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## Ethics in the governance of telecommunications: accountability of global industrial actors

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## Ethics in the governance of telecommunications: accountability of global industrial actors

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### **Abstract**

Historically, the development of tele-communications has been at the heart of State policy based on a set of principles revolving around notions of modernisation, on the one hand, and nation-building, on the other. They were operationalized in State planning for domestic infrastructure, regulation of market, and communication control. Internationally, telecommunications constituted a core piece in the toolbox of foreign policy and international trade hegemony. The physical scarcity of resources and high costs (i.e. frequencies, cables) and the principles of placing the State at the centre of managing the telecoms and media landscapes have dominated the largest part of communications history. With the successive waves of a. liberalisation and b. technological change, the role of the State has receded and the role of international organisations and private actors has become paramount in setting not only the scene for the technological development in the sector, but importantly, in shaping the principles under which the sector is regulated on a day to day basis.

Technological and societal changes shaped the functioning of the telecoms sector, which has become an interconnected ecosystem. Further, regulatory change, in terms of actors, principles and processes is shaping the everyday experience of citizens (or

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users) around the globe: the role of the global telecommunication industry in social and economic development is underpinned by an unprecedented growth over the past 15 years (ITU International Telecommunications Union, 2015a). This growth is strictly connected to access to spectrum and to the adoption of mobile broadband services (ITU; UNESCO, 2015), (GSMA GSM Association, 2016), one of the most valuable public goods globally (Samuelson, 1954), (Samuelson, 1955), (Holcombe, 1977). The future of communication services lies with the utilization of spectrum bands, and scarcity thereof is a matter of public policy about the utilization of public communicative spaces (Sarikakis, 2012); therefore public accountability (Bovens, Goodin, & Schillemans, 2014) by its 'users', i.e. telecom operators is a legitimate expectation of global and local publics.

An often ignored dimension of principles and practice of public accountability of corporations around transparency and integrity, as the new core actors in the global communications regime. Historic failures and structural weaknesses in emerging, developing and least developed countries on forced implementation of competition policies and introduction of 'one-size-fits-all' legal and regulatory frameworks have systematically failed to address serious concerns regarding corruption and integrity structures and have paved the way to current corruption incidents worldwide (Chakravarthy & Sarikakis, 2006; Sutherland, 2013). The demands of investors of industrialised countries dictated the implementation of historically and politically ungrounded policies and regulations with severe impacts to the accessibility and affordability of telecoms infrastructure in developing countries today, hence widening the digital divide.

This paper explores the processes of governing spectrum and connects to accountability mechanisms of European telecom operators as key actors in providing an integrated infrastructure for global sharing of information with a significant impact to the global digital divide. We apply an analysis that takes into account multi-level, multi-actor, multi-purpose factors in the future of information infrastructure – to the increased role of spectrum management, to the effects and impact of globalization of actors and to the role of private sector actors in shaping communication (Sarikakis & Rodriguez-Amat, 2013). The paper surveys the ways in which policies about public accountability and integrity are exercised globally and explores possible connects to

the governance of spectrum utilization. We argue that corporate actors bear social and political responsibilities as *political actors* in the process of governance and discuss the role of European policies in shaping and enforcing those responsibilities.

We further elaborate possible regulatory frameworks in the context of social (power) relations (Bovens, Goodin, & Schillemans, 2014) and of empowered inclusion (Warren, 2004) in regards to integrity. We further argue for the need of supra-national regulation at EU-level to secure integrity in spectrum management. We recommend possible and necessary sector-wide initiatives to implement new standards fostering transparency in spectrum licensing, including a minimum set of criteria to be implemented within the licensing process.

## **Introduction**

Telecommunications have been seen as the “central nervous system” of global communication- their governance fits firmly to global communication and media policy (Castells, 1996) (Chakravarty & Sarikakis, Media Policy and Globalization, 2006). Concerns over access to telecommunication systems as a pre-condition for participation in the network society (WSIS World Summit on the Information Society, 2003) are situated within policy debates of inclusion vs exclusion, but beyond the “mere” issues of the digital divide (Castells, 2004) (Mansell, 2014). Despite a wealth of studies in the field, significant divides in the accessibility and affordability of information infrastructure remain a global concern: the broadband divide of 82 per cent and 21 per cent mobile broadband penetration in developed and in developing countries respectively (ITU International Telecommunications Union, 2015b), create new risks, barriers and social inequalities.

The telecommunication industry, or otherwise the information and communication technologies (ICTs) sector, plays a critical role in today’s social, cultural and economic life, generating 4.2% of global GDP, amounting to more than \$3.1 trillion of economic value-added (GSMA GSM Association, 2016). Over the past 15 years, the sheer number of subscriptions globally open up new possibilities of this interconnected ecosystem in global information sharing and in the flow of economic

and financial transactions: more than 7 billion mobile subscriptions worldwide, accounting for 3.2 billion internet users today (ITU International Telecommunications Union, 2015a), are accompanied by the extension of mobile broadband into nearly one third of the population living in rural areas, where, according to most recent available data, 29 per cent of the 3.4 billion people worldwide were to be covered by 3G mobile broadband by the end of 2015.

This growth is strictly connected to access to spectrum (ITU; UNESCO, 2015), (GSMA GSM Association, 2016), one of the most valuable public goods globally (Samuelson, 1954), (Samuelson, 1955), (Holcombe, 1977). The future of ICT lies with the utilization of spectrum, and scarcity thereof is a matter of public policy about the utilization of public communicative spaces (Sarikakis, 2012), therefore public accountability (Bovens, Goodin, & Schillemans, 2014) by its 'users', i.e. telecom operators is a legitimate expectation of global and local publics.

We clearly see a sharp contrast in the 'DNA' of governance of the ICT sector, namely the expectations, policies and efforts of international organizations setting the agenda of ICT development for the future while addressing anti-corruption and integrity as a matter of growth factor, and the reality of corruption scandals in the global South involving globally present telecom operators subject to regulation of the global North. This contrast highlights questions about the origins and future perspectives of governance matters: what are the historic and systemic failures that have contributed to these outcomes? Are the policies simply wrong or their implementation were not sufficiently systematic, not creating consequences and not accompanied by necessary measures?

Although structural, economic and technological dimensions have attracted a lot of attention, critical and celebratory, there is remarkably little on the question of ethics and accountability of the actors involved in driving this unprecedented growth of ICTs globally, including telecom operators and affiliated manufacturers. In other words, very little has been researched in terms of under which principles, priorities and in which ways does the telecommunication industry expand globally.

In the following discussion we interrogate the extent to which ethical performance of these private actors may have an impact on the closing of the global digital divide (ITU International Telecommunications Union, 2015a) (UN United Nations General Assembly, 2015). As one of the key values of such performance we are interested in whether policies providing for enhanced public accountability (Bovens, Goodin, & Schillemans, 2014) may contribute to lessening this divide. In this paper we are exploring the governance of spectrum, with a particular focus on the integrity and accountability of 'users', i.e. telecom operators as a matter of public trust (O'Neill, 2002). We survey underlying policies from the perspective of the development of the north-south telecommunications divide and with a special emphasis on the role of Europe within this context.

For that, we analyse existing and envisioned policy frameworks that (could) contribute to the ethical performance of telecom operators in regards to integrity. We argue, unethical actions by global Europe-based telecom need to be addressed by European institutions and national regulators for their role in undermining global social justice and for their role in impacting on the European telecommunications market.

### **The costs of corruption and its impact on the global digital divide**

Corruption is one of the main barriers to remove poverty, studied by many over the years from various aspects (Lambsdorff, 2006), and also addressed by several international level legal acts<sup>2</sup>. Definitions do not offer a homogenous understanding of 'what constitutes corruption', stemming from the need to focus rather on the 'societal changes, and their effects on organizations and their members' while approaching the issue of corruption, hence reflective 'corruption theories' being

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<sup>2</sup> Inter-American Convention Against Corruption (1997); African Union's Convention on Preventing and Combating Corruption (2003); Council of Europe's Criminal Law Convention on Corruption (1998) and Civil Law Convention on Corruption (1999); Treaty on European Union (Article 29) implemented by the Convention on the Protection of the European Communities' Financial Interests (1995) and the Convention against Corruption Involving European Officials or Officials of Member States of the European Union (1997). Currently, it is the UN Convention against Corruption (2005) and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1999) that have the most wide-reaching global effects in terms of signatory states (168 and 40 respectively).

'themselves creatures of society' (Breit, Lennerfors, & Olaison, 2015, old.: 331).

Institutional forerunners in developing anti-corruption policies, the OECD and the World Bank especially, aimed to set conceptual and practical glossaries on 'corruption'<sup>3</sup>, while emphasizing the complexity and multi-layered character thereof (OECD; UNODC; World Bank, 2013) (OECD, 2014a), (The World Bank Group, 2012). Historically, we can also witness the evolution of approaches and more significantly the shift of focus in anti-corruption policies since the Enron-case and the financial and economic crisis. 'Corruption' as a matter previously attributed solely to the public sector has been lately significantly associated with the private sector and the role of its actors became a focal point in fighting against corruption (Breit, Lennerfors, & Olaison, 2015), (OECD, 1997), (OECD, 2010), (OECD, 2011), (OECD; UNODC; World Bank, 2013), (OECD, 2014a), (OECD, 2014b), (OECD, 2015). Our decision in choosing Transparency International's definition on corruption for our analyses is because it reflects this conceptual change in describing corruption 'as the abuse of entrusted power for private gain' (Transparency International, 2016).

Our discussion on the role of *global private actors* in corrupt practices and its impact in deepening the global divide requires an understanding that corruption is as much of the matter of the private sector as of public institutions. The ripples of recent cases of abuse and loss of integrity<sup>4</sup> suggest that (un)ethical performance of these actors is key to the next era of global ICT development – and to spectrum as the vehicular of it - and more relevantly to the issues of equality of access to them. Therefore we argue, that all stakeholders in this process – telecom operators, international and European organisations and the States – have responsibilities to systematically develop and enforce policy frameworks in regards to ethical performance, integrity and

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<sup>3</sup> There are various types of corruption and therefore glossaries are following these distinctions. Most typically, when referring to corruption, it is 'bribery' ("a financial offer of or favors to influence a public official") , 'nepotism' ("favoritism shown by public officials to relatives or close friends"), 'fraud' ("cheating the government through deceit") and 'embezzlement' ("stealing money or other government property") that is meant by the phrase (World Bank Group, 2003: 6). However, one should also distinguish between 'grand' and 'petty' corruption as a matter of financial means involved in those transactions, and also between 'administrative' and 'political' corruption based on the impact of corrupt practices .(World Bank Group, 2003)

<sup>4</sup> See the cases of [TeliaSonera AB](#), [Alcatel Lucent SA](#) or [Magyar Telekom](#).

accountability of dominant private actors.

### **Corruption and the digital divide**

The digital divide is best described by the forms of inequalities that underpin it: in terms of access, reach, cost. Access to ICTs is available to only 7% of households in least developed countries (LDCs) compared to world average of 46% and over 80% in developed countries. Reach in developing countries stands at 35%, in LDCs 25%, compared to 82 % in the developed world. Finally, affordable prices of ICT services - threefold higher prices in developing countries in case of average monthly fixed-broadband and twofold higher in the case of mobile-broadband compared to developed countries – show clear evidences to inequality in access to ICTs globally (ITU International Telecommunications Union, 2015a). These inequalities are closely linked with corrupt practices in the markets, even when other crucial factors are controlled for, such as political openness and stability, education and economic wealth (Shrivastava & Bhattacherjee, 2014). Moreover a recent study analysing ICT development and the correlation to country-level corruption has pointed to another aspect to costs of corruption globally, showing “that ICT development is negatively related to corruption, which in turn, is negatively related to government effectiveness and economic efficiency” (Shrivastava & Bhattacherjee, 2014, old.: 1), referring to the need of accessible and affordable ICT for economic growth.

According to the 2015 Global Financial Integrity report, developing and emerging economies lost US\$7.8 trillion in illicit financial flows from 2004 through 2013. This was disproportionately borne by developing countries, as 84% per cent of this ‘burnt wealth’ was a result of deliberate trade mis-invoicing and leakages in the balance of payments (Kar & Spanjers, 2015). It is widely acknowledged that the economic costs of corruption are borne by those who are least able to (Gupta, Davoodi, & Alonso-Terme, 2002).

Corruption creates deficits to democracy (Warren, 2004), perpetuates inequality of income, inequality in education and land distribution (Gupta, Davoodi, & Alonso-Terme, 2002). It also has negative effects on overall productivity (productivity of

resources), distorts the functioning of the public and the private sectors, arising from fundamental problems of institutional structures of state and of society (Lambsdorff, 2006). Corruption plays a significant role in the supply of public services - increasing or decreasing demand - (Sequeira & Djankov, 2013), a critical matter especially in developing economic environments.

Corruption is a matter of historical failures and structural weaknesses in the telecoms sector (Chakravarty, Telecom, national development and the Indian state: a postcolonial critique, 2004), (Chakravarty & Sarikakis, Media Policy and Globalization, 2006) (Berg, Jiang, & Lin, 2011), (Wickberg, 2014). The key areas subject to high-level risk of corruption in the telecommunication sector, namely (spectrum) licensing process (1); market regulation and price-setting (2); supply chain and third parties management (3); and customer services (4) (Wickberg, 2014), coupled with continuous interactions with government at different governance levels (Sutherland, 2012a), (Sutherland, 2012b), (Sutherland, 2015), (Sutherland, 2016), are structural and inherent risks of corrupt practices in the sector.

Among these areas, it is the spectrum licensing process that bears the most significant characteristics in regards to the operations of telecoms and it is also the most vulnerable area subject to corruption (OECD, 2014b), (Sutherland, 2006). Corruption risks in spectrum licensing are stemming from the complexity of the process: the various forms of licensing - including tendering, beauty-contests or auctions - , the high number of interactions with public actors' (governments, regulators, other public authorities), trigger different but significant incentives for corrupt practices. The most widespread methods of corrupt licensing procedures are embedded in delays in auctioning awaiting higher bids, in the application of reserve prices (leaving licenses unsold), in the provision of bidding credits for weak bidders and in the reduction of the number of licenses sold (creating monopoly or oligopolistic power) (Sutherland, 2013a). The range of corruption types associated with licensing includes various forms of public sector corruption (bribery, gifts and entertainment; political corruption; cronyism and nepotism and conflict of interest) and of private corruption (money laundering; corporate misconduct and lack of integrity).

Telecom operators as private actors have a major role in conducting these practices,, an aspect generally missing from policy agendas of international institutions and of the states. Global, regional and national ICT development goals and accompanying spectrum policies (ITU; UNESCO, 2015), (GSMA GSM Association, 2016) seem to overlook a rather banal aspect about the future of an interconnected globe: how are those in control of key assets of this development, i.e. of the necessary spectrum bands governed? Who are they giving account about their actions and on what account? What are the roles and responsibilities of the institutions representing the interest of the public in this interplay? While looking for possible answers, we have to turn our attention therefore to existing or envisioned accountability frameworks addressing telecoms and more closely spectrum management in order to point to their shortcomings, inconsistencies and consequences of those.

### **Governance of telecommunication industries and accountability frameworks**

Governance of global telecommunications industries is “a political process through which decisions are made [and] is beyond the clearly defined spaces of government [...] a field of interaction on a multilevel constellation of power [...] whereby the actors can be governments, authorities, supranational organisations, civil society and ideological dispositions” (Sarikakis, 2012, p. 143). Expectations of the publics about telecoms as political actors (Scherer & Palazzo, 2011) and ethical considerations (Roberts, 2009) seem necessary while studying their governance.

The vulnerability of the telecom sector to risks of corruption is deeply rooted in the historicity of the markets. Deregulation and liberalization of national telecommunications markets in 1980s and throughout the 1990s, as a policy imperative across the globe, has raised concerns about equity and participation in the ‘networked economy’ (Chakravarthy & Sarikakis, Media Policy and Globalization, 2006, p. 69), (Mansell, 1994). The liberalization agenda and its policy failures in Africa, Asia and Latin America in the 1980s as national development priority has exacerbated the growing disparity between the global North and South (Chakravarthy, 2004).

A major shift in global telecommunication policy relied on market mechanisms presented as the ultimate solution to the perceived “state failure” – in the global South largely attributed to corrupt behaviour – in governing rapid technological changes and the opening up of the markets, resulting also in the change of lead roles from state-actors to corporate players (Chakravarty & Sarikakis, *Media Policy and Globalization*, 2006). However no institutional guarantees to the representation of competing demands of the state and of the market have been negotiated (Chakravarty, 2004). The results in the transformation of the governance mechanisms (Mansell & Raboy, 2011) show a critical and uneven shift of powers from state actors to transnational corporations (Sarikakis, 2004), (Chakravarty & Sarikakis, *Media Policy and Globalization*, 2006), (Sarikakis, 2012), (Sarikakis & Rodriguez-Amat, 2013), predominantly legitimised by challenging the role of state actors as ‘guardians of public interest’ (Chakravarty & Sarikakis, *Media Policy and Globalization*, 2006, p. 63).

Overall, market driven policies on liberalization have coupled with privatisation as the ‘salvation’ and of proliferated corruption (Chakravarty & Sarikakis, *Media Policy and Globalization*, 2006, p. 64), (Berg, Jiang, & Lin, 2011), (Wickberg, 2014). The liberalisation process ignored the very risks of corruption of which the State was accused and produced no safeguard mechanisms. On the contrary, liberalisation processes utilised and benefited from high incentives and opportunities for corruption, such as extremely high licence fees, equipment contracts and purchase of state operators (Sutherland 2013).

Sector-specific regulation of telecommunications typically by national regulatory authorities creates a policy-context whereby many of their activities is subject to stricter public scrutiny, therefore eliminating partly the need for voluntary actions in corporate social responsibility (CSR). However it has to be noted, that addressing corruption very rarely forms part either of compulsory or of any voluntary requirements imposed by those specific regulations (Sutherland, 2016).

Telecoms are utilizing immensely valuable public goods: the spectrum. With the advent of digital technologies actually the future of telecoms is about spectrum. But no matter how much technology has advanced, spectrum is scarce and the hunger,

thus the race for it is fierce. Traditional broadcasters, especially public service ones, the states and the military, the alternate rising stars of the global, including giants as Google, and the telecoms are all trying to grasp to the same amount of frequencies.

This battlefield has scenes on the multinational (ITU), on the regional (EU) and on the local (the states). Also, the publics i.e. the users, the audiences are present at all these levels. The interests of these 'warlords' are represented by their powerful associations (GSMA, ETNO, ECTA) or simply by their sheer economic power, but the publics are left with local consumer protection laws and with the hope that their institutions, their governments and regulators, are there to represent them. However the publics are as much global in their interests as the impact of corruption to the global digital divide has showcased. This implies a very profound need to hold the actors involved in those corrupt practices accountable – at least answerable - for their global actions by the public. For this end, we are reviewing theories relevant to regulation of accountability, their legitimization and approach, and present the links to accountability and corporate governance in regards to corruption.

The scholarly debates are notably referring to our research question: should private enterprises, corporations render an account to the public (Mulgan, 2000) within the global context? If yes, on what accounts? What is the role of the public in governing private corporations? What frameworks are in place to hold corporations accountable in regards to integrity? Who are the actors involved in these governing processes and what are the norms they are enforcing? Is there any specificity of telecommunication corporations that would render their accountancy special (Brennan & Solomon, 2008)?

### **Public accountability and transparency as a matter of accountability conceptualised**

Public accountability of private actors (Leader, 2014) and generally, concepts of public accountability are extensively debated in political science discourses (Dubnick & Romzek, 1998), (Majone, 1994), (Majone, 1998) (Majone, 1999), (Scott, 2000) and also within the context of good governance debates (OECD, 2010) (OECD, 2012). The nature of the obligation on why an actor should be compelled to render an

account and what theoretical models can be called upon - varying from the principal-agent model (Majone, 1994) to delegation-of-authority or signalling game models (Bendor, Glazer, & Hammond, 2001) - are central to these discussions.

The concept of accountability is historically rooted with accounting practices of book-keeping (Dubnick & Romzek, 1998), transforming into “the context of social (power) relations within which enforcement of standards and the fulfilment of obligations is a reasonable expectation” (Bovens, Goodin, & Schillemans, 2014, p. 5). Accountability as a virtue - providing legitimacy of exercising power - and as a process - being instrumental in achieving good governance (United Nations, 2010), (Kaufmann & Kraay, 2008) - share their core dimensions on transparency, participation, evaluation, and complaint to response mechanisms (Bovens M. , 2010).

It is also argued, corporations have a new role as political actors in a globalized society; therefore deliberative corporate governance concepts envision their active participation in discourses of the civil society (Scherer & Palazzo, 2007). Acting as social institutions, it encompasses also responsibilities in administering citizenship rights for individuals, described by the term of ‘corporate citizenship’ (Matten & Crane, 2003). As a result of transforming approaches and concepts about corporations as social actors, it has been observed, that these actors may re-focus to values-based perspectives on management and corporate identity, with “emerging practices of social and ethical accounting, auditing and reporting” (Pruzan P. , 1998, p. 1379).

A minimal conceptual consensus have achieved by the various disciplines (Brennan & Solomon, 2008) defining public accountability as the notion “about providing *answers*, about *answerability* towards others with a legitimate claim to demand an account” (Bovens, Goodin, & Schillemans, 2014, p. 6). However answerability resides on the ability of the publics to ask the right questions about the conduct of the relevant actor, that in turn necessitates the availability of *information* in regards to the actor and to its actions. Therefore, ‘transparency’ became a central element in public accountability policies, a key indicator of ethical conduct and a prerequisite of integrity (Transparency International, 2014).

The changing role of global corporations, their role in corruption and its impact to the digital divide are strongly connected and related. It means in other worlds, the

performance of telecoms is a matter of *interest* of globally present publics, therefore there is a legitimate claim of those publics that these corporations take an account to *them* for their actions and that they receive relevant and meaningful information about their actions.

### **Transparency as an indicator of ethical conduct**

Transparency in regards to operation, organizational structures, ownership and internal policies on integrity of private corporations is key to secure public trust. O'Neill (2002) argues that "well placed trust" ... "grows out of active enquiry rather than blind acceptance" (O'Neill, 2002, p. 76), an enquiry that needs to be informed by transparent sources of the corporations. Therefore, it is legitimate to focus on this particular aspect of ethical performance, as informed publics, i.e. citizens are the trustees of morals in any democratic context.

Critiques on accountability practices from psychoanalytic views on processes of recognition opened new perspectives to our understanding on accountability as a social practice, reconstituting as "an exercise of care in relation to self and others, a caution to compassion in relation to both self and others" to "...discover the nature of our responsibility to and for each other" (Roberts, 2009, old.: 969). From this perspective, transparency *as* accountability can become problematic if taken as substitute to accountable and ethical conduct. Roberts (2009) points rightly to "constitutional limits of accountability as transparency" (Roberts, 2009, old.: 968) and the "allure of transparency" (Roberts, 2009, p. 962) as potentially false or misleading, involving reverse effects. Transparency might also turn into 'blame avoidance' underlying political and institutional practices (Hood, 2007) if not embedded in much wider and complex accountability mechanisms<sup>5</sup>.

Not overestimating the role of transparency in regards to ethical conduct, it is still informative if we look at some facts. A recent global overview on transparency of corporations (Transparency International, 2014) assessed the world's largest,

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<sup>5</sup> The disclosure practices of Enron and of Parmalat - both corporations being transparent but untrue - in the sub-prime housing loan scandal in the US point to the controversial effects of transparency. Also, it is a critique about transparency as the code word for good governance used against non-Western companies (Karabell, 2008)

publicly listed companies in terms of corporate reporting based on the dimensions of anti-corruption programs, organizational transparency and country-by-country reporting, pointing to the most critical aspect of non-transparent multinational operations and the lack of information on the country-by-country dimension. The telecommunication sector among all other businesses has performed relatively well (with an average score of 45 per cent), but with an uneven performance of its actors.

As argued before, spectrum as a public good connotes the interest of the public in spectrum management and the importance of spectrum utilization, the need for more and more frequency bands cannot be overestimated (GSMA GSM Association, 2016). The recent report on the ‘State of Broadband 2015’ of the Broadband Commission for Digital Development describes mobile broadband services as “the fastest-growing ICT service in history, taking just five years to achieve one billion users” (ITU; UNESCO, 2015, old.: 12). The ‘hunger’ for spectrum is the major aspect about future industrial trends “anticipating a 33-fold traffic growth ratio in 2020 compared to 2010” (ITU-R, 2014, old.: 9).

The future of telecoms is about spectrum. This also means, it is legitimate to expect public policies and regulations are considering the changing dynamics of the sector, acknowledge the impact of its actors globally and locally and refocus in terms of what policy means and tools might better serve the interest of the publics.

### **Normative requirements on transparency in the telecommunication sector**

Telecommunication is subject to numerous sector-specific international, supranational and national regulations in regards to coordination on the use of radio spectrum and of interconnections of telecommunication networks. It is the International Telecommunications Union (ITU) – an organ of the United Nations (UN) – setting standards on coordinated use of the radio-frequency spectrum to ensure their “rational, equitable, efficient and economical use” avoiding interference. The ITU does not possess any supra-authority over national Telecoms markets, and its functioning – similar to other UN organs – is based on cooperation and multi-lateral agreements of nation states, therefore ITU standards are only applicable if those agreements are met. However, ITU has issued only the Telecommunications

Regulation Handbook (ITU; IBRD; World Bank, 2011) that offers best practices and recommendations in the sector, addressing also specificities of corrupt practices in spectrum licensing. The Handbook highlights the requirement towards Governments to guarantee licensing is undertaken by independent and autonomous regulators, who implement licensing practices that ensure procedural transparency and safeguard integrity of the entirety of licensing.

Within the EU, the telecom regulatory framework claims to encourage competition, safeguard users' rights and enable them to benefit from increased choice, low prices, high quality and innovative services. Yet it fails to provide any specific legal instrument addressing integrity or transparency as a matter of ethical performance<sup>6</sup> and in the interest of citizens.

Meanwhile, corruption is perceived as a serious concern in the telecoms sector, outlying all other sectors (with the exception of construction), even though majority of EU Member States have in place the necessary legal instruments and institutions to prevent and fight corruption (EU Anti-Corruption Report 2014).

The lack of normative requirements on transparency - globally and regionally - is worrisome especially when viewed against the backdrop of current corporate practices in the sector. TI's recent report (Transparency International, 2015) pointed to disclosure practices of telecoms companies in regards to transparent operation, and the results signal problems in this aspect<sup>7</sup>.

### **Transparency on global presence of European telecom operators**

There is today no single, publicly available database or systemic information on the global presence of Europe-based telecoms. Neither the ITU, nor the World Bank or the Organization for Economic Development<sup>8</sup> is in possession of accurate data about

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<sup>6</sup> 'Transparency' as a matter of information asymmetry existing between consumers and internet service providers is addressed however by net neutrality policies and regulations.

<sup>7</sup> 26 of the 35 telecoms assessed scored less than 5 out of 10, and 27 out of the 35 largest firms measured do not disclose where their subsidiaries operate.

<sup>8</sup> Information based on researchers' own inquiry and correspondence with representatives of the aforementioned international organizations.

investments, shares and performance in the global South of operators represented in the global North. Aggregate data is available to the GSMA Association, the largest organization of 800 mobile operators owned by 250 corporations worldwide, but the majority of GSMA's Intelligence Service<sup>9</sup> is not available publicly.

The results of the TI Telecom TRAC Report (Transparency International, 2015) on the country-by-country reporting dimension, evaluating disclosure of international operations by telecoms, are instructive in this aspect. The research undertaken by TI has aimed to look at the „disclosure by country of financial reporting of revenues, capital expenditure, and income before tax, income tax and community contributions“ (Transparency International, 2015, p. 32). This transparency indicator has shown the lowest result out of all three dimensions, highlighting problems of accountability of global corporations by their global and local stakeholders. Although performance of some Europe-based operators were outstanding<sup>10</sup> (Deutsche Telekom, Telenor, TeliaSonera, Telefónica and Vodafone achieved scores of over 50 per cent), the results in other cases (KPN 28%, Swisscom and Telecom Italia 6%, and Orange 5%) suggest huge potential for improvement. Details of the research results show an interesting picture also on exact disclosure practices of those corporations. Opaqueness about community contributions, income tax and pre-tax income are especially worrying outcomes as these data and information bear the biggest value to local stakeholders. However, the list of high-achievers being among the most successful operators within Europe clearly suggest counter-arguments to claims of transparency being a factor of competitive disadvantage.

Another major dimension of TI's research was organisational transparency – i.e. beneficial ownership and structures of incorporation -, an aspect that gained special attention since the recent scandals of non-ethical performance.. The TeliaSonera case in 2013<sup>11</sup> highlighted practices of European telecoms on hiding subsidiaries (in Uzbekistan, Azerbaijan, Kazakhstan, Georgia, Nepal and Tajikistan) while getting involved in bribery, nepotism and other corrupt practices. Beneficial ownership information was finally revealed by the Danish NRA's sudden request for disclosure

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<sup>9</sup> Available at: <https://www.gsmaintelligence.com/data/> (accessed on 5 Aug 2016).

<sup>10</sup> Telecom service providers performed significantly better (25%) than telecoms equipment manufacturers (10%) (Transparency International, 2015: 34).

<sup>11</sup> Refer to [TeliaSonera AB](#)

on its entire global architecture during a spectrum licensing process in Denmark (Sutherland, 2013a). The proceedings have resulted in criminal offences in Sweden but the implications of the case suggest also structural failures of laws, regulations and policies addressing integrity in the sector.

TI research paints a picture of uneven performance of European telecoms. Though no judgments were made about the integrity of the information or the veracity or completeness thereof (Transparency International, 2015, old.: 40) restricting the evaluation of the end-results, we believe they are relevant, informative and instructing to our research question as indicators to ethical performance of global telecoms.

Outstanding transparency – based criteria of availability of relevant information in the category - has been reported in case of Deutsche Telekom, Orange, Telenor and Vodafone (above 50% scores on a disaggregated basis), while others – including, KPN and Swisscom – were just above the global average score (34% scores) -, and Telefónica, TeliaSonera and Telecom Italia below (Transparency International, 2015, p. 27). Details on transparency of ownership structure indicate, that non-fully consolidated holdings of telecoms are the most hidden from the eyes of the public.

Today these corporate disclosure practices are generally not required by laws or regulations in a systemic way. Corporate responsibility of each single telecom in regards to transparent actions is therefore left to accidental regulatory interventions (as we have seen in the Danish case) or to internal policies and deliberations of those corporations (as Deutsche Telekom's outstanding performance suggest, following their lessons of their unethical practices in the Balkans<sup>12</sup> ).

### **Non-transparent practices of European telecom operators – outlining an European accountability framework**

The above results on transparency in corporate reporting by telecom companies have pointed to practices that are strongly related to our research focus, namely to activities of those actors with global impact in regards to potential widening of the digital

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<sup>12</sup> See at [Magyar Telekom](#)

divide. The aspect of country-by-country reporting (Transparency International, 2015, old.: 32) - about the disclosure of financial reporting of revenues, capital expenditure, and income before tax, income tax and community contributions – has the closest link with telecoms performing differently in their homeland and in other countries of operation (typically in less developed countries) (ETNO (European Telecommunications Network Operators' Association), 2008), (GSMA Intelligence, 2016). Secrecy in this aspect boost the risk of illicit trade and corruption, therefore of unethical practices away ‘from home’. Though it is encouraging, that European companies performed better compared to Asian ones (Transparency International, 2015, old.: 35), the results would still require more explanation when compared to the perceptions of those European operators, who consider corruption as a “problem to a serious extent” (European Commission, 2014, old.: 7).

If these results are understood as indicators of ethical performance, they ultimately raise normative questions of accountability of these private actors. Are there available global and European legal and regulatory standards, clear and enforceable requirements on requiring telecoms to take account for their actions? Which fora are best placed for addressing these matters? What role could and should nation states and European-level regulation play in this regard, especially in mitigating clashing strategic objectives of those corporations with interests of equitability (Leader, 2014)?

In the following, we discuss requirements on accountability towards globally present publics by European telecom operators and the subsequent need to shift their focus to newly defined corporate social and ethical responsibility (Pruzan P., 1998) within the global context. We argue, that European policy has to acknowledge the changing role of these actors by setting clear ethical standards reflecting those changes.

### **Spectrum licencing in the context of public accountability**

As argued before, the future of telecommunication lies in the adoption of mobile broadband services and access to more spectrum (ITU International Telecommunications Union, 2015a), (ITU; UNESCO, 2015), (GSMA GSM Association, 2016). However, spectrum, one of the most valuable public goods

globally (Samuelson, 1954), (Samuelson, 1955), (Holcombe, 1977), is scarce in its respective supply. Therefore the allocation of the airwaves in the interest of the public is of key concern of relevant policies (Marks & Williamson, 2007). Spectrum bands that are critically needed for mobile broadband services today, have traditionally been the main assets for terrestrial broadcasting. Indeed, the legitimacy of state regulation for radio and television has been strictly connected to the scarcity argument (Barendt, 1993), (Streeter, 1996). The use of spectrum is therefore a matter of public policy about the utilization of public communicative spaces (Sarikakis, 2012); therefore public accountability (Bovens, Goodin, & Schillemans, 2014) by its ‘users’, i.e. telecom operators is a legitimate expectation of global and local publics.

This also means that telecoms as global corporations should provide answers to the globally present publics about their ethical performance at different accountability fora. In a global context, these fora are necessarily established beyond traditional managerial and supervisory corporate governance structures (shareholders, board of directors, managerial board, supervisory board) and also geo-spatially extended to territories affected by the operation of those corporations. Also, traditional sites of power within corporate governance have been fundamentally changed under the conditions of globalization, thus “social and political responsibilities of corporations should go well beyond legal requirements and fill the regulatory vacuum in global governance” (Scherer & Palazzo, 2011, p. 16).

Within the context of corruption vs ethical corporate performance, this entails the responsibility of Europe-based telecoms with global reach to provide answers about their business practices in all countries of operation, including less developed ones, in a transparent way. These answers should also empower “those harmed to protect themselves by democratic means: with information, arguments, organization, and votes” (Warren, 2004, p. 341). Globally present publics have a legitimate need for the administration of their citizenship rights (Matten & Crane, 2003), therefore to know, how these corporations are performing in all territories of business presence.

The concept of global public accountability implies changing responsibilities and accountability of telecom operators under European jurisdiction in regards to ethical

performance. Therefore, we are also exploring European policies and regulations with the aim of identifying potential ways to reflect these changes.

### **Need for new normative standards at European level**

It is the spectrum licensing process, that offers the most comprehensive opportunity for policy intervention and implementation in regards to ethical performance currently. Licensing is driven and controlled by national regulators (NRAs), “whose role is absolutely critical in ensuring credible market entry and compliance with and enforcement of existing regulations” (ITU; IBRD; World Bank, 2011, old.: 14). This also implies, NRAs are in possess of opportunities – as a result of their specific powers - of regulatory action to enhance global transparency of operation of telecoms, with strong substance and focused regulatory governance to reduce corruption (Berg, Jiang, & Lin, 2011). Regulation should, therefore, address anti-corruption policies in award of licences, with open bidding and contracting rules, with enhanced transparency throughout the licensing process and with establishing integrity and monitoring mechanisms (Transparency International, 2013). While reducing asymmetries of information (Berg, Jiang, & Lin, 2011) NRAs are to define, implement and enforce new set of criteria about the operation and performance, organizational and ownership structure of the bidders.

The introduction of these new criteria within the European Union’s (EU) legal and regulatory framework would implicate an extraterritorial reach of European jurisdiction. The precedents of anti-corruption policies, the US Foreign Corrupt Practices Act 1977<sup>13</sup> and the UK Bribery Act 2010 have already established extraterritorial liability of multinational corporations with connections to the United States and the United Kingdom respectively for various kind of corrupt acts. Thus, liability *in persona* prohibits persons and corporations – including their officers and employees - to undertake corrupt conduct anywhere in the world. Also, any means or instrumentality of interstate commerce of corrupt nature to foreign officials are prohibited, therefor liability extends even beyond personal scope in this aspect. Both the FCPA and the Bribery Act directly impacts business operations of global

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<sup>13</sup> Beyond the FCPA there is a complex policy framework and several legal measures addressing extra-territorial grand corruption in the US (Sutherland, 2012b).

corporations in cases of limited activity in the United States or the United Kingdom, and the global nature of enforcement<sup>14</sup> also reflects extended jurisdiction (Wilson, 2014).

We believe therefore, with the introduction of newly defined normative standards on transparency of ownership structures as well as on country-by-country reporting - including full and accurate details of beneficial ownership and of corporate structures (fully and non-fully consolidated holdings and country-by-country split of subsidiaries) - as mandatory elements of any spectrum licensing process - and the public availability thereof - within the EU, accountability of Europe-based global telecom operators could and should be significantly enhanced.

### **Outlining possible normative standards within the EU telecom regulatory framework**

Spectrum licensing can be conducted with implementing several different management methods, including administrative, market- and commons-based, however it is the traditional administrative method with overwhelmingly dominance even today (InfoDev; ITU, 2011). The process of administrative licensing can take the form of 'first-come-first served' (whereby applicant who express a-priory interest can be granted with licences for certain spectrum bands), of 'beauty contest' (whereby the most appealing bid gets awarded) or of 'lotteries' and auctions (whereby the sum of the payable licence fees is the decisive factor in awarding the licenses). All forms and methods are governed by NRAs, and terms and conditions are set by these authorities within the national legislative context.

Within the EU electronic communications regulatory framework – as put in place in 2002 and revised in 2009 - spectrum policy is governed particularly by the Authorisation Directive (Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services), the Framework Directive (Directive 2002/21/EC of the European

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<sup>14</sup> See also at SEC Enforcement Actions: FCPA Cases, at <https://www.sec.gov/spotlight/fcpa/fcpa-cases.shtml>

Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services) and by the Radio Spectrum Decision (676/2002/EC). Within the principles of technology and service neutrality set by the Framework Directive, licensing is administered according to the „least onerous authorisation system possible” (Authorisation Directive: Recital 7).

Transparency in regards to beneficial ownership and global impact of the bidders’ is a matter of level playing field during bidding for spectrum licenses. Opaqueness about the real identity of the bidders may hinder to determine if there’s any relationship among the bidders. Additionally, secrecy about performance in other countries of operation – different to the one where bidding is taking place – might provide a non-competitive advantage. Any gains as a result of non-ethical performance in other countries of operation raises the chance of these operators to put in higher bids or to take on more commitments envisioned by calls for bids.

Meanwhile, NRAs are to ensure there is no distortion or restriction of competition in the electronic communications sector, while applying criteria during licensing of radio frequencies on objective, transparent, non-discriminatory and proportionate basis (Article 7, 8 2. b and Article 9 of the Authorisation Directive). NRAs are entitled to require any proportionate and objectively justified information during the licensing process that is necessary for the assessment of the bids, and they are to publish all relevant information on bids awarded in regards to rights, conditions, procedures, charges or fees, in an easily accessible manner for all interested parties (Article 11 and 15 of the Authorisation Directive).

Transparency of beneficial ownership has been addressed in a broader context since 2015 in the EU with the adoption of new legislation requiring each EU Member State to create registers of beneficial ownership information in all business sectors by 2017 (Directive 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing), accessible for public authorities and interested third parties. Recently, the UK Government has also considered major steps towards greater transparency towards foreign companies who wish to enter into public procurement contracts in England (UK Government , 2016). However, these

initiatives are only partially addressing the need for translucent indicators of ethical performance in a global context and with differing policy aims. Also, accessibility of entirely open registries is still lagging behind (Kar & Spanjers, 2015), and 'disturbing failures' (Sutherland, 2012b, p. 14) accompanying the experiences on partnerships of European NRAs' on capacity building and exchange with partners in developing and less developed countries, are suggesting the need for more focused policy intervention at EU-level.

With the introduction of new transparency requirements on full disclosure of ownership structures as well as on country-by-country reporting as conditions to be attached to rights of use for radio frequencies (with amendments to Part B of the Authorisation Directive), European regulation would make a significant step towards public accountability of telecoms towards globally and locally present stakeholders. Additionally, the Body of European Regulators for Electronic Communications (BEREC)<sup>15</sup>, could be invited to develop and disseminate best practices on reporting and publishing requirements (common approaches, methodologies or guidelines), which role forms an integral part of its mandate (Regulation (EC) No. 1211/2009 of the European Parliament and of the Council of 25 November 2009).

## **Conclusions**

Un-ethical performance and corruption has a significant impact globally in widening the digital divide, reducing access potentials and quality of offered services and of the infrastructure (Wickberg, 2014). There is a clearly articulated need for supra-level discussion of past and present corruption – including the historical disclosure of licenses, which were issued by methods of bribery, cronyism and nepotism (Sutherland, 2006), (Sutherland, 2013a). To mitigate damages of past corrupt action (Sutherland, 2012b) and to enable globally and locally present stakeholders and citizen to address the right questions about performance of private actors in control of communicative spaces, policy actions and interventions are inevitable.

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<sup>15</sup> BEREC was established as a key institutional actor in implementing the 2009 telecom reform package of the EC.

Transparency is a key pre-requisite of accountable performance of telecoms as a starting point to inform citizens and stakeholders about the nature of their conduct globally. But the role of transparency cannot become a doctrine leading to blame-avoidance (Hood, 2007) It cannot be isolated from wider contexts of reflective and “intelligent accountability”, which entails reflexive forms in corresponding with the ‘others’, a “conscious acknowledgement of my own partial incoherence” and of the “reality of interdependence” (Roberts, 2009, old.: 967)

Improvement of European spectrum licensing standards in regards to transparency of ownership structures could facilitate open accountability dialogues among global stakeholders on corruption risks and significantly enhance integrity of global telecom operators. Our proposed European-level policy actions need careful legislative design and industry-wide discussion, aligned “with notions of democracy, market efficiency, and corporate responsibility” (Sutherland, 2012b, p. 28). These actions would also reflect the roles and responsibilities of European corporations within the global context, considering further implications about wider ICT issues on Internet governance (Sutherland, 2013b).

Especially in times of non-transparent negotiations at EU and US level on a proposed Trans-Atlantic Trade and Investment Partnership, endangering regulatory powers of European NRAs (EDRI European Digital Rights Initiative, 2016), the need for reconsidering the role of Europe in terms of global challenges seems inevitable.

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