Germany: Mannesmann execs acquitted in corruption trial

Justus Leicht
4 August 2004

On July 22, the Düsseldorf regional court delivered its verdict in the most spectacular corporate corruption trial in the history of post-war Germany.

On trial for criminal breach of trust were former chief executive of the Mannesmann conglomerate Klaus Esser, Deutsche Bank Chairman Josef Ackermann (a Mannesmann board member), the company's former board chairman, Joachim Funk, and former board member Klaus Zwickel (who is an ex-chairman of the IG-Metall trade union). Also charged were the former Mannesmann head of personnel, Dietmar Droste, and the ex-chairman of the company's trade union committee, Jürgen Ladberg, who also sat on the company's board.

The charges stemmed from the Mannesmann board's decision to pay out 57 million euros ($70 million) worth of bonuses and pension benefits to top executives after it had become clear that the company was to be swallowed up by its British cell phone rival, Vodafone. Esser alone pocketed 30 million euros. Because he was not a member of the board, he was only charged as an accomplice. The court had rejected a more wide-ranging charge against him to the effect that the severance package was a bribe to secure his agreement to the takeover.

Following an initial indication by the court in March of this year, the verdict came as no surprise. All of the accused were acquitted on all charges. The court agreed that there had been a clear violation of the Stock Corporation Act, but judged that such a violation was not a criminal offence. The state attorney's office, which laid the original charges, said it will appeal the court's decision.

The verdict was praised in media and political circles, because the court had dealt with the big business bosses like a priest treats his flock: moral appeals instead of prison sentences. "The real value of this trial is not in the judgement but in the accompanying remarks" was a typical comment found on the web site of news channel WDR. "It shows that the constitutional state was not prepared to interfere in the independence of the company but nevertheless warned of the need for moderation."

Sentencing top managers to jail would have been seen as injurious to "Germany as an economic base" under conditions in which the payment of fantastic salaries to company boards worldwide has become a matter of course since the 1990s. An acquittal without comment would have also been inappropriate, given that soaring incomes for industry bosses are a source of growing discontent for a general public that has been subjected to relentless cuts in wages and social conditions in the recent period.

In 1995, the head of the Deutsche Bank earned 36 times more than the average wage. In 2000, this ratio had risen to 286 times. The *Süddeutsche Zeitung* newspaper commented: "The discussion over rising incomes for managers would not have taken such virulent forms were it not for the fact that the dismantling of the welfare state is currently on the agenda."

The same newspaper wrote: "The presiding judge passed a moral judgement on the behaviour of those charged that left little room for lack of clarity. The trial will change attitudes in the boardrooms of German companies."

Harald Schartau, the labour minister for Germany's biggest state, North Rhine Westphalia (where the trial took place), remarked that all of those acquitted "should give some thought to their own contribution to the credibility of management in Germany."

The German federation of trade unions (DGB) noted that "the ethical issue of performance and appropriate payment has been put under the spotlight," and DGB executive member Dietmar Hexel remarked that the trial could be a "guideline for future behaviour."

The vice chairman of the conservative opposition, Friedrich Merz, welcomed the acquittals. "Criminal law and, in particular, the charge of breaching fiduciary trust was from the very beginning inappropriate to evaluate internal company procedures,” he said in a statement. Nevertheless, Merz conceded that the size of the compensatory payments was “questionable.”

The top managers themselves gave a very different interpretation of the judgement. Esser declared: “The court has stated that the charges laid against me were false.” Ackermann responded with his customary arrogance: “An acquittal is an acquittal.” Big business circles saw things the same way. Following the judgement, the share price for Deutsche Bank rose.

Ackermann will be able to retain all his posts, and Esser can hold onto his money, because those acquitted also have nothing to fear from a civil law trial. The Mannesmann company or its shareholders could theoretically claim compensation on the grounds that the excessive payments made to those involved in the takeover reduced the company’s worth and thereby reduced payments to shareholders.

In fact, however, nobody is prepared to take such a step: major shareholders had agreed to the takeover of Mannesmann by Vodafone. Vodafone had transformed Mannesmann into a company with a limited liability and was the sole owner after a so-called “squeeze-out” of remaining shareholders. Long-time Mannesmann shareholders were then unable to pose any demands. As Mainz law professor Peter Mülbert commented, “They would not be able to achieve the quota necessary to take legal action for repayment in favour of the company.”

After the court declared its verdict, German Justice Minister Brigitte Zypries said she is considering legislation requiring managers to declare their incomes.

The deputy chairman of the liberal FDP (Free Democratic Party) parliamentary fraction, Rainer Brüderle, called for limiting the influence of banks and trade unions sitting on company supervisory boards. Banks, he said, were involved in a conflict of interest when they acted simultaneously as major shareholders and creditors. Then the FDP politician demanded: “So-called Corporate Germany must be finally led into the epoch of globalisation. That means we need smaller supervisory boards with fewer trade unionists and less influence on the part of the banks.”

Nowhere has the call been heard, however, for an end to the dismantling of the welfare state, and nobody has contemplated calling upon the “fat cats” amongst employers and the wealthy to share out their wealth. On the contrary, the *Frankfurter Rundschau* expressly ruled out such an option: “One possibility consists of siphoning off big incomes with the introduction of a progressive tax rate. However appealing in theory, such a solution fails when it comes to putting it into practice. Currently, taxes on top incomes are spiralling downwards all over the world. In addition, there are sufficient means to avoid paying tax.”

The *Financial Times Deutschland* hopes that “in future the members of the remuneration committees of German corporate boards give more thought before throwing around other people’s money in the manner of Ackermann and Klaus Zwickel in the spring of 2000 in Düsseldorf.” This comment is not directed towards the thousands of Mannesmann employees who have lost their jobs and incomes as a result of the takeover, nor to the taxpayers who have been forced to cough up an additional 20 million euros for subsequent depreciation provisions by Vodafone. The *FT* is writing solely for the shareholders.

The case of Mannesmann is just the tip of the iceberg and the product of a protracted development. The globalisation of business and money markets has swept away the basis for the German system of “social partnership” and “co-determination.” Top managers now no longer have the slightest attachment to some vague “common interests” of the company, but feel themselves answerable only to shareholders.

In the course of the trial, Esser noted that dozens of managers in Germany have either pocketed compensatory payments such as his over the past few years, or are entitled to do so according to their contracts. After all, he commented, he had “created value,” and during his period as chairman shares had risen by 120 percent. Ackermann went even further, claiming that a billion in remuneration payments would be entirely “appropriate” to reward the services of Esser.