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EU court lets states subsidize

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The European Court of Justice ruled Thursday that payments made by governments to companies that provide essential services should not be considered state aid, making it more difficult for regulators to prevent illegal support. .European governments have pumped billions of euros into companies such as Electricité de France to provide services deemed necessary - such as serving remote or low-income communities - that are unlikely to be offered by a private company. ."This decision will set the stage for how the commission addresses state aid in all cases involving public companies," said Thomas Jestaedt, a lawyer with Lovells Boesebeck Droste in Brussels. Rivals argue that companies use funds earmarked for essential services to offset costs related to businesses in which they compete. The Court of Justice ruling that money provided for such services should not count as state aid and therefore does not need to be reported to and approved by Brussels-based European regulators makes it harder to stop abuses of the aid. The court said that as long as services being compensated were clearly defined and covered the costs of providing the service, including a "reasonable profit," money paid by governments should no longer be considered state aid. That removes the onus on governments to notify European Commission regulators of the payments.

The Free and Fair Post Initiative, a Brussels-based lobby representing postal users such as mail-order houses as well as competitors of public postal operators, said it would have preferred the court to have designated such funds as state aid so they would have to be justified to the commission's regulators. .The case that was considered by the Luxembourg-based Court of Justice concerned bus service in the German district of Stendal. District authorities issued licenses to Altmark, a bus company, in 1994 and gave it subsidies to cover the costs of discharging its public-service obligations. .A competing bus company, NVGA, took the case to the German courts, claiming that the subsidies paid to Altmark violated state-aid rules. The German Federal Administrative Court asked the Court of Justice for a ruling on the nature of those subsidies. .At stake was whether such funds represent a payment for the performance of a public function or are a transfer of public money outside of a regular contract and therefore state aid. .Even with the decision Thursday, the commission will continue to monitor cases in which aid is being illegally diverted to support competitive businesses, said Tilman Lueder, a spokesman for the European Commission. But the court's decision will deprive the commission of regular reports on such payments. Instead, it will have to rely on complaints by rivals.