Corruption in the global telecoms sector: undermining ICT sector reform

Ewan Sutherland
LINK Centre
13 March 2012
Introduction

- Sources:
  - Avarice
  - Greed

- The problems:
  - Nepotism
  - Bribery
  - Unaccountability
  - Culture of impunity

- Thoughts about reducing the problems

- Issues for further research
## USA – Corporate fines and penalties

<table>
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<th>USDOJ criminal</th>
<th>SEC civil</th>
<th>Total</th>
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<td>93.0</td>
<td>46.8</td>
<td>139.8</td>
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<tr>
<td>Latin Node</td>
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<tr>
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<td>450.0</td>
<td>350.0</td>
<td>800.0</td>
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<td>13.0</td>
<td>15.4</td>
<td>28.4</td>
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<td>UTStarcom</td>
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<td>1.5</td>
<td>3.0</td>
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<tr>
<td>Veraz</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>557.5</strong></td>
<td><strong>416.0</strong></td>
<td><strong>973.5</strong></td>
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Fines under the Foreign Corrupt Practices Act (FCPA), relating to bribes paid in other countries. US Dollars (millions)

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### Jail sentences under FCPA (months)

<table>
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<th>Individual</th>
<th>Corporation</th>
<th>Jail</th>
<th>Supervised release</th>
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<td>Ott</td>
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<td>Jeong</td>
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<tr>
<td>Holloway</td>
<td>SSRT</td>
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<tr>
<td>Jefferson</td>
<td>-</td>
<td>60</td>
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Traditional problems in telecoms

- Large procurement contracts
- Importation of expensive equipment
Conventional “recipe” for telecoms

- The “Washington Consensus”
- Privatisation:
  - Sale of state-owned enterprises
- Liberalisation:
  - Licencing of new entrants
- Independent regulation:
  - Enduring interactions

Each of these is open to risks of corruption, but no special measures were recommended.
Private investment in telecom projects in developing countries

US Dollars (billions)

Real  Nominal (2007)

Treaties against corruption

- United Nations Convention against Corruption (UNCAC)
- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
- Organisation of American States (OAS) Inter-American Convention against Corruption
- Council of Europe:
  - Civil Law Convention
  - Criminal law Convention

Many companies are signed up to the United Nations Global Compact (UNGC) of which the tenth principle is against corruption.
South Africa investigates

- President Zuma appointed three judges to inquire into the arms scandal:
  - Allegations about the issuance of the Cell C licence
    - *The devil in the detail* by Paul Holden
    - *After the party* by Andrew Feinstein
- MTN appointed Lord Hoffman PC QC to investigate Turkcell allegations:
  - MTN had beaten Turkcell unfairly
  - MTN offered RSA’s *political* support for the Iranian government

These remain allegations
Arab Spring

- Tunisia:
  - Son-in-law of Ben Ali owned 51% of Orange Tunisie
  - Another son-in-law owned 25% of Tunisiana
  - Both confiscated by new government

- Syria:
  - Cousin of Assad owns 75% of Syriatel

- Libya:
  - State/Ghaddafi family owned:
    - Both mobile operators in Libya
    - Host of other operators in Africa
Kingdom of Morocco

- Absolute monarchy
- King owns 69% of INWI:
  - GSM
  - 3G and
  - fixed wireless (exclusive)
- King has monopolised liberalisation since 2002
- His ministers are directors of Maroc Telecom:
  - The principal competitor to Inwi
- Only market entry has been:
  - Kuwaiti investment in Inwi
  - France Telecom purchase of shares in Méditel
U.S. Congressman Bill Jefferson

- Convicted on 11 of 16 charges by a Federal Court, including accepting bribes
- Sentenced to 13 year jail term
- Allegedly intended to bribe the then Vice-President of Nigeria
- First ever raid on a Congressional Office
- FBI found USD 90,000 in his freezer
- On bail, awaiting appeal
Greece

- Siemens paid bribes to both principal political parties and incumbent operator over decades
- Paying about €10–15 million a year
- One conviction with 3 years suspended sentence
- Ineffective parliamentary inquiry
- Settlement last week:
  - For all sectors: telecoms, Athens Metro, Olympic Games, etc.
  - €170m to Greek state
  - €100m investment in Siemens Hellas to ensure its future employing 600 people
Montenegro

- Magyar Telekom
  - Subsidiary of Deutsche Telekom AG
- Bribery politicians to sweeten the deal on privatisation of Crnogorski Telekom
- Companies fined by US prosecutors
- Individuals are still being prosecuted
- Now both firms have delisted from USA
- Parliament has launched a new investigation
- Prosecutors are also looking at the case
Ex-President of Costa Rica

- Miguel Ángel Rodríguez
- Sentenced to a five-year prison term
- Guilty of “instigating corruption”
- Telecommunications deal:
  - Costa Rican Electricity Institute (ICE)
  - Alcatel (now Alcatel-Lucent)
- Served one month as Secretary-General of Organisation of American States, responsible for:
  - Inter-American Convention against Corruption
Haiti – bribes and a murder

- US government liberalised international telephony:
  - Niche markets for émigré communities calling home
  - Smaller telcos wanted cheap rates to terminate calls
- A few bribed officials at Haiti Teleco
- Patrick Joseph (ex-MD) admitted accepting bribes and cooperated with US authorities:
  - Newspapers said “Official B” was Jean-Bertrand Aristide
- Venel Joseph was gunned down one week ago:
  - Former head of Central Bank under Aristide
  - Father of Patrick Joseph
Dora Siliya - Zambia

- Complaint made to the Chief Justice under Ministerial Code Act:
  - Awarded a contract to evaluate the assets of Zamtel to RP Capital Partners (Cayman Is.)
- Investigated by a tribunal comprising: Justices Dennis Chirwa, Peter Chitengi and Evans Hamaundu
- Cleared of the breach of Ministerial code
- Had breached Article 54(3) of the Constitution
- Had failed to comply with the legal advice of the Attorney General
- Had failed to observe tender procedures:
  - should have been the Zambia Development Agency under the ZDA Act
- Resigned as Minister
- A single High Court judge overturned Tribunal
- Minister returned to Cabinet with a new portfolio
Zambia – Privatisation reversed

- Election of a new President:
  - Sata replaced Banda

- Inquiry by Minister of Justice

- Government revoked sale to LAP Green

- Allegations against LAP Green:
  - Failed to meet all three pre-qualification criteria
  - Price grossly undervalued Zamtel
    - Former govt ministers say it had massive liabilities
  - Zambian negotiating team was not neutral

- Interpol pursuing Henry Banda (son of the ex-President) for questioning
Kenya

- Safaricom and Vodafone both paid significant sums to a mysterious Guernsey firm over many years:
  - Owners concealed by non-disclosure agreement
  - Allegedly Daniel arap Moi and telecoms minister
- Alcatel asked to pay USD 20 million to unnamed middleman in Mauritius on behalf of Kencell/Sameer Group
- France Telecom has a mysterious UAE partner in Telkom Kenya
Nigeria – Delta State

- Migrated to UK
- Convictions there for:
  - Theft
  - Handling stolen credit card
- Returned to Nigeria became Governor of Delta State
- In London in February 2012 admitted 13 charges of fraud and money laundering, awaiting sentencing
- Assets worth £35 million in UK seized
- Wife, mistress and lawyer also convicted and sentenced
- Took USD 17 million from the sale of shares in V Mobile
- Assets in South Africa include:
  - £3 million mansion
  - Mercedes Maybach (shipped from London)
Bangladesh

- Two alternating political parties who collude not to investigate corruption
- Licences awarded to cronies
- Bribes paid to ministers and relatives:
  - Admissions by Alcatel and Siemens
- Investigations and prosecutions under the caretaker administration:
  - All set aside once civilian politics returned
  - Except two convictions for money laundering
    - Convicted son of ex-Prime Minister living in Malaysia
- One dispute saw a senior executive arrested and tortured by Rapid Action Brigade
  - Electric shocks and handcuffed so he could neither sit nor lie down
  - Won damages in US courts of USD 1.75 million
Shri Sukh Ram – India

- MP 1962–2007
- Minister of state for telecommunications 1991–96
- Raids by Central Bureau of Investigation on 16th August 1996:
  - INR 24.5 million in his official residence
  - INR 11.6 million in his house in Himanchal Pradesh
  - About USD 1,071,000
  - Names of individuals who had paid him
- February 2009 sentenced to:
  - 3 year term of “rigorous imprisonment”
  - Forfeiture of “disproportionate assets” of INR 42.5 million (USD 836,000)
  - On bail, pending appeal
A Raja – India – 2G spectrum scam

- MP for junior party in coalition government and Minister for ICTs
- Sold 122 spectrum licences in 2008:
  - 2001 prices
  - First come first served
  - Companies then acquired by telecommunications operators at higher prices
- Comptroller and Auditor General (November 2010):
  - Failure to follow due process in licensing
  - Loss to government of INR 580 to 1,520 Billion (ZAR 90–236 billion)
- One Man Committee of Inquiry (January 2011):
  - Breached principles of fairness and transparency
  - Inconsistent with govt policy
  - Did not have approval for pricing
- Central Vigilance Commission:
  - Appointment overturned by Supreme Court
  - Chief Commissioner resigned
- Public Accounts Committee:
  - Report blocked by govt. MPs
- Central Bureau of Investigation:
  - Charged Raja under Prevention of Corruption Act
  - Held on remand for trial
- Supreme Court overseeing case
Indian Supreme Court

- A major driver
- Resolute against corruption
- Public interest litigation proved vital
- Threw out all 122 licences due to illegality of the process:
  - A number of applications for review and reconsideration
- Effectively removed the right of Prime Minister and Chief Ministers to block prosecutions under Prevention of Corruption Act
India – telecommunications policy

- Piecemeal
- 1994 policy, amended in 1999 and 2001
- Created a “licence raj”: 
  - Which Indian industrialists knew how to use
- Opened backdoor to mobile services through fixed wireless which became limited mobility
- Raja created “First come, first served” policy
  - Licences awarded to off-the-shelf companies
  - Companies then sold Telenor, Etisalat, etc
  - Whatever happened to “due diligence”?

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Kingdom of Thailand

- Police Lt Col Thaksin Shinawatra  LLM PhD
- Used connections to get government IT contracts
- Lost a big telecoms franchise
- So began to acquire political contacts
- Realised he could cut out middlemen
- Created own political party to ensure control over Ministry
- Ensured a very uneven playing field for rivals
- The mess has yet to be resolved
Siemens COM division

- Case settled with authorities in Germany and the USA:
  - Payment of massive fines
  - Extensive and detailed compliance programmes now in place across Siemens AG
- Systematic payment of bribes:
  - Cash in suitcases
- Paid for telecommunications contracts in:
  - Algeria
  - Greece
  - Libya
  - Nigeria
  - Russia
Sector initiatives

- Extractive Industries Transparency Initiative
- Defence and aero-space
- Construction
- But not yet for telecommunications:
  - Publication of licence fees and taxes:
    - Paid
    - Received
  - Publication of ownership details
  - Adoption of integrity pacts:
    - Businesses
    - Regulators
  - Annual signing of non-bribery policies
  - Whistle-blowing scheme with protection
United States of America

- Requires audit
- Documents published online in EDGAR
- Bribes not recorded as such are falsely accounted
- Obligation to report concerns
- Obligation to investigate possible corruption

- Any firm listed in USA
- Any US citizen
- Any money passing through the USA
- Not just cash, any thing of value
- Most cases settled
- Recently extended to bribe-takers by money laundering charges

Securities and Exchange Act
Foreign Corrupt Practices Act
Ministries and regulators

- Should publish beneficial owners of licences:
  - Not PO Box or British Virgin Islands
- Should publish all sums paid
- Individuals should have integrity pacts:
  - Training
  - Whistleblower provision
  - Senior officials should sign statement they have not taken bribes

Strangely, no regulator has ever uncovered corruption, despite information powers. A few have been caught at it.
Remarkably little recognition of the problems in telecommunications bodies (e.g., ITU, OECD, ATU, APECTEL and CITEL)

A substantial body of case law

Very difficult to estimate the cost to consumers

Impossible to know the trend (up or down?)
  - Is there a growth in private–private bribery?

There look to be “obvious” gaps in the prosecutions
Further research

- Identification of unreported cases
- Analysis of cases
- Tracing ownership of operators
- Development of a framework in terms of:
  - “crony capitalism”
  - nepotism
  - Regulatory or state capture
  - Corruption
- Identification of best practice:
  - Integrity pacts
  - Whistleblowing
- Estimations of overall:
  - Payments
  - Costs
  - Effects
Thank you

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