

Anti-Corruption Compliance Standards in the Aftermath of the Siemens Scandal

By Karl Sidhu *

A. Introduction

Legal proceedings against Siemens AG arising from allegations of bribery were concluded on 15 December 2008 in Munich, Germany, as well as in Washington, DC.¹ The Siemens case has been the largest of its kind.² It has changed the compliance landscape and has brought criminal law out of its dark corner and to the attention of the corporate community.³ Board directors and other managers have painfully become aware that non-compliance with criminal law may not only threaten the existence of a company, but also may lead directly to personal criminal liability. The subject of compliance has also raised the attention of legal advisors and accountants that naturally must recommend the “best standard,” especially if the sensitive subject of corruption is concerned.⁴ Last but not least, prosecutors now have a deeper inside knowledge of corruption structures than ever before.⁵ Thus, compliance standards tend to rise expeditiously even without regulators taking any action. Siemens thereby smartly has lifted compliance to the “cornerstone” of its business and generally – in particular when it comes to anti-corruption programs – presents its improved and expanded compliance organization as a leading example.

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¹ The bribe payments and other facts leading to the allegations and proceedings against Siemens are referred to hereinafter as the “Siemens case”. Reference to “Siemens” means Siemens AG together with its subsidiaries.

² See Press Release, Dept. of Justice, Siemens AG and Three Subsidiaries Plead Guilty to Foreign Corrupt Practices Act Violations and Agree to Pay \$450 Million in Combined Criminal Fines (Dec. 15, 2008), available at http://www.usdoj.gov/criminal/pr/press_releases/2008/12/12-15-08siemens-guilty.pdf (discussing the U.S. Department of Justice (DOJ) terming the Siemens case as “unprecedented in scale and geographic scope”).

³ See Peter von Blomberg, *Siemens Gnadenlos*, DIE WELT ONLINE, Jan. 6, 2009, http://www.welt.de/die-welt/article1854420/Siemens_gnadenlos.html. (explaining “a new era” and a “revolution” that the Siemens scandal has opened).

⁴ In the context of this article the notion of compliance shall refer to so called criminal compliance. Anti-corruption programs form the essential part of criminal compliance.

⁵ On 8 December 2008, the first conference on corruption of over 40 German prosecutors took place. The conference was organized by Transparency International.

Overall, no company presumably acted under comparable pressure and invested more in compliance than Siemens. For the time being, the leading role of Siemens in the setting of compliance standards is therefore generally accepted.⁶ A decisive question is whether bribery at Siemens has been peculiar to a degree that excludes a sensitive comparison with other companies. If this is true, the development of compliance standards could – at least partly – generally be regarded as excessive if not ill-driven.

The author argues that 1) the Siemens case cannot be regarded as exceptional to an extent that would justify incomparability with other companies and 2) though it had particularities the compliance organisation of Siemens will establish footprints that many German corporations will have to follow. Based on the assumption that German corporations will implement “best practice” compliance standards step-by-step, they may have to face difficult times in international competition. In that respect the last section of this article deals with the challenge of “unfair” competitors and alternative mechanisms against corruption initiated by private corporations and supported by international organizations, in particular, the World Bank.

B. Fines and Expenses

The scale of the Siemens case is illustrated by the fines that Siemens paid to bring legal proceedings to an end. Total costs for Siemens totaled more than €2 billion. In December 2008, the Munich public prosecutor imposed a fine in the amount of €395 million, alleging the failure of the former Managing Board of Siemens AG to fulfill its supervisory duties.⁷ In October 2007, pursuant to the application of the Munich prosecutor, the Munich district court imposed a fine on Siemens in the amount of €201 million.⁸ This brings the total amount payable to authorities in Germany in connection with these legal proceedings to €596 million. In Washington, DC, Siemens AG pleaded guilty in federal court for violation of the U.S. Foreign Corrupt Practices Act (FCPA) and together with three subsidiaries paid a fine of US \$450 million (approximately €350 million). In addition, it agreed to the disgorgement of profits in the amount of US\$350 (approximately €270 million).⁹ Furthermore Siemens paid more than €950 million in fees and expenses to outside

⁶ See Press Release, *supra* note 2 (praising Siemens’ outstanding new compliance structures).

⁷ Press Release, Siemens, Legal Proceedings—First Quarter of Fiscal 2009 (Jan. 27, 2009).

⁸ See Press Release, Siemens, Legal Proceedings—Fiscal 2007 (Nov. 8, 2007) (discussing the fine related to bribery paid by manager’s belonging to Siemens’ former telecommunications or Com Group).

⁹ The disgorgement was agreed to by Siemens due Siemens AG settled a civil action against it brought by the U.S. Securities and Exchange Commission (SEC) for violations of the FCPA.

advisors engaged by Siemens in connection with the investigations into violations of anticorruption laws.¹⁰

Siemens also had to pay additional income taxes in the amount of €443 million for the fiscal years 2000-2006 because of suspicious payments that were treated by Siemens as tax deductible contrary to § 4 Sec. 5 No. 10 General Tax Code (Abgabenordnung).¹¹

C. Characteristics of the Siemens Case and Comparability

The case of Siemens may be seen as a very exceptional case. It could also be regarded as being the tip of the iceberg of German corporations violating national and international corruption laws. Siemens had no option to consider these two extremes. Rather it was under pressure not only to cooperate extraordinarily with the Department of Justice (DOJ) and the SEC, but also had to implement an outstanding compliance program that would prevent US authorities from imposing the maximum fines.¹² But from the ex-post perspective, this categorization of the Siemens case is fundamental. The compliance program of Siemens consists, at least partly, of single actions against the threat of corruption risks that have been realized in the past at Siemens. As far as these risks are unique to Siemens, its compliance program could and should not be applied as a benchmark. For example, Siemens has now employed more than 500 full-time compliance officers – do other corporations of a similar size have to employ a similar number of compliance officers?

A general view on bribes paid by German corporations to foreign countries may not confirm the assumption of the exceptionality of the Siemens case. According to careful estimates, a guiding value of a minimum of €25 billion can be considered as realistic with regard to yearly bribe payments of German companies abroad.¹³ If this is a correct estimate, Siemens would, on the basis of the suspicious payments of \$1,360,000,000 for

¹⁰ See Press Release, *supra* note 8 (according to press releases costs for external advisors have been €347 million in 2007); see also Press Release, Siemens, Legal Proceedings 2008—Fourth Quarter of Fiscal 2008 (Nov. 12, 2008) (according to press releases costs for external advisors have been €510 million in 2008); see also Press Release, *supra* note 7 (according to press releases costs for external advisors have been €50 million in the first quarter of 2009).

¹¹ Press Release, *supra* note 7 (and Summary of Findings with respect to the Proceedings).

¹² Possible fines by the DOJ were estimated by US legal experts up to \$3 billion.

¹³ See Alexander Schemmel & Philipp Hacker, *Korruptionsamnestie - Eine neue Vokabel im nachhaltigen Kampf gegen Korruption- Paradoxon und Paradebeispiel im Kampf gegen Korruption*, ZEITSCHRIFT FÜR RECHTSPOLITIK (ZRP) (J.L. & POL.) , 4 (2009), available at <http://beck-online.beck.de/default.aspx?vpath=bibdata/zeits/ZRP/2009/cont/ZRP.2009.H01.htm> (stating more than \$1 trillion dollars (US\$1,000 billion) is paid in bribes each year, according to ongoing research at the World Bank Institute); see also World Bank, <http://web.worldbank.org> (last visited May 28, 2009) (discussing additional information and statistics).

the years 2001-2006,¹⁴ have had an average share of less than one percent in such bribe payments. Considering furthermore that Siemens has been operating in businesses that in general terms are deeply inflected with corruption,¹⁵ Siemens' share does not seem to be outstanding. Though statistics on corruption are often questionable, from the macro perspective it appears difficult to argue that Siemens is exceptional to a degree that excludes comparability.

Looking directly at the channels, mechanisms, and structuring of bribe payments at Siemens, the result may be different. The nature of the problems at Siemens is well summarized in a concluding statement at the end of the legal proceedings in Munich and the US published by Siemens.¹⁶ Quoting in large part documents made public in connection with the resolution with the Department of Justice, the statement identifies five factors characterizing the "compliance" landscape of Siemens.

I. First Characteristic: Bribery as Standard Operating Procedure

Bribery seems to have been a "standard operating procedure" at Siemens.¹⁷ This is best demonstrated by cash desks housed within Siemens where employees could withdraw large sums of cash, apparently up to and including one million Euros at a time.¹⁸ A classic element of the Siemens case remains the Post-it notes that were used to sign payment authorizations so that the identity of the subscriber could be concealed if payments were later scrutinized. Much to the pleasure of prosecutors, Post-it notes were still affixed to the respective authorization forms.

Corruption as standard operating procedure may give the impression of a crime reserved for companies operating in the shadow of organized crime, and thus seems to make the

¹⁴ Press Release, *supra* note 2, at para. 90.

¹⁵ See Complaint at 14, *U.S. Sec. and Exch. Comm'n v. Siemens Aktiengesellschaft* (D.D.C. 2008) (No. 1:08-cv-02167), available at <http://w1.siemens.com/press/pool/de/events/2008-12-PK/SEC.pdf> (finding low ranked countries pursuant to the Corruption Perception Index (CPI) like Nigeria, China, Venezuela, Russia, Vietnam, Bangladesh are countries were according to findings of the SEC Siemens paid bribes); see also Corruption Perception Index, Transparency International, http://www.transparency.org/news_room/in_focus/2008/cpi2008/cpi_2008_table (last viewed May 28, 2009).

¹⁶ See *Statement of Siemens Aktiengesellschaft: Investigation and Summary of Findings with respect to the Proceedings in Munich and the US*, SIEMENS, Dec. 15, 2008, available at <http://w1.siemens.com/press/pool/de/events/2008-12-PK/summary-e.pdf> (referring only to the proceedings against Siemens and not the individuals that bribed).

¹⁷ Press Release, *supra* note 2.

¹⁸ See Brief of Petitioner at para. 38, *United States v. Siemens Aktiengesellschaft*, No. 1:08-cv-02167 (D.D.C. 2008) available at <http://www.usdoj.gov/opa/documents/siemens-ag-info.pdf> (discussing DOJ information against Siemens AG).

Siemens case exceptional. However, it is almost common knowledge that bribe payments in certain countries are part of the culture of commercial transactions. In Russia, for example, 80 percent of all business entities are said to pay bribes.¹⁹ In many cases, the implementation of a “standard operating procedure” to pay bribes in such countries will be more than tempting.

II. Second Characteristic: Sophisticated Schemes

Siemens used several methods to disguise the purpose and ultimate recipient of illicit payments.²⁰ In particular, shell companies and off-the-books “slush funds” were widely established and used as sources by employees and former employees to acquire business. May these “sophisticated” ways to disguise bribery be marked as exceptional? Indeed the setting-up of a slush fund, as frequently used by Siemens, may promise a high degree of coverage and secrecy. Once it is established and the money is off the books, the “fund holder” does not leave traces in the internal accounting and reporting. But the establishment of slush funds as a consistent source for bribe payments is not uncommon. In addition to slush funds, Siemens widely used consultants and agents as intermediaries to transfer illicit payments to the ultimate recipients. This scheme was well known to prosecutors as well as tax investigators and auditors already before the Siemens case.²¹ Hence, bribery schemes as reported do not qualify as particular sophisticated and *a fortiori* not as exceptional.

III. Third Characteristic: Involvement of Senior Management

Senior managers of Siemens, up to the board level, were directly involved in the policy of making corrupt payments.²² Hierarchy structures and report systems were, as the Post-it example confirms, uphold with regard to the payment of bribes. Though the widespread involvement of senior management seems at first sight unusual, it appears to be consistent with corruption as standard operating procedure at Siemens. The latter, as has been shown, does not stand the test of exceptionality in respect to bribe payments to individuals located in certain countries.

¹⁹ THE ECONOMIST, Nov. 29 2008, at 10.

²⁰ *Statement of Siemens Aktiengesellschaft*, *supra* note 16, at 10.

²¹ This is confirmed by internal guidelines of German financial authorities known to the author.

²² *Statement of Siemens Aktiengesellschaft*, *supra* note 15, at 11–12.

IV. Fourth Characteristic: Broad Coverage of Operating Groups

Corruption schemes were not limited to certain businesses but pervaded several Siemens operating groups. This is due to the countries and the kind of businesses Siemens was conducting.²³ In that respect, it does not strike one as a structural distinctiveness.

V. Fifth Characteristic: Amount of Bribe Payments

Siemens made suspect payments totaling approximately \$1,360,000,000 through various mechanisms, including \$805,500,000 which were “intended in whole or in part as corrupt payments to foreign officials.”²⁴ This is the highest amount ever identified as bribe payments in a legal proceeding. Here, one could argue that it was Siemens’ thorough investigation that ultimately led to the identification of the amount of bribes. So, following this line, had other companies been forced to conduct a similar investigation, similar outcomes might have come to light. However, this would be pure speculation and cannot eliminate the overall impression that corruption at Siemens in its dimension had indeed entered new territory.

So does Siemens qualify as an exceptional case in the end? Exceptionality can be affirmed with regard to the amount of bribe payments and the number of people involved. However, exceptionality in terms of overall incomparability with other companies has to be denied. From the macro perspective, Siemens is only one of many corporations that used bribed to secure business. Taking into account the alleged special features of the Siemens case, the outcome remains the same: Bribe mechanisms used at Siemens are mostly well known. Several countries in which Siemens operated are highly infected with corruption, and other companies with commercial interests in those countries face similar entry barriers and bribe accordingly.²⁵ The involvement of senior management in bribe payments will often be hard to prove. However, it is by no means unusual. In summary, in terms of numbers the Siemens case may be described as exceptional but the bribery features and mechanisms do not qualify as such.

²³ See Complaint, *supra* note 15.

²⁴ Press Release, *supra* note 2, at para. 90.

²⁵ This poses a new challenge for Siemens. See Section VII of this article.

D. Compliance System of Siemens

After its offices were raided in November 2006, Siemens started to radically improve its compliance program. Its main features are presented in several documents published by Siemens.²⁶ The US Department of Justice described it as a “new state-of-the-art system”.²⁷ In the context of this article, only the scale and cornerstones of the program shall be of interest.

The very basis of the Siemens compliance system has been the thorough investigation conducted. In practice it is often internal investigations that allow the management of corporations to learn about illegal conduct and to set up coherent compliance systems. The amount of work Siemens has put into its investigation included, for example, 1750 interviews with Siemens employees, and more than 14 million documents reviewed.²⁸

Meanwhile, Siemens has employed more than 500 full-time compliance officers worldwide. In addition, it founded a compliance investigation unit, headed by a former Interpol official. Siemens has trained more than one third of its global workforce on anti-corruption, and renewed standard compliance measures, like anti-corruption guidelines and handbooks. It has created an online compliance help desk and a 24-hour compliance hotline, in addition to an external ombudsman. Siemens has furthermore created advanced internal reporting lines and set up internal control mechanisms that are audited by the corporate finance unit. Internal controls encompass funds, bank accounts and payments processes.

The aforementioned measures are the result of a new “tone at the top”, meaning an ethical atmosphere that is created in the workplace by the organization's leadership. The replacement of several senior managers that were or appeared to be involved in corruption confirm that the new standards are meant to be of a long term nature. In addition, Siemens has named a general counsel with responsibility for compliance matters at board level.

²⁶ The main features are described in Statement of Siemens Aktiengesellschaft (note 16), 20. The following description of Siemens' compliance system is based on this statement.

²⁷ See Memorandum from Dept. of Justice, United States v. Siemens Aktiengesellschaft, (D.D.C. 2008) (No. 1:08-cv-02167), available at <http://www.usdoj.gov/opa/documents/siemens-sentencing-memo.pdf> (stating DOJ Department's Sentencing Memorandum).

²⁸ See *Statement of Siemens Aktiengesellschaft*, *supra* note 16, at 4.

E. Merger of US and German Compliance Standards

It is a common phenomenon that standards of the most exigent relevant regime dictate the approach that a multinational company takes in other jurisdictions.²⁹ This is particularly the case when US regulation is involved that is not limited to the territory of the US.³⁰ The basic features of an effective internal compliance program according to US law should resemble those set forth in the U.S. Federal Sentencing Guidelines (USSG) for organizations.³¹ There should be a clearly structured compliance program that is actively implemented and enforced and includes a comprehensive system of internal controls and ongoing training of personnel. In particular, specific individuals within the organization shall be delegated day-to-day operational responsibility for the compliance and ethics program.³² Moreover, the compliance program should include mechanisms that allow for anonymity or confidentiality, whereby the organization's employees and agents may report or seek guidance regarding potential or actual criminal conduct without fear of retaliation.³³

Under German law, the central norm on criminal compliance is § 130 of the Administrative Offense Act (OWiG).³⁴ According to this provision, a corporate representative will be held liable if the representative failed intentionally or negligently to take supervisory measures which were necessary in order to prevent criminal or minor offences committed by ordinary employees.³⁵ Pursuant to § 30 OWiG, this liability may capture the respective corporation. In general terms, the required supervisory measures imply the obligations to conduct diligent employment processes, to constantly supervise employees, to maintain a functional and clear structured organization and to act appropriately in case of any irregularities.³⁶ These obligations are directly applicable to the prevention of corruption.³⁷

²⁹ See CORPORATE INTERNAL INVESTIGATION 4 (Paul Lomas & Daniel Kramer eds., 2008).

³⁰ The Sarbanes-Oxley Act of 2002, for example, dictates often internal measures of corporate conduct in multinational corporations.

³¹ STUART H. DEMING, THE FOREIGN CORRUPT PRACTICES ACT AND THE NEW INTERNATIONAL NORMS 350 (2006); CHRISTOPH PARTSCH, THE FOREIGN CORRUPT PRACTICES ACT (FCPA) DER USA 41 (2007).

³² U.S.S.G. § 8B2.1 b (5).

³³ U.S.S.G. § 8B2.1 b (2).

³⁴ See Bock, *Criminal Aspects of Compliance* Discussion, ZIS, 2009, at 68, available at http://www.strafverteidiger-stv.de/hlv/stv/stv_home.nsf/index/zeitschriftenuebersicht/zeitschriftenuebersicht_02Februar2009 (discussing naturally criminal compliance programs are not solely implemented to comply with § 130 OWiG but to avoid the overall risk of criminal liability of management and employees, i.e. the individuals of a company).

³⁵ § 130 OWiG in conjunction with § 9 OWiG.

³⁶ Gürtler, Ordnungswidrigkeitengesetz (OWiG), § 130 margin number 11.

³⁷ *Id.* § 130.9.

Because of the broadness of said criteria for sufficient supervision, the scope of compliance standards ultimately ensuring a sufficient shield against liability under § 130 OWiG is difficult to define.

The board of Siemens implemented a compliance organization on a group level that met any requirement of US and German regulation. Though the German compliance requirements are hard to define in detail, it seems accurate to say that the implementation of US standards will under normal circumstances automatically meet the German standards.

F. Siemens' Compliance System as the Benchmark?

The decision on the scope and quality of a compliance organization has a fundamental impact on the way companies will deal with the sensitive issue of possible criminal charges. As has been shown under German law, there is no catalogue of legal requirements that could be met. In that respect, to follow the traces of a corporation that has survived the worst case scenario and has implemented an organization fully approved by the US Department of Justice seems to constitute the safest solution. On the other hand, the amount of costs Siemens has invested in the improvement of its compliance system is outstanding to a discouraging degree.

Taking a broader perspective, it must be emphasized that standards of diligence, once brought to life and published, are almost impossible to reverse. The German Corporate Governance code itself may serve as an example. According to Section 4.1.3 of the Code, the board "ensures that all provisions of law and the enterprise's internal policies are abided by and works to achieve their compliance by group companies (compliance)." Technically, this statement must be a pure description of the law.³⁸ When the definition of compliance was added in June 2007, the notion of "compliance" was rather new to many corporate legal advisors and still had to find its way into legal literature and jurisprudence.³⁹ Meanwhile, the legal concept and necessity of compliance is accepted. In that context it also should be considered that the chairman of the Commission of the German Corporate Governance Code in 2007 has been the chairman of Siemens'

³⁸ Preamble of the German Corporate Governance Code (2008), available at http://www.heidelberg.com/www/html/en/content/articles/investor/facts_about_heidelberg/corporate_governance/preamble.

³⁹ Karl Sidhu, ZCG, at 16 (2008).

supervisory board.⁴⁰ This emphasizes the signs that Siemens left in the regulatory compliance setting.⁴¹

The foregoing comments shall not lead to the conclusion that the compliance system of one corporation, Siemens AG, shall or must be the guide for all compliance organizations to come. Other organizations in Germany also have also the reputation of maintaining high standards in anti-corruption programs. In addition, it goes without saying that the branch, size, countries of business activity, and history, of a corporation, among other factors, may require a different compliance system. However, Siemens will have a cognizable impact on the growing implementation of standards of US origin, in particular whistleblowing and the employment of compliance officers.

Thus, when the setup or improvement of compliance organizations is planned, a thorough look at the cornerstones of Siemens' compliance organization as it is commonly practiced by internal compliance officers as well as legal advisors, is indeed reasonable. The Siemens case marks a starting point. Just as corporations differ in terms of the means they choose to achieve economic ends, they of course in theory may and should differ in terms of how they achieve compliance with criminal laws. However, often it is the risk of liability that constitutes the strongest motive to recommend the best respective highest standard. That means that even if the compliance organization of Siemens was excessive, it will constitute a benchmark nonetheless.

G. The Challenge of "Unfair" Competitors

Suitcases of cash may be replaced by requests for donations or other payments that sound innocent, but turn out to be corruption in disguise. The resourcefulness of employees willing to bribe for the acquisition of business should not be underestimated. Some voices therefore deny the effectiveness of compliance organizations and describe them as pure "window-dressing".⁴² The opposite is hard to prove. On the other side, it seems evident that, for example, the "tone at the top" and the rigorous replacement of employees that do not abide with clearly communicated anticorruption policies do make a difference. It is this understanding that makes board members of "compliant" corporations think about competitors that might not have given up bribery and consider how to achieve, in that respect, a level playing field. This concern may in particular be justified when competitors

⁴⁰ Dr. Gerhart Kromme has become chairman of the Siemens supervisory board in April 2007. He resigned from the Commission of the German Corporate Governance in 2008.

⁴¹ See Uwe HÜFFER, AKTIENGESETZ, § 161.1, available at http://beck-online.beck.de/?vpath=bibdata/komm/HuefKoAktG_8/AktG/cont/HuefKoAktG.AktG.P161.T6.htm (discussing the regulatory nature of the German Corporate Governance Code).

⁴² Nell, ZRP, at 149 (2008).

originate from countries where anti-corruption laws are either not existent or factually not executed and, hence, companies are not obliged to implement compliance programs.

Provided the respective country of the potential client enacted corruption laws, at first sight, pressing criminal charges may one possibility to consider. However, relying on state prosecutors will often appear to be, in particular in emerging markets, an uncertain strategy. Under normal circumstances, prosecutors will only act on the basis of sufficient evidence. Collecting this evidence, for example by assigning private security agencies, may bring the compliant company into grey areas which it does not want to enter.

Strongly supported by the World Bank as “advanced way of fighting corruption” are so called “collective actions”.⁴³ Collective actions are a means of achieving the level playing field initiated by private companies. There are two categories of collective actions.

The so called “anti-corruption declaration” and “integrity pact” are project-based and are agreed between the customer and the bidding company. Whereas the anti-corruption declaration leads only to enforcement by honor, the integrity pact⁴⁴ consists of a formal, written contract between the customer and the bidding company that includes provisions on an external monitoring process and sanctions in case of violations of the agreement.⁴⁵ Said mechanisms are of a short-term and project-related nature.

The so called “principle-based initiative” and “certifying business coalition” are agreements between competitors.⁴⁶ The former binds competitors to not engage in corruption in their daily business on the ground of principles and does not include any enforcement mechanism. The latter is a coalition between competitors that fulfill requirements of an efficient compliance program and thus qualify for the coalition as well as certification.⁴⁷ The requirements are regularly checked by external audits. An audit with a negative result leads to the withdrawal of the certification.

⁴³ World Bank Institute, <http://info.worldbank.org/etools/antic/index.asp> (last visited May 28, 2009).

⁴⁴ The integrity pact approach was originally developed and is employed by Transparency International and its various national chapters.

⁴⁵ See GERALF PRÜFER, KORRUPTIONSSANKTIONEN GEGEN UNTERNEHMEN – REGULINGSDEFIZITE/REGULINGSALTERNATIVEN 109 (2004) (questioning the efficiency of the integrity pact).

⁴⁶ See *Wir Haben Fast Unser Eigenes FBI*, SÜDDEUTSCHE ZEITUNG, Jan. 29, 2009, available at <http://www.sueddeutsche.de/wirtschaft/231/455904/text/5/> (stating Solmssen, the General Counsel and board member of Siemens, has named them in an interview “cartels of the good”).

⁴⁷ A “certifying business coalitions” has, for example, been founded by the Bavarian construction industry. Following various incidents of corruption an independent association for ethical management (EMB) was founded in 1996 to procure external audits for its members. Currently the EMB counts 43 audited members and 3 new members with their first audition outstanding. See Bauindustrie Bayern, <http://www.bauindustrie-bayern.de/ethik.html> (last visited May 28, 2009).

The “certifying business coalition” is the collective action that enhances the strongest degree of fairness between the stakeholders. It does not rely on “honor,” but forces companies actively to create a level playing field.⁴⁸ From the criminal law as well as compliance perspective, the certificate of a well-implemented coalition may, in cases of individual bribery, exculpate the board from charges of organizational deficit and thus shield from personal as well as corporate liability. Strategically, building certifying business coalitions is a tangible demonstration of a company’s commitment to many of the principles underlying corporate social responsibility and effective compliance program activities that may well gain respect from third party stakeholders, for example investors and regulators and ultimately the customers.

H. Conclusion

The Siemens case does not qualify as exceptional in terms of overall incomparability with other companies. This is confirmed by estimates on the total value of bribes paid by German corporations abroad as well as the characteristics of the Siemens case.

The Siemens case will have a cognizable impact on the growing implementation of compliance standards of US origin in Germany.

A thorough look at the cornerstones of Siemens’ compliance organization is reasonable. Even if the compliance organization of Siemens may be considered as excessive, it does constitute a benchmark for the time being.

Corporations that implement comprehensive compliance standards against corruption may consider the integration of competitors into their anticorruption policy. The so called “certifying business coalition” is the mechanism that enhances the highest degree of fairness between corporations.

⁴⁸ The agreement of competitors upon certain anticorruption principles must be implemented under consideration of antitrust laws. Strategies, measures and meetings shall therefore at all times be coordinated with legal counsel to prevent violations of these laws.