

1 A Case Study of Siemens' Violation of Business Ethics in 2 Argentine Based On Stakeholder Theory

3 Dr. Zhu Wenzhong¹

4 ¹ Guangdong University of Foreign Studies (GDUFS)

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6

7 **Abstract**

8 Hand in hand with prosper of International business brought by globalization, many ethical
9 problems have been surfacing in the past decades: bribery, corruption, human rights issues,
10 etc. Business ethics, as an academic discipline as well as a business practice, is becoming the
11 focal point of waged and animated debate. The increasing attention on it generates many
12 relative theories, among which Freeman's stakeholder theory stands out. This paper, backed
13 by Freeman's stakeholder theory, conducts a case study of Simens' violation of business
14 ethics by analyzing its recent bribery scandal in Argentina. After a detailed analysis of the
15 interests of Siemens' stakeholders, it draws a conclusion of Siemens' severe violation of
16 business ethics, and thus suggests some solutions.

17

18 **Index terms**— Simens Telecommunication; Business Bribery; Stakeholder Analysis.

19 **1 Introduction**

20 Business ethics is a form of applied ethics or professional ethics that examines ethical principles and moral or
21 ethical problems that arise in a business environment. To put it in a simple way, business ethics involves the
22 application of standards of moral behavior to business situations.

23 Despite the fact that the concept "business ethics" was firstly proposed in 1970s and hailed as oxymoron, it
24 witnessed a waged and animated debate as well as increased public awareness ever since. On one hand, there
25 is a huge growth of number of businessmen who realize that pure profit-oriented corporate operation can not
26 stand permanently in a global market where customers' ethic awareness is increasing; on the other hand, more
27 and more companies find themselves time and again stuck in ethic dilemmas. For instance, bribery, as one of
28 the notorious business ethical problems, has surfaced as important issues in an increasingly interdependent world
29 economy.

30 The increasing attention on business ethics not only takes place in business practices, but also in academic
31 fields. Scholars' study on business ethics also gave birth to a famous theory: stakeholder theory, put forward
32 by R. Edward Freeman, which in turn serves as the theoretical foundation of business ethics study. The theory
33 attempts to address the "Principle of Who or What Really Counts" by identifying the stakeholders in business
34 ethics practices.

35 Based on business ethics and stakeholder theory, this paper proposes to conduct a case study by analyzing
36 Siemens' latest business ethics violation—the Bribery Scandal in Argentina. Following the analysis, suggestions
37 pertinent to this issue are also put forward. What is a stakeholder?

38 **2 II.**

39 **3 Literary Review**

40 The earliest definition offered by an internal report of Standford Research Institute in 1963, they define it
41 as those groups that directly influence the organization's existence. Freeman continues to employ this term

5 THE EFFECT OF STAKEHOLDER THEORY IN THE STUDY OF CSR

42 by further defining it as those groups that are so vital to the organization that they dominantly affect the
43 organization's survival and success and can also be affected by the actions of the business (Freeman, 1984). The
44 term "stakeholder" is a variant of the familiar and traditional idea of stockholders-the investors in or the owners
45 of business. It has experienced an evolution and progress in its scope and range.

46 In the traditional view, the stockholders or the shareholders are the owners of the firm, therefore, a firm has
47 binding fiduciary duty to give the top priority to stockholders by satisfying their needs in the first place and
48 increasing their output. It is based on the inputoutput model in which firms have to only address wishes and
49 benefits of parties closely pertinent to its operation: investors, employees, suppliers, and customers ??Donaldson
50 and Preston, 1995). is typically presented in Freeman's stakeholder theory.

51 4 b) Freeman's Stakeholder Theory

52 As in Freeman's Strategic Management: A Stakeholder Approach, the stakeholder theory is a theory of
53 organizational management and business ethics that addresses morals and values in managing an organization.
54 It identifies and models the groups which are stakeholders of a corporation, and both describes and recommends
55 methods by which management can give due regard to the interests of those groups. In short, it attempts to
56 address the "Principle of Who or What Really Counts.

57 In Freeman's stakeholder theory, stakeholder are not only those people who have direct stakes in the firm
58 but also those who are equivalently influential as well, especially in affecting reputation and public image, but
59 their stake is more representational of public than direct. Stakeholder theory argues that every legitimate person
60 or group participating in the activities of a firm do so to obtain benefits and that the priority of the interests
61 of all legitimate stakeholders is not self-evident. From this perspective, the groups of stakeholders expand to
62 government and social institutions etc.

63 In his book Strategic Management: A Stakeholder Approach, Freeman outlines groups of stakeholder in both
64 internal and external environment.

65 Internal stakeholders are as follows: employees, managers, and owners.

66 External stakeholders are: suppliers, customers, society, government, creditor, shareholders, competitors,
67 communities, academics, NGOs or activists, environmentalists, media, etc.

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78 government and social institutions etc.

79 In his Strategic Management-Analytical Methods for Stakeholder Management, Freeman (1984) clearly comes
80 out with the stakeholder management theory which refers to the management activities management of an
81 enterprise carries out to balance the stake requirements of stakeholders. Compared to the traditional shareholders
82 supremacists, this theory holds that the development of any enterprise is closely related to the investment and
83 participation of each stakeholder and the pursuit of an enterprise is the entire stake of all stakeholders instead of
84 some major stakes.

85 Stakeholders not only include the shareholders, creditors, employees, consumers, suppliers etc. of the enter-
86 prise, but also pressure groups such as government, local residents, local communities, medias, environmentalists
87 etc. even the natural environment, future generations etc. who may be directly or indirectly affected by the
88 operation of the enterprise. These stakeholders are closely related to the development of the enterprise, they
89 share the operation risk of the enterprise, some pay a cost for the operation of the enterprise, some supervise
90 and constrain the enterprise, and the decisions of the enterprise must take their stakes into consideration
91 and accept their constraints. In this sense an enterprise is the institutional arrangement of intelligence and
92 management professionalization investment, the development of an enterprise relies on the quality of responses
93 to the requirements of each stakeholder instead of only shareholders. This corporate management idea explains
94 the corporate performance appraisal and the core of management, which lies foundation for the later theory of
95 performance appraisal c) Stakeholder Theory and CSR

96 5 The Effect of Stakeholder Theory in the Study of CSR

97 The are many common grounds between CSR and stakeholder theory as both are concerned about the relationship
98 between the enterprises and their shareholders and the enterprises and individuals and social group apart from
99 their stakeholders; however the two are different concepts. What they study and care are problems of different
100 levels and categories. CSR considers the influence of enterprises on society from the perspective of the whole
101 society and care the relationship between enterprises and the society; while stakeholder theory care more about

102 the relationship between enterprises and stakeholders from the perspective of the enterprises. Ever since the
103 establishment of CSR its supporters spread from various institutions, scholars and ordinary people, which helps
104 in the development of CSR. However this theory encountered lots of problems in practice, and needs further
105 study and improvement. In the process of seeking solution to these problems, we usually introduce stakeholder
106 theory to help to resolve those problems.

107 **6 Y i. Modification of Shareholder Primacy Theory by Stake- 108 holder Theory**

109 The biggest barrier to the implementation of CSR is the Shareholder Primacy rule to some extent, Friedman et.
110 holds that the only purpose for the existence of enterprises is to maximize the profit and shareholder benefits.
111 Their three interrelated propositions are a. shareholders should reserve the right to control the enterprise; b.
112 managers are entrusted the responsibility to singley serve the interest of shareholders; c. the object of enterprises
113 is to maximize the wealth of shareholders; while stakeholder theory holds that i, stakeholders who are affected
114 by the enterprise have the right to participate enterprise decision-making; ii, managers are entrusted with the
115 responsibility to serve the interests of all stakeholders; iii, the object of enterprises is to enhance the interests of
116 all stakeholder not just shareholders'. Stakeholder theory holds that enterprises are 'contract unities' consisted of
117 many a stakeholders and the investment comes not just shareholders but also employees, suppliers and creditors
118 of the enterprise.

119 Shareholders provide the material capitial and other stakeholders provide not only material capital but also
120 human capital which is equivalent to material capital in term of significance particularly in today's knowledge
121 economy. And in some aspects the signifiance human capital exceeds the signifiance of material capital.
122 Enterprises are not simply the 'aggregation' of material capital any more but a kind of 'institutional arrangement
123 of goverance and management of professional investment' and in essence they are the aggregations of various
124 contracts. The risks of enterprises should not just be bore by shareholders and other stakeholders should also share
125 the risks, as a result the owners of enterprisers should not be confined to shareholders and all the stakeholders are
126 the owners of enterprises. The rights of stakeholders are equal and independent, they jointly own the enterprises.
127 While challenging the shareholder priamcy principle, stakeholder theory clears the way for the development of
128 CSR theory in that CSR theory has long been holding that the only mission of enterprises to increase shareholder
129 interests should be changed and thinks that enterprises should view problems from a higher ground and consider
130 their relations with all the stakeholders, the entire society and shoulder some social responsibility.

131 ii. Indenti fication of Subjects for Shouldering Social Responsibility and Defining Responsibilities

132 Viewing from the various definitions of CSR, it is easy to conclude that the beneficiaries of enterprises'
133 shouldering social responsibilities are people of the society including investors, employees, clients, creditors and
134 beneficiaries of enironement and resources, social security and welfare etc. Through shouldering corresponding
135 social responsibilities and taking social benefits as target range, enterprises can maximize their contributions to the
136 sustainable development. And the responsibilities they take are legal, economic, moral, cultural aspects, however
137 today there still lots of people stand against CSR. They start from the point where the subjects and contents
138 of obligations of corporate social responsibility are vague and think that enterprises should not shoulder social
139 responsibilities. Some business and law scholars even think there is not subjects for corporate social responsibility
140 in that there are no satisfactory answers for questions such as the whom should enterprises responsible for, whom
141 can be the subjects that urges enterprises to shoulder responsibilities? To vaguely say that customers, ordinary
142 people and the social communities these enterprises belong to is not enough because the groups can hardly be
143 obligees to exist meanwhile they also hold that the content of social responsibilities is also vague.

144 **7 World**

145 Currently the understanding of stakeholders generally include the first class stakeholders that affect the existence
146 of enterprises, and the secondary stakeholders who do not affect the existence of enterprises or are affected
147 by the enterprises. Though the definition is extensive, it indentifies stakeholders as shown in the following
148 basic framework: investors, employees, customers, suppliers, creditors, trade associations, local communities,
149 political groups etc. Many foreign scholars studying CSR and stakeholder theory holds that stakeholder theory
150 can be introduced to the study of CSR, ??arroll (1991) thinks that stakeholder theory should be applied to
151 the study of CSR and it can be used to identify the orientation of CSR, and by the identification of each
152 relevant stakeholder group the range of CSR can be identified. Clarkson (1995) stakeholder theory can provide
153 a 'theoretical framework', in which CSR can be identified as the relations between enterprises and stakeholders,
154 for the study of CSR. Just as Evan and ??reeman (1993) had it that 'though it cannot replace CSR, stakeholder
155 theory can be regarded as an important condition for the study of CSR and it can specify the subjects the enterprises
156 should be responsible for'. In this stage when the theoretical research of CSR still needs to be carried
157 further, we can adopt stakeholder theory to define the range of responsibilities enterprises should carry. This
158 is both possible and necessary and enterprises can be responsible for each stakeholders in the framework of
159 stakeholder theory.

160 iii.

161 8 Case Description

162 Siemens AG is a German multinational conglomerate company headquartered in Munich, Germany. Siemens and
163 its subsidiaries employ approximately 420,800 people across nearly 190 On Dec. 13, 2011, The Securities and
164 Exchange Commission charged seven former Siemens executives with violating the Foreign Corrupt Practices Act
165 (FCPA) for their involvement in the company's decade-long bribery scheme in Argentina to retain a \$1 billion
166 government contract to produce national identity cards for Argentine citizens.

167 9 Communities

168 According to the SEC's complaint filed in U.S. District Court in Manhattan, the scheme lasted from approximately
169 1996 to early 2007. Initially, in the 1990s? Menem government planned to implement all national electronic ID
170 cards, known as Documentos Nacionales de Identidad (DNI) for every Argentine citizen. In order to obtain the
171 contract which is total of 1.26 billion U.S. dollars, Siemens bribed Argentine government officials with 70 million
172 U.S. dollars through intermediary. Menem government finally signed the contract with Siemens in 1998.

173 But a change in Argentine political administrations foiled the contract: after the next President Fernando De
174 La Rua came into office, some officials questioned the contract on the ground that the cost of each electronic
175 ID reported by siemens was twice what the government estimated. Therefore, the government announced the
176 suspension and cancellation of the contract. In a political change and economic crisis, Duhalde succeeded De
177 La Rua as the president. During his term of office, Simens was told by the intermediary that a 27 million U.S.
178 dollars bribery could "resurrect the contract". In order to revive the contract, Siemens paid additional bribes in
179 a failed effort to Kirchner government until 2004. When the company later instituted an arbitration proceeding
180 to recover its costs and expected profits from the canceled contract, Siemens paid additional bribes to suppress
181 evidence that the contract originally had been obtained through corruption.

182 iv.

183 10 Case Analysis a) Stakeholders of Siemens

184 Bribery has been defined as "the offering, giving, receiving, or soliciting of something of value for the purpose
185 of influencing the action of an official in the discharge of his or her public or legal duties." (Fritzsche, 1998).
186 The bribe is the gift bestowed to influence the recipient's conduct and the outcomes of decisions wherein the
187 nature and extent of the influence are not made public. The item of value may be direct payments of money or
188 property. It may also be in the form of a kickback after a deal has been completed. It may be any money, good,
189 right in action, property, preferment, privilege, emolument, object of value, advantage, or merely a promise or
190 undertaking to induce or influence the action, vote, or influence of a person in an official or public capacity.

191 Based on Freeman's stakeholder theory, the first step in the analysis of this case is to identify the relevant
192 stakeholders and determine the positive and negative impacts on the stakeholders. The stakeholders affected
193 by Siemens' bribery in this case include Simens' stockholders; Siemens' employees; Siemens' supplier; Local
194 community; the Argentine government; Argentine community; Simens' competitor; Siemens' competitors'
195 employees and stockholders. b) Impact on stakeholders For Siemens' stockholders, the contract with the Argentine
196 government would increase profit and gain market share for them. Even though bribery was needed to win the
197 contract, the profit yielded in the contract can not only cover the bribery but also trigger more.

198 For Siemens' employees, the profit yielded from the contract would also benefit themselves a lot. It is likely
199 that their pay got increase, bonus and allowance met a growth, working environment had much improvement etc.

200 For Siemens' suppliers, the growth of Siemens means the growth of themselves as long as they are in a
201 cooperative business relationship. The increase of Siemens' business would lead to more orders to Siemens and
202 more profit for them.

203 For the local community, the contract would bring cascade effect: it would create more jobs for local people.
204 The local community would benefit from the employment of its citizens which would bring money into the
205 community and provide additional tax revenues. The prosper of Simens' business can also cast a positive influence
206 to relative industries.

207 For government, Firstly, the bribery would reduce freedom of choice by altering the conditions under which a
208 decision is made. Its appeal of additional gains for some government officials would lure them to select the less
209 attractive alternative which provides less total satisfaction. By doing so, it adversely would disrupt the official's
210 decision and undermined fair competition among the industry. If the De La Rua administration's doubt that
211 the cost of each electronic ID reported by Siemens was twice what the government estimated is true, then the
212 government has to pay the price for the hidden payment with more governmental expenditure, which leads to a
213 greater loss of money of the government.

214 Secondly, it would damage the authority, prestige and force of laws and regulations. The bribery circumvented
215 the legal system and obtained illegal For Argentine community, From the perspective of whole economy system
216 and environment, it would: ?. hinder fair and just competition and disrupt the order of the whole economic
217 system. Instead of gain market share with quality, businesses would turn to shortcuts like relationship with
218 government officials ?. Result in allocating more resources to a less desirable alternative. The failure of the
219 allocation system would lead to stagnation of technology, service and the whole industry structure. ?. Increase

220 the cost of transaction, and do harm to public's interest. The higher cost would result in higher prices or even
221 monopoly.

222 From the whole society, it would: ?. Cast damage to social credit and rot the social conduct. On one hand,
223 the prevalence of bribery destroys the mutual trust and equity of businesses; on the other hand, businesses with
224 good compliance to laws are suppressed and discouraged. ?. Violate code of ethics. ?. Breed more and more
225 relative crimes. Bribery is always accompanied with business secret theft, deception and evasion of taxes.

226 For Argentine people, the greater expense on the ID project would result in more outflow of taxpayers money
227 from their pocket in that the misconduct and wrongdoings of officials would be shared by all the community.
228 The bribery would harm taxpayers as well as undermine public support for governments.

229 For Siemens' competitors, Siemens' bribery would deprive them of fair competition in this project, and further
230 distort trade. The loss of the competitors is invisible, though, but solid.

231 For Siemens' stockholders, employees and local community, the loss of the contract would provide lower profits
232 for the stockholders, fewer jobs for the employees and less money in the competitors' local community.

233 Taking the interest of all stakeholders into account, Siemens violated business ethics seriously, even though it
234 brought some illegal benefits to its own stockholders.

235 V. Suggestion a) Internally: shaping organizational ethical environment Siemens' bribery scandal is by no
236 means the first violation of business ethics. Back to 2008, its decades-long bribery scheme with 1.3 billion U.S.
237 dollars shocked the world. Subsequently, it was accused of posting business secret of competitors. Its continuous
238 scandal is an indication that Siemens fails to form an ethical corporate culture and ethical environment. To make
239 a change of the current scandal and prevent any further ones, shaping organizational ethical environment should
240 be Siemens' top priority.

241 Shaping organizational ethical environment goes through four stages, each of which demands different actions
242 of organization. The four stages are: ethical awareness, ethical reasoning, ethical action, and ethical leadership.

243 i. Ethical awareness Ethic Awareness is the foundation of an ethical climate. Through ethical awareness,
244 employees learn how to identify problems and how to resolve them. In this stage, code of conduct must be
245 established to support ethic awareness. Formal statement that defines how the organization expects and requires
246 employees to resolve ethical questions must be delivered. A code of conduct typically addresses issues pertaining
247 to; preferred style of dress, avoiding illegal drugs, following instructions of superiors, being reliable and prompt,
248 maintaining confidentiality, not accepting personal gifts from stakeholders as a result of company role, avoiding
249 racial or sexual discrimination, avoiding conflict of interest.

250 ii. Ethical reasoning Since codes of conduct cannot detail a solution for every ethical situation, so corporations
251 provide training in ethical reasoning.

252 Courses in Ethical Reasoning teach employees to reason in a principled way about moral and political beliefs
253 and practices, and to deliberate and assess claims for themselves about ethical issues. Students examine the
254 competing conceptions and theories of ethical concepts such as the good life, obligation, rights, justice, and
255 liberty with a focus on developing the ability to assess and weigh the reasons for and against adopting them to
256 address concrete ethical dilemmas. Employees in these courses may encounter a value system very different from
257 their own that calls attention to their own ethical assumptions.

258 iii. Ethical action Ethical action involves helping employees recognize and reason through ethical problems
259 and turning them into ethical actions. It takes preparing, assessing, deciding, implementing, and reflecting.
260 Whenever employees encounter ethical dilemmas or problems, Siemens should help them out by applying their
261 code of conduct to practice: identifying the issues, assessing them, deciding solutions, implementing solutions and
262 reflecting them. The current Siemens' bribery scandal is good example for its employees to review and retrospect
263 the ethical problems concerning

264 11 iv. Ethical leadership

265 In this stage, executives must demonstrate ethical behavior in their actions. Leaders are first and foremost
266 members of their organizations and stakeholder groups. Since they hold most of the senior positions and are
267 decision makers, their values, vision and ethical standard case great impact on subordinates and thus impact
268 the whole organization. To shape ethical conduct in an organization, leaders' behavior, actions are needed to
269 demonstrate their support and determination.

270 In Siemens' bribery scandal, most of the unethical behaviors were conducted by senior executives, which
271 attribute the frequent news of its violation of business ethics. Thus, in Siemens, to shape ethical conduct
272 and maintain ethical culture, leaders must firstly own their ethical criteria and behave ethically accordingly. To
273 counter bribery, wider cooperation must be conducted between countries and these conventions and organizations.
274 Under the globally accepted guidance and principles, Signatories countries must adopt national legislation to fight
275 against bribery. Government should take regular review of business' and officials' compliance to these laws by
276 establishing stricter supervision system.

277 Secondly, external supervision involves power of media. Media is the oral power of reining any unethical
278 behavior. Thus, media should pay more close attention on business ethical issues, track and make more exposure
279 of unethical firms, and encourage those ethical ones.

280 Thirdly, the whole society should also participate in this campaign. When the whole society establish a
281 common principle of "zero tolerance" to bribery, and monitor it ceaselessly, businesses dare not commit bribery

13 CONCLUSION

282 because of their consideration of corporate image. The more and more serious social attitude towards bribery
283 would make businesses think twice before they leap.

284 12 VI.

285 13 Conclusion

286 This paper conducts a case study of Siemens' violation of business ethics by employing Freeman's stakeholder
287 theory. Based on Freeman's theory, stakeholders of a firm should not only include its stockholders, instead, it
288 covers a wide range from its internal employees to external suppliers, government, society, and even competitors.
289 In the case of Simens' bribery scandal in Argentina, the present author outlines its stakeholders and conducts
290 a detailed analysis of the impact of Simens' bribery on each stakeholder. The conclusion follows the analysis is
291 that Siemens seriously violated business ethics by terribly detrimenting the interest of its stakeholders.

292 The analysis of Siemens' unethical bribery scandal also triggers the author's further discussion about an
293 international issue: bribery Bribery, as one of the notorious business ethical problems, has surfaced as important
294 issues in an increasingly interdependent world economy. No longer seen purely as a morality play, the accepted
295 world view of corruption and bribery today is that they hinder competition, distort trade and harm consumers
296 and taxpayers as well as undermine public support for governments. Therefore, to fight against bribery, suggested
297 solutions are also provided. On one hand, internal ethical environment shaping is of urgent need; Simens should
298 immediately follow the four stages of the structure of ethical environment from ethical awareness to ethical
299 leadership to improve its current ethical predicament. on the other hand, external supervision and cooperation
300 from international and national community to media is also in demand.

301 Although business ethics is in an actual fact as old as business, however, it didn't got enough attention until
302 1970s. As the ethical problems keep surfacing and disrupting the business order, business ethics, as an academic
303 discipline as well as a business practice, is on its way of gaining momentum. To probe into it and make this
oxymoron a better guide of business code of conduct, more and more efforts are still in much need. ^{1 2 3}



Figure 1:

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²© 2012 Global Journals Inc. (US) Year

³© 2012 Global Journals Inc. (US) Year interest, which is a contempt against laws and is detrimental to the implementation of laws.Thirdly, it would undermines attempts by governments to improve the overall wealth of the nation, diminish the image of government and governing party, and further lose people's trust.

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