

A SELF-REGULATORY SYSTEM AMONGST COMPETITORS: AN ALTERNATIVE CHOICE

Brief synopsis

A collective effort amongst competing entrepreneurs intending towards self-regulation and towards establishing monitoring mechanisms that aim to procure “self-control” amongst them, may result effective to restrain bribery: “more eyes overlooking processes”.

As a matter of fact, a self-regulatory system to curb bribery is irrefutably a great progress when it comes to accepting the existence of bribery as a common practice in the private sector and the actions required from entrepreneurs to fight it. It is necessary for the system to have an overseeing body, responsible for the fulfilment of the entrepreneurs’ commitments.

Encourage this body with an independent voice and preventing functions, definitely contributes towards the fight against bribery. Warning advices from the overseeing body on possible corruption situations may be useful for the controlling agencies to take proper actions. In addition, the attention given by third parties or the media, in response to overseeing body warnings could persuade entrepreneurs to remain in their self-regulatory system, in order to continue finding new strategies to prevent bribery.

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In today’s business world, bribery is seen as a common practice amongst entrepreneurs when it comes to competing and gaining access to a greater market share. Very few entrepreneurs declare implementing regular, planned and budgeted practices into their business action plans to systemically curtail bribery risks.^[1]

This perspective of entrepreneurs may be explained, on one hand, by the disposition to hold the public sector responsible for enticing bribery, while on the other, by the scale and deep-rooted condition of this problem, such that it generates scepticism about actual possibilities to curb it.

Furthermore, nowadays, investment or supporting decisions concerning a brand name begin by considering the ethical and social performance of companies with regards to their positioning in view of labour laws, corporate governance, environmental and social policies, and lately, an emphasis has resulted from the efforts of entrepreneurs to prevent corruption. Good performance in these aspects increases the reputation and social recognition of businesses as trust-generators within the market.

Even so, individual, specific and sporadic efforts to resist bribery usually discourage entrepreneurs who choose to do things the right way, owing to the fact that these efforts seem pallid with regards to the magnitude and deep-rooted scope of bribery as a common practice to develop or even remain within the business market. An "Agreement to prevent bribery practices" amongst competing entrepreneurs representing a significant market share, it's a collective effort to face this problem, and it may be defined as an effective alternative to correlate company dynamics with the dynamics of its surroundings.

Entrepreneurs focus on obtaining their individual benefit with regards to the profitability and sustainability of their own businesses, and with that in mind, they need to have access to a free, reliable and organized market outlined within an ethical and transparent framework. A reliable market constitutes, therefore, a public good that benefits everyone. A self-regulatory system amongst competitors that goes beyond legality and serves to define common standards and borderlines between commercial and corrupt practices includes as its purposes to encourage a reliable and free market.

Bribery is a crime difficult to prove, fight and penalize; its nature allows it to be easily disguised with legal procedures. In this sense, a collective effort amongst entrepreneurs intending towards self-regulation and towards establishing monitoring mechanisms that aim to procure "self-control" amongst them, may result effective to restrain bribery and discourage its incidence in entrepreneurial practices, in considering that:

- The self-regulatory system grows and stays around its main asset: "credibility" resulting from its own dynamics. Based on this credibility, participating companies subscribing to the Agreement may evidence reputational benefits for themselves, hence persuading them to remain in the Agreement.
- It implements effective monitoring mechanisms to persuade participating companies to remain subject to the compliance of the standards duly established by them.

A self-regulatory system accordingly structured works from the inside towards the outside and it is sustained by the leadership of those companies that rather form part of the same. It is about a dynamic and active system essentially based on the possibility that its members can look over and supervise each other. For said purpose, it is necessary for the system to have a body duly established by signatory companies, in the form of an Ethics Committee, responsible for the fulfilment of the Agreement, with duties such as analyzing background information, assessing and decreeing if there is lack of transparency or not in a particular process when faced with apparent corruption situations, in responding to any reports or queries that come to its knowledge.

The preventive character of this body has a relevant effect over the companies participating in the self-regulatory system. The possibility of being questioned by the Ethics Committee may have a detrimental effect on the reputation of the business upon subscribing the Agreement. This preventive aspect definitely contributes towards the fight against bribery. Warning advices from this surveillance body on possible corruption situations may be useful for the controlling agencies to take proper action, and should there actually be a crime, then those responsible shall be duly penalized.

A specific way to typify the effect of this preventive action relevant for this proposition rests in the possibility of questioning the consistency and transparency of contracting processes in which companies having subscribed to the Agreement participate or intend to participate. Further than a “supervisory” duty, this monitoring mechanism acquires considerable strength when, based on its “preventive” character, *it can advise about corruption risks, invite contracting public agencies to review their processes and take the appropriate actions in specific situations, issue danger signals to encourage timely actions by control agencies, draw the attention of the multilateral banking sector when their financial resources procure these contracting processes, warn public opinion about possible irregularities in contracting processes that involve public funds and which are analyzed from a private and voluntary perspective*, based on the fact that it is a self-regulatory system amongst competitors.

The reliability and credibility of this monitoring body is closely related to the effectiveness of its performance, in addition to the seriousness and responsibility when making decisions or when taking positions with regards to particular situations brought to its attention. In order to achieve its full potential, this type of body should be independent enough to take proper action. It should have enough resources for its operation and clearly defined duties thus allowing it to fulfil its objective: monitoring the compliance of

regulations hence inhibiting bribery situations from actually happening. Therefore, it is advisable to appoint as members of said body, individuals without any contractual or employment relations with those companies part of the Agreement or even with their business association.

Now that the rules purpose of this self-regulatory system have been clearly defined and given the voluntary condition of this type of initiative, one would expect the companies subscribing to the Agreement to fulfil these standards and, therefore, achieve on a short term the eradication of bribery from their business practice. Even though, it is evident that on many instances these types of commitments may be quite apparent with regards to the market reality and when considering the deep-rooted state of practices intended to be discouraged. This explains why the challenge posed by these self-regulatory systems involves encouraging confidence amongst competitors, hence maintaining their interest and commitment with regards to the Agreement upon being tested, meaning when being confronted with the temptation of offering or responding to a bribery suggestion when perfecting a business transaction.

This system is about promoting the *fulfilment* of “the things that can be done”, in terms of internal management measures and steps to follow in reference to the company’s main interest groups so as to foster a bribery prevention culture; in addition to discouraging what “should not be done,” and developing a “reporting” attitude amongst competitors so that questionable situations are brought to the attention of and assessed by the appropriate monitoring body, hence setting a precedent on the dynamics of this Agreement, thus contributing towards emphasizing its motivation and purpose. In time, if this self-regulatory system progresses effectively, it will achieve “fulfilment” as a general rule and “penalty” as an occasional resource.

Being this a mainly voluntary system, the strength to achieve the fulfilment of its standards results from the certainty that its purpose is convenient and suitable, rather than from fear to sanctions. Nevertheless, while it reaches said maturity stage in reference to the commitment of socially responsible companies, it is commendable to establish a mechanism that oversees the fulfilment of these standards and progresses towards demonstrating the benefits that companies would miss out for not being part of the self-regulatory system, or the cost they would incur in for restraining from participating or breaching the commitments initially acquired. This is the path towards conceiving self-regulation as the development of the capacity to control the organization’s own conduct.

Understood as described, a self-regulatory system to curb bribery is irrefutably a great progress when it comes to accepting the existence of this problem and the actions required from entrepreneurs to fight it.

In Colombia, a group of pipe manufacturing companies signed in 2005 an "Agreement to prevent corruption practices" within the piping market sector, which is key to the country's infrastructural development when it comes to all water supply and basic sanitation systems. The Agreement's central purpose was to implement effective practices to resist bribery. In said sense, the Agreement defined certain policies and established specific measures to encourage the rejection of bribery in whichever form. These companies established an Ethics Committee as the overseeing body responsible for the enforcement of the Agreement. This Ethics Committee, formed by three independent members, has a set of regulations, duties and procedures.

This Ethics Committee collects all claims or reports about specific situations in which this Agreement might be breached. For the most part, reported cases have referred to irregularities in public tendering processes, particularly in the aqueduct and sewerage systems market sector. The most frequent irregularities deal with the conditions established to participate in the tendering process, which may be in favour of one single bidder, without considering the technical analysis justifying said requirements. This allows suspecting on the existence of bribes to achieve said favouring conditions.

As part of its framework of responsibilities, the Ethics Committee analyzes and submits a report stating its final decision on all cases. To date, none of the companies have been penalized by the Ethics Committee. However, by means of a fact research process and the compilation of information required for the analysis and the decision making process, the Ethics Committee, using a mainly preventive approach, has displayed actions to warn third parties about possible irregularities. It has invited third parties in their capacity as public agencies to verify its decisions; it has called the attention of controlling agencies to take charge in this matter; it has alerted financing institutions and other financial sector companies about the risks implied by their participation; in addition to stirring the interest of communication media in this type of situations. All the above has constituted an important scenario to set a precedent thus contributing towards curbing bribery within public contracting: "more eyes overlooking processes".

The attention given by third parties and the media, summoned by the Ethics Committee with regards to an specific situation, has persuaded subscribed companies to remain in the Agreement, hence meaning that said attention indicates that the Ethics Committee's voice is gaining its own strength as a means of expression of an effective self-regulatory system, given that it emulates a common purpose for both the business sector where they belong and the overall society: to encourage transparency in the exercise of

entrepreneurial management, a key aspect when generating conditions that ultimately favour everyone, the State, the private sector and the whole society in Colombia.

Authors:

Alma Rocío Balcázar
almabalcazar@yahoo.com
Phone: (571 – 6226562)
Mobile:(571033002163117)
Bogotá, Colombia

Luz Ángela Díaz
luzdiaz83@hotmail.com
Phone: (571 – 6130845}
Mobile: (5703 – 3005672032)
Bogotá, Colombia