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Stagecoach East Midlands and others, West Coast Trains Partnership and others, Stagecoach South Eastern Trains Limited and others v The Department of Transport and the Secretary of State for Transport

Cases No: HT-2019-000158, HT-2019-000173, HT-2019-000187

In 2019 the Department for Transport was running three procurement competitions, for the South Eastern, East Midlands and West Coast Partnership passenger rail franchises. On 9 April 2019 it was announced that the Secretary of State for Transport, the Rt Hon Chris Grayling, had disqualified bidders involving Stagecoach, Virgin and Arriva from each of the competitions in which they were taking part.

By separate decisions, the East Midland franchise was awarded to Abellio East Midlands Ltd and commenced on 18 August 2019, and the West Coast Partnership franchise was later awarded to First Trenitalia West Coast Rail Ltd and commenced on 8 December 2019. The South Eastern competition was cancelled on 7 August 2019.

The reason for the disqualifications was that the disqualified bidders had refused to accept the allocation of risk of pensions liabilities that had been proposed by the Government and had proposed other terms that were more favourable to the bidders because they allocated a greater risk to the Government. Bidders had been told that they were obliged to accept the Government's allocation of risk in order for their bids to be compliant and that non-compliance could lead to disqualification.

Arriva, Stagecoach and Virgin brought proceedings challenging the disqualifications, contending that the Secretary of State's decision was unlawful for a number of reasons relating to pensions risks and the conduct of the procurement. Arriva settled just before trial on terms that are confidential to the parties. After an expedited trial in January and February 2020, Mr Justice Stuart-Smith has today handed down judgment in the High Court. The judgment finds that the decision to disqualify the bidders for non-compliance on the issue of pensions was lawful for reasons set out in the judgment. The bidders' challenge therefore fails.

Copies of the judgment are available from the Judicial Press office