

The Supply Side of Global Bribery



Discussions of how to combat corruption have focused more sharply on the recipients of bribes than on those who pay them. A more balanced approach, which is emerging, promises to make anticorruption efforts more effective.

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WHEN the talk turns to corruption, the news media and most international institutions (whether official or nongovernmental) focus on the demand side of the equation: on public officials who abuse their office for private gain. Frequently, the supply side is given less attention. Those who pay bribes are sometimes depicted as innocent parties, forced by ruthless officials to provide kickbacks and do special favors in return for business.

The reality is that both parties to corrupt practices conspire to defraud the public, to undermine fair trade, to waste resources, to frustrate development, and often to increase human suffering.

For example, suppose a European supplier of pharmaceuticals does a deal with a minister of health from a developing country that has received emergency funds from an aid agency to purchase urgently required medicines. Instead of agreeing on a purchase of new drugs, the minister and the supplier conspire to use the aid funds to purchase out-of-date drugs, which are far cheaper. The supplier consequently makes a handsome profit and places a portion of it in an offshore bank account set up by the minister. Many of those in the minister's country who are sick receive the old, less effective drugs and die.

Current anticorruption efforts

Today, many organizations are assisting governments to curb corruption and build more

transparent institutions. Initiatives are being launched to create a free press and a politically independent judiciary capable of investigating corruption and prosecuting corrupt individuals or firms. Efforts are under way to create effective offices of auditors general, honest and accountable revenue collection services, and more open public procurement processes, and to undertake many other institutional reforms to make life tougher and riskier for corrupt officials.

While government officials and the public at large in developing countries are increasingly embracing these initiatives, there is a widespread sense in these countries that the efforts of the international community lack balance. Too often the new anticorruption zeal appears uniquely directed at public officials who take bribes and at corrupt systems in the developing countries and the countries in transition in Eastern Europe and Central Asia. Meanwhile, bribe givers appear to remain undisturbed.

Many bribes paid in the course of international commerce originate in firms headquartered in the same industrial countries whose governments are now, more than ever, calling for new anticorruption campaigns in developing countries. There is a hollow ring, for example, to declarations of support by German foreign aid officials for anticorruption initiatives in Africa when Germany has no laws on the books to bar its enterprises from paying foreign bribes and permits them to be deducted from German corporate taxes.

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Government and civil society leaders in developing and transition countries who challenge corrupt systems, and even corrupt leaders, in their countries display enormous courage. Building anticorruption movements takes skill, patience, and determination. There is no question that reforms in many countries would be strengthened if there were more visible evidence that leading international organizations and Western governments were evenhanded in their anti-corruption campaigns, attacking the bribe givers with just as much force and fury as they now use to attack the bribe takers.

The lack of perceived balance in anticorruption efforts weakens the hand of the reformers, and those who support them, in many countries, but is this perception justified?

Is it accurate to suggest that the bribe givers continue to lead largely risk-free lives?

Is it stretching the truth to suggest that the lack of action against the bribe givers by the governments of leading industrial countries amounts to tacit support of bribe giving by these governments?

Or is a lot actually being done about the bribe givers as well, but the broad public, especially in developing and transition countries, is just poorly informed about such efforts?

These are important questions, and the ways in which they are answered in particular countries have important implications for the functioning of their economies.

It is true that only the United States has a law that specifically makes it a criminal offense for a company to pay bribes abroad. It is also true that numerous countries allow their international firms to deduct foreign bribes from their taxes. It is true that the leaders of many international corporations privately acknowledge that their firms pay bribes and that both their governments and international organizations are aware of this.

But it is also true that just as more is being done today to secure reforms on the demand side, more is being done to make life tougher for the bribe givers, thereby reforming the supply side.

In order to avoid the risk of creating inaccurate perceptions, however, it needs to be made clear that the efforts under way to curb both sides of the corruption equation are still in quite early stages. At best, those seeking to make a positive difference could be described as now having reached base camp—still to be climbed is an Everest of corruption.

Efforts to challenge bribe givers and curb their activities fall into four broad categories:

- activities carried out by the press and public prosecutors in the leading industrial countries to investigate and expose bribery;
- activities to criminalize foreign bribery;
- activities to curb money laundering; and
- special antibribery initiatives focused on trade and international procurement.

Scandals foster action

National corruption scandals sharply increase public awareness of key issues and can stimulate constructive change in efforts to curb corruption. This has been very evident over the past decade, during which each of the leading industrial countries has experienced domestic bribery scandals. Investigations and exposés that have been seen all over the landscape of the world's most affluent nations have brought corruption onto domestic political agendas.

Not many years ago, some representatives of Transparency International, a non-governmental antibribery organization, requested a meeting with top trade officials in the government of a European country. At about the same time, another team from Transparency International sought a meeting with officials from a leading business association in another European capital. In both cases, the Transparency International teams were rebuffed. Since then, major corruption scandals have been uncovered and publicized in both countries and made the issue far more politically important. Today, Transparency International enjoys considerable access to government and business leaders in these countries.

As public prosecutors and the media have secured strong public support for rooting out corruption and exposing the corrupt, so in many instances they have been encouraged to redouble their efforts. Moreover, domestic corruption scandals have encouraged editors of newspapers and magazines, and producers of television programs in the leading industrial countries to look beyond their national borders to investigate corruption around the globe. Increasingly, such coverage has not only highlighted corrupt foreign leaders but also sought to expose the corrupt bribe givers.

The increase in public attention paid to, and public awareness of, corruption in the leading industrial countries has been the prime catalyst for actions attacking the supply side of corruption. This phenomenon could be observed in the United States in the 1970s. The combination of the Watergate scandal and international corporate bribery scandals exposed by the Securities and Exchange Commission and the U.S. Senate Finance Committee's Subcommittee on Multinational Corporations created the stimulus for passage of the Foreign Corrupt Practices Act in 1978. The act makes the payment of foreign bribes by U.S. firms a crime. In view of the many recent corruption scandals in industrial countries, there is now a chance that legislation similar in scope to the act will be adopted in many of them.

OECD's antibribery convention

On December 17, 1997, a step was taken to curb bribe givers involved in international business. The Convention on Combating Bribery of Foreign Public Officials in

International Business Transactions was signed by representatives of the 29 member governments of the Organization for Economic Development and Cooperation (OECD). It calls upon each of these countries to enact legislation in 1998 to criminalize foreign bribery.

This initiative can have a global impact. Corporations headquartered in OECD member countries undertake the overwhelming bulk of foreign direct investment and large-scale international official contracting. Moreover, there are indications that some of the governments of leading emerging market economies will adopt similar legislation once the OECD convention has been made effective—Argentina, Brazil, Bulgaria, Chile, and Slovakia all signed the convention at the formal OECD ceremony last December.

Crucial to the convention's success will be the manner in which it is monitored. The aim of the convention's drafters was to highlight the fact that monitoring its implementation will be a permanent part of the OECD's work. The OECD, at an official level, will constantly be requiring governments to report on enforcement issues. Sanctions, for example, are envisaged on corporations found to be paying foreign bribes. At the same time, civil society organizations such as Transparency International will be monitoring enforcement. Increasing numbers of corporations, intent on obeying the law, will want to ensure that their competitors also obey the law and that a "level playing field" for commerce exists. International business groups may also, therefore, join the enforcement monitoring effort.

The OECD's action is a first step toward the development of a comprehensive set of curbs on businesses paying bribes in international commerce. But it is only a first step. The convention does not cover every aspect of international bribery, and its coverage of some areas is vague. In time, improvements will be made in the convention and loopholes will be found and closed.

It was recognized by senior officials from many countries who worked on the drafting of the convention that a formal treaty is not the best vehicle to address all issues related to curbing the international activities of bribe givers. In May 1996, OECD ministers defined a strategy, which was based on "soft law," as part of a broad international anticorruption approach. (In the OECD context, "soft law" means a recommendation for action by national governments, as distinct from "hard law," which is a binding treaty obligation, such as the proposed convention.) The ministers recommended, for example, that member countries (and the wider international community) take steps to end tax deductibility for illicit payments and tighten accounting requirements. Although these actions may be taken most effectively outside the convention, it is clear that only a holistic approach to the question of curbing corruption by corporations engaged in international business holds any prospect of success.

It is useful to recall that negotiations on the OECD convention began several years ago in a political climate of distrust. Some government representatives saw the enthusi-

asm of some of the governments that supported the treaty (as opposed to a "soft law" approach) as stemming more from a wish to delay action, by means of a lengthy drafting period, than from a desire to create strict and enforceable obligations. The text has been defined, however, and the final version is progressive and should be effective, especially if agreed recommendations on tax deductibility and other measures are also implemented in good faith.

Combating money laundering

Money laundering is the handmaiden of international corruption, and efforts to curb money laundering can help to reduce corruption. The linkage is clear: those who take bribes must find safe international financial channels through which they can bank their ill-gotten gains. Those who provide the bribes may well assist the bribe takers to establish safe financial channels and launder the cash. To a considerable extent, many of the world's largest banks—all of which are headquartered in the leading industrial countries—are used in the global money laundering game. Many of the banks are used unwittingly, in the sense that they have few grounds to suspect that deposits being made have been illegally transferred or are the proceeds of illegal actions or bribery payments.

It is very difficult to estimate the scale of money laundering, but an indication was provided in a February 1998 speech by Michel Camdessus, the IMF's Managing Director, in which he noted that "the estimates of the present scale of money laundering transactions are almost beyond imagination—2 to 5 percent of global GDP."

New detailed regulations have been introduced in many countries to strengthen detection of money laundering and improve the supervision of financial institutions to reduce its scope. But time and again, corruption has subverted even the best regulatory initiatives.

For example, in February 1998, the OECD's Financial Action Task Force on money laundering highlighted, in its annual report, the serious money laundering problem in Mexico. It stated: "One of the most favored techniques continues to be outbound currency smuggling, along with electronic transfers, Mexican bank drafts and the parallel peso exchange market. Corruption remains the chief impediment to Mexico's anti-laundering efforts."

The task force has been working on a range of more pragmatic solutions. It has developed a set of global standards for national policies to curb money laundering, established cooperation systems among national authorities and financial institutions to pool intelligence, embraced increasing numbers of non-OECD member governments in its work, and been instrumental in assisting regional anti-money laundering organizations in becoming effective.

At the same time, the leading regulators of the world's banking system are pursuing a multiyear effort to create a modern and universal international banking supervisory system that provides for greater transparency of international financial transactions and their regulation than has

ever been achieved before. Success on this front will dovetail with the work that is now being done to curb money laundering.

Undertaking direct initiatives

Direct initiatives in trade and public procurement are also starting to be seen to curb the bribe givers and affect the supply side of global corruption. The World Trade Organization (WTO) is sensitive to the issue of corruption and the distortions it creates in the global trading system. This subject will probably be addressed within several WTO frameworks—for example, the WTO is exploring the possibility of a multilateral investment agreement. The corruption issue could be dealt with in this context. Pressures on the WTO, especially from some of the leading industrial nations, will mount once the OECD antibribery convention has become effective and governments have formally adopted policies penalizing firms paying bribes in other countries.

Dr. Peter Eigen, Chairman of Transparency International, has suggested that the WTO should observe and follow up on the anticorruption work done by the OECD and forge a tripartite alliance against corruption with the IMF and the World Bank. The three organizations could establish a special high-level task force for this purpose. It is probable, as Dr. Eigen has indicated, that representatives of both the private sector (through, for example, the International Chamber of Commerce, which has recently adopted new antibribery standards) and civil society could contribute to this task force.

Hopes for such initiatives and for the effectiveness of the array of antibribery interventions now being undertaken are partly based on vocal support for work being done on combating corruption by a growing number of top executives from some of the world's largest multinational companies and by a growing number of government leaders. These assertions need to be tested. An approach being launched by Transparency International, which may prove to be a valuable demonstration model, is called the "Islands of Integrity" scheme. This relates to individual major public procurement contracts for goods and services.

A national government might establish one or several islands of integrity. Each individual island would represent a single contract, or a set of contracts in a single economic sector. Corrupt practices would be eliminated from the transactions being focused on by an agreement under a Transparency International "integrity pact," which would oblige bidders to publicly pledge (with pledges signed by top corporate officers) not to use bribes in the contract(s) in question while the host government would sign documents pledging that it would ensure total transparency on the part of its officials in the tendering and contract award processes. In many instances, procurement is likely to be funded by



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bilateral and/or multilateral development agencies, and they, too, would pledge to make their best efforts to ensure that the procurement process is completely clean.

Extensive discussions have taken place with a number of governments in Latin America and in sub-Saharan Africa on possible implementation of the Islands of Integrity approach, which has won endorsements from, for example, the leadership of the Global Coalition for Africa and James Wolfensohn, President of the World Bank.

In support of such initiatives, as well as other individual actions designed to make life far harder for the bribe givers and bribe takers, is a growing international army of civil society volunteers. While Transparency International, which is just five years old, is the most prominent antibribery NGO and has 70 national chapters around the world, many other civil

society organizations are increasingly seeing antibribery work as central to their missions.

Environmental organizations have understood that to accomplish their goals they must win battles not only to secure legislative and regulatory standards but also to curb the corruption of enforcement officials in numerous countries. Human rights and pro-democracy organizations have also increasingly recognized how achievement of their most basic aims is threatened by the pervasiveness of corruption. The targets of their anticorruption efforts are multinational enterprises.

Major corporations are increasingly sensitive to the widening demands being made on them by civil society groups to adopt policies (including ones dealing with corruption) that embrace a growing array of societal issues, from the environment to human rights. Accordingly, many corporations are reviewing their policies and approaches, releasing new statements on issues of business ethics and social responsibility, and seeking advice from NGOs in evolving new policies and programs.

Conclusion

It is early days, however. Changing corporate habits takes time and is difficult. Many corporations have been paying bribes around the world for decades. But, through legislative and regulatory actions; new official interventions; and the work of civil society, the media, and public prosecutors, the heat has been turned up on the bribe givers. Corporations, as a result, are starting to respond.

The agenda of actions designed to combat corruption by influencing the supply side—penalizing the payment of bribes in international business transactions—is getting longer and more substantive. Such efforts have not received sufficient publicity, but as the relevant facts and trends become better known, they should further encourage leaders in the public and private sectors, who, meanwhile, are showing courage and skill in influencing the demand side of the corruption equation by penalizing the receipt of bribes. **F&D**