



INVESTMENTS IN
4G NETWORK
IN BOSNIA AND HERZEGOVINA

CASE STUDY:

BH TELECOM INVESTMENTS IN THE FOURTH GENERATION OF BROADBAND CELLULAR NETWORK TECHNOLOGY (4G NETWORK)

ADDRESSING CORROSIVE CAPITAL FLOWS PROJECT
CENTERS FOR CIVIC INITIATIVES (CCI)

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Abstract

The Centers for Civic Initiatives (CCI) in cooperation with the Center for International Private Enterprise (CIPE) Washington conducted a research on the investments in the fourth generation of broadband cellular network technology (4G/4G+ network) development in Bosnia and Herzegovina (BiH), with a focus on three leading telecom operators.

The research focused on analyzing 4G network's investments in BiH through interviews with target stakeholders, including the respective telecom operators, and the secondary research of available data. Based on the research, CCI produced the following analysis.

List of Abbreviations

4G Network	Fourth generation of broadband cellular network technology
BH Telecom	Telecommunication company
BiH	Bosnia and Herzegovina
CCI	Centers for Civic Initiatives
CIPE	Center for International Private Enterprise
CRA	Communication Regulatory Agency of BiH
EU	European Union
HT Eronet	Hrvatski Telekom, telecommunication company
Mtel	Telecom Srpske, telecommunication company
SAA	Stabilization and Association Agreement
SOE	State-Owned Enterprise/Company

1. Executive Summary

Introduction

The three telecommunications operators in BiH remain the most dominant today, with estimated more than 90% of the mobile phone services market share – telecom companies BH Telecom, Telekom Srpske, and Hrvatski Telekom. All of them were approached as part of this research; BH Telecom investments in 4G network were taken as the Case Study.

Legal Framework

The telecommunications sector in BiH is currently governed primarily by the Law on Communications that was adopted in 2003. The question arises to which extent this Law meets the expectations of the rapidly developing information and telecommunications technologies. It has been 17 years since the law was adopted. Technology has changed significantly. The Law has not.

The latest EU Report on BiH from 2019 points out to that the Stabilization and Association Agreement (SAA) sets BiH's objective to adopt a new Law on Electronic Communications and Electronic Media aligned with the EU acquis in this sector. It underlined that the legislation enabling the liberalization of the telecommunications and electronic media sector is not in place and that despite the 4G's introduction BiH does not have a broadband strategy. Besides, BiH should adopt a state strategy for network and information system security.

Research Findings (Case Study “BH Telecom Investments in 4G/4G+ Network”)

Almost half of respondents¹ (47% of 17 interviewed) to a questionnaire developed as part of the primary research for this analyses believe that there is no sufficient information to be able to assess whether the process leading to BH Telecom’s procurement of 4G equipment was competitive or not. Additionally, 18% of the respondents (out of 17 interviewed) believe that the process was not competitive (according to their assertions, Chinese Government may support Huawei to offer lower prices and thus secure its business deals). Furthermore, BH Telecom changed the procurement conditions on the go which was not against applicable legislation but provides a great opportunity to manipulate the procurement process. Based on the above-mentioned, it can be concluded that the competitiveness of BH Telecom’s procurement of 4G equipment is questionable, due to potential impact of state incentives on equal treatment of bidders.

Also, this study shows that the information on BH Telecom’s spending of the public funds for the procurement of 4G equipment is not publicly available and in this case BH Telecom breached the principles of transparency in spending of public funds, although the company is state-owned. It is evident that there is need for a more detailed specification of the transparency obligation in the work of the SOEs, even when they are exempt from applying the BiH Law on Public Procurement.

In the context of available information, it can be also concluded that the security aspect was not high on the list of BiH institutions’ priorities in realization of investments in the 4G network. It potentially may have a significant impact on privacy rights and security of data related with citizens, companies, institutions, and alike. It can be concluded that not a single institution in BiH paid close attention to this.

As BH Telecom is owned by the Government of the Federation of BiH, and one of the primary interests of the ruling parties in BiH is to appoint their members to the management of SOEs (that often act in the interest of political parties rather than public interest), the political aspect of deciding on the 4G technology and selection of its suppliers cannot be ignored.

¹ In research participated journalists (business related media and investigative journalism), independent experts (university professor in criminology and security studies, experts for foreign investments in BiH, former union activist in sector of telecommunication), representatives of non-governmental organizations (experts for international relations and public procurements), public institutions (state level Ministry of Communications, Foreign Investment Promotion Agency, member of parliament of Federation BiH, Regulatory Agency for Communication), business sector (Foreign Investors Council), and international organizations (UN agency having project in telecommunication sector). Those 17 (out of 34 targeted) accepted CCI’s invitation to participate in the research (response rate 50%).

Overall, BiH investments in the development of the 4G network made in recent years have been predominantly realized by domestic public and private companies that use Huawei's equipment and technology in developing the 4G network. Consequently, according to the research results, two of the three leading telecom operators in BiH use Huawei equipment for the 4G network.

The use of the Chinese manufacturers' equipment and technology would not be contentious per se; however, lately there have been some global concerns with respect to this matter. These concerns have several different aspects. First, there is a question around security for BiH citizens and society given that Huawei equipment for similar networks has been characterized as a global security threat. Second, from the economic aspect, due to Chinese policies in subsidizing companies, as a part of a national strategy to gain global influence via trade and investments, Huawei bid may undermine the market principles of doing business by price undercutting as a result of politics. Third, from the political aspect, Chinese capital inflows in democratic countries are increasingly problematized by Western democracies because of one simple reason - China is not a democracy. The research also shows that Chinese capital in BiH is increasingly present. Taking into consideration announced, in progress, or implemented investments which includes Chinese funding, these exceeding 4 billion USD². If we look at the Chinese capital footprint in the region, BiH is the second of seven Western Balkans countries (including Croatia).

All of the above should be subject to serious considerations in all future BiH investments, especially in sensitive areas, such as the area of information and telecommunications technologies. Security and the Euro-Atlantic perspective of BiH should not be compromised because of all that has been said.

² Center for Strategic and International Studies (CSIS). 2017. Includes announced, in progress or completed investments.

2. Introduction to the Telecommunications Sector in BiH

2.1. Key Players in the Market

The three telecommunications operators in BiH remain the most dominant today, with estimated more than 90% of the mobile phone services market share – telecom companies BH Telecom, Telekom Srpske, and Hrvatski Telekom. All of them were approached as part of this research; BH Telecom investments in 4G network were taken as the Case Study.

According to Communication Regulatory Agency of BiH (CRA) database, there are more than 70 companies in BiH that provide some form of telecommunications services. Out of these, only seven are registered as mobile phone services providers. According to the market share, three operators with the most significant market power in mobile phone service industry, with estimated more than 90% of the market share, are BH Telecom, Telekom Srpske (hereafter Mtel), and Hrvatski Telekom (hereafter HT Eronet). Two of these are predominantly state-owned enterprises (BH Telecom with 90% and HT Eronet with 50.1% of state ownership). Third, Mtel, is formally private but in fact, it is Serbian state-owned enterprise (sold to Telekom Srbija in 2007 by the Government of the BiH entity Republika Srpska).

2.2. Legal Framework - Applicable Domestic Rules and Procedures

Relevant Policies and Procedures

The relevant policies and procedures in the telecommunications sector in BiH include:

- Law on Communications in BiH (2003) (still in practice)
- Policy on the Electronic Communication Sector of BiH for the period 2017-2021
- Policy for Development of the Information Society of BiH for the period 2017-2021

In the context of this research, the Decision on Introduction of the 4G Network specifying the conditions under which the CRA should issue the LTE permissions to the existing licensed mobile operators in BiH is also relevant³. It was adopted by the BiH Council of Ministers (state-level government) in March 2019.

³ BIH Council of Ministers (state-level government) in March 2019 adopted the Decision on Introduction of the 4G Network. This act specifies the conditions under which the CRA is allowed to issue the LTE licence to the existing licensed mobile operators in BiH.

Chronologic Overview

The first Law on Telecommunications in BiH was declared by the High Representative to BiH in 2002. Even at that time, a lack of a central institution (ministry, department or agency) whose primary task would be to ensure preparation, adoption, and implementation of necessary regulation in the field of information and communication technology was identified as a serious problem.

The telecommunications sector in BiH is currently regulated by the Law on Communications that was adopted in 2003. It includes the establishment and work of the Communication Regulatory Agency (CRA) of BiH.

Accordingly, the question arises to which extent the existing Law on Communications in BiH meets the needs of rapidly evolving information and telecommunications technologies. It has been 17 years since the law was adopted. Technology has changed significantly. The law has not.

The policy on the Electronic Communication Sector of BiH 2017-2021 and implementing Action Plan were also adopted in 2017. The document provided the basis for the adoption of the decision on 4G network development and investment.

BiH adopted the Policy for Development of the Information Society for the period 2017-2021 in 2017. Compliance with the EU platform for combating cybercrime and harmonizing the domestic legislation with EU document “Telecom rules on privacy” have been listed as activities in the section of the Policy related to fostering confidence and security. This document also emphasizes a low level of security in the field of information and communication technologies. Additionally, Policy underlines that one of the risks in BiH is lack of data protection legislation at different levels of government.

The Policy for Development of the Information Society of BiH for the period 2017-2021 sets the need to develop a Strategy for Development of the Information Society in BiH as a key strategic document – guide for further directions of the ICT development in BiH. It is not known if the activities have been launched to prepare the strategy even the Policy comes to its end.

2.3. Legal Framework - Applicable EU Rules and Procedures

By signing SAA, BiH is required to harmonize its domestic regulation with EU legislation. This requirement also includes telecommunications sector. Rules for this matter are determined in Green Paper. Green Papers are documents published by the European Commission to stimulate discussion on given topics at European level.

In 2017, the adoption of the Policy on the Electronic Communication Sector of BiH for the period 2017-2021 and the accompanying implementation Action Plan implied the adoption of a Strategy for the Development of Information Communication Technology in BiH 2019-2023. The need to prepare the Strategy is among seven leading European initiatives of the EUROPE 2020 strategy that BiH accepted.

The latest EU Report on BiH from 2019 points out that regarding electronic communications and information communication technology, BiH applies the Law on Communications that was adopted in 2003 and that the SAA sets BiH's objective to adopt a new Law on Electronic Communications and Electronic Media aligned with the EU acquis in this sector. It was underlined that the legislation enabling the liberalization of the telecommunications and electronic media sector is not in place and that the country has introduced the 4G network but still does not have a broadband strategy.

Furthermore, BiH has no single Strategy or Action Plan for the Development of Information Society. It is further stated that BiH should adopt a state strategy for network and information system security.

In the context of this research, the EU Report points out that BiH implements 42 bilateral investment treaties (BIT), 20 of which are with EU member states. For the agreements with non-EU countries, from the day of its accession to the EU, BiH will need to implement Regulation (EU) No. 1219/12⁴, and the BITs which are incompatible with the acquis will have to be brought in line with the acquis or terminated.

⁴ Regulation (EU) No 1219/2012 of the European Parliament and of the Council of 12 December 2012 establishing transitional arrangements for bilateral investment agreements between Member States and third countries. More on: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32012R1219>

In regards to all above mentioned, EU in the latest Report on BiH recommended to BiH:

- To adopt a completely new Law on Electronic Communications and Electronic Media that would address new technology developments and challenges in the field of telecommunications, aligned with EU acquis in this sector.
- To adopt a Strategy for the Development of Information Communication Technology in BiH for the period 2019-2023.
- To adopt a new Policy for Development of the Information Society of BiH for the period 2021-2025 and to create accompanying Strategy or Action Plan to it.
- To adopt a state Strategy for network and information system security.

Public Procurement Law (Official Gazette 39/14) harmonized its contents with the EU 20024/17 Directive that defines the public procurement procedure in utilities sector (including the telecommunication sector).

3. Research Findings (Case Study)

Research focused on analyzing investment in BiH 4G network in order to assess alignment of the process with existing legislation and public interest of BiH. In methodology sense, research was conducted through semi-structured interviews of total 17 representatives of CSOs, public institutions, journalists, international organizations, experts and private companies with personal and professional interest in procurements in public companies and in the telecommunications sector and desk analysis of the available information related with research topic.

3.1. Competition and Procurement

The competitiveness of the procurement process studied under this research was defined as an opportunity for all companies to compete on an equal basis⁵.

Almost half of respondents of the questionnaire developed as part of the secondary research for this analyses (47%) believe that there is no sufficient information to be able to assess the competitiveness of BH Telecom's procurement of 4G equipment (which speaks also to the problem with transparency of the BH Telecom's operations), while 18% of respondents believe that the process was not competitive (according to their assertions, Chinese government's assistance behind Huawei allows this company to offer lower prices and secure business deals), and the remaining little over 1/3 respondents believe that the process was competitive and that Huawei won thanks to its technical superiority and its financial offer.

BH Telecom's key criterion for awarding the contract was "the lowest price of the compliant bid"⁶. Segment "lowest price" of those "acceptable bids" is the area in which the competitiveness of the process is questionable due the existing information about Chinese government incentives to Chinese companies⁷ that consequently offer the lowest prices of the acceptable offers worldwide⁸. Since during the research no information have been found that other bidders (Ericsson Nikola Tesla, Comtrade Distribution, and Nokia Solutions) received incentives from their governments, this can places bidders in an unequal position during the competition for a contract to deliver 4G equipment. Additionally, BH Telecom, changed the conditions for tenderers during the tender procedure which is in accordance to the legislation in practice but represent a great opportunity for the manipulations in the procurement process.

⁵ Excerpt from the OECD's definition – more information at <https://www.oecd.org/trade/topics/levelling-the-playing-field/>

⁶ From the article 'BH Telecom will give the "job of the century" - the introduction of the 4G network to the Chinese, but the Croatian Ericsson Nikola Tesla is asking the court to block the contract', 2018, Independent Research Center (NICK) BiH, more details on - <https://nick.ba/ekskuzivno-bh-telecom-je-posao-stoljeca-uvodjenje-4g-mreze-povjerio-kinezima-no-hrvatski-ericsson-nikola-tesla-tvrdi-da-je-sve-nezakonito-i-trazi-zabranu-od-suda/>

⁷ China provides major incentives and assistance to its industry and public companies. <https://novac.jutarnji.hr/aktualno/vodic-zaprezivljavanje-trgovinskog-rata-sa-svjetskom-trgovinskom-organizacijom/9297269/> and 'in China not even big private companies are entirely autonomous (they also, among other things, have party secretaries in their structures). This refers particularly to companies that make investments abroad and that are part of the Belt and Road initiative' - political scientist and economist Emina Popovic available on: <https://www.dw.com/sr/za%C5%A1to-brisel-negoduje-na-kineska-ulaganja/a-48758000>

⁸ The results of the meeting between the European Union and China, April 2019 in Brussels: Chinese prime minister made concessions even in the dispute on state support to Chinese companies to "strengthen international rules on state incentives" - <https://www.dw.com/hr/eu-i-kina-ustupcima-sa%C4%8Duvan-obraz/a-48270624>

More concretely, before accepting the best offer, BH Telecom changed the conditions of the tender by introducing price offers from all bidders for the “purchase of the existing equipment”, which consequently, among revised offers of all bidders, made Huawei the best offer chosen, although Huawei’s initial offer was not the best value (Ericson Nikola Tesla original offer was lower for 4 million USD).

Based on the above-mentioned, it can be concluded that there should be a concern about the competitiveness of BH Telecom’s procurement of 4G equipment.

3.2. Transparency

BH Telecom’s procurement of 4G equipment, which was realized during 2017 and 2018 according to the BH Telecom’s internal procurement rulebook (without publication of a procurement notice), can be qualified as insufficiently transparent. Even though BH Telecom (same as the overall telecommunications sector in BiH) is exempt from applying the BiH Public Procurement Law (PPL)⁹, it does not mean that the company should exempt from being transparent, especially as the SOE (90% of shares of BH Telecom are owned by the Government of Federation BiH¹⁰).

Despite the position of the BiH Public Procurement Agency that “every spending of public funds, regardless of whether or not it is subject to application of the Public Procurement Law, should be based on transparency and on the principle of the most efficient spending of public funds”¹¹, BH Telecom failed, by complying to its internal procurement rulebook¹² (negotiated procedure¹³), to act transparently or even at least inform the public about the realization of the procurement worth tens of millions of USD of public funds.

Further, the BH Telecom Supervisory Board (SB) in November 2016¹⁴ assessed BH Telecom’s Procurement Rulebook as compliant with the “applicable regulations on procurement”. However, it is not clear to which regulations the Supervisory Board referred since public procurement is regulated only by the BiH Public Procurement Law and partly by the Law on Public Companies of the Federation of BiH (article 34) there no other legislation in BiH, and Rulebook is not fully in compliance with them. Obviously, there is a lack of the legislative framework related to procurement processes conducted by SOEs in the telecommunications sector.

⁹ Public Procurement Law (Official Gazette 39/14) harmonized its contents with the EU 2002/4/17 Directive that defines the public procurement procedure in utilities sector (including the telecommunication sector). This directive made telecommunications exempt from its scope, making the sector also exempt from applying the Public Procurement Law in BiH. The BIH Competition Council in its act number 01-26-7-15-14- I/14 from January 2015, <http://bihkonk.gov.ba/datoteka/Misljenje-JN-29012015-bos.pdf> confirmed that telecommunication market in BiH was open to competition, which created conditions for BH Telecom according to article 5 of the Public Procurement Law to not be required to apply the Public Procurement Law.

¹⁰ Ownership share of the Federation of BiH in BH Telecom is 90,0043% - information is from April 2020 available at <http://www.sase.ba/v1/Tr%C5%BEi%C5%A1te/Emitenti/Profil-emitenta/symbol/BHTSR>

¹¹ Part of the PP Agency's answer to the CCI's query as part of this study

¹² Procurement Rulebook available at

https://www.bhtelecom.ba/fileadmin/user_upload/bhtelecom/Pravni_akti_Drustva/Pravilnik_o_nabavkama.pdf

¹³ <https://nick.ba/ekskluzivno-bh-telecom-je-posao-stoljeca-uvodjenje-4g-mreze-povjerio-kinezima-no-hrvatski-ericsson-nikola-tesla-tvrdi-da-je-sve-nezakonito-i-trazi-zabranu-od-suda/>

¹⁴ Page 34 of the Rulebook available at
https://www.bhtelecom.ba/fileadmin/user_upload/bhtelecom/Pravni_akti_Drustva/Pravilnik_o_nabavkama.pdf

To be added to the above-mentioned is that 59% of 17 experts interviewed in this study had no information about this procurement realized by BH Telecom (others had some information received through the media), which additionally describes the degree to which BH Telecom as SOE applied the transparency principle in the procurement of 4G equipment.

In sum, this study has shown that the information on BH Telecom's spending of the public funds for the procurement of 4G equipment are not publicly available, and in this case BH Telecom contravened the principles of transparency in spending of public funds, although the company is state-owned.

It is evident that there is need for a more detailed specification of the transparency obligation in the work of the SOEs, even when they are exempt from applying the BiH Public Procurement Law, to avoid scenario in which progress in harmonization of the BiH legislation with the EU acquis may be used for non-transparent spending of public funds with potential to jeopardize efficiency and accountability in managing of public money.

3.3. Security Issues and Government Gaps

The security aspect (including risks related with backdoors¹⁵ in the hardware or software for dealing with data, degrade or disrupt communications services, etc.), according to the respondents' views, is not high on the list of respondents' priorities (82% of respondents did not mention security as an important aspect in the context of procurement of 4G equipment and selection of supplier). A dominating opinion among the respondents is that there is a lack of evidence regarding the security problems of the equipment delivered by Huawei (it is a frequently discussed topic in the media in the context of a global competitions between USA-Huawei/China). Some respondents highlight the fact that many western countries (for example, Germany, etc.) keep their willingness to consider Huawei's offer in the development of their 5G network, which speaks in favor that the security problem may not be so severe.

However, the secondary sources indicate that Germany, for example, keeps on the agenda the security risks regarding Huawei's participation in the development of its telecommunications infrastructure – mostly because Chinese legislation on internet binds the companies in certain case to send cognition obtained abroad to the Chinese government bodies¹⁶.

¹⁵ Refers to any method by which unauthorized users are able to get around normal security measures and gain high level user access on a computer system, network, or software application

¹⁶ Spokesperson of Germany's Ministry of Interior for DW "Chinese internet laws do oblige companies "in certain cases" to pass on their knowledge gained abroad and to state authorities there. This regulation certainly gives "cause for concern" - <https://www.dw.com/hr/neopravdan-strah-od-kineske-mobilne-nre%C5%BEe-u-njema%C4%8Dkoj/a-47326751>

Also, the secondary sources did not provide information about BH Telecom's activities or those of the competent BiH government institutions (for example, BiH Ministry of Security, Ministry of Internal Affairs of Federation BiH etc.) on assessment of security risks related to instalment of the 4G technology or about undertaking adequate measures of prevention.

In sum, in the context of available information, it can be concluded that the security aspect was not high on the list of priorities in realization of investments in the 4G network that potentially may have a significant impact on confidentiality of information of citizens, companies, institutions, and the like. Sporadic individual activities¹⁷ addressing security in the context of the 4G network in BiH is not an adequate institutional response in BiH in this segment, and it can be inferred that no competent institution in BiH paid close attention to this problem – particularly as it is expected that the development of the 5G network in BiH will be based on the 4G platforms, which could additionally complicate the problem.

3.4. Political Interference and Relation to the Belt and Road Initiative

As BH Telecom is company owned by the Government of the Federation of BiH, and one of the primary interests of the ruling parties in BiH is to appoint party members to the management of SOEs (often those companies are operating more towards the interest of political parties rather than public interest)¹⁸, political aspect in deciding about the 4G technology and selection of its suppliers cannot be ignored. The fact that in this context BH Telecom conducted the negotiated procedure¹⁹ with four (4) potential suppliers (where the main criterion was “the lowest price of the compliant tender”) additionally intensifies the concern over possible political influence²⁰ in the decision-making. It is no surprise that 47% of respondents believe that politics was certainly involved in the decision about the tender for 4G equipment, while the remaining 53% say that they do not have information about that matter.

¹⁷ Social Democratic Party (SDP) member of BiH Parliament Saša Magazinović in February 2019 asked the Council of Ministers of BiH, Intelligence – Security Agency of Bosnia and Herzegovina (OSA) and BiH State Investigation and Protection Agency (SIPA) to send information about whether protection measures have been taken against potential misuse of telecommunication networks during introduction of the 4G network - <https://www.klix.ba/vijesti/bih/magazinovic-trazi-od-vijeca-ministara-bih-sipa-e-i-osa-e-informacije-o-sigurnosti-4g-mreze/190215032>; additionally, Zlatko Hurtić, “if it is about investments related to procurement of technology, especially in the sectors of telecommunications, energy and the like, I advise a more careful approach”.

¹⁸ Visit CCI's project website on political influence on SOEs operations at www.ferzaposljavanje.ba. See EDA and Transparency International BiH, 2017, “Transparency and Responsibility of Public Companies in the EU and Western Balkans” <https://edabl.org/wp-content/uploads/2017/09/Transparentnost-i-odgovornost-JP.pdf> and professor at the Faculty of Economics in Sarajevo Aziz Šunje, in a statement to Fena – “...key problem of public companies is major political influence on both the daily and the strategic decisions...” <https://magazinplus.eu/javna-preduzeca-neefikasna-zbog-velikog-uticaja-politike-i-drzave-na-njihov-rad/>

¹⁹ A procedure in which the contracting authority negotiates the terms of the contract with one or more invited bidders’ – definition from Article 2 of BiH Public Procurement Law – <https://docs.javnabenabavke.gov.ba/documents/fe873820-2f88-4f45-bfaf-23feb4dea847.pdf>

²⁰ “The division of power between personnel overseeing different stages of the procurement procedure is very vague. Each phase carries a substantial risk of political influence and particularistic control due to appointment procedures as well as the political reality in BiH. All relevant control mechanisms are under direct control of the executive branch government through appointment and employment procedures” – EU funded project ‘Governance Risk Assessment in Public Procurement’ Partnership for Social Development – 2017 - https://fpn.unsa.ba/b/wp-content/uploads/2018/11/Public_Procurement_BOSNIAandHERZEGOVINA.pdf

Also, even though BH Telecom procured 4G equipment through a negotiated procedure (not through Government to Government agreement), 2/3 of respondents believe that the Huawei contract is related to the Belt and Road (B&R) initiative. The bid for 4G equipment has been realized in second part of 2017 and first half of 2018 (before formal joining of BiH to the Belt and the Road initiative in March 2019), but there is a history of bilateral relations between China and BiH even before formal joining to B&R initiative (BiH and China signed several grant agreements worth approx. 8.8 million USD as well as agreements for increasing opportunities for investments, exchange of investment projects and information to increase Chinese investments in BiH).

Also, although China primarily ensures financing for investments in third countries through B&R initiative, there is information²¹ that indicates practice of China to involve private companies as actors for implementation of B&R initiative.

Available sources²² suggest that China is omnipresent in the Western Balkans region and beyond, covering 17 countries in the Central and Eastern Europe, including BiH. In 2013, China launched the initiative that connects China, 11 EU members from Eastern Europe, as well as five candidate and potential candidate countries from the Western Balkans²³. The initial initiative 16+1 has grown into 17+1²⁴ after the 8th annual summit of the involved countries and China, held in Dubrovnik in 2019.

By early 2018, the Chinese financiers have invested 7.8 billion Euros²⁵ in Western Balkans countries, mainly in infrastructure and energy projects²⁶. Even though the European Union remains to be the leading investor in the region, with over 70% of total direct investment, China has over the course of past six years invested substantial amounts in the infrastructure, succeeding to set itself up as EU's competitor in terms of the amount of investments, and has already made a visible impact²⁷.

²¹ China Minister of Commerce Zhong Shan, during the interview with People's Daily, the mouthpiece of the ruling Communist Party – ‘China’s commerce ministry will support private companies in their efforts to expand overseas.

“We will guide private businesses to venture abroad in an orderly manner and to take part in the ‘Belt and Road Initiative’.” He was referring to Chinese President Xi Jinping’s grand plan to build land and maritime trade routes as part of a national strategy to gain global influence via trade and investment - <https://www.scmp.com/economy/china-economy/article/2173469/china-pledges-more-support-private-firms-investing-abroad-12>

²² China’s Road: into the Western Balkans - European Union Institute for Security Studies (EUISS) <https://www.iss.europa.eu/sites/default/files/EUSSIFiles/Brief%203%20China%27s%20Silk%20Road.pdf>

²³ China, the 16+1 format and the EU’, European Parliament Think Tank, 2019, – available at [https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRI_BRI\(2018\)625173](https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRI_BRI(2018)625173)

²⁴ ‘A new silk road in Dubrovnik’, 2019, Deutsche Welle, available at <https://www.dw.com/sr/novi-put-svile-u-dubrovniku/a-48312952>

²⁵ <http://balkans.aljazeera.net/vijesti/kineska-inicijativa-vodi-zapadni-balkan-u-zamku-duga>

²⁶ ‘China’s Economic Footprint in the Western Balkans’, 2020, Bertelsmann-Stiftung; available at <https://www.bertelsmann-stiftung.de/fileadmin/files/BSt/Publikationen/GrauePublikationen/asia-policy-brief-chinas-economic-footprint-in-the-western-balkans-28c4d-775834edcc469f4f737664f79f932d6f9a1.pdf>

²⁷ ‘Chinese investments and Balkan headaches’ Radio Free Europe, 2019; see <https://www.slobodnaevropa.org/a/kineske-investicije-i-domac%C4%87e-glavobolje/29874983.html>

The described investments connected to Chinese capital are characterized by the lack of transparency in interactions with governments of the countries, leaving space for increased corruption²⁸, and given that corruption is one of the largest obstacles in the Balkan region, this process may pose an additional threat slowing down the progress in the European integration. As corruption in BiH is widespread²⁹, there are justified concerns that investments and business operations of the Chinese companies in BiH, which are connected with the Belt and Road initiative, are also connected to corruption³⁰.

3.5. Investments in 4G Network in BiH

Investments in the development of the 4G network in BiH made in recent years are mainly the investments of the domestic public and private companies that use Huawei equipment and technology in developing the 4G network.

According to the research results, 2 of the 3 leading telecom operators (BH Telecom and M:tel) in BiH use Huawei equipment for the 4G network. Among all three, only BH Telecom, state-owned enterprise (owned by the Federation of BiH), responded to the CCI's inquiry in line with the Freedom of Access to Information Act.

M:tel, a formally and legally private company in BiH owned by Telekom Srbija (the state owned enterprise of the Republic of Serbia) was contacted through Telekom Srbija by CCI's partner organization in Serbia in order to provide information about M:tel investments in 4G network in BiH, but Telekom Srbija did not respond to the inquiry until this report was completed. In such situation, several other sources confirmed that M:tel primarily uses Huawei equipment for the 4G network in BiH.

HT Eronet sent its formal response to the request for information two months later, thus violating the legal deadline, and subsequently, after sending a new request for information the company failed to respond until this report was concluded. However, there are confirmations from several sources that HT Eronet primarily uses Ericsson Nikola Tesla equipment for the 4G network in BiH.

²⁸ European Western Balkans, *China in the Balkans: 'Neutral business partner or a foreign power'* - <https://www.balkancrossroads.com/china-in-the-balkans-neutral>

²⁹ Srdjan Blagovčanin, Transparency International BiH, January 2020: 'BiH finds itself in a situation in which corruption has become the official state, entity and cantonal policy and it is possible to see it in every individual move of the institutions if we analyze appointments, tender, regulation, one can see that it is about a clear particular interest standing behind them' - <https://radiosarajevo.ba/vijesti/bosna-i-hercegovina/korupcija-jede-nasu-zemlju-bih-dobila-najgoru-ocjenu-u-posljednjih-osam-godina/364935>

³⁰ 'Chinese companies known for corruption and bribing politicians are penetrating BiH', BiH media Zurnal; 2019, available at <https://zurnal.info/novost/22283/-kineske-kompanije-poznate-po-korupciji-i-podmicivanju-politicara-prodiru-u-bih>

The use of the Chinese manufacturers' equipment and technology would not be contentious per se; however, lately there have been some global concerns with respect to this matter. These concerns have several different aspects. First, there is a question around security for BiH citizens and society given that Huawei equipment for similar networks has been characterized as a global security threat. Second, from the economic aspect, due to Chinese policies in subsidizing companies, as a part of a national strategy to gain global influence via trade and investments, Huawei bid may undermine the market principles of doing business by price undercutting as a result of politics. Third, from the political aspect, Chinese capital inflows in democratic countries are increasingly problematized by Western democracies because of one simple reason - China is not a democracy.

All of the above should be a subject to serious considerations in all future investments, especially in sensitive areas, such as the area of information and telecommunications technologies. Security and the Euro-Atlantic road of BiH should not be compromised because of all that has been said.

4. Proposed Recommendations Related with the Research Findings

- Relevant authorities (including BiH Council of Ministries, BiH Agency for Public Procurement, Committee on Transport and Communications of BiH Parliamentary Assembly) should consider (through inclusive policy dialogue):
 - (1) imposing usage of Law on Public Procurement in SOEs in telecommunications sector (and revise the Law in order to prevent inequality among bidders in the context of receiving government incentive and ensuring additional oversight mechanisms for procurement - i.e. introducing obligatory mixed committees contained by members of parliament and external actors for monitoring of public procurement of high values - related with strategic infrastructure such as communication, energy, food, water, government, transportation, etc.) or
 - (2) creation of a new Law on Public Procurement which will regulate transparency obligation in the work of the SOEs, even when they are exempt from applying the BiH Law on Public Procurement.
- Relevant executive and legislative state, entity and authorities of Brcko District (Ministries of internal affairs, Parliaments' security committees, Security agencies, etc.) should review existing legislation and ensure mandatory security assessment on the public interest and data protection, as well as the vetting process (checking history of preliminary selected tenderers) for investments in strategic infrastructure, prior to signing a contract.
- Relevant institutions (on level of governments in BiH - i.e. cantons, Brcko District, entities, BiH level governments with parliaments' committees) in cooperation with civic sector, international actors and other experts, should initiate an inclusive and open dialogue with a purpose of revising the relevant regulations on employment in the public sector (including SOEs), so that the process ensures employment based on competencies and prevent dominant political influence.

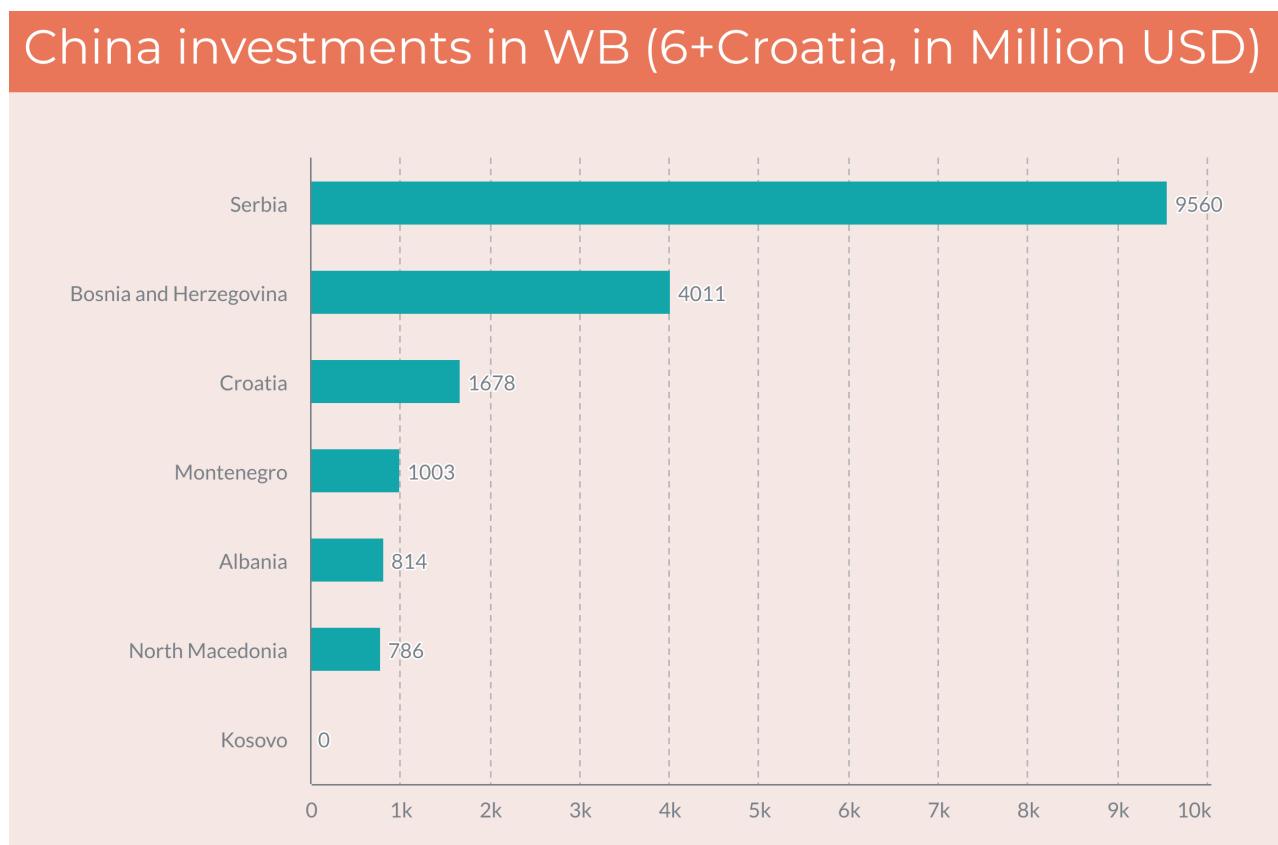
All mentioned policy recommendations should be also addressed in relation with in implementing of the EU recommendations from 2019 Analytical Report³¹ (accompanying the document Communication from the Commission to the European Parliament and the Council Commission Opinion on BiH's Application for Membership of the European Union) including:

- Aligning public procurement legislation with the 2014 EU Directives in the area of classic procurement, utilities and concessions, where BiH should in particular adopt the new Law on Public Procurement and establish a specialised procurement function within contracting authorities
- Amending civil service laws by ensuring merit principle in all procedures of recruitment, promotion and dismissal, and strengthen the capacities of civil service agencies to improve human resource management and trainings
- Adopting a completely new Law on Electronic Communications and Electronic Media that would address new technology developments and challenges in the field of telecommunications, aligned with EU acquis in this sector
- To adopt a Strategy for the Development of Information Communication Technology in BiH for the period 2019-2023
- Adopting a new Policy for Development of the Information Society of BiH for the period 2021-2025 and to create accompanying Strategy or Action Plan to it
- Adopting a state Strategy for network and information system security

³¹ EU 2019 Analytical Report - <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-bosnia-and-herzegovina-analytical-report.pdf>

5. Overview of Chinese Capital in BiH

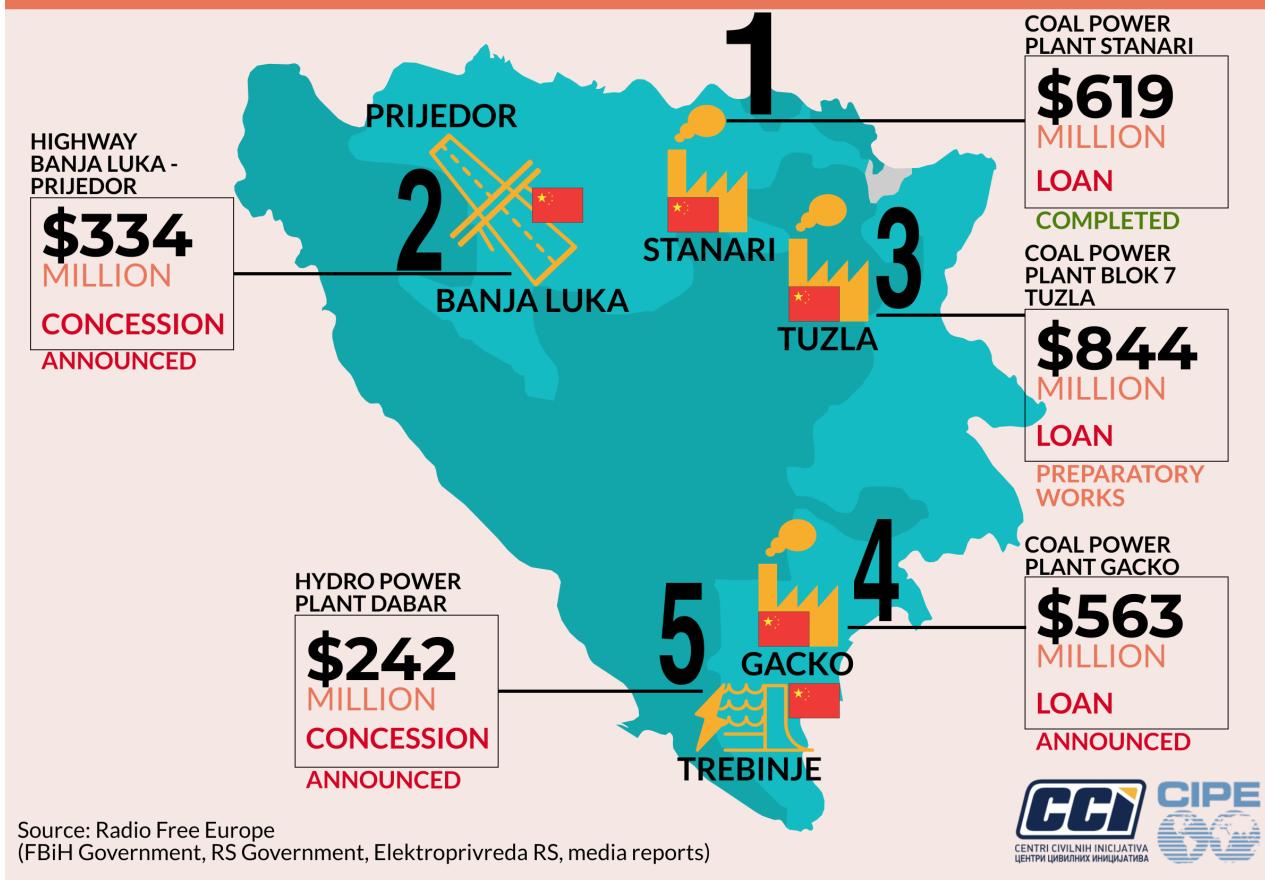
The research also shows that the Chinese capital in BiH is increasingly present and, including announced, in progress or implemented investments, exceeding 4 billion USD.³² If we consider announced, in progress and implemented investments which include Chinese capital in BiH and compare them with the region, BiH is the second of the seven Western Balkans countries (including Croatia).



Most of these investments are announced or implemented as a long-term credit loans from Chinese state-owned banks or through concessions. For now, the largest investments are planned and made in energy sector. Out of the five biggest projects in BiH which are announced, in progress or completed, and include Chinese capital, four are in the area of energy. Because the telecom operators failed to deliver the data, we were not able to determine the total amount of the investments in the telecommunications sector of BiH which included Chinese companies or capital.

³² Center for Strategic and International Studies (CSIS). 2017. Includes announced, in progress or completed investments.

China investments in BiH (Top 5, in Million USD)



6. Research Methodology

The research comprised of the primary research (in-depth interviews with target stakeholders) and the secondary research (desk research on available information on investment, monitoring of media reporting, and analysis of the existing rules and procedures applicable to the case study). As the result, this document/analyses and a two-pages policy paper summary with recommendations was produced.

The primary research was conducted using in-depth semi-structured interviews with 17 target stakeholders who were determined during stakeholders mapping in this project's preparatory phase. The interviewed stakeholders were from different backgrounds and from different fields, including public officials, independent experts, entrepreneurs, other business community representatives, and the representatives of academia, international organizations, domestic civil society organizations, and media/journalists.

The secondary research was conducted using the desk research of relevant open resources and the rules and procedures relevant for the case study investment. Through the desk research, our project staff attempted to explore investments in the telecommunications sector in BiH, whether the applicable regulations (domestic and international) were respected, and whether the negative impact of corrosive capital exists, if possible. The secondary research also included simple media monitoring regarding the Chinese capital presence in BiH for the duration of this project (September 2019 – September 2020).

7. About the Project

The strategic objective of CIPE's global initiative on corrosive capital is to advance local initiatives that address challenges posed by corrosive capital inflows. The strategy to accomplish this goal is to engage multiple local stakeholders in designing and implementing projects in specific countries that close specific governance gaps, strengthen the rule of law, develop democratic safeguards to make markets and democracies more resilient, and build a level playing field for all investors and businesses, regardless of origin. This will contribute to the overall program goal of empowering private sector to advance democratic and market-oriented principles and institutions with space for civil society and equitable access to economic and public leadership opportunities for all.

The project "Addressing Corrosive Capital Flows" has two major objectives: 1) to strengthen the role of private sector-led initiatives that advance local solutions to economic and governance challenges; and 2) to improve governance based on liberal democratic and market-oriented principles and institutions in authoritarian countries and emerging democracies.

These objectives will be achieved through: a) mobilization of private sector and civil society coalitions to engage governments, advance policy reform, and build consensus in a collective and credible manner; b) improved access to credible information on issues of concern to the private sector, civil society, and the general public, including corruption issues; c) public and private dialogue meetings, workshops, roundtables, and other events organized as part of private sector-led initiatives with participation of government officials; and d) development and publication of white papers, reports, tools and other materials that capture and analyze approaches to counter corruption and empower marginalized populations.

8. About CCI and CIPE

About CCI

Centers for Civic Initiatives (CCI) has been recognized as one of the most influential civil society organization in Bosnia and Herzegovina (BiH). CCI's mission is to enable BiH citizens to realize their interests and to increase their influence on the decision-making process. Since its foundation, CCI has contributed to strengthening the awareness of individuals and groups of citizens in order to allow them to cooperate more effectively with their elected representatives. In addition, CCI has been working on strengthening the authorities' accountability towards citizens and has been conducting campaigns aimed at changing laws and policies in order to better meet the needs of citizens and to be in accordance with the democratic principles and standards of the European Union. CCI operates across BiH and has 6 offices - in Tuzla, Banja Luka, Sarajevo, Doboj, Mostar and Bijeljina. CCI has registered about 600 activists who directly support CCI's work. CCI has collaborated with CIPE in analyzing foreign economic footprint and corrosive capital in BiH since 2018.

About CIPE

The Center for International Private Enterprise (CIPE) is an affiliate of the U.S. Chamber of Commerce, organized and operated exclusively for charitable and educational purposes within the meaning of Section 501 (c)(3) of the U.S. Internal Revenue Code. It was established in response to the Democracy Initiative, whose goals have been embodied in the "Private Enterprise Development" program specified in Section 503 (e)(2) of the National Endowment for Democracy Act (P.L. 98 164). It is designed to foster the development of open market, private enterprise systems abroad and encourage the growth of independent business institutions in foreign lands.



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