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Düsseldorf: Investment Magnet For U.S. Companies

The Editor interviews Ansgar C. Rempp, Partner, Jones Day.

Editor: Tell us about your background.

Rempp: I have been a corporate and transactional lawyer for 23 years, having spent 20 of those with Jones Day in New York, Frankfurt, Munich, and now Düsseldorf. I have two main areas of focus. Number one is cross-border M&A and private equity transactions involving several, and often a large number of, jurisdictions. Number two is advising corporate boards in connection with governance issues.

I opened Jones Day's Munich office almost exactly 10 years ago. That office has grown well over the decade and is today very well established. In fact, last year, JUVE, the number-one legal publication in Germany, conferred its "Law Firm of the Year in Southern Germany" award on the Munich office.

Now, I serve as partner-in-charge of the Düsseldorf office, which opened its doors on February 1, 2012. I also head our transactional practices throughout Germany, which include M&A, private equity, banking and finance, capital markets, real estate and restructuring and reorganization.

Editor: What practice areas are covered by the Düsseldorf office?

Rempp: A primary focus of this office is corporate counseling and M&A transactions. The Düsseldorf area is the industrial heartland of Germany. It's not only where the majority of the large German companies are located, but also home to many mid-sized companies with global operations. We recently added five lawyers to our M&A team and will continue to grow rapidly.

Düsseldorf is also the home of the most important and most active patent



Ansgar C. Rempp

court in Europe. Here, most of the large patent cases from throughout the Eurozone are being litigated. As a result, patent litigation is another major focus for the Düsseldorf office. In the patent litigation area, we are working on bringing people from Munich and other Jones Day offices to Düsseldorf, in addition to recruiting laterally.

Our third principal focus is antitrust. One of the three partners who initially transferred to Düsseldorf is a leading antitrust partner. The most important court dealing with antitrust matters in Germany is located in Düsseldorf. The German antitrust authorities are very close by in Bonn.

Although it is not a practice area, we also have a strong Japan focus in Düsseldorf because there is a large Japanese community here. Düsseldorf is the European headquarters for many Japanese companies. The common denominator is English, which of course is very well understood in this office, but we are still looking to hire a native Japanese speaker in order to bridge any language issue.

Editor: What are the driving forces in Düsseldorf that will be a source of your office's future growth?

Rempp: The Düsseldorf region is the location of the headquarters of a large number of corporations, both blue chips and midsize or family-owned corporations that are fully global. These are the types of corporate clients that Jones Day has been serving for decades, and they are mainly why we came here.

Because of its economic strength and its political stability, Germany will see substantial growth in inbound investment. Our Düsseldorf office will greatly benefit from that growth since the region hosts a lot of attractive targets. We see a large increase of U.S. investments in Europe generally, but especially in Germany. The main reason for that is that many U.S. corporations have significant amounts of cash sitting on their balance sheets that need to be invested. Also, Germany, in particular the Düsseldorf region, will experience rapidly growing investment activity from China. One of the lawyers we have recently hired for Düsseldorf is a Chinese native who focuses on these types of investments.

Editor: Our crazy tax laws have generated this frozen overseas cash.

Rempp: That's true. It makes sense for U.S. corporations to use that frozen cash to buy German targets, and we handled such a transaction recently. That's reason number one for the acquisition by U.S. companies of German companies. Number two is that a lot of the U.S. corporations see limited long-term growth in their domestic markets and would rather acquire a target with existing strong operations in high-growth emerging markets than try to set up green field operations. They see a strategic need to become more global through acquisitions.

Please email the interviewee at arempp@jonesday.com with questions about this interview.

Editor: What do you see happening with respect to the Eurozone?

Rempp: Greece is probably not going to continue in the Eurozone. The economic magnitude of Greece's economy is so small that its departure will not have a major impact on the Eurozone and its financial system. The more relevant question relates to what's going to happen to Spain and Italy because these economies are sizeable. I don't think that Germany would come to their rescue as the continent's cash cow.

Germany will survive and continue to prosper irrespective of what happens to the Eurozone. The main reason is that the majority of German businesses are extremely well positioned in terms of competitiveness in global markets. In my view, the German economy isn't going to be hugely impacted by whatever happens to the Eurozone.

The second reason is that Germany, from an infrastructure and logistics point of view, is modern and solid. It has resisted the urge to look merely at short-term profitability of infrastructure projects.

The third reason is German society, mainly the relationship between politicians, companies and unions. When the crisis started back in 2008, they didn't overreact. At the beginning of 2009, they sat down and formed what they called a solidarity pact – politicians, companies and unions agreed not to rock the boat by becoming panic stricken. The government set up support systems for a partially subsidized labor arrangement as an alternative to layoffs. Under this program, the government supported companies that didn't lay off people and gave employees close to full pay even if they worked only part time. Because most German companies did not lay off people, when things picked up again at the beginning of 2010, those companies were able to get up and running quickly at full capacity – a major advantage compared with many of their competitors.

This benign working arrangement, which I think is really unique to Germany, and certainly unique in the Eurozone, has given German business a real boost in global competition.

Editor: I also get the impression that because of the corporate structure of larger German companies, whereby the unions sit in on board meetings, they know that if they press too hard, they may cripple a company that is providing them with jobs.

Rempp: I have seen that chemistry working firsthand. I've been and continue to be chairman of a number of supervisory boards. Germany has a two-tier board structure: the management board made up of the people running the business on a daily basis and a supervisory board that, as the name suggests, supervises the management.

In the large companies, you have what we call co-determination, which means, depending on the size of the company, that one-third to half of the supervisory board consists of employee representatives, mostly union or works council members. As a result of having them sitting on the supervisory board, employees have access to in-depth business information at an early stage. They also share responsibility for managing the company well.

That board structure, plus the fact that our whole collective bargaining system is industry-wide and not on an individual company basis, leads to an environment where the trade unions as well as the works councils are often a lot more reasonable in what they ask for. They realize that it doesn't help if they destroy the business with overreaching demands because, at the end of the day, it's suicide for them.

Editor: What is the status of IP protection and enforcement in the EU?

Rempp: In terms of how the EU or Germany protects European or German IP, to the extent that things are happening within the EU borders, the protection is probably similar to, or as good as, in the U.S. No real problems; it is very efficient.

Editor: Has the use of independent contractors contributed to the low unemployment rate in Germany?

Rempp: Ten or 12 years ago in Germany, everybody rightfully said that you can't really hire people, even if you need them, because it's so difficult to terminate them

if business is slow. Interestingly, it was a Social Democrat, Gerhard Schröder, who introduced the reforms that made the labor market more flexible. That's one of the reasons why our unemployment rate, particularly in the western part of the country, has stayed relatively low, even in a bad year like 2009.

Editor: Do you wish to discuss any recent cross-border transaction that your office handled?

Rempp: Among transactions that are public knowledge, the \$1 billion acquisition of Germany-based VAC-Group by OM Group is noteworthy because it combines a number of the factors that we just talked about. OM Group is a large U.S. corporation listed on the NYSE, which was looking for a target that would give it an opportunity to accomplish several critical, strategic imperatives simultaneously.

It was looking for a target in Europe, and most of the attractive targets on the market were in Germany. With VAC-Group, they found that kind of target. VAC-Group had operations in 16 jurisdictions, including operations in China that had access to scarce materials called rare earths. These are minerals that, as a practical matter, are available only in China, for which the demand worldwide is continuing to increase. Prices have skyrocketed because there is increasing demand but very limited and Chinese government-controlled supply.

VAC-Group was up for sale by One Equity Partners, the private equity platform of JPMorgan Chase. It was healthy, available and well set up in certain emerging markets. It was the kind of transaction that allowed us to display all of Jones Day's strengths: it involved many jurisdictions around the globe; it had to be completed under extreme time and competitive pressure; and it was extremely challenging in many respects, in particular because of a very unusual and complex financing structure on the target's and the seller's sides. We had to assemble and coordinate a large multi-jurisdictional team of lawyers who needed to work together seamlessly. Jones Day's global footprint and high level of integration plus the range of our skill sets give us a significant strategic advantage in handling deals like this.