

Corruption as business practice or joint forces against it?

What are the challenges and associated solutions for companies working together in collective action to fight corruption?

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Abstract

Since the latest corporate corruption scandals the private sector gets more and more involved in developing and implementing anti-corruption practices. Particularly in high-risk regions and sectors businesses are trapped in dilemmas where no single firm can escape the corruptive run. The solution is combating bribery collectively. However, the problem remains of *how* to seduce competitors to commit to collective action. An adequately designed collective anti-corruption pact may make business perceive the inherent, but intangible benefits deriving from collective action, such as the reduced cost of doing business, a level-playing field, a discussion forum, or enhanced reputation, and change the incentive set of the situation. Yet, anti-corruption pacts are only as effective as their enforcement. The firms' commitment must be followed by a credible implementation of written stipulated principles. Herein, collective action encounters endogenous, process-inherent challenges, as well as exogenous, context-related challenges. As long as no credible implementation of the anti-corruption pact is reached, business will lack public credibility and recognition. At the same time, the collective effort needs to be backed by an enabling environment that rewards the companies' attempts to fight corruption. This paper investigates these challenges for collective action enforcement using the example of a private sector anti-corruption pact among pipe manufactures in Argentina and identifies crucial factors for success. Lessons learned from the Argentinean experience include the commitment and trust of the intending signatories, the certification of the activities combined with an independent audit, as well as the promotion of the initiative to entice new members. But an enabling environment, in terms of an apt political and economical framework and a civil society is also necessary. In the end, to make collective action sustainable it is about getting the incentives right.

Introduction

The growing awareness about the perils of corruption has resulted in greater public attention being paid to the role played by companies. Increasing pressure for transparency and for stricter compliance with integrity standards motivates firms to tackle bribery within their company and also their industry. So, private sector anti-corruption initiatives emerge with the objective of generating binding rules for all the players in an industry (cf. Pies and Sass 2005b: 16, Wiehen 2002: 5). Via collective action, business, counterparts, and stakeholders can contribute constructively to fight corruption and create a level playing field. This essay wants to address challenges and associated solutions in collective action by hands of an industry-wide collective action experience in Argentina. To do so, this paper resorts to the *Acuerdo Sectorial para la Transparencia (AST)*¹, an industry-wide collective agreement reached by manufacturers of pipes for water, sewage and drainage infrastructure in Argentina, as an example of a collective action anti-corruption pact, drawing on a number of primary and secondary sources. The author conducted 30 in-depth interviews in Argentina between October 2007 and February 2008 to retrace the complex relationships amongst participants and facilitators and to investigate the design and functioning of the AST.

The private sector agreement AST was launched at the end of 2005 with the facilitation of Transparency International's (TI) local chapter and the AVINA foundation. Eight enterprises in the pipe manufacturing industry committed to a common code of conduct – including TI's Business Principles of Countering Bribery – and five additional key principles tailored to the industry's needs that aim to prevent corrupt practices, promote changes in the business culture, and contribute to social and economic development. The AST is a national, industry-wide, long-term initiative seeking implementation and, thus, can be classified as a Certifying Business Coalition (WBI 2008: 15). Collective action is especially relevant for high-risk regions, such as Argentina, and high-risk sectors, such as the water and the construction industry (cf. WBI 2008: 16, Control Risks 2006: 6, Wiehen & Olaya 2006: 76-78). This essay summarizes the findings of this qualitative study conjoining the inductive, case-oriented results from the fieldwork undertaken in Argentina with theoretical insights from the new institutional economics literature and the findings on the economics of corruption. Yet, as regards benchmarks to further discuss challenges and associated solutions, the study broadens its insights by looking into the AST's precedent in Colombia, the WBI's guide of collective action (2008), and the experience gained from other pioneering examples of business coalitions, such as the Bavarian Construction Industry's Ethics Management (EMB) and the Nigerian Convention on Business Integrity (CBI).

The crux of collective action

Understanding the economic logic of social dilemmas, particularly game theory's prisoner's dilemma, is vital for the illustration of the integrity problem that business people face in a competitive market (Homann 2000: 95). Via kickbacks, companies try to illegally gain a competitive edge over their counterparts in public bidding. Whatever strategy the competitor chooses, i.e. bribing or competing honestly, each player is always better off defecting: A

¹ The original contract document can be found www.poderciadadano.org/up_downloads/temas/74_2.pdf?PHPSESSID=da74a15f5657e0be9cac9fc9f7f65213, retrieved 27th April, 2009.

firm wins, if it is the only bribe payer in a bid, and loses by rejecting kickbacks when all others bribe. As a result, companies find themselves trapped in a dilemma and could be better off with mutual cooperation (Niehus 2007: 47-48, PWC 2008: 5, Pies 2008: 3, 156). Collaborating with industry peers avoids competitors to opportunistically take advantage and offers an effective way to create a level playing field a more competitive, predictable, and transparent business climate (Brew & Moberg 2006: 58).

Incentive Structure

How can companies trapped in the prisoner's dilemma situation be enticed to commit to collective action? Undoubtedly, it is not the actors' motivation or bad morals which lead to the dilemma; the incentives provided to the actors are essential (Lambsdorff 2008: 17). The central objective of collective action is exactly to create and strengthen incentives to avoid bribery and to make business to commit to anti-corruption pacts (WBI 2008: 23). Scrutinizing the inherent incentive design of collective action initiatives means to consider whether the firms experience any gain or conversely perceive disadvantages in business stemming from their commitment (cf. Nino 2005: 172). In other words, if the potential return from a collective action pact is higher than the expected losses from corrupt behaviour, firms will devote resources. Some form of benefit is essential for business that needs to operate profitably and is, thus, identified as a crucial success factor for collective action (Lucke 2008: 19).

What are the benefits that motivate companies to comit to collective action? By adhering to an industry-wide collective action agreement, such as the AST, kickbacks, speed money, and involved transaction costs can be saved (Lencina 2007: 78). Additionally, it enables companies to compete on quality, price, and product innovations rather than on illicit practices. As a result, collective actors can generally benefit from the increased chance of a fair selection of suppliers and from enhanced market access. Good quality at reasonable prices can make the whole industry more reputable and can imply higher sales. Furthermore, other benefits comprise that the peer group serves as a forum for discussion, intermediation, and conflict resolution and helps to build a reputation of a responsible corporate citizen. One of the biggest challenges for the sustainability of the AST case is that the member companies question the benefits from cooperation (Lucke 2008: 20-24). The Argentinean experience shows that it is necessary to look for mechanisms that make the advantages more tangible, because not every company, in particular SMEs, disposes of the necessary financial backup to promote collective action.

Collective action in operational analysis

After exploring incentive-based requisites for collective action, this section examines the operationalization of private sector anti-corruption pacts, since treaties, conventions, and codes are only as effective as their enforcement (Léautier et al. 2006). The analysis of the implementation can be split into endogenous success factors, that are inherent in the process or only depend on the input of the actors themselves, and exogenous success factors, such as the impact of the local context outside the participants' influence.

Endogenous success factors

The design of any collective action initiative should begin with a **thorough analysis** of the industry to be considered, the prevailing regional conditions, and the areas of risk (Léautier et al. 2006, Wiehen 2004: 232). Environments characterized by poor governance and weak institutions require different strategies and more efforts (Boehm 2007: 19). However, neither the peculiarities of the Argentinean water sector, nor the corruption risks of the industry were assessed deliberately a priori to design an adequate strategy. On top, the signatories did not acknowledge the time-consuming process of trust-building resulting in disappointment. So, it is recommendable to conduct workshops beforehand to evaluate local circumstances, risks of corruption, benefits of anti-corruption activities, and best practice examples and, thereafter, to summarize expectations, objectives and follow-up in a concept note (WBI 2008: 38). The focus on **achievable outcomes** is equally essential for success and can provide the foundation upon to implement more challenging principles later on (WBI 2008: 58, Lucke 2008: 43).

Collective actors must be **credible counterparties** and display **trustworthiness** at various stages: First, when the intending candidates are about to sign the contract, second, whilst cooperating as a group, and third when they defend their credibility and build up a reputation towards other parties. Already before the operationalization of any anti-corruption agreement the companies must demonstrate their trustworthiness. If their integrity is questioned at the time of the commitment, they lack a key prerequisite to participate (Beckmann & Pies 2006: 22). The Argentinean experience shows that certain companies refrained from participating, because they mistrusted the integrity of other adhering companies (Lucke 2008: 34). To mitigate this risk, each company ought to individually implement an **internal anti-corruption policy** prior to collective action. It is proposed to keep track of these “compliance-related prerequisites for membership” and publish the antecedents of aspirants to the anti-corruption pact (WBI 2008: 15, 27-28). At the same time, mutual confidence is a key factor for success to generate tangible results within the agreement. Collective action enforcement requires “a trusting business relationship among industry peers” (WBI 2008: 53). The prevalent mistrust among AST partners illucidates the poor results in the AST’s implementation. Accordingly, this also explains why a central success factor is attributed to the role of **business leaders**, as candid leadership can help on building confidence (Lucke 2008: 34).

Further, to achieve sustainable success, **participation** and a sincere **commitment** are essential (ibid.: 33-36, TI COL 2005: 48). On the one hand, a strong tone from the top, i.e. top-level executives pledging zero-tolerance towards bribery, have an exemplary function for the successful implementation of collective action (Wiehen 2004: 231, WBI 2008: 58, TI COL 2005: 47). This also involves full-time committed personal for the enforcement of the collective action agreement and representatives that are vested with sufficient decision making power (TI COL 2005: 47). On the other hand, the success of private sector anti-corruption pacts depends on a stable and sustainable **funding**. Hence, it is recommended to jointly provide for an appropriate funding throughout the entire initiative by creating a common endowment fund (TI COL 2005: 47, WBI 2008: 58). The latter could also balance financial asymmetries, as especially SMEs often lack resources to have staff dedicated to an

anti-corruption pact (Léautier et al. 2006). Not least, adequate financial support shows the signatories' dedication and creates outward credibility (Lucke 2008: 40-44). This is the same with the involvement of external facilitators. The participation of an external **facilitator**, i.e. a trusted third party, such as an academic advisor, NGO, or business association, is a crucial success factor to manage the collective process (WBI 2008: 38, 58). A neutral and renowned facilitator, such as locally represented organizations, e.g. TP's national chapters, can convene key actors and acts as a coordinator, watchdog, and intermediary between stakeholders (Brew & Moberg 2006: 132). Moreover, the additional involvement of business associations, that gather the companies, can help fostering and stabilizing the process.

As mentioned above information, sensitization, and conviction of the staff – in other words effective **internal compliance mechanisms** – are relevant success factors (Lucke 2008: 35). A roadmap should follow up the companies' performance and require intending signatories to streamline their business standards with the requirements of the code, including an extra verification to ensure the commitment to core principles (Apampa 2005: 248-249). Collective action agreements are at risk of window-dressing, if individual performance is not followed up. Undoubtedly, only solid enforcement, constant congruence between written codes and actual actions can establish a credible reputation for integrity (Niehus 2007: 135). At this point, the actors' trustworthiness towards outsiders comes into play: The committed companies have to keep up investing to ensure the enforcement of their collective action agreement and build up a **reputation**. The challenge for a credible anti-corruption pact is that it must back its principles with an effective regime of **sanctions** (PWC 2008: 5-6). For creating a level playing field, the stipulated principles require effective **monitoring** and a neutral, unquestioned authority to make sanctions enforceable and to discourage deviant behaviour (Apampa 2005: 240, 247). This is vital for sustainable collective action and additionally contributes to trust and reputation building towards other stakeholders (WBI 2008: 58, Lucke 2008: 37-38).

Certification of the collective action initiative could entice companies to stand up for enforcement. Yet certification should only be granted after successful achievement and verification of compliance standards (Apampa 2005: 248-249, EMB 2007: 12). Only, if it is costly to get the seal of accreditation for transparency, if it is backed by sustained values and a credible implementation, and if it is monitored by a renown authority, can a seal of approval have a legitimate value and serve as a quality signal. To take the asymmetries in terms of size and resources between member companies into account, it is suggested to enable several levels of commitment, obviously based on concerted minimum standards and aiming at unification at the highest level. Thus, a seal of approval may include the level of compliance reached and it is to differentiate between normal and audited membership, such as the CBI's five star rating (WBI 2008: 15, 54, EMB 2007: 12, Apampa 2005: 249-251). Additionally, the seriousness of collective action and its hallmarks can be increased by an independent **external audit**, executed by the facilitator for example. To ensure output-oriented accountability, the audit should be based on workable controls consisting of clear performance criteria, e.g. a checklist of agreed standards or certain measurable indicators (WBI 2008: 54, Lencina 2007: 38). The audited certification could spur the companies to unite prevailing different levels of commitment.

It is not enough, that a seal of approval is backed by sustained values; it must also be recognized publicly to deliver an added value. This in turn means that collective action initiatives get the public behind their anti-corruption efforts (Klitgaard 1988: 186). Business committing to integrity should engage in **outreach programs** with the public and media and advertise the involved intentions (Wiehen 2004: 239). **Public exposure** and media coverage were identified as crucial success factors for a sustainable collective action implementation (Lucke 2008: 45-46). The straightforward proposal is “publicize and publicize some more” (Klitgaard 1988: 186), i.e. to initiate a broad communication campaign and convey intentions, rules, and penalties to the relevant stakeholders, and galvanize the support of the common man. However, the AST-members were very reserved in promoting the AST, although it would have been essential to reach attention from society and create public awareness for anti-corruption in Argentina (WBI 2008: 58, Lucke 2008: 45).

At this juncture, successful marketing goes along with **preventing** the collective action agreement being **perceived** as a **cartel**. Indeed, major reservation about industry-wide agreements is the suspicion that members arrange rules with their peers to the detriment of third parties (Homann & Blome-Drees 1992: 140). So, companies need to be careful not to violate antitrust laws when initiating and performing collective action (WBI 2008: 59). A chief worry amongst AST-members was the fear of being perceived as a cartel, and the prevention of this image is considered essential for success (Lencina 2007: 46). To mitigate the risk of violating competition laws, legal advice is helpful. Further, an effective marketing campaign for the collective action initiative make clear that the group of companies does not operate in secrecy, but rather intends to aspire public acknowledgment and to sensitize civil society to enable it as a watchdog.

Promotion and public awareness is accompanied with integrating more participants and word-of-mouth recommendation. First of all, the willingness to welcome new members, in other words to be **accessible** to outsiders instead of conveying the image of a cohesive group, is important and can also help to break with the picture of a cartel (Lucke 2008: 46-47). It is suggested to pursue a dynamic strategy and maintain **open calls for memberships** (TI COL 2005: 47). Ideally 100% of the market integrates the collective agreement, since outside defectors can topple the pact and force the others to adopt the defector’s behaviour (Homann 1997: 196, 2000: 98). If there is a critical number of participating companies to make collective action work, is hard to answer. Still the higher the collective actors’ market share in public bidding, the stronger the influence on the market, and the higher the enticement for outsiders to join. The open call for membership does not only refer to recruit new counterparties, but also to extend the collective agreement to the **entire value creation chain** from the raw material to the final product, including suppliers, dealers, and so on. Given that the tube manufacturers form only one part in the value creation chain of the Argentinean water sector, the AST loses validity without integrating suppliers, agents, and especially clients that directly interact with public entities. The inability to convene the other subsectors, in particular those with a direct link to the public sector, is considered to be one of the main weaknesses of the AST (Lencina 2007: 37, Lucke 2008: 47). So, with regard to the AST’s accessibility, experts not only propose to keep the AST open for new members, to try hard to incorporate other stakeholders. The Argentinean experience shows that the inclusion of the whole industry and the enlargement of the AST to

100% of the market are crucial for collective action sustainability (Lucke 2008: 46-48). Last but not least, the critical number of integrants varies with politically, economic, and social pressure, which stresses the importance of the environment anti-corruption pacts operate in (PWC 2008: 5-6).

Exogenous success factors

The value of the seal of approval combined with certified membership, the promotion of collective action, the prevention of the image of a cartel, the inclusion of new members as well as the extension to the entire value creation chain have already touched the interface where exogenous success factors influencing collective action sustainability come into play: The effectiveness of private sector anti-corruption pacts is inextricably linked to the social, political, legal, and regulatory context they emerge from and collective action cannot work well if the other parts of the system work poorly (OECD 2001: 18). External factors, i.e. the local political, economic, and social framework, influence the performance and sustainability of collective action, since the endogenous success factors mentioned depend on the facility of the surrounding environment to interpret and reward these signs as such (Lencina 2007: 36, Lucke 2008: 25, 46). Hence, the relationship between integrity, economic advantage, and incentive cannot be understood in isolation of the social and institutional context in which a company is operating (Sharp Paine 2003: 73-75). In terms of “integrity has to pay off”, the public sector and civil society are challenged to provide an **enabling environment** for business by claiming for best practices, motivating firms in their role of corporate citizens, and making them to perceive the costs involved in anti-corruption as a long-term investment (Pies 2008: 139, 173-175). The so-called enabling environment, that displays **recognition** and feedback of the **public sector**, the **economy**, and **civil society**, is a key success factor for collective action sustainability and can be understood as a prerequisite to launch collective action (WBI 2008: 28, 57).

A responsible corporate citizen should have some advantages over others. Accordingly, the AST-members demand public recognition in exchange for their efforts to establish an anti-corruption coalition (Lucke 2008: 25-32, 48-49). In Argentina, however, the overall corrupt environment not only distorts competition, but any sincere incentive for upright competition (Grondona 1993: 110-111). To the contrary, a **stable institutional framework**, such as a functioning rule of law and an independent judiciary, are significant to build an enabling environment (Pies et al. 2005a: 195-201, Apampa 2005: 240-41, Grondona 1993: 114). Yet, the AST’s campaign for transparent procurement confronted weak institutions and a hostile context (Lucke 2008: 26). If the government falls short of creating a regulative framework that attributes more benefits to obeying the law than breaking it, corrupt activities are given the green light (Medina 1995: 108). Recognition for a credible audited collective action initiative could be expressed by accepting the membership as a prequalification for bidding or giving preferential treatment in the technical evaluation of public tenders (Wiehen 2002: 4). On top, contracting authorities should require a good company record or anti-bribery policies as a necessary prerequisite for bidding and only contract companies from the “white list” to motivate business to establish a good reputation. In case of irregularities, the membership in collective action initiatives could reduce the sentence in trials or help re-qualifying for bidding after debarment (Hess 1996: 77).

The enabling effects of the political framework apply to the **economic framework** as well. The Argentinean economy, drawn by short-term thinking and macroeconomic instabilities, is detrimental to the success of private sector anti-corruption pacts. The creation of tangible benefits, and, thus, the incentive to participate, is the more difficult the less long-term thinking drives the market actors. Yet, essential for collective action is a long-term strategy (TI COL 2005: 47). Also corporate responsibility oriented investors, that might urge business to adopt ethical standards, are rare in Argentina and, consequently, the creation of an enduring economic demand for integrity is missed (Lucke 2008: 49).

To fully capture the impact of the surrounding context of collective action initiatives, it is necessary to recognize norms and values of **civil society**. The effectiveness of private sector anti-corruption pacts relates to the external pressure of civil society and its ability to formulate, communicate, and channel reasonable demands for correct business conduct (OECD 2001: 18). Thus, it is necessary to conjure the conscience and sensitivity for the disastrous effects of corruption within society and to achieve public and societal support beyond civil society facilitators. The more the public sector and civil society are sensitized to corruption, the more business will have to fight for its legitimacy (Pies et al. 2005a: 119-121). However, informally, corruption is massively generalized in Argentina resulting in little social demand for anti-corruption initiatives (Nino 2005: 107, Grondona 1993: 128, 137). Nonetheless, it is vital that private sector efforts to enforce collective action are rewarded and not penalized, neither by the public sector nor by civil society (Lucke 2008: 48). Only if efforts are outwardly appreciated, can collective action and ensuing certification seduce intending adherents (WBI 2008: 54).

Conclusion and outlook

This paper argues that focusing on the incentives driving the various actors is crucial to overcome dilemma structures and achieve systemic changes. By looking at dilemma structures, the premise of this research approach is that business needs an incentive to participate in collective action. Therefore, it is indispensable to actively search for carrots that tempt outsiders to join a collective action agreement. In the end, it must be costly for non-members not to belong to the group, in other words, the anti-corruption pact must covet to adhere. The lacking benefits of the Argentinean experience underline that for efficiently tackling collective action problems the crux is to configure incentives – or, in financial terms, to create a return on investment – to make companies invest in becoming more transparent, since business needs to operate profitably (Homann 1999: 236).

The operational analysis of collective action enforcement revealed several exogenous and endogenous success factors. These factors interact and must also be kept in mind as a whole. Thus, figure 1 summarizes the interrelation of the different levels of commitment and the influence of the enabling environment.

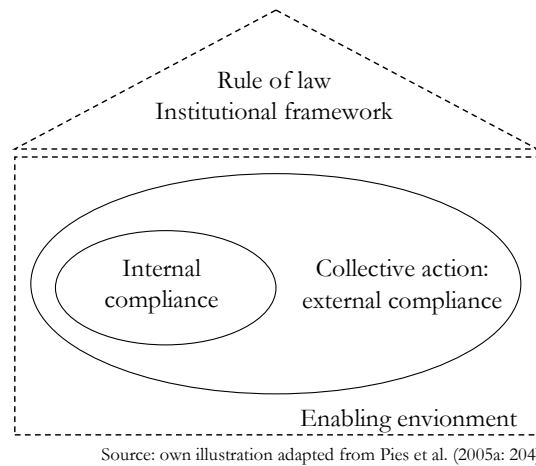


Figure 1: Relationship between internal and external success factors

As endogenous and exogenous success factors interrelate and reinforce each other, collective action can either result in a virtuous or in a vicious circle. The collective action agreement in Argentina proved to be trapped in the vicious circle. Examining the endogenous success factors, it was demonstrated that the AST's implementation is not credible, since the stipulated principles are insufficiently enforced, owing to an absence of trust and commitment. Moreover, the Argentinean context is not an enabling environment for collective action, since the public sector, markets, and civil society fall short of demanding integrity and subestimate ethical corporate conduct, and, therefore, send counterfactual incentives to the companies fighting for integrity (Lencina 2007: 5). The existence of an enabling environment, however, can be vital to channel business' motivation and to reward the input of collective actors. Consequently, the lack of outward attention and approval does not provide incentives to private sector actors to invest in enforcing a credible implementation of the collective action agreement. Encouragement from the economy, governments, civil society, and international institutions is indispensable to generate a long-term competitive advantage stemming from private sector anti-corruption pacts and, thus, to facilitate their sustainable success. Otherwise, as it was shown for the AST case, collective action is not sustainable in the long run.

It is difficult to make well-founded proposals from the findings of this research of how to escape the vicious circle, whether more or different actors involved could reach a higher impact on systemic change, or whether an enabling environment by itself would make a remarkable difference. Further research on case-based experiences could focus on internal and external sustainability criteria of other collective action initiatives to explore these on a larger scale and develop theory building from a more comprehensive number of cases.

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