

**THE ESTABLISHMENT OF AN ANTI-CORRUPTION AGREEMENT  
WITH PIPE MANUFACTURING COMPANIES**  
A Colombian Experience

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## INTRODUCTION

*"The impact and effect of this Agreement will be very strong, since we never before have had a code to guide us on these matters. Now we have parameters for action. Furthermore the sanctions that have been established are very important. With this Agreement we, pipe manufacturers, will act differently amongst ourselves, since the same rules and regulations apply to all"*

TESTIMONY OF A PARTICIPANT IN THE AGREEMENT

TRANSPARENCIA POR COLOMBIA submits this document that presents the experience of a year of intense and rigorous collective work involving the construction of an Anti-corruption Sectorial Agreement between the companies that supply water and sewage pipes for public projects, a strategic aspect in the country's social and economic development, not only because of the basic needs it addresses but also because of the scale of public resources it handles.

The actors or players in this process were on the one hand pipe manufacturing companies interested in developing a practice of self-regulation to prevent corruption, the *Asociación Colombiana de Ingeniería Sanitaria y Ambiental*, ACODAL, their trade association who led the initiative, and on the other hand TRANSPARENCIA POR COLOMBIA who welcomed and independently coordinated an open scenario for dialogue among the companies involved.

The absence of transparency detected in the pipe business sector and in particular in public sector procurement (purchases), gave rise to an environment of mistrust and to a credibility crisis in its entrepreneurial activity, in addition to the loss of public resources, caused by the unethical over-pricing of products, and the ensuing detriment in the quality of public projects and utilities. This situation worsened during the first months of 2000 and turned unmanageable for the companies and for the trade association itself.

In this context, ACODAL, the association grouping national and international companies that account for 95% of market sales and 100% of those involved in public tenders with the State, asked Corporación TRANSPARENCIA POR COLOMBIA for support in finding alternatives that might contribute in solving the problem from their sector.

In the fight against corruption, it is of strategic importance for our Corporation to strengthen the private sector as a pillar of the National Integrity System, to encourage and facilitate agreements among private actors that, above and beyond specific interests, defend and benefit the public interest by strengthening the confidence in markets under rules of free and fair competition. It is a matter then of encouraging self-regulation among private players who are willing to assume their joint responsibility with regards to the spread of integrity and to agree on the establishment of ethical standards for their businesses. In so doing, they are able to provide the State with greater assurances that they are honest representatives in the management of those public resources that may reach their hands.

On the one hand TRANSPARENCIA has advanced in this process in the context of the OAS and United Nations international corruption-fighting Conventions, the former already ratified by Colombia and the latter in process of being ratified. On the other hand, our Corporation has been encouraged by the Constitutional Mandate set forth in article 333 of the Colombia's Constitution that emphasizes the social obligations and priorities of the private sector as the basis for development, and defines their responsibility in the exercise of free competition.

The Anti-corruption Sectorial Agreement, signed in April 2005 by American Pipe and Construction S.A., Eternit Colombiana S.A., Colombiana de Extrusión – Extrucol S.A., Flowtite Andercol S.A., PVC Gerfor S.A., Pavco S.A., Celta S.A., Titan Manufacturas de Cemento S.A., Tubotec S.A., Tuvinil S.A. and Pam Colombia S.A., is the result of a lengthy process of agreements and disagreements, in which the companies touched a sensitive nerve associated with corrupt practices in their sector, explained the motives that led them to become involved in the creation of the Agreement, identified the main risks for corruption to which they had been exposed, proposed precise measures to prevent and control this phenomenon, and established follow up procedures for the compliance of the Agreement as well as a penalty system for those failing to obey by it.

One of the main achievements that was gained from this experience was the establishment of ethical issues as the pillar for entrepreneurial decisions in the context of a comprehensive vision that includes ethics as an integral part. This strategic focus has become a motivation and a challenge for the future. To the extent that companies, based on self-regulation, define common standards to prevent practices of bribery, they are contributing to the development of the country and to the building of public confidence, as expressed in reliable and organized markets and in transparent business dealings. Furthermore, these companies can then present themselves to the State as reliable alternatives in the management of public funds.

An ethical agreement among equals, in which companies have defined their own rules above and beyond legal reforms or statutes, may also give rise to cultural transformations, based on new convictions regarding the way to conduct business in the context of the acceptance of and respect for the rule of Law.

The companies that participated in the creation of this anti-corruption (Sectorial) Sector Agreement may encounter significant challenges ahead: that the Agreement be complied with and not infringed, that it be imposed over the mistrust of other competitors, that those commitments that have been acquired be respected, and that the decisions made by the Ethics Committee (that they themselves set up for the self-control of this initiative) be respected and obeyed.

The road is clear for other pipe companies to adhere to the Agreement, and in so doing to strengthen this effort and strategy for the sector, in the hope of making this experience a model to be used in other scenarios in Colombia and Latin America.

In summary, the experience has opened a door whose threshold is still to be crossed.

Finally, we wish to express our gratitude to TRANSPARENCIA INTERNACIONAL LATINOAMERICANA for its financial support in the edition of information and to publicly acknowledge the work and effort put in by all the representatives of the Trade Association (ACODAL) and of those companies involved in the creation of this Agreement.

Rosa Inés Ospina Robledo  
Executive Director  
Transparencia por Colombia

## I. CONTEXT

### 1. Corruption and bribery<sup>1</sup> in Colombia

Studies conducted by specialists indicate that the harmful effects of corruption on the country's social and economic growth increase income inequality and reduce social investment<sup>2</sup>. Corruption impacts negatively on governance because it affects the State's effectiveness, the accountability by public Agencies, and the quality of the State of Law<sup>3</sup>. It also discredits Government and limits or saps public resources destined for the provision of social services<sup>4</sup>.

In 2004, Colombia maintained the trend of slight increases in TRANSPARENCY INTERNATIONAL'S Corruption Perception Index with a score of 3.8 over 10, and ranked 60 among 146 countries. Although the score is over the 3.5 index for Latin America, the situation is still worrying.

The country, internally, does not have a consensus on corruption figures. However, the perception indicators provided by entrepreneurs with regards to the relation between corruption and the entrepreneurial sector in the country, indicate that<sup>5</sup>:

- On average, 68.3% of those entrepreneurs interviewed think that public procurement processes have little or almost no transparency at all.
- Entrepreneurs estimate that, on average, a competitor has to pay an additional 11.74% of the contract's value in order to secure the contract's awarding.
- 24% of the entrepreneurs doing business with the State admit to being aware of at least one case of bribery payment during the year 2003.
- 36,10% of entrepreneurs interviewed acknowledge that, when referring to bribe payments, the amount and modality are known in advance.

### 2. The private sector in the fight against corruption

Today it is well known that at the international level: "The private sector as the pillar for the National Integrity System has a special role to play in maintaining national integrity, both in the country where it is based as well as in the markets of those countries where it decides to operate... The traditional vision that companies exist only to make a profit for their shareholders is giving way to a new focus of broader corporate responsibility, not only towards clients and users but also towards the communities in which they operate. A company can actually contribute to the environment in which it has developed and from which it grows. It has also been acknowledged that people seem to be happier when working for organizations with strong social ethics, and this may prove to be a powerful incentive for proper behavior on the part of corporations"<sup>6</sup>.

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<sup>1</sup> Bribery, understood as the offering and/or acceptance of gifts, commissions, loans, fees, gratifications or any other type of benefit, as an incentive to perform a dishonest or illegal act, or an act that implies a breach of confidence in the course of the company's business, whether for your own benefit or for the benefit of relatives, friends or associates.

<sup>2</sup> GUPTA, S.; DAVOODI, H. & ALONSO, T.; 1999. Does corruption affect income inequality and poverty? Fiscal Affairs Department. International Monetary Fund's Working Document. In Badel, M.E.; Costos de la Corrupción en Colombia; Bogotá; Departamento Nacional de Planeación, Archivos de Macroeconomía.

<sup>3</sup> KAUFMANN, Daniel; 2003; Replanteando Gobernabilidad. Instituto del Banco Mundial. Borrador preliminar para discusión. [www.worldbank.org/wbi/governance](http://www.worldbank.org/wbi/governance)

<sup>4</sup> INFORME NACIONAL DE DESARROLLO HUMANO PARA COLOMBIA; 2003; El Conflicto, Callejón con Salida. UNDP.

<sup>5</sup> CONFECÁMARAS; 2004; Probidad III – Encuesta Empresarial sobre Corrupción y Probidad en el Sector Público; Documento de Coyuntura No. 10; Bogotá; Confecámaras.

<sup>6</sup> Citado en el Libro de Consulta. Adaptación para Colombia. Elementos para fortalecer un Sistema Nacional de Integridad. Capítulo 15. El Sector Privado. Diciembre 2003.

The private sector conducts its activities on two levels: business with the public sector and business with the private sector. "Activities that in the past were considered common to the public sector are now, more than ever before, falling into the hands of the private sector. In the case of Colombia several energy plants, banks and financial corporations, waste collection companies, car factories and companies providing public utilities have become privatized. As privatization advances in many countries, it is becoming increasingly urgent to stop corruption in the private sector"<sup>7</sup>.

On the other hand studies conducted in Colombia between 2002 and 2003 by The World Bank, the Office of the Vice-president of the Republic and Transparencia por Colombia show and highlight the following aspects as being the main risks for corruption in the processes of public purchases or procurement for the private sector:

- Lack of participation by entrepreneurs in the planning stages of projects;
- Absence of impartial competition given the make-up of contractor monopolies;
- Lack of commitment by the private sector in the fight against corruption;
- Absence of concrete entrepreneurial ethics facilitating non-compliance of regulations relative to purchase or procurement processes;
- Excess of regulations or red tape;
- Excessive influence peddling and pressure on the State<sup>8</sup>;
- Lack of transparency in the private sector's influence on the processes of Government decision-making ;
- Threats to the independence of political parties and rulers due to the funding of campaigns by entrepreneurs<sup>9</sup>.

### **3. Corporate progress at the international level in the fight against corruption.**

At the international level during the eighties and in particular during the nineties, the concern of companies was always taken up by labor issues or environmental rights topics, among others; today that interest has shifted towards the search for mechanisms to fight domestic and international corruption.

Nation-states and international organizations have advanced in the approval of legislation that enables the fight against the different forms of bribery and corruption. Some indications of this progress are:

- The Organization for Economic Cooperation and Development– (OCDE) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, that established transnational bribery as a crime in Colombia in 1999.
- The Eleventh Principle of the World Pact or Global Compact of June 2004 stating that "Companies will have to work against all forms of corruption, including extortion and bribery". This Pact, led by the United Nations, involving hundreds of countries and organizations worldwide operated until then with nine principles that had to do with the protection of the environment, labor and human rights.

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<sup>7</sup> Source book. Adaptation for Colombia. Elements to strengthen a National Integrity System. Chapter 15. Private Sector– Corruption which involves public officials and what occurs within the private sector. December, 2003.

<sup>8</sup> Capture of the State: the World Bank defines the Capture of the State as "*the capacity of interest groups to influence political decision-making processes through corrupt practices*". From this perspective capture implies corruption, therefore in absence of corruption there is no capture of the State. La captura del estado vista desde los niveles locales. Jorge Iván González. Documento de trabajo 22 de septiembre de 2003.

<sup>9</sup> Source book. Adaptation for Colombia. Elements to strengthen a National Integrity System. Chapter 15. Private Sector– o – Main corruption risks of entrepreneurial sector in public procurement. December 2003.

- The Interamerican Convention Against Corruption of the Organization of American States OAS, ratified by Colombia in 1998.
- The United Nations Convention Against Corruption, signed by Colombia on December 2003, approved by the Commission of the House of Representatives and the Senate of the Republic of Colombia, pending final approval by the plenaries of both Bodies, (Bill of Law 235/2004). This Convention explicitly refers to the importance of including the private sector in the fight against corruption. It defines and categorizes crimes like bribery among private players and the misappropriation or embezzlement of goods in the private sector, emphasizing criminal, civil or administrative liability by groups or collectives.

However, this struggle is just beginning. Certain bribery-related practices are not yet considered as such, and although (we could say that for) most people involved in a case of bribery (it is clear) know that they are doing something improper, many of these practices are commonly or commercially accepted and, in some cases, it proves difficult to draw a line between those practices that favor the development of entrepreneurial activity and corrupt actions. This is the case, for instance, of facilitation payments, about which there are many different interpretations in the manner of understanding and conceiving them at the international level. OCDE and FCPA Foreign Corrupt Practices Act, admit exceptions, acknowledging that many countries expect those payments to be made, even considering them necessary at lower levels of public administration.

Contrary to this, TRANSPARENCY INTERNATIONAL includes facilitation payments as a form of bribery in the context of the Entrepreneurial Principles to Counteract Bribery. Eventhough on some occasions they may seem minor, they become a part of and contribute to the generation of systemic corruption.

#### **4. Colombian legislative references with regards to public trade and purchases.**

Colombia has a broad set of legislation that supports several aspects that are central to the Anti-corruption Sector Agreement created by the pipe entrepreneurs. We list some of them below:

- The *Colombian Political Constitution* enshrines the social object of companies and defines their responsibility in the exercise of free competition (art. 333).
- The *Colombian Code of Commerce* establishes regulations geared towards good commercial behavior. It defines free and loyal competition, respect for the rights of consumers, and restrictive trade practices as pre-requisites indispensable for the development of commercial activity. These rules are supposed to insure that direct or indirect pricing be done according to the law of free supply and demand, thus prohibiting agreements or practices that limit competition or determine and maintain inequitable prices. Those agreements whose objective is the selfish sharing of markets among producers or distributors, the collusion in bids or tenders, and the internal sharing of contracts and the coordinated definition of quotes and proposals are considered to be contrary to free competition. Commercial legislation also seeks to avoid abuse by a dominant actor when particular conditions are present that place one distributor or supplier at a disadvantage from another.
- The *Colombian Criminal Code* refers specifically to bribery of public officials be that for the act of asking or offering. It also makes reference to transnational bribery.

- With regards to (procurement) public purchases, *Law 80 of 1993* establishes the rules and principles that guide the contract agreements of state agencies, based on the principles of transparency and objective selection. In particular it determines that state agencies will be accountable for the acts and omissions that may cause damage to their contractors, if proven imputable to them. Public servant will be fully accountable, both from a disciplinary and civil standpoint, for their acts and omissions during contracting activities under the terms of the Constitution and the Law. It also stipulates that contractors will not give in to demands or threats by those acting outside the Law whose to pressure them to heed their will. Contractors will be liable civilly and criminally for their acts and omissions in contractual acts under the terms of the law.

From a criminal standpoint, the contractor is considered an individual who is fulfilling his public duties and responsibilities in every aspect with regards to the act of contracting with state agencies, and therefore will be subject to those liabilities that the Law establishes for public servants or officers.

## **5. TRANSPARENCIA POR COLOMBIA in the prevention and fight against corruption**

Since 1998 TRANSPARENCIA POR COLOMBIA has been making progress in the design and implementation of tools for corruption control and prevention, as well as in the generation and dissemination of knowledge regarding the shared responsibility of the private sector in the fight against corruption. This work reflects both world trends in this struggle within the private sector in: the mandatory or regulatory and the voluntary or self-regulatory.

In terms of dissemination of knowledge TRANSPARENCIA POR COLOMBIA and TRANSPARENCY INTERNATIONAL have published the following studies:

- *A study on the risks of undue pressure of private interests in the establishment of laws in Colombia* presented in June 2005 presented by TRANSPARENCIA POR COLOMBIA. The research highlighted aspects regarding pressure techniques or strategies and illegitimate incentives used by certain private groups to meet specific economic or political interests, thus affecting the common good.
- *Bribery Perception Index*: Every two years TRANSPARENCY INTERNATIONAL presents this indicator that measures bribery levels in activities involving private enterprise in 21 industrialized countries, in 15 countries with developing economies which includes Colombia, and the degree of information available on these matters. The Index shows statistics on the inclination of multinational companies to bribe; those commercial sectors that are more prone to contamination by bribery; the level of awareness of important company executives abroad regarding the OCDE Anti-corruption Convention; the extent to which these companies abide by the Convention; and the perception of disloyal commercial practices used to get contracts. The index also shows that only one out of five individuals that responded to the survey in 15 countries with developing economies are aware of the OCDE Anti-corruption Bribery Convention.

In the area of regulation:

- *Follow up to International Conventions*: Since 2002 TRANSPARENCIA POR COLOMBIA participated in the follow up to the implementation in Colombia of the Interamerican Convention Against Corruption of the Organization of American States OAS, and advanced jointly with TRANSPARENCY INTERNATIONAL in the design of a system to follow up on implementation of the United Nations Corruption Fight Convention by the Colombian Government, using the Reportcard methodology.

- *Follow up to the modifications of the public procurement law:* Since 2003 TRANSPARENCIA POR COLOMBIA, together with other agencies, has undertaken the overseeing of the Public Procurement Statute Reform, which supervises in Congress those projects that may modify public contracting law in Colombia. Among the more important and relevant proposals presented so far is one that includes an article regarding registry of proponents or contractors that would required adherence to some minimum standards of ethics as a pre-requisite for registration, in order to counteract bribery. These minimum standards would have the Entrepreneurial Principles to Counteract Bribery as a reference guide.

In the area of self-regulation:

- *Integrity Pacts:* TRANSPARENCIA POR COLOMBIA has been witness to important public tender processes in which the private sector has been involved. To date, 60 Integrity Pacts (a Transparency International mechanism, used in several countries around the world) have been signed in 82 supervised tender processes, with the participation of 409 national and 58 international companies, involving close to US\$ 2.300 million.
- *Principles against Bribery:* TRANSPARENCIA POR COLOMBIA has managed to create alliances with private sector companies and associations to disseminate, to place the issue on the agenda, and to encourage adherence to the Entrepreneurial Principles to Counteract Bribery (an initiative promoted by Transparency International and Social Accountability International).

In the context of this adherence, in a fundamental step in our view, TRANSPARENCIA has brought about progress with regards to anti-corruption agreements by sectors that have enabled entrepreneurs to openly discuss the problem, collectively propose mechanisms that generate mutual confidence, and build environments for fair competition thus making a commitment to protect the public interest. The following are the results of these processes:

- An Agreement signed by the largest pipe manufacturing companies operating in Colombia, grouped under the Colombian Sanitary and Environmental Engineering Association, ACODAL – described in this report.
- An Agreement signed with Publishing companies through the School Texts Committee of the Colombian Book Chamber.
- The beginning of a process with the main representatives of the pharmaceutical sector, affiliated to the ANDI pharmaceutical Chamber.

## **6. The structure of water supply and sewage service operations in the country**

One of the main conditions for social and economic development is the public and human right of access to drinking water and to the existence of sewage systems. The providing of public utilities for residential use in Colombia is the responsibility of the municipalities or townships (Art. 367 of the Constitution), and environmental sanitation, which includes water supply and sewage is enshrined as a public service for which the State is responsible (Art. 49 of the Constitution). In order to provide for this need the Nation transfers the necessary resources to the municipalities<sup>10</sup>.

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<sup>10</sup> In the 1999-2002 period investment with resources transferred by the Nation to the municipalities to attend these services accounted for 85% of total investment. DNP. **Inversiones realizadas en el sector de agua potable y saneamiento básico.** [www.dnp.gov.co](http://www.dnp.gov.co)

Many players are involved in the operation. The State, main guarantor and provider of public utilities, guides its development through the Ministry of the Environment and Urban Development; it then regulates this through the Drinking Water Regulation Commission –CRA; and it acts as an observer of sanitary practices through the Superintendencies of Public Utilities and Industry and Trade. On the other side are the municipal administrations or managers responsible for providing this service through public, private or semi-private service companies; the contractors responsible for delivering a functional service, and, finally, the pipe manufacturing companies in charge of providing the materials.

The municipalities have resorted to two basic strategies for the provision of this service: they can create public residential service companies according to the legal mandate stated in law 142 of 1994, or they can resort to private or semi-private companies who are in charge of providing the service, without losing its public nature.

Currently, only about 5% of small and middle-sized Colombian municipalities have privatized this service. However, many of the large urban centers have done it. There are several reasons for this as indicated in a Latin American study currently conducted by TILAC<sup>11</sup>.

- From the perspective of the private sector, doing business in depressed urban neighborhoods or in rural areas increases costs and does not guarantee profitability. Likewise having to adopt the administrative and financial problems that characterize the provision of services by public municipal agencies or taking over the management of a service that is marked by infrastructure problems and limitations (poor condition of the networks, illegal connections, etc.), prevents the obtainment of profits in the short or medium term.
- From the standpoint of the townships, they must not only guarantee the provision of the service but also give priority to social over economic considerations, setting up subsidies, price stability schemes, and avoiding the transfer of costs to the user, among other aspects.
- The efficient provision of the water and sewage service requires network systems, which are owned by the State, and requires large and continuous investments in construction primarily in rural areas, or for its expansion, repair or maintenance. The last two are aimed at responding to the dynamics of population growth, at guaranteeing uninterrupted supply, and at maintaining minimum public health conditions.
- The parameters for the provision of water supply and sewage services have been defined by population growth and the effective life cycle of these networks. These parameters, as minimum points of reference, are usually utilized by private companies to acquire materials in the short or medium term, when they could resort to materials with longer horizon guarantees. For this reason, network systems periodically become obsolete resulting in unbelievable costs for the State, and increasing profit margins for the companies<sup>12</sup>.

In Colombia, pipe production serves basically two areas, one associated with pipes manufactured for buildings and other construction sites; and the other associated with infrastructure for the provision of electricity, telecommunications, mining, gas, water supply and sewage services.

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<sup>11</sup> Reference found in the Document that analyzes the water conduction sector in Latin America. Programa regional TILAC: Fortaleciendo la integridad en el sector de conducción de aguas en América Latina. Version may 26<sup>th</sup> of 2005.

<sup>12</sup> Reference found in the Document that analyzes the water conduction sector in Latin America. Programa regional TILAC: Fortaleciendo la integridad en el sector de conducción de aguas en América Latina. Version may 26<sup>th</sup> of 2005.

## II. CREATION OF THE AGREEMENT

### 1. The root problem and its causes

*Evidence of continued use of corrupt practices in the business activities of pipe manufacturing companies, with emphasis on sales to the Public Sector.*

These practices have created an environment of mistrust in this business sector and have affected their credibility. On the one hand, companies' income had fallen due to reduced sales or to overcost in their products, giving rise to corruption, pointing to the loss of public resources in detriment of the quality of public services for the citizenry, as well as potentially affecting the quality and durability of the pipes, those key materials in the infrastructure required for the provision of this public service. On the other hand, some companies had been forced to lose business opportunities due to their inability to participate in tenders with specifications committed in advance to a supplier.

**Some of the main findings were:**

- **The need to recover from the recession of the 90's:** even though the time framework for the beginning of these practices cannot be clearly determined, it is possible to state that they soared with the country's recession during the 90's, that this had a negative impact on the growth of the sector, and that the profit margin of companies started to fall progressively. The need to recover profitability produced incentives that ended up approving any means to achieve that profitability, to the extent that the limits between commercial and corrupt practices blurred.
- **Pressure on the attainment of sales targets at any cost:** here as in other sectors of the economy, this has been a constant. The search for profits has led to a loss of perspective in business's ethics with regards to the dynamics of sales.
- **Weaknesses in the functioning of the State:** the sector's companies have for a long time coexisted with the presence of corrupt practices inside the State, its main client. The lack of administrative and financial organization by public agencies has facilitated the existence of these practices and has made its identification difficult. On the other hand, the instability of public jobs and their low salary levels make public servants more inclined to ask for or receive money.

### 2. How is the process of Anti-Corruption Sectorial Agreement initiated and developed?

In light of this problem, which has been present for a long time in purchasing processes, in view of the meager results of previous individual actions, as a response to specific situations<sup>13</sup>, and based on the premise that some companies had already established some controls to counteract corruption in their businesses<sup>14</sup>, ACODAL, the *Colombian Sanitary and Environmental*

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<sup>13</sup> Filing of rights of petition, direct claims, requirements and demands in public hearings for increased transparent processes, in addition to accusations before control agencies. These attempts found:

- a high degree of impunity by State agencies to attend rights of petition and accusations,
- punctual advances in specific cases thanks to the allegation in public hearings, but without a major impact on the rules of the game,
- increased mistrust and discomfort among competitors.

<sup>14</sup> Some companies had implemented, in an exceptional manner, internal measures to counteract corruption: defined explicit policies associated with "no payment"; forbidden political campaign funding or established limits and controls to expense budgets and sponsorship management. In the area of processes and their controls, some companies had introduced criteria and procedures for the review of legal contracts regarding forms of payment or had applied internal control systems to follow up on quotations submitted by suppliers, to avoid facilitation payments. Unfortunately, in no event has exemplifying sanctions been applied to those that failed to comply with policies, processes or controls.

*Engineering Association*, through its Industry Chamber groups of 12 of the 17 national and international companies that manufacture pipes for water supply and sewage systems in the country, decided in October of 2003 to promote a collective initiative to counteract corruption in this sector<sup>15</sup>.

ACODAL then approached TRANSPARENCIA POR COLOMBIA, stating that they were not clear on how to face the problem. They felt that the time was right for the sector to start an awareness campaign involving this issue.

As a result of this contact, TRANSPARENCIA POR COLOMBIA presented a proposal to Acodal to work jointly in the adherence to the "Business Principles for Countering Bribery". For this purpose, the trade association and TRANSPARENCIA entered in an alliance to disseminate these Principles among the sector's companies of this sector.

In the context of this process, the companies affiliated to this Association not only adhered to the Principles but made a commitment to promote, within their organizations, the setting up of programs to eradicate illegal practices in their businesses, thus expressing their interest in becoming jointly responsible with the private sector in the fight against corruption.

At this time they also proposed to look into the possibility of establishing rules of the game that enabled confidence building inside the sector and the promotion of integrity in their businesses. For this purpose in November of 2003 TRANSPARENCIA and ACODAL signed a *Memorandum of Understanding* that sought to encourage the sector's companies to collectively build the *Anti-corruption Sectorial Agreement*.

And what seemed impossible was achieved. The Agreement, signed one year later in April 2005, is the result of a long period of agreements and disagreements during which the main corruption risks prevalent in the pipe manufacturing sector were identified and measured in order to prevent and control them.

### 3. The Actors and their roles

There are three actors in this process: 1) the companies that adhered to the Entrepreneurial Principles, 2) ACODAL, the association grouping them, and 3) TRANSPARENCIA POR COLOMBIA, who acted as an independent facilitator.

- **The companies:** they were the main actors in the process; the ones directly affected by the problem and who were more familiar with it. These companies represented 95% of the domestic market, participated in 100% of the public tenders of the pipe sector for water supply and sewage systems, their clients being mainly the municipalities and public utility companies. They have national coverage and some of them, international outreach.

The summary table appearing below presents information on approximate sales for 2004 of each one of the companies that signed the Agreement, collected from different sources: trade data, provided by the companies themselves, as well as information taken from journals.

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<sup>15</sup> In the past the association had encouraged an anti-corruption agreement among companies, which reflected the concern for and motivation of the association to face the problem. The initiative's weakness was that a collective process that gradually produced agreements reached by consensus was not performed, instead a text prepared by external actors was proposed.

COMPANY	SALES 2004 *
1. Pavco S.A.	\$ 220,000
2. PVC Gerfor S.A.	\$ 100,000
3. Tubotec S.A.	\$ 31,142
4. Tuvinil S.A	\$ 10,352
5. American Pipe S.A.	\$ 10,137
6. Flowtite Andercol S.A	\$ 35,000
7. Titan Manufacturas de Cemento S.A.	\$ 30,135
8. Pamcol S.A.	\$ 41,000
9. Colombiana de Extrusión – Extrucol S.A	\$ 12,000
10. Celta S.A Ralco	\$ 50,750
11. Eternit Colombia S.A	Not provided

\*Figures in Colombian million pesos.

In general, the companies were represented by delegates with a global perspective on the business and with the capacity to complete the internal validation process demanded by the exercise. In most cases the participants held top level managerial positions: President, General Manager, Assistant to the Manager, Procurement Manager, Commercial Manager, Administrative and Financial Manager. Second-in-command employees also attended: Head of Production, Head of Sales and Head of Zone.

Eight of the 12 companies in ACODAL participated from the beginning to the end. Three attended less than half of the sessions, of which one did not sign the Agreement and another adhered to the process at the signature of the Agreement. Both the group of companies and TRANSPARENCIA POR COLOMBIA reacted to those not always present by sending on October 2003 a Memorandum reminding the remaining companies of the commitment made.

- **ACODAL:** played a vital role due to its capacity to convene and summon companies around a common purpose and because its interest rested in the promotion of clear rules against corruption in the construction sector, beyond private interests. It continuously encouraged companies to participate and to persist in the process. It kept in contact with them in order to get them to make a stronger commitment to the Agreement, facilitating the adhesion of two companies that had not been part of the process at the start. Likewise, the association took on the responsibility of providing the logistical support required for this effort.
- **TRANSPARENCIA POR COLOMBIA:** its involvement as external and independent facilitator in the establishment of the Agreement was decisive, according to the participants in the process, not only because it provided a guarantee of impartiality but also because of the sense of calm and confidence created by the recognition it has achieved in this country, the international support it receives, and also its background and experience in this area.

The role of TRANSPARENCIA POR COLOMBIA focused on facilitating the experience by contributing guidelines, information and feedback to companies during the entire process. Among others it assumed the following tasks:

- Rigorous digitalization of information,
- Collection of sector information and of other experiences on self-regulation,
- Collection of information parallel to the process, dealing with the detection of critical problems between the parties, thus anticipating a solution,
- Request for legal concepts regarding the pros and cons of present legislation. It had the permanent assistance of a legal advisor.
- It prepared and forwarded communications, reports, and follow-ups, as the case required.

The challenge of this role was to create the proper and necessary conditions enabling the players to transcend their individual interests and to seek a common purpose, and in this process to counteract corruption in the sector.

In order to guarantee its independence during the support work, TRANSPARENCIA designed and undertook its efforts under the following conditions:

*Prior to starting the process:*

- Verification of the Association's characteristics: its members, the interest in the topic, its capacity towards openness, and trade recognition, among others.

*During the process:*

- This required keeping a permanently open invitation to all the sector's companies, whether or not they belonged to the association.
- It decided that the cost of the experiment was to be carried by the Association or by the participating companies, in equal proportions.
- It promoted and gave equal treatment to all participants in the process, regardless of each one's particular conditions.
- It created a dynamic that enabled decision-making by consensus and not by majority.
- It worked on securing the association's commitment regarding awareness, motivation and dissemination of information at a group level rather than with individual companies.
- It did not play the role of external agent acting as overseer and performing social control, but rather that of a third party facilitating the self-regulation and self-control process among the participating entrepreneurs.

#### **4. TRANSPARENCIA POR COLOMBIA'S proposal and methods**

- **Duration**

The Agreement's initial efforts, as already mentioned, started in November 2003 with the signature of a Memorandum of Understanding between the pipe manufacturing companies and TRANSPARENCIA POR COLOMBIA, and ended in April 2005 with the signature of the Agreement. It was originally planned to be developed in eight sessions during six months; however, it was completed in eleven sessions during the eleven months, between February and December 2004.

- **Methodological Approach**

Once the working group was created, TRANSPARENCIA proposed a methodological approach consisting of creating a forum for discussion among companies, where decisions were made by consensus and not by majority. The group started the process by identifying the internal and external advantages and difficulties in implementing the Entrepreneurial Principles to Counteract

Bribery<sup>16</sup>. Later they made precise references to the motives that led them to work around an Anti-corruption Sectorial Agreement, making a thorough analysis of corruption risks to which they had been exposed in their business transactions and, finally, defining the steps to counteract them. Based on the latter, the companies agreed to an ethical standpoint that would serve as reference for the overseeing of the Agreement's compliance, as well as the sanctions that they would be willing to impose and assume in the eventual infringement of their commitments. And they also saw the need to establish an Action Plan to assure the implementation of the Agreement's strategies as well as the follow up to the implementation of the measures inside every company.

- **Methodological resources used**

**Collective work:** an Agreement of this nature can only work if it is the result of discussions and definitions among equals. With this in mind a Working Group was set up with delegates of each of the various companies, responsible for the agreements, the changes, and the definitions of the rules and instances necessary for the advancement of the Agreement.

**Work Sessions:** from the beginning the group of companies and TRANSPARENCIA scheduled periodic sessions to achieve the objectives proposed. This advanced planning enabled the delegates to reserve the agreed dates on their agendas and to therefore assure most everyone's participation in the entire process. The half-day work sessions with the group of delegates from the companies included conceptual and methodological presentations, work groups, and in depth analysis, plenary meetings, and instructions to be discussed inside each company. TRANSPARENCIA coordinated the sessions with the assistance of Metaplan, which enabled the permanent sharing of the ideas put forward by all the delegates and facilitated the organization of proposals.

**Verification inside the companies:** as progress was made in the work sessions, the delegates had the responsibility of promoting discussion within their companies regarding the proposals they had worked on during each session. For this, TRANSPARENCIA repeatedly contributed with instructions that guided the delegates towards compliance of that responsibility. The result of each validation discussion became the input for the following session. This dynamic nourished the discussions in the plenary meeting, involving other actors inside each company and avoiding the risk that decisions made by the plenary be the opinion of a single delegate rather than the company's as a whole.

**Rigorous preparation of each session's minutes:** this resource implemented by TRANSPARENCIA helped the organization of the process and the presentation of results of each work's session in real time. In addition, the ability of being able to send this information to all delegates four days after the session ended was a way of showing permanent results and of motivating everyone's participation in a dynamic process that made progress continuous.

**External conceptual support:** even though this was not foreseen at the beginning, the complexity of some of the issues discussed during the work sessions required TRANSPARENCIA to research national legislation and other self-regulatory domestic and international practices in advance to nourish the discussions and contribute with new input.

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<sup>16</sup> Business Principles for Countering Bribery were used as a basic conceptual point of reference.

The collecting of *opinions and perceptions of other Company workers* on controversial issues of the Agreement, *different from that of the delegates*, by TRANSPARENCIA, through visits, meetings and communiqués, also contributed to increasing the critical mass involved in the process.

- **Investments and resources**

The resources to fund the project were geared towards covering the costs of TRANSPARENCIA POR COLOMBIA's supervision of the process which included the logistics aspects of the work sessions and of the transportation costs of companies employees with headquarters outside Bogotá.

From the beginning it was agreed that companies would share funding costs in equal parts, which would furthermore strengthen their commitment to the process. TRANSPARENCIA contributed with a co-allocation of funds since this presented an opportunity to create and set into motion a model for TRANSPARENCIA in the accompaniment of a self-regulatory process that could be replicated by other sectors in different contexts.

In practice, the resources spent were greater than the ones initially foreseen, since TRANSPARENCIA contracted the services of legal advisors for several of the complex issues in the Agreement; and spent many additional hours in meetings, visits to companies, parallel collection of information, as well as the design and coordination of the work sessions.

## **5. Reasons and motives for creating the Agreement.**

Once the Working Group and the methodology were established, the process started with the identification of the motives that both the companies and TRANSPARENCIA POR COLOMBIA had to build an Anti-corruption Sector Agreement. The main reasons stated by companies are listed below:

- **Weariness with corrupt practices:** company officials stated being tired of the increasing prevalence of corrupt practices in their business relations, in particular with the public sector.
- **The need to promote confidence and credibility** before current and potential clients and other interest groups; to forge increased respect among equals and to achieve increased good will for the sector.
- **Interest in assuming their responsibility in the creation of integrity in the public domain:** even though the first goal of a company is to be profitable, the companies felt that in order to continue being viable in the market, by participating in the creation of the Agreement, they manifested their interest in assuming a specific commitment towards the joint responsibility of the private sector in the fight against corruption.
- **A Guarantee to the State that it has an honest partner** in the management of public resources reaching their hands. The legitimacy achieved by the effective application of the Agreement among companies could lead to an improvement in the negotiating conditions before the State, in particular with regards to purchasing processes, given the Agreement's potential to control and discourage corrupt practices in the sector.
- **To integrate Ethics into Business's vision:** one of the main strengths of the experience was to place the issue of ethics on the table as the pillar for entrepreneurial decisions, with a

comprehensive business vision that understands ethics as part of its reason for existence. This strategic approach became a motivation, and at the same time a challenge for the future, because as companies participate, from self-regulatory practices to the creation of an improved public confidence thanks to transparent market practices, they contribute to the development of the country and to the sustainability of their businesses. An ethical agreement between equals beyond legal reforms would be able to bring about cultural transformations based on the own convictions regarding the way in which they wish to conduct their activities.

- **The motivation to learn:** in line with what has been stated, companies mentioned a set of expectations that could be called learning, for instance: “a deeper understanding of current problems”, “identifying different types of bribery”, “understanding and making deeper analysis of business transparency”, “acquiring tools to implement the Entrepreneurial Principles Against Bribery inside the companies” and “defining the guidelines to establish rules for fair play among pipe manufacturers and the agencies they relate to”.
- **Long term strategic objectives:** “create a good business management culture with the Association as an example”, “encourage social responsibility in our entrepreneurial activity and promote respect for the Rule of Law”, “serve as a channel for the development of a national anti-bribery policy in the potable water and environmental sanitation sector”, “contribute to the economic development of the country” and, “contribute to the creation of an open and transparent market”.

On the other hand, TRANSPARENCIA POR COLOMBIA, in the context of its Ethical Self-Regulation Program for the private sector, had among its objectives the strengthening of the private sector as the basis for a National Integrity System, the encouragement of entrepreneurs in assuming responsible and concrete actions in business ethics to counteract the high costs of corruption that affects market confidence and the sustainability of companies, and to advance in its line of work that it has been able to consolidate at the international level in the fight against corruption involving the private sector.

## 6. The Agreement's scope

For private companies the Agreement meant the possibility of:

- Defining clear rules for the game among competitors, i.e. certain minimum ethical standards that could govern commercial practice of doing business with the public and private sectors.
- Preventing corrupt practices and promoting a culture of transparency in the market for the common good.
- Contributing to society from the sector's consolidation to the economic and social development of the country.

For TRANSPARENCIA POR COLOMBIA:

- Building a model of good practices in order to fight corruption within the private sector.
- Accompanying and supervising a self-regulatory experience that favors the public interest.

## 7. Identifying risks and factors that facilitate the existence of corrupt practices.

During the work sessions, companies worked to identify the risks to which they were permanently exposed to in the corruption issue:

- **Lack of an anti-corruption corporate culture:** the weak political will to fight corruption inside companies represents the main risk that facilitates the existence of corrupt practices. For example, there are no strategies to create and consolidate human capital committed to action guided by corporate ethical principles, and human management policies or principles related with the selection and education of personnel do not include anti-corruption principles.
- **Absence of clear internal ethical standards:** companies lack anti-corruption ethical codes that establish limits between doing business and corrupt practices, which is why they lack the criteria to identify and penalize different forms of corruption. For instance, there are no explicit regulations for the approval of donations and sponsors for clients or clear policies relative to gifts, hospitality and expenses.
- **Pricing policy weaknesses:** sales discounts and commission ranges are the most controversial issues in price matters.

*Companies handle broad discount margins in their sales system, and if they do not adjust to the strip that exists between the reference price and the actual sale price, it would be impossible to limit the discount percentage in infrastructure businesses and herein lies the risk of the appearance of improper practices.*

*The companies have not defined criteria to manage shared sales commissions; therefore the door is opened here for bribery and to other forms of corruption, both when selecting commissioners and when defining the amount of sales commissions.*

- **Permissiveness of bribery practices in the distribution scheme:** the sales scheme of companies is based on distribution chains more than on direct sales. These chains that operate, in general, with a great deal of autonomy, have made the existence of arrangements between manufacturers and contractors possible in order to have access to privileged information, and facilitating the adjustment of prices in quotations and the access to contracts with public agencies between manufacturers and distributors. This has also made it possible for distributors to pay bribes in exchange for individual benefits.
- **Lack of transparency in public procurement:** there are several corruption risks in this respect, from the moment in which the decision is made to call for public bids until the time the contract is awarded.

It often happens that local officers responsible for water supply or sewage-related investment decisions not always have the technical elements or information required and, in multiple occasions their decisions are influenced by their links with political actors. Once the investment decision has been made, corrupt practices also arise in the preparation of bidding documents that define the technical and economic specifications and criteria in order to select the best offer.

In the course of the bidding process agreements may arise between a certain manufacturer and the contractor to adjust the bidding documents to the conditions offered by the contractor, as well

as arrangements to quote below market prices and to later recover the difference arguing cost increases, enhancements or claims.

During the contract's execution stage several corrupt practices arise, for instance: products that do not meet bid specifications, inclusion of overcost for assumed damages, the disappearance of materials while in storage, or changes in delivery times due to the climate, soil conditions, among others. The delivery of the product is also subject to risks, in particular those associated with the management of guarantees.

With the identification and prioritization of these risks, the group of companies overcame the belief that corruption is a problem solely originating in the behavior of public servants or politicians, and acknowledged that other factors inside their own companies were generating and fueling situations of corruption.

## **8. Defining policies and measures**

In view of the identified risks, the Working Group decided to establish the definition of the basic characteristics of the policies and measures they expected to come to agreement on.

In terms of policy, it was agreed to:

- Define a general policy
- Define particular policies for each one of the forms of bribery
- Define policies for structural issues

The measures to be established:

- Should be viable
- Should address the identified risks in a clear and specific way
- Should analyze the key aspects of the problem
- Should put each of the policies established into practice

The chapter on Results states in detail the measures agreed to by the companies in the Agreement.

## **9. Facing and overcoming resistance**

The establishment of this Anti-corruption Sector Agreement faced great difficulties. At different times companies resisted addressing some issues or were hesitant to make decisions on certain aspects of the Agreement.

This resistance manifested itself in different forms. In some cases there was the use of subterfuge "*we do not resort to corrupt practices but are exposed to market risks and difficulties*". In others, it was argued that they acted under the premise that the legal framework restricted or opposed this or that type of decision, and in other cases, they would adduce arguments limiting participation and work sessions attendance. The last difficulty arose during the Agreement's signing process that took several months, from January to April 2005, during which several companies delayed their signatures under the pretext that they would do so after others had.

It became imperative to anticipate these issues; therefore detecting this type of resistance in a timely fashion, analyzing their content, and offering alternatives to the Group in order to build points of consensus, was to prove fundamental in the establishment of the Agreement.

### ¿How were the main differences during the process overcome?

- ***Skepticism and distrust among competitors in agreeing to the rules:*** even though this resistance was present from the very beginning of the process, having room for open dialogue made it possible to gradually overcome it. In this respect the experience had an impact and influence on the relations between the companies, thus allowing for an environment of mutual confidence. However during the process there were critical moments of disputes between some of the companies because business deals were being made utilizing disloyal practices, while agreement was being reached simultaneously in the Agreement Working Sessions. In light of this situation, TRANSPARENCIA decided to protect the Agreement's environment and did not allow specific topics to intrude in the process, limiting the discussion to general policies and agreements.
- ***Difficulty in calling corrupt practices by their name:*** the acknowledgement that several business practices had become corrupt practices was one of the most significant difficulties during the first stage of the process. It was not easy to accept the fact that companies had or were incurring in unethical behavior.
- ***Difficulties in the establishment of measures regarding prices and distribution systems:*** *Regarding pricing policies*, reference was made to the fact that broad discount margins had proved to be a saving formula to increase sales at a time of crisis for the sector, but it was acknowledged that this had favored corrupt practices. Therefore, the most difficult measures to agree on were those that were related with bridging the gap between the reference price and the actual sale average.

*With regards to the distribution schemes* generally characterized by their laxity and independence, as well as by business dealings that, in many cases, are not formalized in writing, the most significant difficulty had to do with extending the Agreement to distributors, intermediaries or sales representatives. Finally, evidence overcame this resistance, as it became clear that failing to commit to these aspects would frustrate the attempt of preventing corrupt practices in the sector.

- ***Assumed legal impediments:*** often, in the course of the process, several of the measures proposed were objected to arguing that they infringed already existing legislation, or because the Law forbid them. For instance, from the perspective of the companies, establishing agreements on prices and discounts could be objected to by the Superintendency of Industry and Trade, since it could be seen as restricting competition, and therefore, open to legal suits by those who were not part of the Agreement. In order to mitigate this resistance, the Superintendent was informed about the process and its goals. He applauded the effort and encouraged its continuation.

A similar case happened with the inclusion of compliance of an anti-corruption policy in the auditor's annual report that was strongly objected to. Given the rejection by companies to include this aspect not established by Law, TRANSPARENCIA requested a legal concept that proved that even though it was not defined by law, it was not in opposition to it.

- **Handing over of Confidential information:** companies argued that not all of their information should be made available to third parties, as in the Ethics Committee; this fear can be explained by the historical mistrust among competitors and the privacy necessary for market strategies. The group finally understood that, in order to guarantee visibility and transparency in the following steps on compliance of the Agreement, it was necessary to keep an open attitude with regards to this topic.
- **Creation of the Ethics Committee and its duties:** although the importance of this step in the follow up on the implementation of the Agreement was clear, the decisions regarding its nature and duties produced significant resistance.

At this point it was necessary to resort to the experience of other national self-regulation efforts that shed light on topics such as its Constitution and the scope of its decisions<sup>17</sup>, as well as the range of penalties to be imposed.

The concern had to do with not exceeding the judge's duties. It was therefore agreed to, with the support of external legal concepts, that the Committee would make strictly ethical decisions, impose ethical sanctions in the context defined by the signatories to the Agreement, and respond to consultations on their application and the way in which companies should implement it. The above implies that its decisions are related to the infringement of the Agreement, and not to transgressions of national legislation. Likewise, it was thoroughly discussed that the Committee was not to become a mediator for Agreement infringements, emphasizing rather that the rules stipulated in the Agreement were to be strictly complied with.

- **Establishment of penalties:** during the process several forms of penalizing companies were mentioned, and also sanctions were to be established for distributors during the final stage. In the case of companies exemplifying social penalties were established that could affect their reputation and produce subsequent loss of respect by clients and competitors.

With respect to the subject of distributors, which produced a heated debate, the group decided that the Agreement should be extended to distributors. Therefore failure to comply would also imply sanctions. Thanks to this it was established that *all companies will suspend deliveries to*

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<sup>17</sup> *The Colombian Self-regulation Advertising Code of 1998* is an ethical nature regulation, originated in the private will of the advertising sector to set forth rules that governed the contents of advertising messages and establish responsibilities and consequences for those who must abide by its guidelines. The purpose of the Code is to achieve that advertising be based on principles of decency, honesty, veracity and loyal competition and applies to advertising activities and produced to encourage direct sales. In the context of this Agreement the National Self-Regulation Advertising Commission – CONARP – was established, responsible for issuing the provisions it deemed necessary for the due application of the Code, produce opinions on the eventual violation of the rules defined and adopting the corresponding penalizing action.

*The Good Industrial, Commercial Practices and Consumer Protection Unified Agreement (2003)* is the self-regulating context for all commercial relations developed by vendors with trade without State intervention by means of a law or decree. The purpose of the Agreement is to endow the industry and trade with a genuine mechanism to solve disputes that may arise among them, thus preserving the commercial climate of cooperation. The conflict solving procedure structure must have three phases: direct arrangement, intervention by the associations and third party intervention to settle the dispute. All the signatories to the Agreement must notify in writing those parties with whom it has commercial relations, the establishment of a direct arrangements, that will include an internal procedure to attend petitions, claims and complaints.

*The National Pact to Fight the Illegal Medications Market (2004)* represents a commitment to fight the manufacturing, import, distribution, marketing, release and sale of spurious or illegal medications, i.e. forged, altered, stolen and smuggled, as well as the illegal change of commercial channels. It stipulates, among other things, commitments for the creation of communications channels to share information among signatories and adhering parties, verification and reporting of irregularities perceived, inclusion of a special Pact adherence clause in all distribution and supply contracts, and sanctions to all points of sale marketing spurious or illegal pharmaceutical products. In order to have a follow up instance a Pact Coordination Committee is set up; this committee will be responsible for verifying compliance by signatories, for creating a hallmark that identifies those that have adhered the Pact and for creating new communications and information channels on the pact and its content, among other duties.

*those intermediaries who fail to comply with the Agreement*<sup>18</sup>. Undoubtedly, this was one of the main victories of the process because agreeing to extend the Agreement to distributors represented an important control mechanism, decisive in the prevention of corruption practices. However, at this point it was also necessary to resort to the study of other self-regulation experiences and to make use of the legal opinions requested by TRANSPARENCIA. The issue was to clarify whether this measure incurred in legal limitations, since discriminating sale or marketing conditions with third parties would be established. The legal concept made the proposal viable.

- ***Increase or review of audit controls:*** companies repeatedly showed resistance to increasing audit reviews of accounting books and entries. The counterargument however was that these controls would permit the identification of irregularities regarding direct or camouflaged bribe payments. After many discussions these were included in the Agreement.

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<sup>18</sup> See the Agreement's final text in the annex.

### III. RESULTS: AN ANTI-CORRUPTION SECTORIAL AGREEMENT

#### 1. Essential aspects of the Agreement

In general terms the experience was able to go beyond the initial terms of an Agreement of purposes or a declaration of principles to an Agreement of specific policies and mechanisms for its effective implementation. In other words, companies identified the risks that had been increasing, defined precise policies, decided on measures to control them and established sanctions for those who failed to comply with them. Listed below are some of the main results:

- **Establishment of a general policy:** to become effective in each company's business dealings: " To develop and strengthen in our companies the culture of non-payment, no offer, non-acceptance of, no asking for gifts or any other advantage with the intention of inducing the performance of a dishonest, illegal action that could lead to a loss of confidence in the business activities of the company, therefore implementing practices that provide guarantees for the honest and transparent development of the sector"<sup>19</sup>.
- **Specific guidelines regarding each of the forms of bribery included in the Entrepreneurial Principles to Counteract Bribery:** these guidelines set forth prohibitions and rationales, proportionality, visibility and even periodicity criteria for the control of certain practices. For example, direct and indirect bribery, facilitation payments and direct funding of political campaigns by companies are to be forbidden. Contributions and donations must be specified in the annual report submitted by the Manager to the General Assembly of Members<sup>20</sup>.
- **Specific Guidelines regarding three structural topics:** price policy, distribution and sales schemes, and transparent purchases.
  - *Regarding pricing policies:* the challenge of adjusting rationally, gradually and progressively to the existing gap between the reference price and the actual market sale average, in order to limit the maneuverability that propitiates bribery, was defined as the general framework in addition to the use of a separate price list for construction and infrastructure businesses. The following was specifically established:
    - i) a pricing policy for companies' distributors through which discounts will be granted taking into account rationality criteria and
    - ii) a pricing policy for public and private (procurement) purchases with direct participation of companies through intermediaries different from distributors, focusing on the establishment of the amounts of sales commissions based on rationality criteria, on the establishment of sales commissioners selection criteria, on the elimination of sales commissions – if they do not respond to the criteria defined – even though this could lead to the eventual loss of businesses for companies, and on the clear presentation of the sums of money accrued as sales commissions in the accounting books and entries.
  - *With respect to the distribution network,* companies commit themselves to making the Agreement extensive to distributors, intermediaries or sales representatives. Other aspects agreed to:

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<sup>19</sup> Taken from the Agreement's text.

<sup>20</sup> Taken from the Agreement's text.

- To work with distributors and sales intermediaries who are familiar with and are willing to abide by the contents of the Agreement;
  - To sign a declaration in those business dealings that have not been formalized in writing or to include an amendment to the existing contract regarding the knowledge of the Agreement, adherence to its content and unilateral termination in the event of non-compliance;
  - To require of new agents or new distributors who state their interest in working with the companies the adherence to the Agreement as a pre-condition to doing business.
  - To report those distributors and intermediaries who infringe the commitments and contents of the Agreement to the group of signatory companies.
  - As to *transparent (procurement)* purchases the following was established: commitments of product delivery according to the specifications contained in the bidding documents, agreement to encourage technical overseeing and changes in the legal contracting framework, and to promote the adherence of sales representatives to the anti-corruption policy as a pre-requisite for the purchase of their products and services.
- **Mechanisms of implementation:** in order to make the particular policies and guidelines in companies and their business relations effective, mechanisms were established in matters like: direct responsibilities of the Legal Representatives of all companies; internal controls and audits; human resources; communications; and internal reporting and consulting to report irregularities and inform of non-compliances of the Agreement without running the risk of any type of retaliation.
  - **Nature and duties of the Ethics Committee:** in order for proper follow up of compliance of the Agreement, the decision was made to create the Ethics Committee whose nature would be that of Arbitrator. In other words, its decisions would be mandatory for all parties, and its lack of compliance would make the guilty party legally liable. In addition, the obligatory nature of its decisions stems would be born by the commitment to abide by the Agreement, both by the manufacturers and the distributors, and its decisions would be binding for all parties, including those accused.

The Committee would also be responsible for evaluating the criteria of rationality, proportionality and periodicity of sponsorships, as well as for verifying the application of pricing policy measures based on the information provided by the companies and required by the Committee. It would be the Committee's duty to report to the relevant authorities those who incur in questionable or punishable behavior that it brought to its attention.

The Committee would be made up essentially of external third party members, in such a way as to guarantee objectivity and neutrality, thus to avoid becoming part and parcel of the issues. It was decided it would be a three-member body, and one of its members would be an independent third party elected by the companies and known for his or her integrity, thus preventing any conflict of interest arising from the direct participation of any of the companies. The operation costs of the Committee would be borne by the companies.

In addition, a second instance was created comprising a group of companies that would review – upon the request of one or more interested companies – the decisions arrived at by the Committee in the event that a company commit transgressions in its commitments to the Agreement for a third time in a row. This decision of including external parties in this second phase was the subject of lengthy debate not only for the reasons already mentioned but because

it was assumed that mediation could prove necessary in the Agreement's compliance, given the obligatory nature of the terms agreed to.

- **A policy of Penalties:** in the eventual cases of non-compliance of the Agreement, the companies decided that the Ethics Committee could send a private reprimand accompanied by a written communication to the accused Company's Board of Directors, to ACODAL'S Board of Directors and to all signatory companies – depending on whether it be the first, second or third infringement of the Agreement; and by a communication that would be forwarded through ACODAL's e-mail network. Likewise, it was agreed that the company incurring in an infringement practice would lose the right to utilize the seal or hallmark designed to identify the companies committed to the Agreement, for a two, four or six month time period, whether it be the first, second or third time this non-compliance occurs.

On the other hand with regards to issues of non-compliance on the part of intermediaries or distributors of pipe manufacturing products, suspensions would be applied, which would consist of imposing on the guilty party the prohibition or abstention from any type of contracts (including the marketing of any type of goods involved in the intermediation) with manufacturers or producers who themselves would likewise not be able do business with the guilty party for the following six months.

- **Promotion of the Agreement by a Working Group:** in view of the need to manage the different strategies to empower the Agreement and of the acknowledgement that it is a dynamic or ever-changing process not only in terms of implementation but also with regards to its potentially periodical review, it was considered important to create this body that would be responsible for:
  - (i) Defining an action plan that determine the activities to be performed, those responsible for them, and the resources required;
  - (ii) Establishing parameters that facilitate follow ups of the activities defined in the action plan;
  - (iii) Evaluating in a periodic manner the compliance of the Agreement bringing together the opinions and comments of the actors involved in order to make the necessary adjustments.

The duties of this Group would differ from the ones assigned to the Ethics Committee responsible for cases of Agreement infringement. This Working Group would be made up by members of the pipe manufacturing companies and would receive the administrative and technical support of the association. (ACODAL)

- **Funding:** lastly, the group of companies decided that each one of them would set aside funds to guarantee the start and the later effective operation of the promotional Working Group.

## 2. Factors for Success

- **The Association's leadership:** the participants concluded that the factor that contributed most to the success of the experience was the Association's leadership in this process. The fact that the companies were grouped under the Association's Chamber of Industry, with some previous background in joint work on critical issues of their sector, made it easier to create another forum for a discussion of anti-corruption rules. The Association groups all the

pipe manufacturing companies that participate in public bids and account for 95% of the domestic market, which allowed for a deep transformation of the sector with regards to this matter. The responsibility assumed by the Association of putting the Companies in contact with TRANSPARENCIA POR COLOMBIA in order to encourage them to stay motivated and committed to the process was decisive for its success.

- **Keeping clear objectives:** this allowed the process to preserve its original objective and focus avoiding digressions and the temptation to become a scenario for the discussion of other issues of the sector.
- **Methodological resources:** collective efforts, validation by companies, the permanent presentation of progress reports using clear methods and discipline, the search for legal points of views or opinion as well as practical domestic and international references points, along with the collecting of opinions and perceptions of other company actors were another factor for success.
- **Building consensus in a scenario for dialogue:** listening and the search for a consensus rather than a majority rule under a strict methodology that required effectiveness and efficiency. The imposition of one single will was avoided and joint efforts toward building a consensus was always preferred. This dynamic increased the participants' interest in participating in the next working session.
- **The Power of Proofs:** the fact that all the companies felt to be contributing to an experience that could serve as a pioneering example in other areas was another success factor for success. Although these pipe manufacturers have not been the only actors involved in advancing self-regulation processes in the country, the workings of this Agreement was able to show how a sector can overcome corruption problems, fighting as a mobilized and joint team.
- **Collective work for a common purpose:** the committed participation of each of the companies proved to be an important element in the experience. The presence of the larger companies in one or another way drove the process. It could be argued that the impact of small manufacturers on the Agreement was limited, given that generally speaking those who drive prices and market behaviors are the larger players.

The fact that all companies faced the same problem and decided to make a joint contribution to finance the supervision of the process also had important effects on the commitment to the process, as well as creating the understanding and belief that this challenge would bring common benefits to all.

Some participants stated that the presence of companies with anti-corruption policies already in place was also decisive, since they encouraged other companies to assume commitments without having anything to lose but rather much to win, since this way the entire sector would advance as a group in the definition of ethical agreements.

- **Make up and contribution of the delegates:** although company delegates had different profiles, they were characterized by their positive human qualities and by their capacity to contribute conceptually to the working sessions. Likewise, their openness to change despite their initial resistance was a key element in the process, because it enabled them to accept pursuing a common objective.

- **Efficient validation process within companies** between working sessions a solid internal dynamic emerged that brought company directors into the discussions, thus enabling the periodical review of the commitments established during the working sessions by the management staff of companies.
- **Accompaniment by a Third Party like TRANSPARENCIA POR COLOMBIA:** the participants acknowledge that TRANSPARENCIA was able to clearly identify the essential aspects of the problem, guide the heated discussions and objections that arose around critical topics, and propose ways to address them. Its mediation and capacity to visualize and anticipate problems and its support in the design and orientation of clear methodological procedures also represented important factors for success.

### **3. Lessons learned and methodological recommendations**

One year later, after the signing of this first Anti-corruption Sectorial Agreement with eleven national and international companies that manufacture pipes for water supply and sewage systems operating in Colombia, we present some simple lessons learned that may be useful when undertaking similar processes:

#### **Transparencia recommends:**

- Assure sufficient funding for the development of the project.
- Involve actors at the highest Company levels, since success depends on the effective commitment by Directors.
- Have the necessary time commitment available to delve into each of the issues.
- The point of reference for all discussions must always be the National interest, over specific needs of individual businesses.
- Throughout the process maintain confidentiality in all issues in order to create confidence.
- Interact with and listen to all participants on an equal basis, regardless of each company's sales volume in the market.
- Remain focused on ethical issues and on the long term vision, over short term situations and discussions.
- Coordinate all issues with up-to-date National Legal and Commercial legislation as the basis for the Agreement.
- Issues addressed during the process must also be cleared with the main offices of the Companies and with representatives of other countries where the Company conducts businesses.
- The Agreement must be followed up and supported by other parallel work in the Public Sector, to prevent corruption risks arising from the State.
- Have a clear profile of the delegates of companies keeping in mind their command of the issues at stake, from the legal, technical and commercial aspects, their decision-making power, and their direct access to the highest decision-making levels of the Company. The participation of two permanent delegates per company in the process is recommended.
- Maintain an open and dynamic summoning strategy
- Guarantee the participation of a permanent legal advisor.
- An adequate information management and communication system within the Companies is necessary for effective implementation of the Agreement.

**Companies must:**

- Comply with the parameters initially established and guarantee their permanence and participation during the entire process as proof of their corporate commitment to the change being sought.
- Internally validate each phase of the work with sufficient rigor and depth.
- Internally strengthen the capacity to manage crisis situations and tense situations stemming from resistance to controversial issues and possible disagreements among competitors.

**The Association must:**

- Qualify the summoning process: the success of an experience like the present one depends on the participation of all Companies, if possible from the very beginning, in the building of the Agreement, therefore requiring a very clear and precise definition of strategies aimed at keeping all actors involved and committed throughout the entire process.
- Permanent participation is of vital importance because it provides Companies with the Association's support contributing those key elements that determine the role the Association can play in the Agreement's implementation and follow up, as well as with providing new experiences as references for its affiliated companies in other sectors.
- Technical support for the Ethics Committee: the recommendation is that this duty be assumed by the association.

#### 4. Threats and opportunities.

##### Opportunities

***Internal policies against corruption in some State agencies:*** some Agencies have made progress in defining explicit policies and the issuing of internal regulations forbidding the acceptance or receipt of gifts and invitations, among other things, by public officials. Policies like these are starting to show signs that measures are also being taken to counteract corruption in the public sector – the main client of these Companies.

***Progress made in transparent (procurement) purchases:*** although there is still a great deal to be done, the country has made progress in establishing rules for secure public purchases (procurement) guided by principles of transparency aimed at reducing vulnerability to corruption.

***The existing business and legal context:*** The Colombian Code of Commerce establishes rules on good business behavior based on free and loyal competition, respect for the rights of consumers and restrictive trade practices. These principles provide the chance to develop a self-regulation experience like the present one, since they are created in a theoretical context that – from a legal perspective - promotes the predominance of good commercial practices.

***Other private sector self-regulation experiences in the country:*** they nourish the experience from two perspectives. On one hand, they encourage companies to agree on common rules in view of the evidence that private groups from other sectors have already achieved this, and, on the other, some of their agreements have proven to be important reference points as supports in decision-making for various issues.

***The Consolidation of Wills among sectors:*** some initiatives between actors of the private and public sectors aimed at adopting a minimum set of parameters by consensus to facilitate integrity scenarios are making important progress. One example is the Public and Private Ethics Pact in State Procurement, signed in October 2004, by the Attorney General's Office of the Nation, the

General Controller of the Republic and the Confederation of Chambers of Commerce, in alliance with the Office of the Vice-president of the Republic.

### **Threats**

***Uncommitted Competitors:*** the existence of other competitors unwilling to accept “the rules of the game” proposed by the Agreement leaves the opportunity open for this group to adopt and develop improper practices that may influence decisions in their favor, thus weakening the solidity of the Agreement by encouraging committed Companies to resume illegal commercial practices to stay in the market.

***Changes in market trends:*** in the future new product marketing schemes may arise, with its own commercial logic contrary to the goals and terms of the Agreement convened to by the participating companies. This threat could blur the fine line that separates commercial policies from corrupt practices.

***Avenues of Exception in Public purchases:*** despite the progress made so far, there are still gaps in legislation given that not all aspects of the bidding process are regulated. In addition there exist means of exception in purchasing policies that leave the doors open to corruption.

***Gaps in Colombia's Criminal Code:*** the Code does not define certain behaviors or activities, such as acts of bribery between private actors.

***Administrative and financial disorganization in State agencies:*** when simpler and more visible processes and proceedings are put into practice for everyone, and more transparent budgetary managements become the norm, only then will the exercise of identifying or preventing the development of corrupt practices cease to be difficult.

***The perception of Impunity:*** many State Agencies of Control responsible for of investigating and applying sanctions to corrupt individuals and of imposing disciplinary penalties are perceived as weak. The quiet coexistence with these practices and the social tolerance surrounding them have led to a certain environment or degree of impunity.

***Lack of guarantees when formulating accusations:*** even though all citizens have the duty to report cases of corruption that they are aware of or are witness to, it is also true that most fear doing so. Furthermore, the complexity and slowness of those procedures designed to receive and attend accusations or complaints has discouraged social and institutional actors from responding to this call.

***Interference of politics in public services:*** this phenomenon has resulted in a high degree of “politization” of the Agencies providing public services. This is reflected, for example, in the fact that managerial and administrative staff selection in public companies does not always answer to suitability criteria, or that decisions like the awarding of contracts are not guided by technical criteria. Furthermore, traditional political campaign funding schemes have permeated both public administration and private companies, establishing links that exert undue influence on management and decision-making.

These threats, identified by the group of companies that participated in the establishment of the Agreement, also present challenges that will have to be met and overcome in the development and implementation of the Agreement.

## 5. Challenges for the future

The challenges to be faced by this project comprise various types: those for the participating Companies, those implicit in the Agreement as such, and those that arise for the State.

### Company challenges

- **Making the terms of the Agreement a reality:** the challenge consists in undertaking an aggressive campaign of disseminating the spirit of the Agreement among company employees and among all interested groups. Furthermore it is imperative to create a strategic reorientation process that enable policies to reflect those company guidelines and measures that have been agreed to, and at the same time promoting the principles of the Agreement to distributors, intermediaries and sales representatives.

For the future, once the Agreement's policies and measures start to be implemented, the company as a whole should be effectively committed to the creation of an honest environment with transparent processes of management and control.

Efforts should then be aimed at preventing and controlling corruption risks in all companies as well as their distribution chain, in which the exercise of self-regulation is fundamental.

- **Aim for long term prevalence of a solid ethical conviction vis-à-vis the Agreement,** thus gaining from the commercial effects stemming from the elimination of corrupt practices. This assumes that a transformation in the culture and procedures of companies has in fact happened. This is clearly a long term challenge. Just as in the past, processes of "total quality" procedures and environmental protection controls, among others, became well positioned in the private sector; the challenge today consists of fighting for the inclusion of ethics as an integral part of the business vision.
- **Keep an open invitation for other companies to join the Agreement,** since it is not exclusive to the group of companies that have initially signed on. With just the adherence of one of the affiliated companies that participates in bids and has not signed the Agreement as well as the remaining five manufacturing companies that do not belong to the Association, 100% of the sector's companies would be sharing the same business behavior rules. Should this challenge be ignored, the threat of these other competitors incurring in improper business dealings will continue to exist, creating the risk or temptation for companies that have signed on to return to non-transparent practices to stay in the market.
- **Recognize and accept the changing nature of the Agreement:** the current terms will be exposed to external threats such as the undue influence of politicians in the public services sector, the gaps in the legal system, the weak presence and functioning of the State, among others and, therefore, a continual analysis of risks will be required, as well as a periodic review of policies and measures, and eventually the potential re-definitions of penalties.

In this sense it will be necessary to be alert for potential cracks in the Agreement. Private companies are used to the need to move ahead and even to taking risks in the business environment vis-à-vis clients or distributors; criteria and mechanisms for detecting the change of

identity of distributors, special clients or wholesalers –another category for business agents - would enable them to avoid being out of step with the Agreement, as well as avoiding the eventual implications of cases of non-compliances by distributors, intermediaries and sales representatives.

- **Respect for the decisions of the Ethics Committee and the guarantee of sufficient institutional support** with delegates of unquestionable suitability, recognized for their moral standards and honesty, is a fundamental element for Companies in terms of instilling confidence in this process. The Committee is to be composed of representatives from the Association, ACODAL, the Presidential Program for Modernization, Efficiency and Fight against Corruption, and by an independent third party delegate named by the Companies. ACODAL feels its participation in the Committee must be limited to a circumscribed period of time at the beginning stages, since it considers itself to be playing the potentially unethical role of witness and judge simultaneously. TRANSPARENCIA POR COLOMBIA, by the Companies' request, will act during the first six months as advisor to the Committee, guiding the proceedings, making suggestions, promoting the Agreement, and strengthening this stage.
- **The importance of reliable information** in the supervision of compliance of the Agreement is an on-going challenge. Corrupt practices usually cannot be easily documented or tracked down. It is therefore difficult to obtain evidence, and reports are not always reliable. On the contrary, they can be hurriedly manipulated to harm a competitor.
- **Apply and, if necessary, review the Penalties.** Since it is generally the case that for many companies, social pressure is an exemplifying penalty; for others this may not prove sufficient, it become relevant and necessary to conduct a mid-term review of the penalties, to assure that the commitment of companies and their distribution chain cannot be easily set aside in light of potential benefits or advantages brought about by non-compliance.
- **Take advantage of this experience of self-regulation as a model for businesses in the fight against corruption,** at a time when the private sector's joint responsibility in this phenomenon is acknowledged at the international level.

### **Challenges for the State**

Bearing in mind that the Public Sector is the main customer of those companies that have signed on to the Agreement, the challenge lies in attaining the government's acceptance, promotion and dissemination of this self-regulatory Agreement and, above all, the adoption of similar exercises among public utility companies that purchase pipes.

Achieving the establishment of incentives for self-regulation processes, as well as the inclusion of anti-corruption public policies among the pre-requisites for participation in the bidding processes based on this past experience, would be an interesting challenge.

### **The initiation of a second phase**

On the request of the Companies, TRANSPARENCIA POR COLOMBIA is present in the development of strategies aimed at implementing the agreement and strengthening its compliance among its signatories. The following steps have been anticipated:

- Establishing each Company's contribution in the implementation of the strategies.
- Setting the Ethics Committee into motion and defining its internal regulations.
- Setting up the Promotional Working Group with members of the Companies that have signed on as well as the administrative and technical support of the Association. (ACODAL)
- Designing and implementing the communications strategy to disseminate the Agreement within the Companies and their respective interest groups.
- Establishing and implementing channels for reports and consultations for the Companies and the Association.
- Preparing documentation to assist in the implementing of measures on the Agreement's scope.
- Evaluating the compliance of the Agreement periodically, bearing in mind the opinions and comments of all the players or members involved.