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The government has adopted the Tariff of Fees applicable to proceedings under Chapter 11 of the Public Procurement Act (PPA) with the Competition Protection Commission (CPC) and the Supreme Administrative Court (SAC), which, for all practical purposes has put an end to the appeals in most proceedings of this kind. The proposed fees on a pro rata basis restrict the access to legal remedies and directly distort competition.

In accordance with the PPA amendments which entered into force as from 1 July this year, state fees are charged on a pro rata basis when public procurement procedures are appealed with the CPC or the SAC. The Tariff sets out the rate of 2 % of the estimated value of the public procurement contract or a part thereof to be awarded, as specified by the contracting authority. It has also introduced a range in absolute terms, i.e. the fee cannot be lower than BGN 850 and higher than BGN 15,000. In the case of cassation proceedings with the SAC the fees range from the minimum of BGN 375 to the maximum of BGN 7,500. Previously, the fee applicable to appeal proceedings under the PPA was BGN 859 or BGN 1,700 respectively, depending on the case.

The introduction of fees on a pro rata basis has been justified with reference to the recurrent tendency over the recent years of increasing the number of ill-founded appeals which is claimed to have slowed down public procurement procedures and to have impeded the implementation of projects. Nevertheless, it should be borne in mind that the payment of a fee in such proportions for an administrative procedure (as in the case of appeals against acts issued by the contracting authority under the PPA) would put some potential participants in such procedures in a situation which would prevent them from providing the financial resources required for the defence of their legitimate rights and interests. It should be recalled that it is precisely the PPA that envisages mechanisms which safeguard competition through the opportunity for start-ups or new entrants on the respective market to take part in public procurement procedures.

Furthermore, pursuant to § 1 of the Transitional and Final Provisions of the above mentioned government ordinance, its effect is retroactive as from 1 July 2014, which actually put

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hundreds of persons who lodged their appeals during the period from 1 July to the date of entry into force of the new Tariff (15 July 2014) in a situation in which they had only three days to pay the difference between the old and the new fee and, in most cases, it was an amount that was hardly negligible.