

# **Administrative innovations and accountability failures: The termination of the Spanish telecommunications agency**

## **Abstract**

We discuss how far accountability practices may be relevant to the success of independent regulators in countries without a tradition of administrative autonomy. We develop a conceptualization of agency accountability failures and develop an analytical framework to examine the life and termination of the Spanish regulatory agency for telecommunications, *Comisión del Mercado de las Telecomunicaciones* (CMT). We argue that CMT's termination was related, among other reasons, to accountability failures in its institutional design. The paper relies on a variety of sources, including legislation, literature, media coverage, and semistructured interviews with agency officials and several stakeholders.

## **Keywords**

Accountability, political vulnerability, independent regulatory agencies, Spain, telecommunications policy, institutional transfer

**Word count:** 10.079 words.

## **Introduction**

The accountability of public institutions is key to their success and public acceptance. In democratic settings, electoral accountability provides a solid link between citizenship and politicians, despite all the problems that may exist. Within the public sphere, civil servants remain accountable to elected politicians by means of hierarchical subordination (Przeworski, Stokes & Manin 1999; Adsera, Boix & Payne 2003; Bovens, Goodin & Schillemans, 2014). However, a variety of administrative innovations in recent decades have weakened the traditional hierarchical relationship. In many cases, the extensive agencification of public administration has conveyed new institutional models that include provisions of organizational autonomy and/or political independence towards the principals (Jordana, Levi-Faur & Fernández-i-Marín 2011; Christensen & Lægreid 2006; Gilardi 2008). Thus, as conventional accountability mechanisms based on hierarchical relationships with politicians diminish, there is a growing need for alternative accountability mechanisms, and multiple options and alternatives have emerged for this purpose (Bianculli, Fernández-i-Marín & Jordana 2015; Majone 1999; Schillemans 2008; Scholten 2014; Busuioc 2009; Koop 2011).

In this paper, we discuss how far the establishment of adequate accountability practices may be essential to the success of such administrative innovations, particularly in countries without a solid tradition of bureaucratic autonomy, which tend to suffer from the intense involvement of political parties in public administration. These sorts of countries are more likely to adopt administrative innovations in an instrumental fashion, that is, only superficially adopting certain innovative elements. However, when administrative innovations are introduced seriously and administrative autonomy and political independence are provided to a certain extent, accountability tensions may

emerge as a particularly significant obstacle for their institutional consolidation. Administrative innovations are certainly also up against many other problems, but these are not the concern of this article. Instead, accountability is the central issues in this paper: how far accountability failures undermine the possibility of administrative innovations taking place, such as agencies with disruptive institutional designs becoming solid and reputable within the public sphere. For the purposes of our analysis, we develop a conceptualization of agency accountability failure to better assess the problems that institutional innovations face in being assimilated into resilient administrative environments.

We will assess how independent regulatory agencies' accountability mechanisms, which are administrative innovations, operate in practice, as we think that the nature of these mechanisms matters. We distinguish between formal and informal accountability mechanisms, the latter being shared but usually driven by unwritten practices. We refer to the legal provisions established as part of formal accountability mechanisms and to the formal rules introduced by the agency when defining its interactions with different audiences. We examine how the agency combines these two types of accountability and identify the relationships between them in different environments. In this sense, our main hypothesis suggests that the institutional consolidation of agencies may be endangered by a lack of articulation between formal and informal accountability mechanisms.

In the paper, we also discuss which agencies' accountability strategies are more suitable for building agency strength, especially in cases where regulatory outcomes are difficult to measure and conflicting views over agency goals persist among those involved. For example, we consider whether reliance on formal accountability

mechanisms when interacting with public actors is sufficient to enhance an agency's resistance to opportunistic political changes, or whether a flux of informal deliberation needs to be promoted to facilitate the institutional articulation of the agency in the public sphere. More broadly, we are interested in assessing agencies' capabilities for developing their public accountability in order to build their reputation and institutional resilience (Busuioc & Lodge 2016; Biela & Papadopoulos 2014).

Our case study of the Spanish agency *Comisión del Mercado de las Telecomunicaciones* (CMT, Telecommunications Market Commission) allows us to examine the accountability dimension of a major administrative innovation. The CMT was established in Spain in 1996 as an independent regulatory entity under public law that would monitor competition in the nascent telecommunications market<sup>1</sup>. The agency was clearly separated from the Ministry of Public Works (later renamed the Ministry of Development), which consequently lost most of its regulatory powers. Over the 17 years following its creation in 1996, the CMT contributed decisively to the configuration of the telecommunication markets in Spain by having a voice of its own and being separate from the executive and from major companies operating in the sector, although this process was not without frequent administrative tensions and regulatory conflicts with these other players. Overall, it successfully fulfilled its mission of opening up the Spanish telecoms market, regulating competition between the incumbent and new entrants.

However, late in 2013, the CMT was terminated and a new agency responsible for all utility sectors and market competition was launched, the *Comisión Nacional de los Mercados y la Competencia* (CNMC, National Commission for Markets and Competition). There are many potential explanations for the CMT's inability to avoid

this merger, including political competition, as the literature on agency termination suggests (Lewis 2002), or the fact that it was simply the outcome of bureaucratic struggles and disputes over the agency's territorial location<sup>2</sup>. Nonetheless, as stated above, the concern of this paper is not explaining the full set of reasons underlying this process. Instead, we wish to focus on the accountability dimension of the CMT. We suspect that the CMT's accountability problems were among the reasons that it was unable to resist the major institutional threats that led to its dissolution. The purpose of this paper is thus to discuss the shortcomings in the CMT's accountability during the years prior to its termination in 2013 which eventually became drivers of the agency's weakness within the Spanish administrative environment. We will focus particularly on the existing connections between formal and informal accountability mechanisms, as well as the CMT's strategies for developing and strengthening its accountability mechanisms.

To test our hypotheses, we have relied on a variety of sources including legislation, relevant literature, and media coverage. As we are aware of the difficulties that capturing informal accountability mechanisms entails, we have conducted 13 semistructured interviews with former CMT members and various representatives of its external audiences, namely parliament, government, telecoms companies, and consumer associations. We hope that using multiple sources will shed light on the variety of accountability mechanisms the CMT employed and on how they interacted with one another.

The paper is organized as follows. Section 1 presents the theoretical framework, built upon the literature concerning the accountability of independent regulatory agencies (IRAs). Section 2 outlines the research strategy and methods. Section 3 describes the

CMT's transformation process and the network relationships between CMT officials, politicians, and members of the business community and civil society. Section 4 presents a narrative that illustrates the chief insights from the semistructured interviews. The final section discusses our main findings.

### **Theoretical Framework**

#### *The accountability of independent agencies: a conceptual approach*

The concept of accountability has been widely used in the study of public administration (Bovens, Goodin & Schillemans 2014), and there are multiple ways in which the public sphere is accountable for its practices and activities. We do not intend to capture all these possible dimensions; in fact, this study is based on a narrow definition of accountability as a mechanism connecting two parts: an actor (who is held to account) and a forum (those who hold the actor to account). Building on these insights, our starting point is Bovens's definition of accountability, namely, any 'relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgment, and the actor may face consequences' (Bovens 2007, p. 450).

The notion of accountability as a relationship has been stretched in recent decades as it has become a counterpart to debates over how to strengthen the legitimacy of highly contested political institutions as a way of improving returns on involvement and, consequently, the quality of democratic life (Schillemans 2011; May 2007). In this context, some authors deal specifically with such accountability problems in the case of IRAs (among others, see Koop 2011; Busuioc 2012; Maggetti 2012, Biela &

Papadopoulos 2014), considering the characteristics of these agencies that result from their independence rules.

Agency accountability in democratic societies thus means that they have to be able to explain what they do to the forum to which they are accountable and should expect to face specific penalties if they fail to do so and to justify what they have done (or not done), including whether this is sufficient or inadequate. It is also important to assume that a regulatory agency's forum is made up of both its principals and other audiences, understood as 'any individual or collective that observes a regulatory organization and can judge it' (Carpenter 2010, p.33), such as citizens, users, and stakeholders. Agencies put both formal and informal accountability mechanisms into practice to interact with their different audiences. The accountability mechanisms we describe as 'formal' are those defined in legal norms. In contrast, those we refer to as 'informal' are based on interpersonal relationships (Romzek 2014) and are defined as those social accountability rules that are widely known and respected by all actors involved in the forum via informal meetings or information exchange.

With regard to the characteristics of formal accountability mechanisms in independent agencies, beyond government and parliamentary channels (Lodge 2004), there are a variety of mechanisms of a nonhierarchical nature (Scott 2000). Downward and horizontal accountability mechanisms with citizens and stakeholders have been used by agencies as innovative tools, but may also be seen as devices for compensating for the accountability weaknesses arising from agencies' independence rules, in that hierarchical elements of control are less present in such cases (Bianculli, Fernández-i-Marín & Jordana 2015). Informal accountability mechanisms can emerge through agencies' interactions with the government or parliament, complementing or altering

established formal mechanisms, but they can also populate horizontal and downward relations, supplementing or fulfilling spaces for interaction between the agency and the forum.

*The role of accountability failures in agency termination*

Independence rules were introduced to protect regulatory agency decisions from the potential incursion of political actors, as a means of strengthening their credibility and avoiding inconsistencies resulting from political cycles (Gilardi 2008). However, these innovations thus represented a significant challenge for the political and administrative culture of many countries that adopted them, sometimes resulting in adverse reactions. Thus, to reduce the risk of political intervention to constrain (or even terminate) agencies, these often try to protect themselves by developing closer ties with their audiences in the forum so as to increase their support. This may improve their reputation and act as a protective shield against political intervention in cases of confrontation with the executive or the parliament (Bianculli, Jordana & Juanatey 2015).

Interestingly, the recent literature on bureaucracy autonomy and agency termination also supports these views. On the one hand, it has been recently argued that a reputation of professionalism may protect bureaucratic autonomy from instability, particularly when bureaucracies face a 'divided' political principal (Miller & Whitford 2016). On the other hand, according to Bertelli, Sinclair, and Lee (2015), strong networks and agency reputations may mean that termination draws attention to these and focuses unwelcome attention on the government. In a similar vein, Dommet and Skelcher

(2014) argue that agencies respond to proposals for downsizing, reduction of functions, or actual termination by using and mobilizing their audiences.

In this paper, we argue that when independence rules are weak, hierarchical dependence on the executive tends to prevail through traditional accountability mechanisms. In contrast, when independence rules are strong, we should expect that alternative accountability mechanisms will arise as a compensation device. If these mechanisms were not established when the agency was created, the agency will probably try to develop horizontal and downward accountability mechanisms to gain more support from its audiences. However, if the agency perceives that the risk of political intervention is low, it will probably avoid setting accountability mechanisms in motion that may place constraints on the agency's leadership. This being the case, informal accountability mechanisms with the forum would then emerge as a less critical option, allowing the agency's leaders more room to manoeuvre when answering audiences. Alternatively, relying on more formal accountability mechanisms is a plausible option when there is a greater threat of political intervention and the agency is looking for stronger support from audiences.

Formal and informal accountability mechanisms usually coexist without major difficulties within most agencies. Informal accountability can complement or expand the effectiveness of formal accountability, while formal accountability mechanisms provide more certainty and visibility to agencies' interactions with their forums. Nonetheless, when formal and informal accountability mechanisms are strongly decoupled, without any articulation, then accountability failures can easily arise. Examples of accountability failures include agencies that do not formally take all the relevant actors into account, at least not satisfactorily so, or cases of disproportionality

privileges to some forum members based solely on informal mechanisms. Conversely, a coherent accountability system should involve all relevant actors in the forum and combine both formal and informal mechanisms within each accountability dimension in place.

### **Method**

Our study aims to contribute to exploring the role that accountability mechanisms may play in the survival of independent regulators in countries with no tradition of administrative autonomy. To do so, our analysis explores a negative case study that suggests that accountability failures may play a role in the termination of agencies. We take these as our independent variable and define them as the imbalances and incoherencies in a particular system that privilege either formal or informal mechanisms, occurring for any type and direction of accountability (upwards, horizontal, or downwards). Agencies' internal crises, or external interventions affecting them, may thus emerge as the most probable process outcomes of persistent accountability failures in the relationship between the agency and its forum.

The article is based on a qualitative case study. The case was selected for two main reasons. On the one hand, the CMT is an exemplary case of an administrative innovation being transplanted into a hostile environment. As in other Southern European countries under the influence of the Napoleonic Code, Spain is a clear-cut example of a country with no tradition of administrative autonomy for public entities (Juanatey et al. 2017). The CMT was, in fact, one of the first independent regulators established in the country and was not welcomed by everyone with open arms, particularly by the parent ministry who had lost its regulatory powers, and Telefónica,

the main actor affected by the CMT promoting competition practices (interview 7). On the other hand, the CMT is an example of an agency that did not survive political intervention in a moment of crisis. At the beginning of 2012, in the name of cutting public expenditure, the People's Party (PP) government announced the need to reform and rationalize public administration by reducing the number of public entities. This study examines this case to explore the role that accountability failures may have played in this dissolution.

This research applied a qualitative data collection method which comprised a combination of written sources and interviews that aimed to identify both formal and informal accountability mechanisms. The formal accountability mechanisms put in practice by the CMT were identified through an analysis of the relevant legal texts, the CMT's web page and other relevant documents, such as newspaper articles and secondary literature. These sources were complemented by 13 in-depth, semistructured interviews conducted in Madrid and Barcelona between March and November 2014. These interviews were based on an open-ended questionnaire that mainly intended to capture the informal accountability mechanisms put in practice between the CMT and its audiences. These interviews were conducted with former CMT members, including former councillors and representatives from the different departments (international, communication, legal and market analysis) as well as with various representatives of the agency's external audiences, namely parliament, government, telecoms companies, and consumer associations. The selection of the interviewees was motivated by the need to bring together different perspectives both inside and around the CMT to get a complete picture of its informal ties with its main audiences.

To discuss this framework, in the next section we introduce the case of the CMT, suggesting that this agency experienced an accountability failure for various reasons that we will explore in detail and that these contributed to its termination in 2013.

### **The CMT from its inception in 1996 to its termination in 2013**

For many decades, the former state-controlled operator Telefónica enjoyed a protected legal monopoly. The Spanish government dominated Telefónica by owning most of the company's shares and through a controlling office embedded within the firm (Calvo 2010). However, this old-style organization of the telecommunications system was replaced in the 1990s by a competitive environment and the privatization of Telefónica within the context of the European single market (Gil 2005). In June 1993, the European Council approved a resolution that provided the basis for full market opening, and January 1998 was established as the deadline for the liberalization of all services, including voice telephony.

The creation of the CMT marked an important step in the distribution of public regulatory functions for the telecoms sector in Spain. The newly founded agency was headed by a council, with a president, a vice president, and seven councillors (all appointed for fixed terms) and began operations in February 1997. The composition of the first council was the result of consensus between the main parliamentary groups. In fact, appointees combined specific political allegiances with significant professional experience. The law that created the agency strengthened its independence, protected the appointed council members and provided the agency with resources from taxes on telecoms services and operator benefits.

The agency's main goal was to control competition in telecoms services, data transmission, and interactive markets by acting as the arbitration and sanctioning authority for these. Even so, the government continued to hold important regulatory powers, such as price regulation and consumer protection, and this led to many tensions and disagreements with the CMT on policies and strategies during these years (Calzada & Costas 2012). The goals of the government and the CMT often did not coincide: for example, during the late 1990s, the government promoted anti-inflationary policies that contravened the agency's procompetition objectives (Calzada & Costas, 2016). Furthermore, successive Spanish governments were anxious to shield the incumbent's position and facilitate its globalization strategies. The objective was to transform Telefónica into a national champion, as other European countries had done (Guillen 2005, Martínez 2008). Simultaneously, the CMT was interested, up to a point, in promoting new entrants as a way of increasing market competition ( Jordana & Sancho 2005, García Calvo 2014). Over the years, policy objectives continued to cause constant friction between the government and the CMT over regulatory strategies, despite there being different political parties in office, and market performance was not outstanding (Calzada & Estruch 2013).

During the years the CMT was in operation, its legal framework underwent several transformations. Most of these reforms aimed to increase formal accountability to the executive, introducing more legal controls on agency operations but without a focus on horizontal and downward accountability. In fact, these reforms did not undermine the commissioners' independence and may even be interpreted as administrative attempts to regain spaces of regulatory power and operational control over agency activities. The last reform was in 2011 (only a few months before a general election in Spain), and it

was of different nature. This time the focus was more on the political side of upwards accountability, aiming to provide clearer mechanisms for all regulatory agencies in Spain: the Spanish Socialist Workers' Party (PSOE) government promoted the legislative approval of a new law that modified the number of board members, provided more legislative oversight, and aimed to strengthen the independence of agency heads (Ley de Economía Sostenible, LES). However, as a result, a few heads and some board members won an extra term at a crucial time, because all boards were reappointed after the reform. Nonetheless, the PP saw the requirement to renew regulators as an opportunistic move and voted against this law. The PP did not support extending terms in this way and announced that if it won the upcoming election it would reform IRAs again, a promise it soon made good on.

In January 2012, after obtaining an absolute majority in the general elections, the PP formed a government, replacing the PSOE. This new government intended to form a single body by bringing together the *Comisión Nacional de la Competencia* (CNC, National Competition Commission), and the three utilities sectoral regulators – the *Comisión Nacional de Energía* (CNE, National Energy Commission), the CMT, and the *Comisión Nacional del Sector Postal* (CNP, National Postal Commission). By establishing this new multisector agency, the PP aimed to claim the right to name a new agency head and agency board and thereby overturn the extended terms introduced by the previous PSOE reform. In addition, large regulated Spanish firms expected to weaken the agencies' powers, and different ministerial departments saw this reform as an opportunity to regain regulatory powers. In contrast, the European Commission (EC) raised major concerns over the efficacy and independence of the new regulatory body (Pérez 2013). Nevertheless, there was no significant domestic opposition to this reform

from other constituencies, especially interest groups such as consumer organizations and small operators, who benefited greatly from the CMT's procompetition policy. In fact, the PP reforms presumed that the operation would be almost cost-free: having obtained an absolute majority of parliamentary seats, the PP could pass any law regarding the configuration of the regulatory system without major problems beyond potential loss to its reputation. In fact, the CNMC was finally established in 2013 and began operations later that year.

The creation of the CNMC not only involved dismantling the telecoms agency but also reduced the regulatory responsibilities of this new agency, meaning that the administrative innovation that the CMT represented was eventually transformed into a rather toothless institution that did not represent a serious threat to the prevailing hierarchical structure of Spanish public administration. Many regulatory capacities were transferred to the government, including portability, interconnection, universal service, operator registration, and conflict resolution. All these responsibilities had been controlled by the CMT and their transfer allowed the executive to recover a significant amount of its power over the sector.

### **Analysis of the CMT's accountability practices**

In this section, we will examine the CMT's accountability practices in three different directions: upward, to its principals (mainly the executive and the legislature); horizontally, to other public institutions (other agencies); and downward, to consumers, users, operators, providers, and so forth. We also consider the formal and the informal mechanisms adopted by the CMT in order to examine potential imbalances between them in each dimension. Our aim is to discuss how far the CMT's accountability

failures, which were created by such imbalances, contributed to the termination of the agency, as we discussed in the previous section.

#### *Upward accountability mechanisms*

The CMT's upward accountability relationships encompass different mechanisms between the regulator and both parliament and the ministry.

*The CMT and parliament.* During the period under study, the main accountability mechanism between the CMT and parliament was an annual hearing, at which the CMT president would appear in front of the Senate and answer questions from senators and congresspeople. However, this hearing was not an obligation. Indeed, the only obligation stipulated in the legislative framework of 1996 was that an annual report should be sent to parliament, but no details of its content were specified. The hearing at the Senate emerged as an informal accountability mechanism promoted by the CMT to make the presentation of this annual report more visible, attracting media and stakeholder attention as well.

This mechanism was, however, assessed differently by interviewees. For example, one member of parliament (MP) considered the hearing to be very useful, especially because it attracted media attention, meaning that citizens were informed about the sector (interview 12). Similarly, this mechanism was perceived as a success by one of the CMT's former presidents (in an interview with us) because the entire sector was required to be present and 'a regulator needs to be known to be respected' (interview 8). Conversely, it was suggested by other interviewees that parliament exerted no effective control, as the senators lacked the necessary knowledge and were not sufficiently prepared. As one interviewee put it, 'the questions they [the senators] asked were too

simple. Being controlled by parliament is like being controlled by nobody' (interview 1). This view was shared by MPs, who pinpointed the lack of resources as the reason that parliamentary control was too lax (interviews 12 and 13). As one MP stated, 'given the current personal resources [it] is very difficult to provide good technical follow-up' (interview 12). Another interviewee considered that annual hearings were simply doing 'too little' (interview 4).

Formal accountability mechanisms to parliament were not clarified until 2011. The same law that paradoxically triggered the conflict with the PP also aimed to increase the formal accountability of regulatory agencies vis-à-vis parliament. In fact, it provided important clarification about the CMT's upward relationships as it stated clearly that all the relevant agencies were accountable only to parliament and the judiciary (article 8.3). On the one hand, it stated that both the annual report and policy evaluation had to be sent to the ministry and parliament before being published (article 20). On the other hand, parliamentary control was tightened. More concretely, article 21 of the LES stipulated that, at parliament's request, the presidents of agencies had to appear before the house to explain their basic course of action as well as future priorities and plans (art. 21). In addition, the 2011 law stated the ministry's obligation to appear before parliament to present its candidates for president and councillors (art. 20). Another important guarantee of independence introduced by this law was that members of the public administration or the government were not allowed into CMT council meetings (art.11.3). However, it was not possible to assess the actual impact of all these formal accountability mechanisms for the CMT, as a few months later parliament was dissolved. Following the ensuing elections, the new parliamentary majority arrived with the purpose of dismantling most regulatory institutions.

*The CMT and the government.* The CMT's legislative framework established some feeble formal accountability mechanisms to the government. First, Royal Decree 1994/1996 stipulated that the CMT had to submit a report about telecoms market development to the government, which in turn would send this report to parliament (art. 26). Second, the complex division of different regulatory responsibilities between the government and the CMT, as well as the requirement that the former request inspection and sanctioning from the latter, opened up an elaborate dispute on regulatory powers that culminated in several litigation processes from 2004 onwards. In fact, such litigation originated in the government's attempts to recover some of the responsibilities that had previously been delegated to the CMT. The resulting tensions led to the phasing out of informal accountability mechanisms between the two entities, which did not evolve into well-established rules for informal coordination.

Thus, despite the government being responsible for appointing the CMT's commissioners, this did not give rise to informal accountability mechanisms. Indeed it was well-known that the CMT was not formally accountable to the government. We did not identify informal accountability mechanisms between the agency and the government, and found only a few formal ones, such as mutual inputs on resolutions or reports as explicitly required by the legislation. For instance, one interviewee from the CMT mentioned that 'the CMT wrote reports as an answer to the ministry's proposal for a resolution, but there was no real debate between them' (interview 2). Another interviewee reported the relationship as being very formal and 'extremely bureaucratic', because 'everything had to be written and had to pass through the official channel' (interview 3).

In general, most interviewees thought that the CMT was not accountable to the government or the ministry, although there were different nuances to these perspectives. As one interviewee vehemently put it: ‘The ministry was not supposed to supervise us: the CMT was independent!’ (interview 1). Another interviewee said that, to influence CMT resolutions, the ministry had taken different steps over the years, such as ‘criticizing it in public’, ‘calling the councillors and putting pressure on them’, ‘withdrawing competences’, or ‘going to the judiciary’ (interview 2), meaning that accountability mechanisms did not operate at all. Interestingly, it seems that the government’s attitude towards the CMT did not change with the different administrations, as PSOE and PP ministers both favoured similar policy perspectives that would support a national champion instead of promoting more intense market competition. This long-lasting enmity may have impacted the CMT’s institutional strength, as the ministry tried different pressure strategies to jeopardize the CMT’s initial ability to conduct its mission and operations until it was eventually terminated.

In relation to this open conflict between the ministry and the CMT, which lasted many years, it is necessary to highlight that beyond regulatory disputes, there was a clear confrontation about the definition of telecoms policy. As declared by an interviewee: ‘for the ministry, it is uncomfortable to have independent regulators, as they have different opinions of what is in the interest of the public’ (interview 4). According to an interviewee from CMT personnel, the vision of the government was ‘to support and protect Telefónica’s interests, as the ministry’s civil servants considered that it was the only company which really invested in the country’ (interview 2). This opinion was shared by another interviewee, from a business association, who stated that

the civil servants working at the ministry ‘tried to prevent the CMT from adopting resolutions which were contrary to Telefónica’s interests’ (interview 9).

On the government side, the relationship was mostly considered to be poor. One interviewee who had worked there described the relationship between the two entities as ‘always tense’, as there was ‘the lack of a tradition of independent regulators in the country’ (interview 7). This lack of tradition is suggested in another statement by the same interviewee: ‘some politicians find it difficult to accept that they are not the only ones who are in command’ (interview 7). CMT personnel agreed about the strained relationship, particularly on the ministry’s side, and confirmed this view. As one interviewee put it: ‘from the beginning, the ministry – or more concretely the vice-ministry for telecoms – saw us as the enemy’ (interview 2). Therefore, the relationship between the government and the CMT became a tense, conflict-ridden dispute over control of regulatory power over the years. The absence of any type of accountability mechanism, either formal or informal, evolved into strong policy confrontation, where expectations about how to define government-agency relations remained very different on each side.

#### *Horizontal accountability mechanisms*

Horizontal accountability refers to exchanges between entities in the absence of legally upheld hierarchies, usually within the public sphere. The CMT had formal horizontal accountability relationships with other independent authorities, particularly with the competition authority (the CNC, from 2007 onwards)<sup>3</sup>, which was one of the entities that were also merged into the CNMC in 2013, as described above.

The CMT's legal framework established various mechanisms for coordinating with the competition authority. According to Royal Decree 1994/1996, the competition authority had to be informed each time the CMT investigated a case within the telecoms sector (art. 28). Additionally, the CMT was obliged to report if a breach of competition law was identified. In 2011, the LES introduced more clarification regarding the relationship between the two regulators. Concretely, the need to collaborate with other sectoral regulators was made more explicit with the requirement that 'they should cooperate and meet at least once a year' (art. 24).

Most interviewees mentioned the CNC when asked about the CMT's relationship with organizations operating at the same level but only pointed to a few informal accountability mechanisms between both agencies. The main ones mentioned were meetings, seminars, and other informal contact, such as giving opinions on reports and providing information, particularly about telecoms operators' merger plans (interviews 1, 2, and 6). Only a few cited the obligation set out in the LES of holding a formal meeting with other regulators once a year. In fact, according to two interviewees, only one or two meetings were ever held (interviews 6 and 8), probably due to the beginning of the merger process in 2012.

As in the case of ministry–CMT relations, most interviewees assessed the relationship between regulatory agencies and competition authority as predominantly poor. This relationship was characterized consistently within interviews as complicated and uneasy. In the words of one of the interviewees, the regulators 'had close, but very complicated relations' (interview 3). Certainly, most interviewees from the CMT characterized the relationship with the CNC as uneasy (interviews 2, 4, 5, 7 and 8). Some of them described it as simply 'not good' (interview 2) or plainly 'bad' (interview

5), while others went further, describing it as ‘mutual hatred’ (interview 4). This exemplifies the lack of accountability mechanisms to articulate their relations, either formally or informally. Furthermore, one interviewee indicated that even if the accountability relationship between the CMT and the CNC had been ‘ugly’ since the beginning. Many interviewees pointed to the lack of clarity over the division of regulatory responsibilities between the CMT and the competition authority as the main reason for this tense relationship (interviews 4, 5, 6, 7 and 8). Nevertheless, interestingly, other interviewees pointed to the different organizational cultures within each of the regulatory bodies: most of the CMT’s personnel came from the private sphere while CNC’s personnel were mainly civil servants (interview 8).

#### *Downward accountability mechanisms*

Downward accountability refers to nonhierarchical arrangements of multiple actors who exchange information in a way that is conducive to a mutually recognized accountability relationship. These relationships may occur under formal accountability ties, when explicit regulations have been established for this purpose, or as part of informal accountability mechanisms. When formal, these arrangements may include a variety of policy forums and dialogue procedures as well as other transparency and information disclosure measures, while those that are informal involve regular interactions between IRAs and forum members, including business associations, citizen and consumer organizations, and other actors.

*Policy forum and dialogue platforms as formal mechanisms.* According to the interviewees, the CMT maintained informal accountability relationships with two main actors: telecoms operators, including single operators and business associations, and

several consumer associations, particularly Consumers in Action (FACUA) and the Organization of Consumers and Users (OCU). However, the CMT's legislative framework did not include many provisions regarding its relations with its policy forum or any other downward accountability mechanisms.

Nevertheless, the CMT had to comply with General Public Administration Law 30/1992 of November 26, 1992, which established some ground rules regarding the relationship between the Spanish administration and its stakeholders. This law established the obligation to consult and inform stakeholders and to justify any decision taken which could affect any rightful interests (art. 54), although this provision did not represent a complete accountability relationship. In fact, such procedures were followed but without introducing any innovations to its practices.

*The CMT and operators.* Different informal accountability mechanisms linking the CMT and the telecom operators were identified in both the literature and the interviews, such as benchmarking activities and other mechanisms for close consultations, including meetings, panels, interviews, focus groups, forums, and technical boards. First, CMT public consultations<sup>4</sup> were based on the notice and comment (NC) procedure, a consultation technique consisting of stakeholders giving opinions on a draft of a regulatory act published online (Righettini & Grimaldi 2015). According to one interviewee, the consultation process was really 'not formalized' and was not taken too seriously by the CMT: 'they come, we have meetings with them, but in the end, we decide how we will react' (interview 1). Among other informal mechanisms, the interviewees mentioned the 'Foro Neba', a permanent discussion forum involving the CMT, Telefónica, and other key players who defined indirect access to services over copper and fibre optic networks. One interviewee gave this forum as an example of the

close collaboration established between the CMT and operators (interview 1): ‘This forum was continuous, it lasted almost a year. There were many communication channels (with operators), the relationship was very smooth’ (interview 1).

Apparently, relations with operators were very close and were mostly based on informal accountability mechanisms. They were particularly intense with CMT councillors. As one former CMT president said: ‘when a decision was about to be taken, the “dance” that the operators performed for the council was huge (...). On those occasions, you had to sit with a different operator every day’ (interview 8). Furthermore, this informal accountability relationship involved more ex-ante involvement than ex-post justification. As one interviewee from the CMT put it: ‘more than justifying our decisions, what we do is provide an audience for stakeholders. We involve them before taking a decision’ (interview 4). The operator and the business association that we interviewed confirmed these opinions, saying that: ‘the relationship was very informal’ and ‘in general, they were expeditious, if you requested a report or a meeting, they responded promptly’ (interview 9). In a similar vein, one interviewee said, ‘the relationship was frequent and easy’. Another said, ‘the CMT was accessible, including both the technical corps and the councillors’ (interview 10). As seen, during the years the CMT was in operation, no strong interest arose on its part to better formalize accountability relations with these stakeholders.

*The CMT and consumer groups.* As has been mentioned above, managing customers’ complaints was a government prerogative, but the CMT also fostered relations with the two consumer organizations mentioned earlier, FACUA and OCU. It did so largely through public consultations, which were more formal than existing relations with operators were. However, the CMT’s relationships with these consumer associations

were not as fluid as its ones with operators were, and these mechanisms were ultimately not very useful. According to one interviewee, the process of public consultation was very formal and relationships were very cold (interview 11). Furthermore, apart from consultations and some information petitions, no other accountability mechanisms were established between the CMT and consumer groups.

The relationships between the CMT and consumer groups could thus be described as very poor. As one interviewee from a consumer association stated, ‘from our perspective, the CMT’s trajectory was very bad. We barely had a relationship; there was an absolute lack of dialogue’ (interview 11). Likewise, the same interviewee added: ‘we never requested any meetings. We did not do so because we were very aware of the lack of dialogue mechanisms’. As another interviewee reported, ‘it was clear that the CMT had no interest in encouraging these relationships’ (interview 3). In contrast, a consumer group representative stated that their organization desired to establish a ‘formal dialogue mechanism’ with the CMT, beyond public consultations (interview 11). The interviewees from the CMT’s side shared this view. One said, ‘we could have done more. For instance, we could have undertaken more public consultations or more open workshops...Perhaps that could have been improved. Truth be told, we were a little introverted’ (interview 1). It therefore seems that there was little interest in promoting accountability relations with consumer groups, although they had sufficient interest in telecoms issues to be more engaged in formalized dialogue.

*Transparency and information disclosure to the general public.* The CMT’s legislative framework included some ground rules concerning transparency. First, the General Telecommunications Law 32/2003 introduced transparency requirements; it encompassed the accountability obligations of the regulator to the regulatees and the

rest of society, such as the obligation to publish a summary of all rules regarding compliance on the part of the different administrations with the general telecoms regulations on the internet (Art. 31). Secondly, the LES presented new transparency rules. It established that the CMT was obliged to publish certain key decisions online, namely all approved rulings, resolutions, agreements, and reports regarding companies' right to privacy (art. 20). More specifically, the LES required the CMT to make a long list of items public: council members' CVs; council minutes; reports that led to CMT decisions; any telecoms market-related analyses or reports; the plan for the following year, including the main objectives and priorities; and annual reports, including annual accounts, the organizational state of affairs, personnel information, activities, the objectives the CMT had pursued, and the results it had obtained.

Nevertheless, the legal provisions of the LES did not substantially alter the CMT's activities. The agency had already developed a comprehensive strategic action plan on transparency years before. Since 2008, the CMT had thus developed two main communication programs: first, providing operators and the public with data query tools that allowed access to statistical information on the sector in open formats; and second, continuing its information work through its own social networks. In 2012, the CMT created a new web portal (<http://cmtdata.cmt.es>) that the general public could access for interactive data consultations. This website contained all the historical data available for both annual and quarterly reports. The CMT also set up a blog (<http://blogcmt.com/>), which received an average 45,000 visits per month and had 2,400 subscribers. This was an instrument for corporate communication and was a channel for providing immediate responses to citizens' questions. Providing information through social networks significantly improved the CMT's visibility and helped disseminate nontechnical

information to citizens, in addition to explaining the state of the industry and major developments in regulatory policy. Even so, the CMT's efforts around communication and transparency were not systematic, especially in relation to citizens. For example, the CMT blog content came from the CMT corporate communications area, not its strategic department (interview 9).

Another example was the publication of comparative studies of internet and mobile telephone charges, particularly at the European level. According to one interviewee, the publication of these price comparisons started during Reinaldo Rodríguez's presidency (2005–2011) (interviews 1 and 3). Another interviewee mentioned that the operators did not appreciate the publication of these studies, as it showed year after year that prices decreased more sharply in other European countries than in Spain (interviews 8 and 9). Apparently, this made Spanish operators look bad as they charged higher prices for average cable and telecoms services than other their counterparts in other EU countries did.

However, this publication was not continued when the CMT presidency changed, which revealed that there was no solid or stable benchmarking strategy in the CMT. Similarly, according to Righettini & Grimaldi (2015), the weight of this nonsystematic communication strategy was very poor in terms of downward accountability. Despite many efforts, such strategies thus did not lead to wider public legitimacy or attract strong support for the CMT from larger audiences. In general, we found that some basic strategy in favour of open information was introduced, but this was not employed to build a broader strategy of downward accountability, including both formal and informal.

### **Interpreting the CMT's accountability failures**

Based on the analysis in section 4, in this section we summarize and contextualize our findings in the light of our initial hypothesis. As stated, we were interested in assessing the CMT's capabilities in managing and promoting accountability mechanisms to make the agency more stable and better established within the Spanish political and administrative sphere. The CMT was established shortly after the PP's victory in the 1996 general elections as a strong regulatory agency with multiple provisions designed to protect the independence of the agency's decision-making processes, but with very few details about the accountability mechanisms that the agency should implement. The disruptive character of the agency's design in the context of Spain's public administration and the exceptional momentum that came with the opening up of telecom market triggered high expectations for this institutional innovation when it was created.

However, over the next few years, the CMT often went to the trenches as disputes with the executive power became quite common while the agency's relations with the incumbent were also quite tense. More generally, interactions with multiple stakeholders remained relatively underdeveloped. Assessing how the CMT performed in its role as regulator in opening Spanish telecom markets is not the focus of this article, although we do realize that this job was not an easy one. Many political economy factors were at stake, as we discussed briefly in section 3, and the agency did not benefit from solid political or administrative support from within the traditional structures of the Spanish state. Designing an independent agency does not mean creating 'isolated' institutions; agencies need to interact with multiple public bodies to perform their tasks. In adverse administrative environments, this cannot be taken for granted. This was,

perhaps, an initial failure of the institutional design of Spain’s CMT: the agency was better envisaged as an isolated body with a key purpose – introducing effective competition – rather than as a public organization that should be required to work in a very populous administrative environment.

In figure 1, we summarized the formal and informal accountability mechanisms that we have already identified for the CMT and commented on its evolution over time. As stated above, we claim that, from the agency’s beginnings, many failures in its accountability design contributed to complicating the difficulties that the agency faced in becoming a fully consolidated administrative body that was well respected inside and outside the public realm. Although there were later attempts to improve the CMT’s accountability mechanisms, some of which appeared to be very persistent and committed, these did not fully succeed, at least not enough to reverse the accountability problems that had existed from the outset.

**Table 1** The CMT’s accountability mechanisms

<b>Accountability mechanisms</b>	<b>Formal</b>	<b>Informal</b>
<b>Upwards</b>	-Annual report sent to the ministry and parliament -Parliamentary hearings (formalized in 2011)	-Parliamentary hearing in the Senate
<b>Horizontal</b>	-Annual meeting (formalized in 2011, but not developed)	- Meetings, seminars, opinions on reports

<p><b>Downwards</b></p>	<p>-General obligation to consult and inform stakeholders</p> <p>-General obligation to justify any decision taken which could affect any rightful interests (not developed)</p>	<p>-Different consultation mechanisms with operators (meetings, panels, interviews, focus groups, forums, and technical boards)</p> <p>- Few consultation mechanisms with consumer groups (information petitions)</p>
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The analytical framework that we have developed in this paper has focused on identifying accountability failures. In the case of the CMT, our results confirmed that several inconsistencies and the absence of a well-defined mechanism led to several accountability failures. In terms of upward relationships, the analysis we carried out in the previous sections suggests an agency pattern that relies on undefined formal accountability practices and very limited informal ones. Only in 2011, almost 15 years after the agency was created, was formal accountability to the legislative body better defined, specifically through the LES. As to the accountability relationship between the agency and the executive, a formal accountability relationship was never established and informal accountability relationships did not emerge, as expectations on both sides were extremely different. Disputes predominated for most of the time, hampering the emergence of collaborative mechanisms. Initially, this was due to the agency's unfocused institutional design, and later to the CMT's unsuccessful attempts to establish informal upward mechanisms that were not based on traditional hierarchical relations. These were not effective enough to overcome multiple misperceptions.

We found that the CMT's accountability problems became more visible over the years and were only partially rectified during the period immediately prior to the

agency's termination. Horizontal accountability mechanisms were only revised and formalized in 2011, with the passing of the LES, which detailed the need to convene meetings among the institutional actors involved in regulation. However, despite the attempts made, the practice of horizontal accountability was not well established and there was little contact between parties to mutually account for their decisions. Likewise, informal coordination mechanisms between agencies did not emerge during the CMT's lifetime.

Although the CMT's downward accountability mechanisms were strong on many fronts, they were largely biased towards operators. For wider audiences, accountability was focused through a unidirectional mechanism (the CMT blog), and formal accountability mechanisms were not established with a broader forum, including consumer groups. Furthermore, the agency's transparency policy was not able to compensate for these shortcomings, as it was based on nonsystematic communication strategies. Some findings also suggest that no more efforts were made to articulate a formal accountability system with forum actors because the CMT perceived itself as being highly independent and at low risk of political intervention.

Because of these deficiencies, CMT's accountability failed on multiple counts. These failures were mainly due to the limited development of well-established formal mechanisms, but also to resistance, misconceptions, and difficulties in establishing informal accountability practices with a variety of forum actors. During the years in which the agency was active, it was therefore unable to build enough reputational capital by developing and nurturing innovative accountability strategies and combining the formal and informal sides of such processes. This might have contributed to building wider public legitimacy and raising strong support from larger audiences. Nor

did these shortcomings contribute to creating a resilient forum structure that was capable of protecting the CMT's role after it was integrated into the traditional Spanish state administrative system.

### **Concluding remarks**

The story of the CMT is a tale of an independent body that was established to promote competition in a country lacking an administrative tradition of independent regulators, where most policy-makers favour nuanced procompetition policies to avoid harming their national champions. This administrative innovation, which reflected the new EU-supported conception of competitive telecoms markets, led to a long-term conflict within the traditional Spanish administrative system, one that was more hierarchical and politically embedded. The CMT was supported by several stakeholders, which included different interest groups and the EC and which incidentally agreed on favouring market competition. However, government officials viewed the new institution with suspicion, as it exerted powers that they had previously held, and disputed their long-term vision of a privileged relationship with Telefónica, which they considered the undisputed national champion. This persistent confrontation between the CMT and the government was finally resolved with the termination of the former in 2013.

Without blaming the former CMT for not having a more sophisticated accountability system, it is possible to say that had it developed such a system, political intervention would have been more costly and uncertain for political parties, especially because they did not have very transparent or reasonable justifications for their actions. Although it is not possible to demonstrate this, we would like to suggest that successful accountability

strategies may potentially play a role in the survival of an agency that represents an administrative innovation and challenges the traditional policy-making procedures in a country. This study therefore suggests that a good combination of formal and informal accountability practices in both hierarchical and nonhierarchical settings could reinforce an agency's strength, while the absence of some of these components could create notable difficulties for it. In other words, while the CMT was initially supported by many stakeholders that shared expectations on the agency's procompetition goals and its role, over the years, it was not able to transform these initial expectations into reputational capital by displaying either formal or informal accountability mechanisms that contributed to broadening its support among the relevant audiences (Busuioc & Lodge 2015). In this regard, for a substantial period of its life, the CMT may also have neglected to cultivate relationships that could have been important to its survival. Support from lawmakers also arrived too late (2011) and ultimately brought about the opposite effects to those that had been hoped for. According to Busuioc and Lodge (2016), reputational considerations may lead agencies to invest more in some relationships than others, including existing formal relationships. In this sense, opening up the market and gaining a reputation among main market players was the CMT's main goal in its early years, but this goal also undermined some windows of opportunity for broadening its audiences from the very beginning. In addition, the policy discrepancies existing with the government from the agency's early days did not contribute to building up fluid channels of informal accountability towards the executive. The large institutional differences between the agency and the ministry bureaucrats made this even more difficult.

We believe that our findings indicate the value of a more systematic exploration of the tensions that administrative innovations suffer when they are inserted into traditional environments that are reluctant to take on changes. In this sense, we clearly observed that inadequate accountability mechanisms contribute to weakening administrative innovations' ability to establish their own public space and firmly consolidate their role as market regulator. This problem occurs more intensively when certain circumstances hold true: first, when administrative innovations involve the introduction of new organizational designs which largely differ from those existing in the administrative environment; and second, when specific policy preferences are embedded in their institutional design (in this case, the favouring of procompetition policy), which eventually led to tensions with the policy preferences that were dominant among politicians. Finally, in terms of broader implications, our study suggests the need to place the development of accountability mechanisms at the strategic level as a way of helping administrative innovations establish themselves more firmly in adverse environments. It would also reinforce their political legitimacy and professional reputation or protect them from interference and the threat of termination, despite their being granted economic and legal resources to pursue their goals.

<sup>1</sup> Spanish telecommunications policy has undergone a significant overhaul since the 1990s. Initially characterized by a close control of the monopolistic operator Telefónica by the government, the sector adapted progressively to the new European framework based on market liberalization and opened up the market to new entrants since the mid-1990s (Author, 2005).

<sup>2</sup> In 2004, the CMT was moved from Madrid to Barcelona, as a symbolic move to confirm political decentralization on the part of the new socialist president, J.L. Rodríguez Zapatero, who came to power that year. The agency remained in Barcelona until its end.

<sup>3</sup> One person also mentioned that there were relationships with the energy regulator and the judiciary.

<sup>4</sup> Consultations were required under Article 27 of the Regulation of the CMT Internal Rules and Procedure published in the resolution of the CMT Council in 2007 (RE-2007-12-20-3-1).

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