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(Information)

COURT OF JUSTICE

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JUDGMENT OF THE COURT

of 24 July 2003

in Case C-280/00 (Reference for a preliminary ruling from the Bundesverwaltungsgericht): Altmark Trans GmbH, Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH ⁽¹⁾

(Regulation (EEC) No 1191/69 — Operation of urban, suburban and regional scheduled transport services — Public subsidies — Concept of State aid — Compensation for discharging public service obligations)

(2003/C 226/01)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-280/00: Reference to the Court under Article 234 EC by the Bundesverwaltungsgericht (Germany) for a preliminary ruling in the proceedings pending before that court between Altmark Trans GmbH, Regierungspräsidium Magdeburg and Nahverkehrsgesellschaft Altmark GmbH, third party: Oberbundesanwalt beim Bundesverwaltungsgericht, on the interpretation of Article 92 of the EC Treaty (now, after amendment, Article 87 EC), Article 77 of the EC Treaty (now Article 73 EC), and Regulation (EEC) No 1191/69 of the Council of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway (OJ, English Special Edition 1969 (I), p. 276), as amended by Council Regulation (EEC) No 1893/91 of 20 June 1991 (OJ 1991 L 169, p. 1), the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, M. Wathelet, R. Schintgen and C.W.A. Timmermans (Rapporteur) (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, P. Jann, V. Skouris, F. Macken, N. Colneric, S. von Bahr, J.N. Cunha Rodrigues and A. Rosas, Judges; P. Léger, Advocate General;

D. Louterman-Hubeau, Head of Division, and subsequently H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 24 July 2003, in which it has ruled:

1. Regulation (EEC) No 1191/69 of the Council of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway, as amended by Council Regulation (EEC) No 1893/91 of 20 June 1991, and more particularly the second subparagraph of Article 1(1) thereof, must be interpreted as allowing a Member State not to apply the regulation to the operation of urban, suburban or regional scheduled transport services which necessarily depend on public subsidies, and to limit its application to cases where the provision of an adequate transport service is not otherwise possible, provided however that the principle of legal certainty is duly observed.
2. The condition for the application of Article 92(1) of the EC Treaty (now, after amendment, Article 87(1) EC) that the aid must be such as to affect trade between Member States does not depend on the local or regional character of the transport services supplied or on the scale of the field of activity concerned.

However, public subsidies intended to enable the operation of urban, suburban or regional scheduled transport services are not caught by that provision where such subsidies are to be regarded as compensation for the services provided by the recipient undertakings in order to discharge public service obligations. For the purpose of applying that criterion, it is for the national court to ascertain that the following conditions are satisfied:

- first, the recipient undertaking is actually required to discharge public service obligations and those obligations have been clearly defined;
- second, the parameters on the basis of which the compensation is calculated have been established beforehand in an objective and transparent manner;

- *third, the compensation does not exceed what is necessary to cover all or part of the costs incurred in discharging the public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations;*
 - *fourth, where the undertaking which is to discharge public service obligations is not chosen in a public procurement procedure, the level of compensation needed has been determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means of transport so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations.*
3. *Article 77 of the EC Treaty (now Article 73 EC) cannot be applied to public subsidies which compensate for the additional costs incurred in discharging public service obligations without taking into account Regulation No 1191/69, as amended by Regulation No 1893/91.*

⁽¹⁾ OJ C 273 of 23.9.2000.

JUDGMENT OF THE COURT

of 24 July 2003

in Case C-39/03 P: **Commission of the European Communities v Artegodan GmbH and Others** ⁽¹⁾

(Appeal — Directives 65/65/EEC and 75/319/EEC — Medicinal products for human use — Anorectics: amfepramone, clobenzorex, fenproporex, norpseudoephedrine, phentermine — Withdrawal of a marketing authorisation — Competence of the Commission — Conditions for withdrawal)

(2003/C 226/02)

(Languages of the case: German, English and French)

In Case C-39/03 P, Commission of the European Communities, (Agents: R. B. Wainwright and H. Støvlbæk, assisted by B. Wägenbaur): Appeal against the judgment of the Court of First Instance of the European Communities (Second Chamber, Extended Composition) of 26 November 2002 in Joined Cases T-74/00, T-76/00, T-83/00 to T-85/00, T-132/00, T-137/00 and T-141/00 *Artegodan and Others v Commission* [2002] ECR II-4945, seeking to have that judgment set aside, the other parties to the proceedings being: *Artegodan GmbH*, established in Lüchow (Germany), (represented by U. Doepner), *Bruno Farmaceutici SpA*, established in Rome (Italy), *Essential Nutrition Ltd*, established in Brough (United Kingdom), *Hoechst*

Marion Roussel Ltd, established in Denham (United Kingdom), *Hoechst Marion Roussel SA*, established in Brussels (Belgium), *Marion Merrell SA*, established in Puteaux (France), *Marion Merrell SA*, established in Barcelona (Spain), *Sanova Pharma GmbH*, established in Vienna (Austria), *Temmler Pharma GmbH & Co.KG*, established in Marburg (Germany), *Schuck GmbH*, established in Schwaig (Germany), *Laboratoires Roussel L^{da}*, established in Mem Martins (Portugal), *Laboratoires Roussel Diamant SARL*, established in Puteaux, *Roussel Iberica SA*, established in Barcelona, (represented by B. Sträter and M. Ambrosius), *Gerot Pharmazeutika GmbH*, established in Vienna, (represented by K. Grigkar), *Cambridge Healthcare Supplies Ltd*, established in Rackheath (United Kingdom), (represented by M. D. Vaughan, QC, K. Bacon, barrister, and S. Davis, solicitor), and *Laboratoires pharmaceutiques Trenker SA*, established in Brussels, (represented by L. Defalque and X. Leurquin), the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, M. Wathelet, R. Schintgen, C.W. A. Timmermans (Presidents of Chambers), C. Gulmann, D.A. O. Edward, A. La Pergola, P. Jann (Rapporteur), V. Skouris, F. Macken, N. Colneric, S. von Bahr, J.N. Cunha Rodrigues and A. Rosas, Judges; S. Alber, Advocate General; M. Múgica Arzamendi, Principal Administrator; for the Registrar, has given a judgment on 24 July 2003, in which it:

1. *Dismisses the appeal;*
2. *Orders the Commission of the European Communities to pay the costs of these proceedings and those relating to the application for interim relief.*

⁽¹⁾ OJ C 70 of 22.3.2003.

ORDER OF THE COURT

(First Chamber)

of 24 July 2003

in Case C-166/02 (Reference for a preliminary ruling from the Tribunal Judicial da Comarca de Alcácer do Sal): **Daniel Fernando Messejana Viegas v Companhia de Seguros Zurich SA, Mitsubishi Motors de Portugal SA** ⁽¹⁾

(Article 104(3) of the Rules of Procedure — Answer which may be clearly deduced from existing case-law — Second Directive 84/5/EEC — Compulsory insurance against civil liability in respect of motor vehicles — Types of civil liability — Minimum amounts of cover)

(2003/C 226/03)

(Language of the case: Portuguese)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-166/02: Reference to the Court under Article 234 EC by the Tribunal Judicial da Comarca de Alcácer do Sal (Portugal)