

The Mannesmann trial: German business and union bureaucracy in the dock

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The most spectacular business trial in German postwar history began January 21. The *crème de la crème* of the German business and trade union elite must answer in Düsseldorf's 14th District Criminal Court to charges of "grave joint embezzlement" or being accessories to embezzlement.

The former chairman of Mannesmann's board of directors, Klaus Esser, the former supervisory board chairman, Joachim Funk, and board members Josef Ackermann (also chairman of the board of directors of Deutsche Bank) and Klaus Zwickel (at the time, chairman of the German engineering workers union IG-Metal) are standing trial. Also charged are the former head of the personnel department, Dietmar Droste, and the former chairman of the works committee, Jürgen Ladberg, who was also a member of the executive board.

In February 2000, in a concerted action, they had 57 million euros worth of pension claims and premiums paid to both active and former board members of Mannesmann. Esser alone received the equivalent of nearly 30 million euros from these payments. These are the biggest payouts ever received by German managers.

The public prosecutor charges that Esser did not block the takeover of Mannesmann by Vodafone so that he could enrich himself at the expense of his company. Initially, when proceedings were instituted in 2000, the prosecution spoke of "corruptibility" and "venality"—accusations that had to be removed from the charge sheet by decision of the court.

In November 1999, Chris Gent, the boss of the British mobile phone company Vodafone Airtouch, issued a takeover bid to the board of Mannesmann. The Germany company, which was founded in 1890, traditionally processed steel and iron. But in the 1980s it began to increasingly orient towards the mobile phone market, and, following a number of acquisitions, became, by the end of the 1990s, one of the largest telecommunications companies in the world.

The rapidly growing Vodafone Airtouch sought to extinguish the competitive threat from Mannesmann by acquiring the rival firm.

On November 18, 1999, then head of Mannesmann, Klaus Esser, rejected Gent's bid. The management of Mannesmann revived its "Project Friedland," the strategy it had employed to repel a takeover attempt by Thyssen AG in the 1980s.

One element of this strategy was a massive publicity campaign, for which Mannesmann spent more than 200 million euros, raising its stock market value and elevating its potential takeover price in a short period of time by over 70 billion euros.

Mannesmann attempted, unsuccessfully, to merge with the French telecommunications company Vivendi and AOL Time Warner Europe, and on February 3, 2000, Esser and Gent announced the "friendly takeover" of Mannesmann by Vodafone.

But the public prosecutor's office suspects Esser of forcing up the takeover price, not to block Vodafone's takeover bid, but to obtain a windfall for himself, along with one of Mannesmann's most important shareholders, the Hong Kong-based Hutchinson Whampoa company and its owner, Li Ka Sheng.

Hutchinson Whampoa was very interested in the takeover of Mannesmann. Mannesmann shares increased in value by more than 5 billion euros during the campaign. Because of an exclusion clause, Whampoa would not have been allowed to sell its shares until the following year, had the acquisition been blocked. It therefore had a vested interest in seeing the takeover succeed.

It is well known that from the end of January until the beginning of March 2000, a representative of Whampoa, Canning Fok, was in Düsseldorf to closely observe the negotiations of Esser and Gent. It was then that he offered Esser 10 million pounds as a supplementary premium if he agreed to the merger.

The former members of the board—Funk, Ackermann, Zwickel and Ladberg—who were part of the committee that agreed to such payments to Esser and others must also answer to the court. They are accused of acting as accessories to embezzlement because they failed to check the legal "appropriateness" of these payments. Esser is accused of being an accessory to embezzlement because he didn't make the proposal of these payments known to the supervisory board.

Nevertheless, most legal commentators assume that the accused can expect acquittal, because breach of trust crimes are juridically not clearly defined. A prerequisite for conviction is proof that the accused intended to abuse his control over someone else's property, knowing that the owner would be

damaged.

How the court will evaluate these and other facts in a trial that is expected to last for several months remains to be seen. In any case, there is nothing left of Mannesmann. The company has been broken to pieces and sold off, and there is no longer any mention of the 115,000 jobs that were lost.

The significance of this criminal case goes beyond the legal questions. The fact that some of the most important representatives of the German industrial elite are to stand trial for pocketing payments worth millions reflects deep concerns within sections of the ruling establishment.

They fear that social indignation could spin out of control if German business moguls behave as arrogantly as their colleagues on the other side of the Atlantic—openly raking in massive sums—even as they insist on the imposition of “American conditions” in Germany.

This is seen to be inopportune, especially following the collapse of the 1990s stock market bubble. Until three years ago the destruction of jobs and permanent wage cuts could be justified by rapidly rising share values and the establishment of a so-called “shareholder culture.” But today, executive pay has no relation to share prices and is regarded by workers as a sheer provocation. In the last year alone, compensation for German managers increased by an average of 14 percent.

However, there are also advocates of an aggressive capitalism à la the US, who are not prepared to capitulate to such moods. The chair of the CDU (Christian Democratic Union), Angela Merkel, for example, defended Esser and Ackermann, and called the trial a blow against Germany’s business prospects. The boss of Daimler-Chrysler, Jürgen Schrempp backed her up: “If in future public prosecutors and criminal courts are to decide on the compensation of company directors, we will have conditions resembling those of a planned economy.”

Ackermann has insisted that this kind of income is in accordance with the norm. And Esser declares at every opportunity that by multiplying share values while he was in charge, he “created value.” He does not mention, however, the fate of share values that slumped following the takeover and led to huge losses for as many shareholders.

The weekly paper *Die Zeit* got to the heart of the arguments: “Finally, the proceedings in Düsseldorf will begin an overdue debate on the question of once again uniting the market with morals. Why have so many bosses forgotten that earnings should come from services rendered, and not self-aggrandisement?”

Die Zeit is worried that these criminal wheelings and dealings could be seen as symptoms of a criminal system. “It is the lack of moderation of managers that has destroyed confidence in capitalism,” it writes. *Die Zeit* demands that the judiciary enforce certain business standards. Businessmen must feel “responsible for the social impact of a company—and not just concern themselves with filling their own pockets.”

As he entered the courtroom at the beginning of the trial,

Josef Ackermann grinned superciliously, giving the victory sign and telling journalists: “Germany is the only country where those who are successful and create wealth must stand trial for doing so.”

Klaus Esser accused the prosecutors of “defamation of character” and “stirring up animosity,” and said he saw nothing reprehensible in high executive premiums. In a “functioning market economy,” he said, the labour of those involved must be “rewarded in correspondence to their performance, success and the market.”

This provoked a wave of indignation and inflamed the debate. The vice chairman of the FDP (Free Democratic Party), Rainer Brüderle, stated: “Arrogant behaviour damages not only those involved, but also the image of our legal system.” Those involved in the court proceedings should at least show a little more tact and sensitivity, he said, since a functioning legal system is also an “advantage to German business.”

The chair of the SPD (Social Democratic Party) in North Rhine Westphalia, Harald Schartau, declared that the “fundamental difference between a democracy and a banana republic” is the independence of the judiciary. The former secretary general of the SPD, Olaf Scholz, called Ackermann’s statements cynical. Working people are being “ridiculed by the way the managers are behaving in Düsseldorf,” he complained.

Herman-Josef Arentz, committee member of the CDU and chair of the employees’ wing of the party, said, “Not only is the trial of these gentlemen damaging to business in Germany, but also their greed.” The daily paper *Süddeutsche Zeitung* described Ackermann’s behaviour as the “arrogance of power.”

But this debate cannot hide the fact that the policies that have made such excesses possible are being continued, by mutual agreement on all sides. The hopes of those seeking to restrain the excesses of German business are in vain. Their raised eyebrows are hardly being taken seriously.



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