

LARGE LAW FIRMS IN GERMANY

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INTRODUCTION

While the legal profession has been changing and continues to change worldwide, this change has been and most likely will continue to be particularly rapid among larger commercial law firms. In the past four decades, law firms have grown ever larger, expanding first nationally and then internationally. At the same time this process of growth has not been uniform or continuous. Especially in light of the strains created by the current financial crisis on existing business models and strategies of law firms, there is and will be continuous adaptation and change.

This paper provides an overview of the German legal market, or more specifically, of the large commercial law firms in Germany. A number of articles appeared on this same topic in the immediate wake of the many mergers at the end of the last millennium.¹ However, the legal landscape has continued to evolve dramatically since then. While the German legal market was vastly different in 2000 than it was in 1990, the differences that have unfolded in the subsequent ten years are as equally important, and perhaps only slightly less dramatic.

Three reasons readily stand out for a study of the German legal market: First, it provides an interesting case study worth reviewing on its own merits. Germany's economy

¹ Susanne Lace, *Mergers, Mergers Everywhere: Constructing the Global Law Firm in Germany*, in 3 *SOCIOLOGY OF CRIME, LAW AND DEVIANCE: LEGAL PROFESSIONS: WORK, STRUCTURE AND ORGANIZATION* 51-75 (Jerry Van Hoy ed., 2001); Samantha Wigham, *Foreign Influence Pushes German Lawyers into New Mergers*, 16 *INT'L FIN. L. REV.* 41 (1997); Benno Heussen, *Commentaries on Papers from the German Perspective*, *LAWYER'S PRACTICE AND IDEALS: A COMPARATIVE VIEW*, (John J. Barceló III & Roger C. Cramton eds., 1999); Martin Henssler & Laurel S. Terry, *Lawyers Without Frontiers – A View From Germany*, 19 *DICK. J. INT'L L.* 269 (2001); Nick Ferguson, *Merger Fever Grips German Market*, 18 *Int'l Fin. L. Rev.* 3537 (1999); Glenn Morgan & Sigrid Quack, *Institutional legacies and firm dynamics: The growth and internationalisation of British and German law firms*, CSGR Working Paper No. 169/05, May 2005, available at <http://www2.warwick.ac.uk/fac/soc/csgr/research/workingpapers/2005>. A more recent German-language publication, with extensive research on the history of over twenty storied German law firms, is

is the largest in Europe, the fourth largest worldwide, and is known as a global leader in exports.² Germany plays an important role in the European Union. While its legal market was relatively late in maturing, it has changed rapidly. Germany provides a case study of services and strategies, successes and failures, growth and collapse, and of consolidation and fracture, all involving both local and foreign lawyers and law firms.

A second reason for examining the German legal market is that Germany is much more than just an isolated case study. Its rapid transitions and trends share parallels to what has happened or will likely happen in many other countries. Of course, while history will not repeat itself exactly, especially as constellations are different in other countries, the developments in Germany may serve as a guidepost to what is happening or will happen in the legal markets of countries such as Brazil, China, India, or South Korea.³

Finally, because Germany does allow Multi-Disciplinary Partnerships, we may gain some guidance regarding the potential benefits and problems associated with MDPs, when lawyers and non-legal professionals may associate. This is especially relevant at a time when there is much discussion about the future of large law firms generally, and also of the business and ethics of professional services as an industry.

REINHARD PÖLLATH & INGO SAENGER, 200 JAHRE WIRTSCHAFTSANWÄLTE IN DEUTSCHLAND (Markus Heukamp ed., 2009).

² Germany is slightly larger than the state of New Mexico and slightly smaller than Montana, and has a population equivalent to the states of California, New York, and Texas combined. It has a landmass of 357,021 km² (137,847 sq. miles), a population of about 82 million, and a GDP (PPP) of \$2,807 trillion.

³ Surprisingly, Shanghai's legal market now, has some similarities with the German legal market twenty years ago, such as a large number of small practitioners, with very few large law firms. In terms of differences, the order of magnitude is substantially different, as is the timing of entry of foreign firms. It remains to be seen if there will be a wave of consolidations in Shanghai similar to what has occurred in Germany. See Robert G. Eccles & Catherine Zhang, *Shanghai Diligence Law Firm*, HARVARD BUSINESS SCHOOL, 9-409-065, Rev. Feb. 19, 2010. Similarly, there has been talk in Korea regarding the strategies of both the international firms and the local Korean firms, as the legal market more fully opens there. The difference with Germany of the early 1990s is that in Korea the legal market is already relatively developed and its largest law firms already have numbers of lawyers in the triple digits. See Tong-hyung Kim, 'US

Part II of this paper provides a general survey of the German legal market, which may be especially helpful to those unfamiliar with the topic. Part III, the main thrust of the paper, focuses on the five types of law firms in the German market: UK firms, US firms, International-German firms, Domestic-German firms, and MDPs. The paper concludes with general observations in Part IV.

II. OVERVIEW

In the past, German lawyers generally worked as solo practitioners, in-house counsel or civil servants. Large commercial law firms as known in the UK or USA were, until recently, non-existent. In fact, until 1989 German lawyers and law firms were limited by law to practicing in only one city, which effectively prevented the development of larger law firms, known in German as *Großkanzleien*.⁴ As a result of this limitation, there were law firms—or rather sophisticated solo practitioners or small partnerships—in each of Germany’s larger cities. Some of these entities were well established, and had roots that reached back to the nineteenth century. There was also no centralized legal market. This pattern reflected Germany’s development as a decentralized federalized state, with many important population and economic centers, which is very different from France or the

Invasion’ Not Likely in Korean Law Market, THE KOREA TIMES, Apr. 15, 2007, available at http://www.koreatimes.co.kr/www/news/special/2009/05/206_837.html.

⁴ The word *Kanzlei* translates into English as chambers or chancellery. A *Großkanzlei* is simply a large *Kanzlei*. While German lawyers have adopted certain English terms such as *Associate* and *Equity Partner*, they have not adopted the term *law firm*. German lawyers still speak of a *Großkanzlei* or *Kanzlei*. See Erhard Blankenburg, *Patterns of Legal Culture: The Netherlands Compared to Neighboring Germany*, 46 AM. J. COMP. L. 1, 7, 11. For a somewhat more satirical description of the absorption of English legal jargon into German, see Uba, SB, ah, lh, ML, *Das A-Z der modernen Kanzlei*, JUVE RECHTSMARKT May 2009, at 102. One example is their definition of the term “*Work-Life-Blance: Überwiegend gebraucht von naiven Associates. Bedeutet übersetzt: Die Arbeit ist dein Leben. In Krisenzeiten verkehrt sich W. allerdings ins Gegenteil, frei übersetzt: Balanciere ohne Arbeit durchs Leben.*” “*Work-Life-Balance: Used mostly by naïve Associates and can be translated as: Work is your life. In times of crisis, however, the meaning of the term is reversed, or can be translated as: Balance through life without work.*”

UK.⁵

By the mid to late 1980s, English firms had gone through a series of merger waves that led to larger and larger firms. Having watched this development, German lawyers followed suit when changes in the law finally allowed it. In the years 1989-1990 German lawyers consolidated to connect offices in the major centers, viz.: Düsseldorf, Frankfurt, Hamburg, and Munich, thereby creating for the first time law firms more akin to those that existed in the UK or USA. In addition to those centers, many firms also set up offices in Berlin.⁶ As the Communist regimes of Eastern Europe collapsed and as the German government voted in 1991 to relocate from Bonn, Berlin looked to be an important future market. Some firms also set up offices in the East German regional centers of Dresden or Leipzig, as foreign investment rushed into former East Germany. Moreover, Germany suddenly found itself in contact with several neighboring Eastern European countries, and these regional centers showed potential for building bridges to the East.

Starting in the 1990s, both UK and US firms began to establish offices in Germany. The prime spot for this expansion was Germany's financial center: Frankfurt am Main. It was there that the largest and most important financial work was happening. Moreover, at the time there were even predictions that Frankfurt would become Europe's new financial center.⁷ As foreign law firms gained familiarity within Germany, they began to seek

⁵ This continues to remain true even today: "Unlike in the United Kingdom or France, where a firm can find success with a single strong office in London or Paris, legal work in Germany is decentralized, requiring firms to set up shop in more than one city." Brenda Sandburg, *They'll take 'Meinhattan': U.S. firms don't always have an easy time in Germany - but they can't stay away*, THE AMERICAN LAWYER, May 28, 2006, at 196.

⁶ Richard Lloyd, "The Berlin stories: the German capital isn't an obvious place for U.S. firms to be. But a select few are thriving in this quirky, specialized market." THE AMERICAN LAWYER, May 29, 2007, at 102.

⁷ Chris Crowe, *Strange Pairings*, LEGAL BUSINESS, Mar. 2005, at 58. While Frankfurt is Germany's financial center, and while both the German Central Bank and the European Central Bank are housed there, London remains Europe's more important financial center by a large margin on several metrics.

business opportunities in other areas, by setting up offices in other cities and by offering a wider array of legal services.⁸ While the initial wave consisted of a few pioneering firms, soon law firms of different sizes and from different tiers, both from the UK and the USA, followed. Many of the firms that entered the market did so by large-scale mergers, especially the UK firms, or through attracting key lawyers and bringing in foreign lawyers, which was more commonly done by the US firms. Many Anglo-American law firms decided that for a global firm to be represented in the world's principal centers of finance and industry, a presence in Germany was essential.⁹

A few German firms resisted the mergers and sought to position themselves through one of several ways: through establishing their own international brand, through seeking formal or informal alliances with foreign law firms, by becoming focused-boutiques, or by concentrating on a regional presence. Recently, some of the mergers have also come undone, as partners and practice groups have been asked to leave or have left of their own accord. While the German legal market has developed similar contours to the UK and US, it also maintains some unique features, more similar to what exists or likely will exist in other countries in Europe and possibly in Asia or South America.

Finally, with the global nature of the current recession, it remains to be seen how the future will develop. As the financial crisis erupted in the US, it seemed at first to have little impact in Europe. However, very quickly, as the system unraveled, it was clear that Germany was just as caught in the difficulties. The German government intervened to save

⁸ The German managing partner of Allen & Overy, Mark Welling, explained: "International law firms have increasingly come to recognize that there are exceptionally able lawyers in cities other than Frankfurt [...]. If they are serious about developing practices in Germany, then they would be foolish to ignore that fact." Aled Griffiths, *Looking beyond Frankfurt*, THE AMERICAN LAWYER, Jan. 1, 2002 (hereinafter "*Looking Beyond*").

the private financial sector and the economy went into recession. The legal market has been also affected, and law firms have been forced to respond.

A. *LEGAL EDUCATION*

To qualify as an attorney in Germany, individuals must complete university studies, usually of eight to ten semesters. Students then take a state bar examination followed by two years of practical internships, and then a second state bar examination.¹⁰ Currently, law students complete this education and training in an average of about eight years, and are thereafter known as *Volljuristen*. They are then theoretically qualified to practice in any of the legal professions, e.g., as a lawyer, prosecutor, or judge.¹¹ More recently, a growing segment of German law students and younger attorneys also pursue an LL.M. degree, often in an English-speaking country.¹² A small number of students also complete a doctoral degree, known as *Doktor der Rechtswissenschaften (Dr. jur.)*.¹³ Many students who pursue a doctoral degree do so even if they have no intention of pursuing a career in academia. The reason for this is that doctoral degrees are not at all uncommon among practitioners, especially among lawyers at the more prestigious corporate law firms. In addition to a

⁹ Knut Papendorf, *Wirtschaftsanwälte in Zeiten der Globalisierung – die Situation in Norwegen und Deutschland im Vergleich*, 27 ZEITSCHRIFT FÜR RECHTSOZIOLOGIE, 133, 137 (2006).

¹⁰ The state bar exam, consists of two exams. The first exam focuses on law as learned in the academic setting, and the second focuses on more practical material. They are graded on a curve on a scale of 0-18 points, and only approximately 15% of students achieve a *Prädikatsexamen*, meaning 9 points or above – a prerequisite to being hired at most large law firms.

¹¹ See Annette Keilmann, *The Einheitsjurist: A German Phenomenon*, 7 GERMAN L. J. 293 (2006).

¹² Till Mattes, *LL.M. in Großbritannien: Ein Königreich für einen LL.M.*, AZUR, May-Oct. 2005, 20, available at http://www.azur-online.de/pic/2005_01_LLM-GB.pdf.

¹³ Among the best students, as determined by their grade on the first state exam, some continue on to complete a doctoral degree, known as the *Doktor der Rechtswissenschaften (Dr. jur.)*. For example, in 2005 of the 13,300 students who earned some type of law degree, just over 14% received a doctoral degree. Usually students who reach a certain grade on the first state exam have an automatic right to be admitted into the doctoral program. Students with less stellar grades may still be able to enroll in the doctoral program; however, it may be difficult to find a professor, known as a *Doktorvater* or *Doktormutter*, who is willing to supervise them. The degree requires a dissertation and an oral examination, and can be completed in 1-3

doctoral degree, German attorneys may also gain an additional title as experts in a subject area, by practicing in the subject area for a period of time and then completing additional exams. Nearly 39,000 lawyers (approx. 25%) have such an expert title, specializing for example in employment law, family law or tax law.¹⁴

In addition to *Volljuristen*, there is also a professional group of so-called business lawyers (*Wirtschaftsjuristen*). Their course of study is shorter, as it involves no internship period or state exams; thus they enter the market at a younger age. Law firms are increasingly using them for a number of responsibilities. They complete more mundane tasks such as document review, but also more complex assignments such as marketing presentations, as their studies are more business and numbers oriented. Since they are not qualified as attorneys they are limited in the legal work they can do, e.g., they cannot appear in court, nor can they attain partnership.¹⁵

B. ENTRY INTO THE LEGAL PROFESSION

German *Volljuristen* who enter the legal profession have the advantage of having had practical exposure to a variety of positions within the profession, by way of the internships. Thus, in theory, new legal professionals should be able to make well-informed

years. The length is determined in part by the topic, and also by how much guidance (or pressure) the student's supervisor provides. The completed thesis is usually published.

¹⁴ German Federal Bar (*Bundesrechtsanwaltskammer*), *Statistik: Fachanwälte zum 01.01.2008*, available at <http://www.brak.de/seiten/pdf/Statistiken/2008/Fachanw.2008.pdf>.

¹⁵ However, they can earn more than many *Volljuristen* in small firms or businesses. Lovells employs 20, Gleiss Lutz 19, and Baker McKenzie 1. Both Clifford Chance and Linklaters have plans to hire *Wirtschaftsjuristen* in the future. Kirstin von Elm, *Gefragte Wirtschaftsjuristen*, KARRIERE.DE, Apr. 1, 2008, available at <http://www.karriere.de/beruf/gefragte-wirtschaftsjuristen-6872/>. See also *Vergütung: Angestellte Wirtschaftsjuristen verdienen gut*, FRANKURTER ALLGEMEINE ZEITUNG, Sept. 14, 2009, available at <http://www.faz.net/s/Rub8EC3C0841F934F3ABA0703761B67E9FA/Doc~E714DB8AA62364965BD81512D2D17188A~ATpl~Ecommon~Scontent.html>; Melanie Haack, *Wirtschaftsjuristen vs. Volljuristen: Konkurrenz oder Kooperation?*, LEGAL TRIBUNE ONLINE, Oct. 15, 2010, available at <http://www.lto.de/de/html/nachrichten/1733/wirtschaftsjurist/>. Law firms are also using candidates with less stellar exam scores as contract attorneys. See, e.g., Ulrike Heitze, *Juristischer Jobnomade*, KARRIERE.DE, May 1, 2009.

career choices. In reality, however, regardless of what careers *Volljuristen* aspire to pursue, their options are significantly predetermined by their performance on the state exams. Rather than using a weighted combination of law school ranking and law school grades, as is done in the USA, employers in Germany look primarily at performance on the two state exams. Despite the criticism that a lawyer's entire career trajectory is dependent on these two exams, this remains the reality.¹⁶ Moreover, the importance of grades on the state exams is compounded by a lower degree of mobility in the German legal labor market, i.e., while attorneys now switch amongst law firms as readily as they do in the UK or the USA, it is far less common for attorneys to switch between the private and the public sector and vice versa.

In the private sector, most medium-size or large corporate law firms prefer or even require a *Prädikat* on both exams. Thus, from a recruitment point of view, though some 14,000 new lawyers qualify each year, but only approximately 1,600-1,800 students have a *Prädikat* on both exams, the pool from which the large law firms recruit is quite small.¹⁷

¹⁶ On the one hand, this process makes hiring very objective, as employers rely only on grades, and not on more subjective measures such as law school ranking. On the other hand, this also means that reliance is limited to one criterion. In the USA the use of a weighted combination of law school grades and law school rankings, though not as objective, does give employers a further vetting process that assesses multiple criteria including broad intellectual abilities and personal achievements.

¹⁷ Moreover, the group of students who would actually like to work in a large law firm, as well as who have an LL.M. or *Dr. jur.* is much smaller, perhaps closer to 500. Sven Aretz, *Kampf um die Besten geht weiter – Freshfields mit 100 geplanten Neueinstellungen an der Spitze*, JUVE, Aug. 29, 2006. For an example of hiring at a large law firm, see the career's brochure at Clifford Chance, which indicates that the firm expects outstanding results on the state exam, and while further degrees such as an LL.M., or a *Dr. jur.* are welcomed, they are not required: “Die Checkliste für Einsteiger. Abschlüsse. Wir erwarten zwei hervorragende Examina. Im Ausland erworbene Abschlüsse wie den „Master of Laws“, LL.M., oder einen Dokortitel begrüßen wir, sie sind jedoch keine zwingende Voraussetzung.” Clifford Chance Website, available at <http://www.cliffordchance.com/careers/locations/roleinlocation.aspx?Country=Germany&RolePosition=lawyers>. Another example is Gleiss Lutz that specifically requires two exams with distinction, on the grounds that the firm needs to adhere to this formal requirement, in order to secure the best talent. They ask rhetorically, what else have they to sell, but excellence?: “Notwendig für einen erfolgreichen Einstieg bei Gleiss Lutz sind zwei mindestens vollbefriedigende Examina. Nur wenn wir an dieser formalen Hürde festhalten, stellen wir sicher, dass die besten Talente zu uns kommen. Für die Zukunft der Kanzlei ist das

The realities of recruiting stand in contrast to the career aspirations of many students, e.g., while one survey found that 44.9% of students would like to work in a large law firm, only a much smaller fraction would even be considered.¹⁸ Likewise for a government position as a prosecutor or judge, a *Prädikat* is also required. Government positions tend to be less well paid than positions in law firms, but are considered to be prestigious and offer better hours and greater job security. Other government positions on the local, state, or federal level, which tend to be civil-servant type administrative positions, are less selective and correspondingly less prestigious. In-house legal departments that recruit new graduates—and only very large corporations actually do—also tend to be very selective. In reality, a large portion of graduates end up in very small legal practices or as solo-practitioners, or in other areas such as journalism or politics.¹⁹

C. ATTORNEY DEMOGRAPHICS

Historically compared with the USA, Germany has had far fewer lawyers and has been a much less litigious society. However, the number of lawyers has grown tremendously. In the last five decades, while Germany's population has increased by only 14% the number of lawyers has increased by some 720%. The growth in lawyers has been

unabdingbar. Denn was haben wir zu verkaufen, außer Exzellenz?" Gleiss Lutz Website, available at <http://www.gleisslutz.com/de/karriere/qualifikation.html>.

¹⁸ See Trendence; KARRIERE Nr. 11, Nov. 1, 2008. About 14.6% would like to work in government, and 10.8% in a small or medium sized law firm. The remaining students indicate a number of employers in other categories as their employer of choice.

¹⁹ Salaries for lawyers in small and solo practices tend to be less financially rewarding. See, e.g., Ulrike Barth, *Rechtsmarkt-Splitter 05/2007*, JUVE, Apr. 29, 2007. So far, three of the so far eight German chancellors of the Federal Republic of Germany were lawyers: Konrad Adenauer, Kurt Georg Kiesinger, and Gerhard Schröder. One in eight members of the German parliament are lawyers (83 out of 622), including 20 lawyers from commercial law firms. See Geertje Oldermann, *Gewählt: Jeder achte der 622 Parlamentarier ist Jurist, davon 20 Wirtschaftsanwälte*, JUVE, Sept. 28, 2009.

especially pronounced in recent years.²⁰ The number of attorneys doubled in just over a decade (1994-2006), and tripled in the last two decades, often growing at a rate of 4-6% per year.²¹ Germany, with a population of about 82 million, has just over 150,000 lawyers, as compared to the USA which has some 750,000 lawyers for a population of 300 million.²² All in all, there are about 200,000 legal professionals in Germany, which can be further broken down as follows: There are about 150,000 lawyers, an estimated 25,000 of whom are employed by medium and large companies. The remainder can be found in anything from solo-practice to major international law firms.²³ Approximately 21,000 are judges at the different levels and types of courts, 5,000 are public prosecutors, 20,000 are civil servants, and 1,000 are legal academics.²⁴ As of 2000, the majority of practicing attorneys (55%) still worked as solo practitioners, 35% were in local partnerships, and only 10% of attorneys were practicing in *Großkanzleien*.²⁵ While the numbers have probably

²⁰ The number of lawyers grew from a mere 18,347 in 1960 to 153,251 in 2010. During the same time span, the population increased from approximately 72 million to 82 million.

²¹ Christoph Hus, *Jura: Das Prädikatsexamen erleichtert die Jobsuche*, KARRIERE.DE, Nov. 1, 2008, available at <http://www.karriere.de/beruf/jura-das-praedikatsexamen-erleichtert-die-jobsuche-8049/>.

²² Bureau of Labor Statistics, Occupational Outlook Handbook, 2008-09 Edition, available at <http://www.bls.gov/oco/ocos053.htm>; German Federal Bar (*Bundesrechtsanwaltskammer*), *Statistik: Entwicklung der Zahl zugelassener Rechtsanwälte von 1950 bis 2010*, available at <http://www.brak.de/seiten/pdf/Statistiken/2010/EntwicklungRAe.pdf>. There is some indication that this increase will slow down or level off. As the general population has reached a plateau and is slowly beginning to shrink, so is the number of law students slightly on the decline, especially as some of the larger demographic cohorts have passed beyond the age of university studies. For example, in 2005, there were some 13,400 law students fewer than ten years previously. While the overall number of new enrollees declined by some 6%, the percentage of women going into law schools among new enrollees increased during that same time period from 49% to 57%. See Federal Statistical Office (*Statistisches Bundesamt*), *57% Studienanfängerinnen in den Rechtswissenschaften 2005*, PRESSEMITTEILUNG NR. 387.

²³ The balance is still clearly tipped towards very small practices. Only just over 8,500 attorneys work in the 68 largest German law firms. See *Anwaltszahlen von Kanzleien in Deutschland*, JUVE HANDBUCH 2009/2010, available at <http://www.juve.de/handbuch/de/juve-handbuch-anwaltszahlen-von-kanzleien-in-deutschland>.

²⁴ Stefan Koriath, *Legal Education in Germany Today*, 24 WIS. INT'L L.J. 85, 8-909 (2006-2007). For further information on the German legal profession, see INGO VON MÜNCH, LEGAL EDUCATION AND THE LEGAL PROFESSION IN GERMANY 56-78 (2002).

²⁵ German Federal Bar (*Bundesrechtsanwaltskammer*), *Statistik*, available at <http://www.brak.de/seiten/pdf/Statistiken/Nr.10-Anlage.pdf>; Christian Wolf, *Maltez vs. Lewis - ein Lehrstück für den deutschen Anwaltsmarkt*, in GRENZÜBERSCHREITUNGEN: BEITRÄGE ZUM INTERNATIONALEN

shifted slightly, the majority of German attorneys continue to work in smaller settings. Thus, it must be kept in mind that because this paper focuses on large law firms, it provides only a partial description of Germany's legal profession.²⁶

There are some five hundred foreign attorneys registered in Germany.²⁷ This confirms that the foreign law firms, whether Anglo-German or American-German firms, are primarily staffed with German lawyers. Under EU rules, EU (and Swiss) licensed lawyers can move to Germany and re-qualify by taking an exam, which allows them to practice German law. Often, however, foreign lawyers in Germany will practice the law of their home jurisdiction. Despite convergence in the EU, the legal profession is still heavily regulated and remains very local.²⁸

There is a clear bias in geography, with a logical concentration of attorneys in more populated areas. However, certain cities have a proportionally much denser concentration of lawyers, because of the types of businesses and industries connected to those cities, e.g.,

VERFAHRENSRECHT UND ZUR SCHIEDSGERICHTSBARKEIT: FESTSCHRIFT FÜR PETER SCHLOSSER ZUM 70. GEBURTSTAG 1130 (Birgit Bachmann et al. eds., 2005).

²⁶ In recent years in the study of the legal profession, there seems to be a bias towards studying large law firms. One explanation for this might be that large law firms have changed so dramatically over the past 20 years. Another might be that information is relatively more easily available. Large law firms are more likely to have informative websites or to release other publications, and are more likely to be written about in the larger legal trade publications that are more readily available, such as *The American Lawyer*. Likewise, it is much easier to learn about large law firms in Germany with the help of *JUVE* than it is to conduct research on solo-practitioners. A promising recent development was the founding of the Center on the Legal Profession (CLP) at the Bucerius Law School in Hamburg, Germany's first private law school. Currently headed by Markus Hartung, former Managing Partner of Linklaters in Germany, the CLP aims to be a research center for developments in the German legal market and of management and leadership strategies of law firms. See www.bucerius-clp.de.

²⁷ According to the German Federal Bar, 297 European Lawyers and 185 lawyers from WTO countries are registered with the local German bars. See German Federal Bar (*Bundesrechtsanwaltskammer*), *Statistik: Mitglieder der Kammern nach dem EuRAG zum 01.01.2008*, available at <http://brak.de/seiten/pdf/Statistiken/2008/EuRAG2008.pdf> and German Federal Bar (*Bundesrechtsanwaltskammer*), *Statistik: Mitglieder der Kammern nach § 206 BRAO zum 01.01.2008*, available at http://brak.de/seiten/pdf/Statistiken/2008/BRAO_2008.pdf.

²⁸ Mario Monti, Commissioner for Competition, European Commission, *Competition in Professional Services: New Light and New Challenges*, Address at Bundesanwaltskammer Berlin (Mar. 21, 2003);

Frankfurt, Germany's main center of finance, leads the list with 1 lawyer per 97 inhabitants;²⁹ corporate center and state-capital Düsseldorf is next, with 1 in 117; and IP-hub and state-capital Munich also has a high ratio of attorneys, namely 1 in 124. Thereafter, there is quite a gap, and even cities with much larger populations such as Hamburg or Berlin have relatively fewer attorneys, with ratios of 1:234 and 1:332 respectively.³⁰ Likewise, the offices of the major law firms are located in Germany's main economic centers. The ten largest law firms in Germany all have offices in Frankfurt, Düsseldorf, and Munich, though interestingly, not all have offices in Berlin.

There is also a geographic tilt in that the wealthier West German states have proportionately more lawyers than the former East German states. This may be a telling reflection on the role of law and lawyers in a democratic vs. a communist society and the lasting impact of communist rule.³¹ Except for the city-state of Berlin, no East German state has a lawyer to inhabitant ratio lower than 1:1,000 (ranging from 1:1,029 for Saxony to 1:1,431 for Saxony-Anhalt). In the West, most states have substantially more lawyers, with an average of 1 in 649.³² Interestingly, not only are there fewer lawyers in the East German states, there are also few large law firms. Starting in the early 1990s, West

Tsukasa Oda & Kai Dräger, *Betätigungsmöglichkeiten von ausländischen Rechtsanwälten in der Bundesrepublik Deutschland*, 23 *NIHON U. J. OF COMP. L.*, 51, 51-68 (2006).

²⁹ Perhaps this only confirms the stereotype that “[J]ust as a good airplane pilot should always be looking for places to land, so should a lawyer be looking for situations where large amounts of money [are] about to change hands.” KURT VONNEGUT, *GOD BLESS YOU MR. ROSEWATER, OR PEARLS BEFORE SWINE* 17 (1965) as quoted in J. Mark Ramseyer, *Lawyers, Foreign Lawyers, and Lawyer-Substitutes: The Market for Regulation in Japan*, 27 *HARV. INT’L L. J.* 499 (1986).

³⁰ Even today most types of legal work is done throughout Germany, and only certain types of work is concentrated in specific cities: financial work concentrated in Frankfurt, seat of many German financial institutions, maritime work done in the port city of Hamburg, and intellectual property focused in Munich, a city renowned for its technical university.

³¹ Many judges and prosecutors were removed after reunification in the lustration process. See Inga Markovits, *Children of a lesser god: GDR lawyers in post-socialist Germany*, 94 *MICH. L. REV.*, 2270, 2271-2272 (1995-1996).

German firms with existing expertise began to handle the larger more profitable commercial work, while East German attorneys gravitated towards other areas such as family and labor law.³³ This suggests that the relative difference in lawyers may also be a factor of the connection between lawyers and the level of maturity of finance and industry.

III. LARGE LAW FIRMS IN GERMANY

For the purpose of this paper, large law firms are defined as the 68 law firms with the most number of attorneys in Germany. While 68 may seem an odd cut-off point, it is the number used by legal news magazine *JUVE* in its 2009/2010 ranking by size, upon which this paper draws.³⁴ All 68 law firms listed have more than 40 lawyers. Perhaps if one were to list law firms beyond that, two things would happen: First, the number of law firms would mushroom, and second, the rankings would be more volatile, as changes in a small firm have proportionally a greater impact, i.e., firms would fluctuate in and out of rankings each year in large numbers, making the logistics of tracking them more difficult.³⁵ These large law firms employ some 8,642 attorneys in Germany, and a total of 54,023 attorneys worldwide – most of whom are in the UK and the USA. On average they have 88

³² German Federal Bar (*Bundesrechtsanwaltskammer*), 2005. Note that this is a non-weighted average of the states, based on figures as of Jan. 1, 2005. The national average at the time was 655 persons per lawyer.

³³ Markovits, *supra* note 31, at 2307-2308.

³⁴ See *Anwaltszahlen von Kanzleien in Deutschland*, *JUVE HANDBUCH* available at <http://www.juve.de/handbuch/de/juve-handbuch-anwaltszahlen-von-kanzleien-in-deutschland>. *JUVE* is a German legal publisher comparable to *The American Lawyer* that began in 1998. Within the past decade *JUVE* has achieved its place in the market, see Christian Fischer, Book Review, 5 GERMAN L. J. 431 (2004) (reviewing *JUVE HANDBUCH 2003/2004, WIRTSCHAFTSKANZLEIEN – RECHTSANWÄLTE FÜR UNTERNEHMEN (2003)*).

³⁵ It may also be a function of the relative youth of the modern German legal market and/or of *JUVE*. Likewise, when *The American Lawyer* launched its firm financial reporting in 1985, it initially reported on only the 51 highest-grossing firms. Now their coverage has grown to include some 200 firms. See Andrew R. Dunlap & Katherine L. McDaniel, *Catching Up With the Class of 1985*, *THE AMERICAN LAWYER*, May 10, 2010.

attorneys in Germany, spread over 4 offices.³⁶ While the focus of the paper is on these large firms, this paper also discusses firms that are not included among these 68 firms, such as smaller law firms, which can still be very prestigious or expert in niche fields, and MDPs.

The researcher often faces the challenge of applying bright-line categories to what in reality are often continuous spectrums. At present, the law firms in Germany can roughly be characterized into five different groupings: UK law firms, US law firms, International-German law firms, Domestic-German law firms, and Multi-Disciplinary Partnerships.³⁷ However, in the future, these classifications will be further complicated by firms such as Hogan Lovells, a product of a recent UK-US merger.

Finally, before transitioning to the next section of the paper, certain disclaimers should be made.³⁸ The paper draws on anecdotal evidence, to a lesser degree, and on published materials, to a greater degree. The former is inherently subjective, and the latter tends to become stale quite quickly, given the rapidly changing pace in the world of professional service firms. Rankings of size, present only a snapshot in time, as the number of lawyers at a law firm likely changes monthly, especially among larger firms.³⁹ Rankings of prestige are also by their nature subjective. Moreover, the descriptions of law firms are

³⁶ This average for the number of offices is a median average. The mean average of 5.6 is skewed by five firms that have 20-30 offices.

³⁷ This paper uses the terms UK firms and US firms. In reality, they are imperfect descriptions. Likewise other alternative definitions such as Anglo-German, American-German, and international or global law firms all have their own descriptive strengths and weaknesses.

³⁸ This disclaimer is made out of allegiance to academic integrity, to avoid any lawsuits (in its early years *JUVE* was taken to court because of its rankings, see Kristofer Bott, *Lawyer's Ranking From A Constitutional Perspective: The Federal Constitutional Court's JUVE-Handbook Decision*, 4 GERM L. J. 237 (2003)), and out of a sincere desire not to offend any lawyer who feels his/her law firm is wrongfully excluded or mischaracterized herein.

³⁹ The process of writing an article such as this, shared some semblance with doing a news story on a marathon race – every time one stops to take notes, the runners have moved on yet again.

of different lengths and even the selection of which law firms are discussed may seem somewhat arbitrary, and rightfully so. While some law firms were consciously chosen for inclusion, others made it into this paper on the basis of a news article the author of this paper came across, or perhaps a conversation with or comment from persons with familiarity with the German legal market.

A. UK LAW FIRMS

Several UK Law Firms are among the largest and most global of any law firms worldwide. While their expansion into Germany has taken many turns, including satellite offices, formal and informal alliances, and full-blown mergers, they are now a clear presence in the German legal market.⁴⁰ The basic, albeit somewhat oversimplified story, is that around 2000 a number of UK firms merged with German firms, many of which had only become national German firms through relatively recent mergers. The UK firms had in the 1980s and 1990s grown tremendously in size and strength, and sought to expand internationally. Moving into Germany was a logical next step. Some UK firms had already gained a toehold in Germany,⁴¹ but then realized that critical mass could be built up quickly only through mergers. In the ensuing merger mania, there was perhaps an element of herd mentality on both sides of the Channel, as none of the major firms, whether British or German, wanted to be left without a merger partner. The mergers were in part also a reaction to an environment marked by rapid change, including the dot-com boom and the

⁴⁰ For a more detailed perspective, see, e.g., Tony Angel, *Your Challenge: Sustaining Partnership in the Twenty-First Century: The Global Law Firm Experience* in MANAGING THE LAW FIRM 196, 196-217 (Laura Empson ed., 2007).

⁴¹ For example, in January 1997, UK firms with toeholds in Germany, included: Allen & Overy (11 lawyers), Clifford Chance (40 lawyers), and Linklaters (4 partners, 6 other fee-earners). Samantha Wigham, *Foreign influence pushes German lawyers into new mergers*, 16 INT'L FIN. L. REV. 41, 44 (No. 1, 1997).

introduction of a common European currency.⁴² With ongoing EU convergence, it made sense for UK law firms to have a strong presence in continental Europe, and in Germany and France in particular.

With just a few exceptions, nearly every Magic Circle or Silver Circle UK law firm has a presence in Germany. Some of the mid-tier UK firms also have a presence in Germany. The largest UK presences in Germany include Freshfields Bruckhaus & Deringer, Clifford Chance, Lovells,⁴³ Taylor Wessing, and Linklaters, several of which are highlighted below. The remaining UK firms with a large enough presence in Germany to be classified as large law firms are Allen & Overy, Bird & Bird, DLA Piper, Norton Rose, SJ Berwin, Ashurst, Eversheds,⁴⁴ and Osborne Clark. Of these firms, DLA Piper is also discussed below. Other UK firms such as Simmons & Simmons and Wragge & Co. have lawyers in Germany, however, their presence there is currently still somewhat smaller.

The success of the UK firms in the German market can be seen in several ways. Of the ten largest law firms in Germany, five are products of Anglo-German mergers. Of the 68 largest law firms in Germany, 13 are Anglo-German firms. Their presence is even more impressive when one considers the absolute number of lawyers: 2,778 out of 8,642 lawyers at the largest law firms work in UK law firms (32.1%). Conversely, for these UK firms, Germany is not the dominant, but still an important legal market with 12.5% of their lawyers working in Germany. This figure ranges from 38% at Taylor Wessing to just over 2% at Eversheds, which suggests variance in how important the German legal market is to

⁴² Bruce E. Aronson, *Elite Law Firm Mergers and Reputational Competition: Is Bigger Really Better? An International Comparison*, 40 VAND. J. TRANSNAT'L L. 763, 804 (2007).

⁴³ While issues surrounding the merger of Hogan & Hartson and Lovells are discussed, the two firms are still treated as separate entities for purposes of this paper.

the respective UK firms.

Moreover, the UK law firms are present not just in terms of size, but also in terms of prestige. In the overall prestige rankings of legal news magazine *JUVE*, the UK firms are regarded highly: two out of three in Band 1, one out of two in Band 2, and two out of five in Band 3 are all UK firms. In the detailed *Chambers & Partners* rankings, which ranks firms in 34 different areas of law from “Banking & Finance: Acquisition Finance & Syndicated Lending” to “TMT: Telecommunications (Regulatory)” and then places them into different bands, the UK firms also are regarded highly. Of the top ten firms with the most number of rankings in bands 1-3, either four or five are UK firms. Overall, if one were to weight the bands, giving more weight to higher rankings, four out of the top ten are UK firms, with Freshfields Bruckhaus & Deringer and Clifford Chance leading the pack by substantial margins. On the other hand, this result should not be surprising in that there is a high correlation between the number of lawyers in Germany and prestige, as measured by the *JUVE* prestige band of the firm (0.73). The correlation is similarly high for the *Chambers & Partners* ranking (0.78).⁴⁵

1. Freshfields Bruckhaus & Deringer:

This firm’s entry into Germany was preceded by a series of local mergers. In 1990 the Hamburg-based law firm Stegemann Sieveking Lutteroth merged with fellow Hamburg-based law firm Steeger Tiefenbacher Heibey to form Stegemann Sieveking Lutteroth &

⁴⁴ In Germany, Eversheds is known under the name of Heisse Kursawe Eversheds. See Eversheds Website, available at <http://www.eversheds.de/>.

⁴⁵ When the total number of lawyers worldwide is included, then the correlation of size and prestige, as measured by the *JUVE* prestige band, drops to 0.45 – the correlation now strongly affected by US firms that are big in the USA, but small in Germany. By comparison, the correlation between the number of lawyers in US firms and their prestige, as measured by their Vault ranking, is much more diffuse (0.26, which is based on the 2009 *Vault* ranking and the number of lawyers according to 2009 edition of *The American Lawyer*).

Steeger. The following year, they⁴⁶ joined with Frankfurt-based Westrick & Eckholdt and Düsseldorf-based Bruckhaus Kreifels Winkhaus & Lieberknecht to create Bruckhaus Westrick Stegemann. Then in 1998 they merged with the Austrian firm Heller Löber Bahn & Partner to form Bruckhaus Westrick Heller Löber, which was actually the first international full-scale merger between a German and an Austrian firm.⁴⁷ This move turned out to be only a prelude, as in 2000 Bruckhaus Westrick Heller Löber merged with the law firm Freshfields Deringer, creating the now existent Anglo-German firm. This merger was somewhat of a surprise, as Freshfields Deringer was the recent product of an Anglo-German merger of Freshfields with Deringer Tessin Herrmann & Sedemund just the previous year.⁴⁸

The firm has more lawyers in Germany than any other law firm, even though its growth has slowed more recently. As one of Germany's most elite firms, it is in the top band for overall prestige and also leads in many individual categories. Germany is clearly an important market for Freshfields, with 542 of its 2,135 lawyers (25%) operating in six different offices there. Moreover, the German partnership is reputedly one of the most strongly positioned out of any of the international firms.⁴⁹ For example, after the merger in 2000, the firm was led by a dual leadership with a joint-senior partner in London and one in Germany respectively. This lasted until 2010, when the partnership voted in favor of a

⁴⁶ A note on pronoun usage: While it is customary to use the third person singular as the pronoun to refer to organizations, especially for corporations, this article at times also uses the third person plural as the designated pronoun to refer to law firms. The article does so, because law firms are professional service firms where the lawyers, or at least the partners, literally are the firm, and thus "they" act as the firm. In a corporation, the persons engaged in the corporation's activities are the corporation's employees acting on behalf of "it."

⁴⁷ *Osborne Clarke resigns from the Legal Resources Group*, THE LAWYER, Nov. 25, 1997

⁴⁸ *El Condor pasa – Bruckhaus fusioniert mit Freshfields Deringer*, JUVE, June 22, 2000; *Freshfields Bruckhause Deringer: Law Firm Heritage*, JUVE HANDBUCH 2006/2007, at 620.

single senior partner.⁵⁰

2. Clifford Chance:

One of the world's largest law firms, this eminent UK law firm has a very similar history. In 1990 Frankfurt-based Pünder Vollhard Weber merged with Düsseldorf-based Axster & Partner and Berlin-based Lachman to create Pünder Vollhard Weber & Axster. Ten years later, Clifford Chance (UK), Pünder Vollhard Weber & Axster (Germany), and Rogers & Wells (US) joined in a momentous tripartite merger. The German offices were known as Clifford Chance Pünder until 2004.⁵¹ This mega-merger also surprised pundits, as Clifford Chance had already built a sizable presence of its own in both Frankfurt and Düsseldorf. However, Thomas Heymann of Clifford Chance explained at the time that further organic growth would have required a long process that would preclude them from taking advantage of opportunities in the meantime. Heymann further stated: "We are successful in Germany, but concentrated in individual areas; if we truly want to lead globally, we need to be able to offer strong teams in every area."⁵²

In the decade since the merger, there has been significant readjustment worldwide within Clifford Chance, especially in North America, but also in Germany. Several groups

⁴⁹ While this may be nothing but mere coincidence, it is also one of the few UK law firms in Germany to maintain the German name, or names in fact, in its firm name.

⁵⁰ *Freshfields Bruckhaus Deringer*, JUVE HANDBUCH 2009/2010; Christian Wilde, a very influential figure and one of the former co-senior partners, passed away in 2004. Matthias Goldbeck, *Freshfields Bruckhaus Deringer trauert um Christian Wilde*, FRESHFIELDS BRUCKHAUS DERINGER MEDIA RELEASE, May 10, 2004, available at <http://www.freshfields.com/news/mediareleases/mediarelease.asp?id=479>; Antje Neumann, *Freshfields: Bisheriger Seniorpartner Christian Wilde verstorben*, JUVE, May 13, 2004; Sofia Lind, *Freshfields partners vote against joint senior partner structure*, LEGALWEEK, Apr. 23, 2010. London-based William Lawes was just recently elected to this position. See Margaret Taylor, *Lawes wins Freshfields senior partner race*, THE LAWYER, Sept. 30, 2010.

⁵¹ *Clifford Chance: Law Firm Heritage*, JUVE HANDBUCH 2006/2007, at 619 (hereinafter "*Clifford Chance: Law Firm Heritage*").

⁵² "Wir sind in Deutschland erfolgreich, aber konzentriert auf einzelne Gebiete. Wenn wir global führend sein wollen, müssen wir alle Bereiche in starker Besetzung anbieten können." *Clifford Chance stimmte ab - Doppelfusion mit Pünder und Rogers & Wells*, JUVE, June 6, 1999.

of lawyers split off to start their own firms. In 2002 the Leipzig attorneys launched their own firm, known as Sammler Volhard Bren & Lange;⁵³ and in 2004 a group in Düsseldorf formed Reimann Osterrieth Köhler Haft and another group in Munich formed Feldges Rechtsanwälte.⁵⁴ The lawyers who left to launch their own firms did so for a variety of reasons: Either the lawyers were not profitable enough for Clifford Chance's lockstep model, or they had expertise in a field no longer strategically relevant, or their work was too regional to fit within a global firm, or they did not want to be managed out of London. This same pattern is also visible at the other large UK firms.⁵⁵

Altogether, Clifford Chance in Germany has 416 attorneys, or roughly 11% of its lawyers, located in three offices. It is the third largest law firm in Germany. Its lawyers in Germany are mainly German lawyers practicing German law; however, Clifford Chance does have people from 24 different countries in its German offices, including a US law group.⁵⁶ While *JUVE* ranks Clifford Chance in Band 2 for overall prestige, according to *Chambers & Partners*, however, Clifford Chance has the second highest number of prestige rankings, often ranking as either the best or second best law firm in many different practice areas. Clifford Chance's recent work has included advising notable clients such as a banking consortium on a 1bn Euro bond issue by software giant SAP, and Volkswagen

⁵³ Interestingly, Sammler Volhard Bren & Lange recently added another Clifford Chance alumna, who joined as a name partner: Sabine Usinger in Berlin. Usinger had been a partner with Clifford Chance also, but she opened her own solo practice in 2005, after Clifford Chance jettisoned their Berlin office in late 2004. See Sammler Volhard Bren Lange Usinger Website, available at <http://www.sammlerusinger.com/sozietat.php?n=1>.

⁵⁴ *Clifford Chance: Law Firm Heritage*, supra note 51, at 619.

⁵⁵ *Clifford trennt sich von Leipziger Standort*, *JUVE*, Nov. 11, 2001; Mathieu Klos, *Reimann und Osterrieth: Neue Kanzlei mit neuem, alten Partner*, *JUVE*, Sept. 2, 2004; Mathieu Klos, *Feldges plus drei: Clifford-IP-Partner nimmt Associates mit in die Selbstständigkeit*, *JUVE*, Apr. 29, 2004.

⁵⁶ *Clifford Chance 2008 Annual review*, at 34. Clifford Chance now produces an annual review, with one report dedicated to financial and related information, and one report dedicated to corporate responsibility.

AG on a stock reissuance of 4bn Euro, one of the largest in Germany.⁵⁷ Despite its strong presence in Germany, according to *JUVE* the integration with the firm's overall management in London is still weak, though this is not atypical for the UK firms in Germany.⁵⁸

3. Linklaters:

The roots of Linklaters in Germany are tied to the law firm of Oppenhoff & Rädler, which had come about through a series of mergers in the early to mid-1990s, combining offices from several cities, to become one of Germany's largest law firms. In 1998 the UK firm Linklaters entered into the Linklaters Alliance with Oppenhoff & Rädler, and other law firms in several continental European countries. The Alliance promised access to the financial markets in London on the one side, and access to growth opportunities in continental Europe on the other. In Germany, the alliance ultimately led to an integrated merger in 2001, which gave Linklaters offices in Berlin, Frankfurt, Cologne, and Munich.⁵⁹

As a prelude to the merger, some 40 partners were asked to leave as Oppenhoff & Rädler prepared itself to focus on areas that were deemed strategically important. This continued in the years thereafter, as the firm sought to be large and competent in corporate and finance work, but lean in other areas. In 2004 four partners were asked to leave, while 15 partners had their salary reduced or frozen. Some partners complained of a "lack of human qualities" and "arbitrariness" and even leaked their complaints to the press. Priority

⁵⁷ *Clifford Chance berät Volkswagen bei Kapitalerhöhung von rund 4 Mrd. Euro*, CLIFFORD CHANCE PRESS RELEASE, Mar. 29, 2010; *Clifford Chance advised banking consortium on issue of EUR 1 billion bond by SAP*, CLIFFORD CHANCE PRESS RELEASE Apr. 8, 2010.

⁵⁸ *Clifford Chance*, *JUVE HANDBUCH* 2009/2010.

⁵⁹ *Linklaters: Law Firm Heritage*, *JUVE HANDBUCH* 2006/2007, at 625.

was given to younger rising partners that had prospects for developing business.⁶⁰ Then managing partner for Germany, Markus Hartung, explained: “Our business model requires each partner to continue to develop his business. Not all are ready to do this.”⁶¹ After long discussion, Linklaters even abandoned its Cologne office, replacing it with a more strategically-located office in Düsseldorf, and winning over two leading corporate attorneys from magic circle rival Freshfields in the process.⁶² These measures led to several spinoffs over the years, such as the IP-boutiques Höcker Rechtsanwälte and Jonas Rechtsanwaltsgesellschaft mbH, and as of January 2008, a group of former Linklaters’ attorneys now operate out of Cologne again under the name of Oppenhoff & Partner.⁶³

This development, especially the dramatic winnowing of the partnership, was seen rather critically at first, though what it represents is an example of a law firm’s management in Germany coordinating with London, to build up a corporate and finance focused global law firm. Part of this transformation also entailed the switch from the traditional career-long partnership to a more business-like environment. Ultimately, this focused strategy has proven to be successful so far. Currently, of some 2,200 attorneys worldwide 282 are in Germany (11%), and the firm has established itself as one of Germany’s most prestigious and profitable.⁶⁴

⁶⁰ Christoph Tillmanns, *Linklaters macht Druck: Deutsche Partner auf dem Prüfstand*, JUVE, July 1, 2004.

⁶¹ “Unser Geschäftsmodell verpflichtet jeden Partner, sein Geschäft auch weiter zu entwickeln. Nicht alle sind dazu bereit.” Claudia Tödttmann, *Deutsche Großkanzleien unter starkem Erfolgsdruck: Rechtsanwaltskanzleien wandeln sich*, WIWO.DE, July 22, 2004, available at <http://www.wiwo.de/unternehmer-maerkte/rechtsanwaltskanzleien-wandeln-sich-353604/>.

⁶² Caroline Binham, *Linklaters raids Freshfields for Düsseldorf launch*, THE LAWYER, Sept. 27, 2010.

⁶³ See Christine Albert, *IP-Boutique eröffnet Büro in Berlin*, JUVE, Dec. 29, 2006; René Bender, *Köln: Nächster IP-Rechtler von Linklaters schließt sich Jonas an*, JUVE, June 6, 2007; Jörn Poppelbaum, *Oppenhoff ist aufgestellt: Ex-Linklaters-Standort ernannt weitere Partner und besetzt Kanzleigremien*, JUVE, Jan. 29, 2008; Richard Lloyd, *Ruhr opportunity: pulling up stakes in Cologne, Linklaters bets on Dusseldorf to kick-start its German corporate practice*, THE AMERICAN LAWYER, May 5, 2008.

⁶⁴ “In puncto Angleichung der Partnerprofitabilität haben die dt. Büros schon früher ihre Hausaufgaben gemacht als andere Linklaters-Büros im Ausland. Die Konzentration wichtiger Fachbereiche in Frankfurt

4. Lovells:

The German side came about through a series of mergers of law firms in Frankfurt, Hamburg, Munich, and Düsseldorf in the years 1990, 1997, and 1999. This resulted in a firm known as Boesebeck Droste. This was followed in 2000 by the merger of Boesebeck Droste and the UK law firm Lovell White Durrant. Initially known in Germany as Lovells Boesebeck Droste, the firm shortened its name to Lovells in 2002.⁶⁵ Lovells now has 380 attorneys in four German offices out of 1133 worldwide (25%). Beginning for the financial year 2007/2008, the firm has begun to make its accounts public, and then beginning with the financial year 2008/2009, the firm also produced its first comprehensive Corporate Responsibility Report.⁶⁶ In 2010 the firm was nominated as the most favored employer for young attorneys.⁶⁷

Lovells has also experienced similar pressures to improve performance. Walter Klosterfelde, former deputy chairman at Lovells, explained: “Every partnership is continuously under pressure to weed out de-motivated and inefficient partners.”⁶⁸ On the client side, Lovells has represented some impressive clients in recent years, including construction giant Hochtief, the former banking corporation Dresdner Bank, and Germany’s largest airport, Fraport. Lovells was even announced as law firm of the year 2007/2008 by *JUVE*. It was recognized for three main reasons: First, its corporate team,

(z.B. Prozess- u. Arbeitsrecht) u. Berlin (Regulierte Industrien) u. die damit z.T. einhergehende Verschlingung sowie die Schließung des Standorts Köln zum Jahreswechsel 2008 waren nach diesem Maßstab konsequente Schritte, wie sich nun zeigt.” Linklaters, *JUVE HANDBUCH* 2009/2010.

⁶⁵ Lovells: *Law Firm Heritage*, *JUVE HANDBUCH* 2006/2007, at 626.

⁶⁶ See <http://www.lovells.com/Lovells/AboutLovells/LLP+Conversion/LLP.htm>; <http://www.lovells.com/Lovells/MediaCentre/PressReleases/Lovells+launches+its+first+CR+report.htm>.

⁶⁷ Mathieu Klos, *azur-Liste 2010: Lovells ist attraktivster Arbeitgeber für Juristen*, *JUVE*, Feb. 24, 2010.

⁶⁸ “Jede Sozietät steht kontinuierlich unter dem Druck, leistungsschwache und unmotivierte Partner auszukämmen.” Claudia Tödtmann, *Lovells überholt Wirtschaftskanzleien*, *WIWO.DE*, Nov. 10, 2008, available at <http://www.handelsblatt.com/unternehmen/handel-dienstleister/lovells-ueberholt-wirtschaftskanzleien:2084227>.

which saw an increase in the number of deals done for DAX corporations⁶⁹ despite a very competitive market; second, Lovell gained an outstanding reputation with industrial clients such as chemical giant Cognis and recycling mammoth Interseroh; and finally, under the management of Harald Seisler, the German attorneys became more profitable than their British counterparts – despite higher billing rates in London.⁷⁰ On the other hand, despite such a strong performance, among its Germany offices, its Frankfurt office is still considered weak compared with some of its leading competitors.⁷¹

The German legal market is now dealing with the repercussions of Lovell's recent merger with Hogan & Hartson. Just months after the two parties announced their intent to merge, a large group of 40 attorneys, including 18 partners—roughly two-thirds of the Hogan & Hartson attorneys in Germany—split off to start their own firm under the name of Raue Rechtsanwälte.⁷² Reasons behind this move included client conflicts and a desire to be independent from management. Only about 20 Hogan & Hartson attorneys were left to join with Lovells, though this did at least give the combined firm an office in Berlin, which it otherwise would not have had, since Lovells closed its Berlin office in 2006.⁷³

⁶⁹ The DAX – Deutscher Aktien Index – is a stock market index of the 30 largest German companies listed on Germany's primary stock exchange, the Frankfurt Stock Exchange. See <http://deutsche-boerse.com>.

⁷⁰ Claudia Tödtmann, *Lovells überholt Wirtschaftskanzleien*, WIWO.DE, Nov. 10, 2008, available at <http://www.handelsblatt.com/unternehmen/handel-dienstleister/lovelles-ueberholt-wirtschaftskanzleien;2084227>.

⁷¹ *Lovells*, JUVE HANDBUCH 2009/2010.

⁷² In addition, after nearly twenty years with Hogan & Hartson the entire Warsaw office left to join K&L Gates. Hogan & Hartson's Geneva office also left. See *Hogan & Hartson Announces Departure of Lawyers in Its Warsaw Office*, HOGAN & HARTSON PRESS RELEASE, available at <http://www.hhlaw.com/pressroom/newspubs/detail.aspx?news=1176>; *K&L Gates Opens Warsaw Office*, K&L GATES PRESS RELEASE, March 1, 2010, available at <http://www.klgates.com/newsstand/detail.aspx?publication=6249>; *Geneva Lawyers to Depart Hogan & Hartson*, HOGAN & HARTSON PRESS RELEASE, available at <http://www.hhlaw.com/pressroom/newspubs/detail.aspx?news=1184>.

⁷³ Ulrike Barth & Simone Bocksrocker, *Raue-Neustart: Gründe für die Abspaltung von Hogan Lovells*, JUVE, Mar. 25, 2010; See also Ulrike Barth, *Überraschung in Berlin: Hogan-Partner gründen Raue Rechtsanwälte*, JUVE, Mar. 23, 2010.

This fall-out provides an interesting example of the ramifications of large-scale international mergers. Mergers that are planned in London or New York might focus primarily on the needs and future of those two markets. Secondary markets such as Germany might not be a primary consideration, especially if the share of attorneys in the overall firm is small and if they are not present in management. While in the wake of a merger, the firm leadership may envision either consolidation or integration its plans may be preempted by the initiatives of individual attorneys or whole offices. Finally, this merger highlights the future need for a separate category: the truly global law firm (or at least an Anglo-American-with-international-offices law firm), especially if increasingly more law firms follow suit.⁷⁴

5. DLA Piper:

This is another firm that defies simple classification. From its management, with co-CEOs Sir Nigel Knowles and Lee I. Miller, to its history and geographic distribution, DLA Piper is neither a UK firm or a US firm. However, given that it still has a dual management and still maintains a separation of profit pools, it is essentially comprised of a UK firm and US firm under one brand. While in the past the firm has announced intentions of moving towards greater integration, full integration has yet to be achieved. More recently the firm announced the sharing of a global bonus pool, so it remains to be seen

⁷⁴ During the time of writing this article, US-based Squire, Sanders & Dempsey was engaged in merger discussions with UK-based Hammonds; US-based Sonnenschein Nath & Rosenthal and UK-based Denton Wilde Sapte merged to form SNR Denton; and UK-based Simmons & Simmons engaged in and then ended merger discussions with US-based Mayer Brown. See Brian Baxter, *Squire Sanders and Hammonds Considering Trans-Atlantic Merger*, THE AMERICAN LAWYER, Aug. 25, 2010; Nate Raymond, *Sonnenschein, Denton Approve 1,250-Lawyer Combination*, NEW YORK LAW JOURNAL, June 11, 2010; *SNR Denton Launches as Top 25 Global Law Firm*, SNR PRESS RELEASE, Sept. 30, 2010, available at http://www.snr-denton.com/news_insights/in_the_media/snr_denton_launch.aspx; Suzi Ring, *Simmons & Simmons Still Considering U.S. Merger as Part of Growth Strategy*, LEGAL WEEK, Oct. 22, 2010.

whether and how this changes the structure of the law firm with time.⁷⁵ For purposes of this paper, the characterization as a UK firm still makes sense, since the German offices are historically linked to Dibb Lupton Alsop (DLA), the UK half of the firm.

Starting in 2001, DLA began an alliance with Görg Rechtsanwälte. However, by the summer of 2004, this relationship came to an end. DLA was pushing for more integration and even for a merger, but was rebuffed by a large majority of partners on the German side. As a consequence, the German Managing Partner Dr. Ulrich Jüngst, who had supported further integration with DLA, resigned and left the firm with two associates to start DLA's first German office. In the years since, his goal to build up a German presence with some three offices and some 40-50 attorneys has already more than been accomplished.⁷⁶ The Hamburg office of Görg Rechtsanwälte, which had only recently joined Görg Rechtsanwälte, decided to join with DLA in its entirety.⁷⁷ Then in October 2005 DLA Piper opened its Frankfurt office with five partners and six associates, from Coudert Brothers' former office.⁷⁸ In August 2007 the firm opened an office in Munich. The firm considered bringing in laterals, but ultimately made the decision to start up in Munich organically, by moving a partner and two associates there.⁷⁹

At this point DLA Piper has over 130 attorneys in Germany and belongs to Germany's 25 largest firms. In the *JUVE* prestige rankings, the firm places in the same

⁷⁵ Richard Lloyd, *Putting it together: DLA Piper's American and international units share a name, a brand, and – the firm says – a vision. But they still don't share profits. Is the firm a harbinger, or just poorly integrated?*, THE AMERICAN LAWYER, Nov. 2008.

⁷⁶ Antje Neumann, *Görg und DLA uneinig über Fusion: DLA bald mit eigenem Büro in Köln*, JUVE, July 22, 2004; Jörn Poppelbaum, *DLA: Erster Quereinsteiger in Deutschland*, JUVE, Oct. 7, 2004.

⁷⁷ Jörn Poppelbaum, *Deutschland im Visier: Auch Hamburger Görg-Büro tritt DLA bei*, JUVE, Aug. 18, 2004.

⁷⁸ Till Mattes & Antje Neumann, *Schluss in Deutschland: DLA und Coudert-Partner handelseinig*, JUVE, Sept. 8, 2005.

band as other UK firms Ashurst, SJ Berwin, and Bird & Bird, and ironically also with Görg Rechtsanwälte. However, in the *Chambers & Partners* prestige rankings, DLA Piper is significantly ahead of both the other British firms mentioned and also ahead of Görg Rechtsanwälte.

6. Summary:

Undoubtedly, the UK firms have successfully established themselves in the German legal market: they have large numbers of attorneys; they do prestigious international work with German components, German work with international components, and strictly domestic German work; and their reputations are esteemed among clients, lawyers, and law students. A recent survey of where German law students would like to work confirms this: three of the top ten employers of choice are UK firms.⁸⁰ A different ranking that lists the best employers for lawyers (*attraktive Arbeitgeber für Juristen*) found that out of the top ten employers, five are UK firms.⁸¹

Given that for most UK law firms the German legal market makes up a smaller proportion of the overall firm than the UK legal market, many of the changes have been inbound. German offices have had to adopt a more corporate-like, managed structure.⁸²

⁷⁹ Antje Neumann & Marcus Jung, *Neuer Standort: DLA Büros nun auch in München und Polen*, JUVE, July 29, 2007.

⁸⁰ The three UK firms are: #2 Freshfields Bruckhaus & Deringer, #4 Clifford Chance, and #8 Linklaters. The others are #1 the Foreign Service, #3 Hengeler Mueller, #5 Gleiss Lutz, #6 McKinsey & Company, #7 CMS Hasche Sigle, #9 Deutsche Lufthansa, and #10 Porsche, Christoph Hus, *Jura: Das Prädikatsexamen erleichtert die Jobsuche*, KARRIERE.DE, Nov. 1, 2008 available at <http://www.karriere.de/beruf/jura-das-praedikatsexamen-erleichtert-die-jobsuche-8049/2/>.

⁸¹ The top ten are: *Hogan Lovells*, *Freshfields Bruckhaus Deringer*, *Hengeler Mueller*, *CMS Hasche Sigle*, *Gleiss Lutz*, *Linklaters*, *Taylor Wessing*, *Clifford Chance*, *Shearman & Sterling*, and *Noerr* (UK firms are italicized). See http://www.azur-online.de/azhtml/mag_akt_2010-100.html.

⁸² For a discussion on the balance of power of German attorneys within these merged entities, see Glenn Morgan & Sigrid Quack, *Institutional legacies and firm dynamics: The growth and internationalisation of British and German law firms*, CSGR Working Paper No. 169/05, May 2005, available at <http://www2.warwick.ac.uk/fac/soc/csgr/research/workingpapers/2005>.

There has also been great pressure to bring German offices up to greater profitability as UK billing rates are generally 10-20% higher than German rates.⁸³ UK firms, many of which adhere to a lockstep system of compensation, have also been more serious about removing underperformers. Thus even in growth years while most German firms grew in size, several UK firms reduced their headcount.⁸⁴

What remains to be seen is how the UK firms will develop long term. On-going issues will center on the relative size and influence of the German segment in the UK-firms, i.e., will the German segment shrink in size and importance compared to London and other markets, and what ramifications will this have? A further question will be regarding the relative size of the UK firms, i.e., will the UK firms continue to be the largest in Germany, or will they focus on key areas at the expense of size, or will there perhaps be a split amongst the UK firms in what strategy they follow?

B. US LAW FIRMS

It should be noted that the category of a US law firm is similarly an imperfect description. Perhaps this can be best illustrated through examples. Sullivan & Cromwell in Germany was a good example of a US firm. For their initial six years, the firm only had US lawyers located in its one satellite office. By contrast, Orrick, Herrington & Sutcliffe in Germany is the product of a recent merger in 2008 with Hölters & Elsing, and is still known under the combined name of Orrick Hölters & Elsing. It would seem a stretch to call Orrick in Germany a US firm. Instead this firm should probably be classified as a

⁸³ Chris Crowe, *Strange Pairings*, LEGAL BUSINESS, Mar. 2005; Marcus Creutz, *Worauf Mandanten bei den Anwaltshonoraren achten sollten*, WIWO.DE, Dec. 12, 2008, available at <http://www.wiwo.de/finanzen/worauf-mandanten-bei-den-anwaltshonoraren-achten-sollten-381160/>.

⁸⁴ *Der Markt ist gespalten*, JUVE, June 29, 2005; Claudia Tödtmann, *Die besten Adressen für Juristen*, WIWO.DE, May 16, 2005, available at <http://www.karriere.de/beruf/die-besten-adressen-fuer-juristen-6976/>.

German firm under an American brand or perhaps as an American-German firm. The US laws firms in Germany all fall somewhere on this spectrum.

Most of the American law firms have a somewhat different constellation than the UK firms. When they came to Germany, they merged with much smaller partners, or set up offices of their own, which also tended to be small. Though there are over a dozen US law firms among the largest law firms, there is only one among the top ten. Three reasons seem to explain this phenomenon: First, “[t]he British firms got [a] head start by snatching up the biggest German firms in a series of mergers”⁸⁵ and many German firms that remained had made a commitment to remaining independent; second, much of the work that many US firms do is US-focused and is probably not as likely to have a significant German component as the work done by UK law firms, which is likely to be more Euro-centric simply by virtue of geographic proximity; and third, given that billing rates tend to be lower in Germany, especially relative to top US partners in cities like New York,⁸⁶ there can be some potential for conflict or simply limits on expansion, e.g., Cleary Gottlieb’s strict lock-step compensation acts “as brakes. [. . .] Cleary Gottlieb is apt to pen only those offices that can generate revenues and PPP equivalent to its other offices [. . .] Thus, it is likely to avoid anything but the most controlled expansion.”⁸⁷

Most of the US firms that first went overseas to Germany and elsewhere focused on US law, either for US businesses abroad, or for foreign businesses with interests in the

⁸⁵ Sandburg, *supra* note 5, at 196.

⁸⁶ Chris Crowe, *Strange Pairings*, LEGAL BUSINESS, Mar. 2005; Marcus Creutz, *Worauf Mandanten bei den Anwaltshonoraren achten sollten*, WIWO.DE, Dec. 12, 2008, available at <http://www.wiwo.de/finanzen/worauf-mandanten-bei-den-anwaltshonoraren-achten-sollten-381160/>.

⁸⁷ Peter D. Sherer, *Your competitors: Mapping the competitive space of large US law firms: a strategic group perspective*, in MANAGING THE LAW FIRM 184, 162-185 (Laura Empson ed., 2007).

USA.⁸⁸ In Germany, this entailed usually starting with an initial office in Frankfurt. This reflects Frankfurt's role as Germany's financial center, and also the strong emphasis law firms have placed on financial work in the past two decades, especially during the internationalization of the capital markets.⁸⁹ Perhaps related to this is that the USA has maintained strong ties with Frankfurt for decades, in part because of the US military presence. It is worth noting that Frankfurt is "the largest U.S. consular post and one of the largest diplomatic missions in the world."⁹⁰

The initial wave of firms to Frankfurt included firms such as Jones Day (1990), Skadden Arps Slate Meagher & Flom (1990), and Shearman & Sterling (1991); then after this initial wave of leading firms, a whole array of other US firms followed: including Weil Gotshal & Manges (2000), White & Case (2000), Latham & Watkins (2001), Mayer Brown (2001), Cleary Gottlieb (2002), Dewey & LeBoeuf (2002), Sidley Austin (2006), and Paul Hastings (2007). Within this second wave, several US law firms were not just content to set up outposts, but also acquired or merged with existing law firms. Law firms felt the pressure to follow the needs of clients, and also sought to profit from lucrative capital markets work.⁹¹ During the second wave, many firms chose instead, or in addition, to open an office in Düsseldorf or Munich, such as Shearman & Sterling (2001), Jones Day (2003), Dechert (2004), and Kirkland & Ellis (2005).⁹² Some law firms have also set up

⁸⁸ Carole Silver, *Local Matters: Internationalizing Strategies for U.S. Law Firms*, 14 IND. J. GLOBAL LEGAL STUD. 67, 75-76 (2007).

⁸⁹ Papendorf, *supra* note 9, at 138-139.

⁹⁰ U.S. Consulate General Frankfurt, Germany. http://frankfurt.usconsulate.gov/frankfurt/general_info.html.

⁹¹ Papendorf, *supra* note 9, at 138-139.

⁹² Richard Lloyd, "Bavaria's buyout capital: once-scorned Munich has become the locale of choice for buyout houses and their law firms." THE AMERICAN LAWYER, May 29, 2007, at 96; Matt Fleischer-Black, *Tech Central: Munich is getting Frankfurt's overflow of foreign firms, and nothing is hotter than IP work. How many global patent litigators does it take to compete with the local boutiques?*, THE AMERICAN LAWYER, Apr. 25, 2003, at 135.

offices to complement their own practice strengths or out of other strategic reasons, such as Wilmer Hale (1993) and Hogan & Hartson, both strong DC firms that set up offices in Berlin.⁹³ At this point, of the fifty largest firms by gross revenue in the AmLaw 100, thirty-one have a presence in Germany.⁹⁴

While there are about just as many US firms as UK firms among the largest law firms, far fewer attorneys work at the US firms: Only 1,249 of 8,642 attorneys (14.5%). As a result of being relatively smaller, it is not surprising that “U.S. firms tend to be narrowly focused on transactional work, [while] the London giants are full-service shops.”⁹⁵ Moreover, for the American law firms, the number of attorneys in Germany is a much smaller proportion of the total number of attorneys – namely only 5.7%, ranging from nearly 13% at White & Case to just over 2% at Skadden. The three US firms with the largest presence in Germany are White & Case, Baker & McKenzie, and Latham & Watkins, the first two of which are discussed herein. The other US firms with a significant presence in Germany include, viz. - Shearman & Sterling, Mayer Brown, Weil Gotshal & Manges, Jones Day, Clearly Gottlieb Steen & Hamilton, Hogan & Hartson, Orrick Hölters & Esling, Dewey & LeBoeuf, Wilmer Hale, Skadden Arps Slate Meagher & Flom, and McDermott Will & Emery, of which Shearman & Sterling, Dewey & LeBoeuf and McDermott Will & Emery are discussed below. Sullivan & Cromwell is also discussed, given its interesting history.

⁹³ Richard Lloyd, “*The Berlin stories: the German capital isn't an obvious place for U.S. firms to be. But a select few are thriving in this quirky, specialized market.*” THE AMERICAN LAWYER, May 29, 2007, at 102.

⁹⁴ The firms among the fifty largest firms in the AmLaw 100 that do not have a presence in Germany are: Greenberg Traurig, Morrison Foerster, O’Melveny Myers, Simpson Thacher, Ropes & Gray, Davis Polk, Akin Gump, Bingham McCutchen, Winston & Strawn, Foley Lardner, Paul Weiss, Goodwin Procter, Hunton & Williams, Proskauer Rose, Baker Botts, Holland & Knight, Vinson & Elkins, Pillsbury Winthrop, and Alston & Bird. *See AmLaw 100 by Gross Revenue*, THE AMERICAN LAWYER, May 31, 2009, at 151.

⁹⁵ Sandburg, *supra* note 5, at 196.

In terms of *JUVE*'s prestige rankings, the US firms are highly ranked, though not as highly as the top German or UK firms: two out of five in Band 3, two out of three in Band 4, and one out of two in Band 5 are US firms. That said, the US firms are still well represented, given that fourteen of them appear in the top fifty in terms of ranking for prestige. In the *Chambers & Partners* rankings, the American-German firms receive very few Band 1 rankings, and are more frequently ranked in lower prestige bands. When using a weighted measure, only White & Case and Latham & Watkins appear in the top ten, albeit in positions eight and nine. Several interesting observations can be made on this basis. On the one hand, the US firms in Germany rank behind the Domestic-German and UK firms in terms of prestige; though this should not be surprising given the correlation between size and prestige. On the other hand, US firms are still better positioned in terms of prestige than their size would suggest. This may be a reflection of the power of the global brand value of the US firms, e.g., when comparing a US firm with a Domestic-German firm, the former may be considered more prestigious than the latter, even if both are comparable in terms of office size and work performed, purely on the basis that the US firm has a global vs. a local brand. Alternatively, it may be a reflection of the type of work US firms perform in Germany. For example, many US firms were able to break into the lucrative and booming area of private equity work. They were able to do this, because client relationships in this area were primarily with individual lawyers, whom US firms were able to attract as laterals.⁹⁶

⁹⁶ Heather Smith, *Race to the top: U.S. firms discover a window of opportunity in Germany, thanks to the private equity boom*, THE AMERICAN LAWYER, May 27, 2005, at 118.

1. White & Case:

This law firm is unusual among US law firms in that it has real geographic coverage and numeric depth in Germany. It has 252 attorneys in offices in Berlin, Düsseldorf, Frankfurt, Hamburg, and Munich, and received more *Chambers & Partners* recognitions than any other US firm in Germany. White & Case established its German presence in 2000, when it merged with the relatively large German firm Feddersen Laule Ewerwahn Scherzberg Finkelnburg Clemm, who had through a series of mergers in 1990, 1992, and 1999 respectively, combined attorneys from the different cities.⁹⁷ More recently, White & Case added a Munich office (2006), but then closed their Dresden office (2008) as the managing partner there retired.⁹⁸ According to *JUVE*, the firm has done much recently to improve its internal collaboration across its German offices, though it still remains behind some of its competitors in this regard.⁹⁹

2. Baker & McKenzie:

Baker & McKenzie is the oldest continuously present US law firm in Germany. It opened an office in Frankfurt in 1962, at the time, the only German city with an international airport. This move was part of Baker & McKenzie's strategy to achieve a global presence, just as many accounting and consulting firms were doing. Its Frankfurt office did work primarily for US clients (over 90%), and maintained a low profile until the 1990s, as not to further exacerbate already uneasy relations with the German Bar Association. As the market liberalized in the 1990s, Baker & McKenzie began opening

⁹⁷ White & Case and its predecessor firm in Germany have not been known for their centralized management. This perhaps explains in part the rather lengthy name of the predecessor firm. Aled Griffiths, *Föderale Organisationsstrukturen: Das Effizienzproblem*, *JUVE*, Dec. 29, 2007.

⁹⁸ Sofia Lind, *White & Case to Exit Dresden as Local Chief Retires*, *LAW.COM*, Oct. 28, 2008, available at <http://www.law.com/jsp/law/LawArticleFriendly.jsp?id=1202425579080>; Kian Ganz, *White & Case shuts Dresden base*, *THE LAWYER*, Oct. 27, 2008.

offices in other cities: Berlin (1990), Munich (1997), and Düsseldorf (1999).¹⁰⁰ With some 177 attorneys, it is the second largest US law firm in Germany, and offers a full-range of legal services, which has helped it during the current financial crisis.¹⁰¹

3. Shearman & Sterling:

The firm Shearman & Sterling came to Germany in 1991. Unlike other firms who at the time looked mainly to Frankfurt, Shearman & Sterling opened its first office in Düsseldorf, because the firm sought to attract a certain lawyer, by the name of Georg Thoma, who was located there. Thoma had spent a year as an associate at Shearman & Sterling back in 1978, and had since then become a leading corporate lawyer. The decision to court Thoma was a successful one. In the nearly two decades that have followed, Thoma has helped build up the firm's presence in Germany to become one of Germany's leading law firms, perhaps even the leading US law firm in Germany, being involved in high-profile deals such as the Daimler-Chrysler merger.¹⁰² Thoma's own ability to routinely bill around 3,000 hours a year, while managing a book of business said to be worth some \$40-50m, has been a contributing factor to the firm's success.¹⁰³

In the early 2000s the firm continued to expand dramatically, bringing on several leading lawyers, and opening offices in Mannheim (2000) and Munich (2001). Following this period of expansion, the firm then entered a period of contraction, as several top

⁹⁹ *White & Case*, JUVE HANDBUCH 2009/2010.

¹⁰⁰ JON R. BAUMAN, PIONEERING A GLOBAL VISION: THE STORY OF BAKER & MCKENZIE, 84-90 (1999).

¹⁰¹ *Baker & McKenzie*, JUVE HANDBUCH 2009/2010.

¹⁰² Heather Smith, *Going Deutsche: Shearman & Sterling opened in Dusseldorf in 1991 with just three partners. Georg Thoma, now the firm's co-managing partner, looks back at how he built up a tiny outpost into one of the most respected corporate practices in Germany*, THE AMERICAN LAWYER, May 27, 2005, at 126.

¹⁰³ See Richard Lloyd, *Über-Rainmaker: Georg Thoma made Shearman & Sterling a powerhouse in Germany. So why have so many of his partners said auf Wiedersehen?*, THE AMERICAN LAWYER, May 01, 2009.

partners left. The Mannheim office returned to independence and readopted its former name of Schilling Zutt Anschutz in 2007.¹⁰⁴ However, the firm's performance during the financial crisis has been impressive, with involvement in major restructurings and deals, and has been noted as a comeback.¹⁰⁵

4. McDermott Will & Emery:

This firm opened their first German office in Munich at the beginning of 2001, with five lawyers from BBLP Beiten Burkhardt Mittl & Wegener.¹⁰⁶ They then opened a Düsseldorf office later in the year, with a group of lawyers from Menold & Aulinger, who had concerns regarding an impending merger of Menold & Aulinger with Andersen Luther. The group that came from Menold & Aulinger had contacts to McDermott, because of a relationship with a McDermott attorney in Munich.¹⁰⁷ When McDermott opened its offices, it only provided advising on German law: "This may be the result of a strategic choice by McDermott or the consequence of acquiring a group of German lawyers from a local firm to serve as its foreign office."¹⁰⁸ Now nearly a decade later, the firm still only has German lawyers. It remains strong in the mid-cap segment, which has helped the firm in the current downturn, though it has yet to achieve its self-declared goal of breaking into the arena of larger transactions.¹⁰⁹

¹⁰⁴ The Mannheim based office had represented carmaker Daimler and chemical giant BASF. Claudia Tödtmann, *Top-Kanzleien machen sich stärker Konkurrenz*, WIWO.DE, Jan. 4, 2009, available at <http://www.wiwo.de/unternehmer-maerkte/top-kanzleien-machen-sich-staerker-konkurrenz-382831/>.

¹⁰⁵ *Shearman & Sterling*, JUVE HANDBUCH 2009/2010.

¹⁰⁶ *Looking Beyond*, *supra* note 8.

¹⁰⁷ Christoph Tillmanns, *McDermott-Büroeröffnung in München: neue Hintergründe*, JUVE, Nov. 5, 2001; Mathieu Klos, *McDermott-Coup in Düsseldorf*, JUVE, Aug. 22, 2002.

¹⁰⁸ Carole Silver, *Regulatory Mismatch in the International Market for Legal Services*, 23 NW. J. INT'L. L. & BUS. 487, 499 (2003).

¹⁰⁹ *McDermott Will & Emery*, JUVE HANDBUCH 2009/2010.

5. Dewey & LeBoeuf:

Dewey & LeBoeuf made its entrance into Germany in 2002 as what was then Dewey Ballantine. The firm grew rapidly through a number of lateral acquisitions, and until recently had about fifty attorneys. The office had a strong tax practice, thanks to stellar rainmaker Hanno Berger, who was also one of the largest revenue generators firm-wide, with a book of business said to be about 10m Euro or more. Despite the financial crisis, the firm achieved a record year in 2009, in part due to the tax group, increasing revenues by 5% to just over 30m Euro.¹¹⁰ However, during the summer of 2010, Hanno Berger and a number of other attorneys left, some to start a new tax boutique, others to join the tax advisory firm WTS. While the slimmed down Frankfurt office of Dewey & LeBoeuf has plans to rebuild its office, it remains on friendly referral terms with Berger's group.¹¹¹

6. Sullivan & Cromwell:

This was one of the first US law firms to expand into Europe, maintaining a Berlin and Paris office in the early part of the twentieth century. However, Sullivan & Cromwell closed its Berlin office in 1935 and did not open a Frankfurt office until sixty years later. The Frankfurt office has been small from its inception and even now has only 18 attorneys. It also was essentially a US law office until 2001 when it added two German attorneys as partners, one of whom, Wolfgang Feuring, is now the managing partner of the Frankfurt office. Now nearly ten years later, the office consists almost entirely of German lawyers.

¹¹⁰ Jörn Poppelbaum, *Einsamer Herrscher*, JUVE Rechtsmarkt, Mar. 2010, 24-31; René Bender & Jörn Poppelbaum, *Umsätze: White & Case und Dewey mit ordentlichen Ergebnissen*, JUVE, Feb. 11, 2010; see Volker Votsmeier, *Neustart: Berger Steck & Kollegen gründen Steuer- und Investmentboutique*, JUVE, Aug. 3, 2010.

Despite its size, Sullivan & Cromwell in Germany is a notable firm in the field of capital markets, though more recently also in the area of M&A.¹¹²

7. Summary:

The US law firms have also established themselves in Germany, and with their entry have helped to accelerate change. Perhaps a most telling example is the appearance of *JUVE*, beginning in 1998. *JUVE* is a publication similar to *The American Lawyer*, and has provided the source material for much of this paper. Another symptom of change is the associate salary wars. The large law firms in Germany have all dramatically raised their salaries over the past ten years, just as had happened in the UK.¹¹³ Also, law firms more generally have focused more on profitability. And despite their relative size, some US firms have been among the most profitable in recent years. For example, in 2007 six of the top ten law firms with the highest revenue per lawyer were US firms.¹¹⁴

A challenge for many of the US firms in particular is the question of trying to match their strategy across the board. If one is a top firm in the USA, is it worth being in Germany or other countries if one is ranked in a lower tier there, e.g., a Skadden Arps Slate Meagher & Flom that achieved 4th place in the 2009 Vault prestige rankings, is only ranked 41st in the 2009 AZUR-Liste for top places to work and 78th in the 2009 Associate-

¹¹¹ See Volker Votsmeier, *Neustart: Berger Steck & Kollegen gründen Steuer- und Investmentboutique*, *JUVE*, Aug. 3, 2010; Volker Votsmeier, *Frankfurt: WTS jetzt im Asset Management offiziell mit eigener Rechtsberatung*, *JUVE*, Oct. 14, 2010.

¹¹² *Sullivan & Cromwell*, *JUVE HANDBUCH* 2009/2010.

¹¹³ “Erstmals seit vier Jahren haben Kanzleien wieder ihre Einstiegsgehälter für Associates erhöht, bisher insgesamt sieben Sozietäten. Hengeler Mueller zahlt seit Anfang Mai bis zu 10.000 Euro mehr und erhöhte ihr Angebot auf maximal 90.000 Euro. Zusammen mit Dewey Ballantine steht Hengeler damit an der Spitze.” Sven Aretz, *Höhere Einstiegsgehälter: Kanzleien unter Druck*, *AZUR*, May 30, 2006, available at http://azur-online.de/azhtml/karri_intro.html.

¹¹⁴ *JUVE Rechtsmarkt* 10/2008, quoted in *Die profitabelsten Wirtschaftskanzleien*, *WIWO.DE*, Oct. 1, 2008, available at <http://www.wiwo.de/handelsblatt/die-profitabelsten-wirtschaftskanzleien-308723/>. Note that

AZUR ranking for profile. Firms will have to ask themselves whether they can achieve the much-advertised one-firm worldwide, and whether they can still make the cross-border and cross-practice sell when they face disparities in practice strengths.

Related to that issue, is that going forward, each US law firm will have to decide if and to what extent it wants to be present in the German legal market, in terms of number of offices, attorneys, and practice groups. This in turn begs the question of what US firms are still left and interested in expanding into Germany, whether through a satellite office or by merger; and conversely, what German firms remain that are looking to merge with an international partner.¹¹⁵ For the foreign firms who are there, they must assess whether it makes sense to also have foreign-trained lawyers and to offer non-German legal services in their German offices. While ultimately this decision will likely be dictated by client demands, foreign trained lawyers can serve as powerful integrating force as they coordinate cross-border work that involves German and foreign lawyers.

One of the most recent moves into Germany was made by Orrick, Herrington & Sutcliffe that in 2008 merged with Hölters & Elsing. Through the merger, Orrick suddenly gained a presence in the three major cities of Berlin, Düsseldorf, and Frankfurt, and conversely Hölters & Elsing gained a worldwide platform. While in the short-term at least, profits per equity partner at Orrick slumped some 20%, through a combination of the financial crisis and the addition of over 20 new equity partners through the merger, there

these figures are estimates. Though for example Clifford Chance does make public its financial figures, most firms in Germany do not.

¹¹⁵ “‘There has been a sea-change in client attitudes in the U.S.,’ says one managing partner of a U.S. firm in Frankfurt. ‘You can’t pass [clients] on to referral firms without running the risk of losing them. And that means building up something in Germany approaching full service.’ But doing so would thrust a firm into the most competitive realm of German practice.” Aled Griffiths, *Making the most of the downturn*, THE AMERICAN LAWYER, Jan. 25, 2003, at 8.

may be long-term benefits that will still be realized.¹¹⁶ On the other end of the spectrum is Davis Polk that in 2009 after many years of an active presence in Germany, withdrew and closed its Frankfurt office.¹¹⁷

C. *INTERNATIONAL-GERMAN FIRMS*

A number of law firms in Germany resisted mergers with UK and US Firms, whether by conscious choice or because of a lack of opportunity. These firms are discussed in this and the following sections.

Just as it is increasingly becoming difficult to define what is domestic and what is international for UK and US firms (especially as some firms now describe themselves as a “global firm with no headquarters”¹¹⁸), the same holds true for German firms. For sure, there are no large German international law firms that have reached the scale or geographic presence as have many Anglo-American firms. Similarly, there is virtually no large German law firm that has more attorneys outside of its home jurisdiction than within its home jurisdiction, as is true of some of the UK firms.¹¹⁹ However, there are several firms that can be characterized as international, foremost among them is, or better said was, Haarmann Hemmelrath. The only other three German firms that are placed in this category are CMS Hasche Sigle, Noerr and Beiten Burkhardt. All four firms are discussed below.

1. Haarmann Hemmelrath:

Founded in 1987 Haarmann Hemmelrath is perhaps the best example, albeit an

¹¹⁶ Geertje Oldermann, *Unter Dach und Fach: Hölters & Elsing fusioniert mit Orrick, JUVE*, Sept. 15, 2008; *The Party's Over*, THE AMERICAN LAWYER, May 31, 2009, at 109.

¹¹⁷ Christopher Tod, *Rückzug: Davis Polk schließt deutsches Büro*, JUVE, June 10, 2009.

¹¹⁸ “We see ourselves as a global legal institution [...] Jones Day does not have an official headquarters and the Firm is based in every market where we serve clients.” Where is Jones Day based and/or where are its headquarters? Jones Day Website, available at <http://www.jonesday.com/aboutus/> and <http://www.jonesday.com/newsknowledge/pressroom/?section=FAQs>.

unsuccessful one, of an International-German law firm. It peaked at about 1,200 employees worldwide, including some 650 professionals of whom 350 were lawyers, in offices throughout Germany, the rest of Europe, and Asia.¹²⁰ In addition to legal services, the firm also provided other professional services, including auditing and accounting services.¹²¹

Haarmann Hemmelrath's rise and fall happened within just a few years. By 1999 the firm was known as one of the "rising stars of the legal industry."¹²² In the early 2000s, the firm appeared still vibrant and strong, and though there was some turnover in partners, laterals came in to replace those who had left. In 2003 the firm had gross revenues of about 145m Euro.¹²³ However, in late 2003 and early 2004, its bankruptcy group started falling apart as it lost key lawyers.¹²⁴ In 2004 the firm switched to a modified-lockstep system of pay in an overhaul of the compensation system.¹²⁵ Then during the summer of 2004, it faced the wrath of a former client who sued for malpractice to the sum of 360-480m Euro.¹²⁶ Several attorneys left in the following months, and in the fall, Haarmann Hemmelrath actually began a libel-suit against a business magazine that had published an article that maintained that the firm's management and financial position were weak.¹²⁷

The firm did attract new laterals in late 2004 and throughout 2005; however, in the summer of 2005, Prof. Dr. Wilhelm Haarmann, one of the founding partners, left because

¹¹⁹ The exception to this is the MDP Rödl & Partner.

¹²⁰ Conrad Raj, Arthur Loke, *EU law giant in tie-up: Alliance will give clients one-stop access to legal, tax, accounting advice*, THE BUSINESS TIMES SINGAPORE, Jan. 29, 2002.

¹²¹ Papendorf, *supra* note 9, at 137-38.

¹²² *Top German firm opens office in London*, THE LAWYER, June 7, 1999.

¹²³ Christoph Tillmanns, *Negativ-Bericht: Haarmann stoppt 'Manager Magazin'*, JUVE, Aug. 26, 2004.

¹²⁴ Jörn Poppelbaum, *Haarmann Hemmelrath: Insolvenzpraxis vor dem Zerfall?*, JUVE, Jan. 29, 2004; Jörn Poppelbaum, *Haarmann-Insolvenzverwalter macht sich selbstständig*, JUVE, Sept. 11, 2003.

¹²⁵ Till Mattes, *Kehrtwende: Haarmann setzt auf Lockstep-Vergütung*, JUVE, Feb. 5, 2004; Chris Crowe, *Breaking step at Haarmann Hemmelrath*, THE AMERICAN LAWYER, Jan. 28, 2006.

¹²⁶ Antje Neumann, *Gefahr für Haarmann: Kanzlei droht Millionenklage*, JUVE, July 1, 2004.

¹²⁷ Christoph Tillmanns, *Negativ-Bericht: Haarmann stoppt 'Manager Magazin'*, JUVE, Aug. 26, 2004.

of disagreements with a majority of the partnership over management issues.¹²⁸ In the fall of 2005 attorneys started to leave, and by early 2006 the firm was in dissolution. Attorneys and even whole offices left, such as much of the Frankfurt office that switched to Squire, Sanders & Dempsey, the Munich office that joined White & Case, the Cologne office that joined Heuking Kühn Lüer Wojtek, and the Berlin office that joined Salans.¹²⁹ After it collapsed in 2006, its remaining offices were absorbed into other law firms. Ultimately, the former partners of the firm actually retaliated against the former client who had brought the malpractice suit (the malpractice suit had proven to be unsuccessful), on the grounds that this suit had destroyed the firm's reputation and subsequently helped bring about the firm's demise.¹³⁰

2. CMS Hasche Sigle:

This law firm is currently Germany's second largest law firm with just over five hundred attorneys. It is also much more broadly spread than other large firms, with a total of nine offices. In addition to offices in the usual large cities, it is also present in the secondary markets of Cologne, Dresden, Leipzig, and Stuttgart. It also has small foreign offices in Belgrade, Brussels, and Shanghai. In order to meet the need for international coverage, the firm is part of the CMS organization that was established in 1999 by law

¹²⁸ Aled Griffiths, Till Mattes, & Christoph Tillmanns, *Der Lotse geht von Bord: Haarmann verlässt Haarmann*, JUVE, July 28, 2005. The title of this article is a reference to an 1890 *Punch* caricature about the departure of Otto von Bismarck from office.

¹²⁹ Till Mattes, *Haarmann ohne Hauptstadt: Berliner Team eröffnet für Salans*, JUVE, Jan. 19, 2006; Brenda Sandburg, *German disunity: Haarmann Hemmelrath, Germany's largest independent firm, breaks up, and international firms gather the spoils*, THE AMERICAN LAWYER, May 28, 2006, at 206.

¹³⁰ Michael Freitag, *Haarmann Hemmelrath: Kein schnelles Geld*, MANAGER MAGAZIN, 10/2006, Sept. 22, 2006, at 32; Michael Freitag, *Haarmann Hemmelrath: Versunken im Chaos*, MANAGER MAGAZIN, 5/2006, Apr. 28, 2006, at 30; Ulrike Barth, *Haarmann gegen Werhahn: Richter mahnt "ernsthafte Verhandlungen" an*, JUVE, Dec. 10, 2008; Mathieu Klos, *Nächste Runde: Haarmann Hemmelrath fordert Schadensersatz von Werhahn*, JUVE, Apr. 3, 2008. The claim was finally settled in 2009, after years of litigation, for an

firms from five European countries.¹³¹

The CMS organization has grown to include nine European law and tax firms, with a total of over 2,400 lawyers in over 50 offices. Moreover, CMS is also in an association with The Levant Lawyers, a Lebanese law firm with offices in Beirut, Abu Dhabi, Dubai and Kuwait.¹³² Each CMS member firm uses the naming convention of CMS, followed by the name of the member firm, e.g., CMS Hasche Sigle or CMS Cameron McKenna. While this umbrella organization is coordinated by CMS Legal Services EEIG, formerly out of Brussels, and now out of Frankfurt, it still stops short of a full-scale merger and integration, as for example, there still is no financial integration. On the other hand, only recently, the French, German, and UK CMS firms merged their Moscow offices into one operation, to operate under the sole name of CMS. An executive committee, consisting of the managing partner of each CMS member, an additional partner from each CMS member, as well as a chairman, an executive partner, and a director of operations, provide leadership to the organization. After more than ten years, CMS has shown itself to be stabile, and more recently has been rewarded for improved international cooperation within CMS, by starting to serve several major international clients in multiple locations.

In Germany, because of its full-service offerings, the analogy of an oil tanker has been used to describe the firm, i.e., while not the leader of the pack in the best of times, still moving forward undeterred when the market around it is in crisis. Handling the

undisclosed sum, *see* Ulrike Barth, *Ausgestritten: Haarmann/Werhahn-Prozess endet mit Vergleich*, JUVE, Oct. 6, 2009.

¹³¹ The nine CMS member firms are: CMS Adonnino Ascoli & Cavasola Scamoni (Italy); CMS Albiñana & Suárez de Lezo S.L.P. (Spain); CMS Bureau Francis Lefebvre (France); CMS Cameron McKenna LLP (UK); CMS DeBacker (Belgium); CMS Derks Star Busmann (Netherlands); CMS von Erlach Henrici AG (Switzerland); CMS Hasche Sigle (Germany); and CMS Reich-Rohrwig Hainz Rechtsanwälte GmbH (Austria).

¹³² The Levant Lawyers, *see* www.tll.cc.

bankruptcy work for Lehman Brothers in Germany has been a notable matter that has kept the firm busy. During the current crisis, the firm has also made progress in being better managed, while still maintaining its kinder culture. That culture has proven to be a strength in the current crisis, and the firm has not experienced the drastic restructuring seen at other firms.¹³³

3. Noerr:

Noerr is one of the top ten largest law firms in Germany, with some 257 attorneys in five German offices. Within Germany, Noerr has its roots in Munich, where it began in 1950. Then in 1989, when the prohibition against multi-city partnerships was lifted, the firm opened an office in Frankfurt. In the following year it opened offices in Berlin, Dresden, and Prague. Thereafter, the firm continued to grow in Central and Eastern Europe, opening offices in Warsaw (1992), Moscow (1994), Bucharest (1998), Düsseldorf (1999), Bratislava (2004), and Kiev (2007). Two more unusual expansions were first into New York (2005), and second into London (2010). In both NY and London the firm only practices German law, however, Noerr hopes by having a physical presence there to be in better contact with both clients and referral law firms.¹³⁴ The firm intends to continue its focus on Germany, Central and Eastern Europe, and on Russia, and Noerr's lawyers advise on local and international matters in these jurisdictions. Internationally, the firm is a member of Lex Mundi, and has close connections to law firms in the UK and USA including Macfarlanes and O'Melveny & Myers.

From 1983 until the end of 2009, the firm was known by the name of its senior

¹³³ *CMS Hasche Sigle*, JUVE HANDBUCH 2009/2010.

partners Nörr, Stiefenhofer & Lutz. However, in 2010 the firm shortened its name to Noerr LLP. Given the increasing international roster of its clients, the firm wanted a name that was “short, easily memorised and pronounced while retaining the goodwill established over many decades. Noerr, without the German ‘ö’, was chosen so that the name would not become distorted in electronic communication.”¹³⁵ At the same time the firm switched its legal entity status from a German partnership to an English Limited Liability Partnership. While the firm has weathered the current economic storm quite well, in comparison to its competitors it has fewer connections to DAX corporations and is also considered less strictly managed.¹³⁶

4. Beiten Burkhardt:

Despite some differences, Beiten Burkhardt has a very similar constellation to Noerr. In Germany, it has offices in Frankfurt, Düsseldorf, Berlin, Munich, and Nuremberg. And in Central and Eastern Europe it has offices in Moscow (1992), St. Petersburg (1996), Warsaw (1999), and Kiev (2004). In a very unusual departure for a German firm, it also has offices in China: Hong Kong (1994), Beijing (1995), and Shanghai (2003). The China offices all have five lawyers each, at least one of whom is German. These offices offer local Chinese law capabilities. The firm also maintains a small office in Brussels (2000), which is not as unusual for German firms. This office in particular assists with a growing range of EU specific issues. In the UK, the firm has a non-exclusive referral relationship

¹³⁴ *Noerr Stiefenhofer Lutz eröffnet Liaison Office in New York*, NOERR STIEFENHOFER LUTZ, PRESSEMITTEILUNG, Mar. 10, 2005. *Noerr geht nach London: M&A, Finanzierung, Medien, Versicherungen und internationale Prozesse*, NOERR PRESSEMITTEILUNG, Mar. 10, 2010.

¹³⁵ Noerr Website, available at <http://www.noerr.com/en/DesktopDefault.aspx/tabid-39/>.

¹³⁶ *Noerr*, JUVE HANDBUCH, 2009/2010.

with Berwin Leighton Paisner, which it has maintained since 2005.¹³⁷ The firm has 231 attorneys in Germany, and 131 attorneys abroad. It is the 12th largest law firm in Germany and among the large law firms is the firm with the highest proportion of its lawyers located internationally, save for Rödl & Partner, which is discussed in the section on MDPs. Additionally, it has a dedicated Dutch Desk, Eastern Europe Desk, and Spanish Desk, with a number of multi-lingual lawyers to better assist clients from those jurisdictions interested in Germany, and vice versa.¹³⁸

5. Summary:

The rise and fall of Haarmann Hemmelrath and the paucity of other International-German law firms are indicators of how competitive the global legal market has become. German law firms were relatively tardy in their appearance on the global stage, and it seems unlikely that any new major International-German law firms will arise. One obstacle German law firms have faced in their international expansion is the dominance of Anglo-American common law, concurrent with the triumph of English as the world's *lingua franca*. Recently, several legal professional organizations with support of the German government have made efforts to promote German law internationally, especially for use in Central, Eastern, and South-Eastern European countries, where there is a demand for unified legal structures that are not based on the common law.¹³⁹

¹³⁷ Jeremy Hodges, *Berwin Leighton Paisner Set for Russia Launch With Moscow Merger*, LEGAL WEEK, Dec. 19, 2008.

¹³⁸ Beiten Burkhardt Website, available at http://www.bblaw.com/Lawyers_Offices.395.0.html?&L=0.

¹³⁹ In November 2008 the Federal Chamber of German civil law notaries (*Bundesnotarkammer*), the German Federal Bar (*Bundesrechtsanwaltskammer*), the German Bar Association (*Deutscher Anwaltverein*), the German Notaries' Association (*Deutscher Notarverein*) and the German Judges Association (*Deutscher Richterbund*) released a brochure entitled "Law – Made in Germany," with a foreword from the Federal Minister of Justice. The brochure advertises the benefits of German law, emphasizing efficient procedures, fairness, predictability, reliability, and Germany's part in the creation of the continental law tradition used throughout Europe. German contracts are more concise (saving time to parties), because statutory law

Given the current constellation, CMS Hasche Sigle, Noerr and Beiten Burkhardt are anomalies, and it will be interesting to observe how they develop in the future. Their existence suggests that there may be a niche for International-German firms, or at least for supra-regional firms with a focus on Europe or even more particularly on Central and Eastern Europe. Time will tell whether the firms in this niche can sustain themselves in the long-term, whether this niche is large enough for other German firms to grow into, and whether there is an opportunity for these firms to expand internationally beyond their niche.¹⁴⁰ The answers to these questions are of great importance to firms in the emerging world that are seeking to branch out beyond their own home jurisdiction.¹⁴¹

D. DOMESTIC-GERMAN FIRMS

Then there is a large class of what can be characterized as Domestic-German firms. These are firms that are located either wholly or mostly in Germany, whose attorneys are usually all German, and who advise mainly on German law, whether their clients are German or foreign. Of course, even among this core of German firms, there is a spectrum: from firms that only have offices in Germany to firms who have at least some attorneys in a few foreign outposts; from those with international reputation to those with none (even

provides reliable default provisions. Germany is a signatory to CISG, and also has a system of public registration for businesses and land ownership thus regulating questions of property rights quickly, efficiently, and cheaply. Litigation is said to be more advantageous in Germany, as there are judicial courts that are expert on certain subject matters and as evidentiary proceedings are very concise. Germany is also very expert in patent matters, ranked ahead of the UK and US in terms of IP protection. The brochure even claims that German law was the basis for West Germany's post World War II economic miracle and East Germany's transformation after the fall of the Berlin Wall. See www.lawmadeingermany.de; see also BRAK *will die Dominanz des Common Law brechen*, AZUR, Dec. 16, 2008, available at http://www.azur-online.de/azhtml/karri_intro.html.

¹⁴⁰ For example, an interesting German law firm not discussed herein is Amereller Rechtsanwälte. It is a "specialist international law firm, operating mainly in the field of Arab Business Law," with over 30 lawyers, in Munich, Berlin, Cairo, Damascus, Dubai, and Baghdad. See <http://amereller.de>.

¹⁴¹ For example, the Chinese law firm King & Wood has already branched out to Tokyo, the Silicon Valley, and New York, while Zhonglun W&D Law Firm is the first Chinese Law Firm to have an office in London. See <http://www.kingandwood.com/> & <http://z1wd.com/>.

though both might maintain a strong reputation in Germany); and from those whose clients are near-exclusively German to those who have a large portfolio of foreign clients.

Of Germany's largest domestic firms, twenty have no offices outside of Germany at all, and an additional ten firms have only one or two foreign offices. By contrast only one of the top fifty largest US firms, Alston & Bird, has no offices outside of the USA. This suggests that among the large law firms in Germany there still is a large segment that is wholly active on the domestic legal market, where they are able to compete with the Anglo-American firms. These firms run the gamut from full-service firms to boutiques. This structure is in part perhaps a result of the German economy, which in addition to its large multinational corporations, has a strong sector of medium-sized companies, often multi-generational family-run businesses and/or closely held corporations. These companies, are known as the *Mittelstand* corporations, and perhaps are more likely to have strong historical ties to their respective lawyers and law firms.

1. Hengeler Mueller:

Hengeler Mueller is one of Germany's most successful law firms. The firm has over 250 attorneys in offices in Berlin, Düsseldorf, Frankfurt, and Munich. It also has offices in Brussels and London each with half a dozen attorneys. Among the domestic firms, Hengeler Mueller is clearly Germany's top end firm, and annually is ranked by *JUVE* in the top prestige tier. It received the 2007/2008 award for Banking and Finance law, an area of traditional strength, with the praise: "To improve themselves is nearly impossible, but they did it anyway."¹⁴² As evaluated by *Chambers & Partners*, the firm

¹⁴² "Sich zu verbessern ist fast unmöglich, aber sie haben es geschafft." Claudia Tödtmann, *Lovells überholt Wirtschaftskanzleien*, WIWO.DE, Nov. 11, 2008, available at <http://www.wiwo.de/unternehmer-maerkte/lovells-ueberholt-wirtschaftskanzleien-377448/>.

ranks more highly than any other German firm, placing just behind Freshfields and Clifford Chance, with Band 1 rankings in a number of areas of law. The firm is a market setter in matters such as associate salaries, and the firm clearly draws on some of the very best of German law students. At the end of 2007, Hengeler Mueller raised their salary for starting associates to 105,000 Euro – the first law firm to offer a salary above 100,000 Euro.¹⁴³ Of its 85 partners all but 6 have doctoral degrees.¹⁴⁴ The firm also has a relatively low leverage ratio.¹⁴⁵ Moreover, in contrast to some of its competitors, the firm prefers to promote internal candidates to partners over lateral hires, even if they lack their own book of business. Hengeler Mueller is able to be successful in this strategy in part, because its clients are strongly institutionalized.¹⁴⁶

The firm uses a referral network of ‘best friends’ which are, in Europe, notably Slaughter and May in the UK, Bredin Prat in France, Bonelli Errede Pappalardo in Italy, and Uría Menéndez in Spain. Best friend firms in the USA include Davis Polk & Wardwell. Interestingly, because of conflicts of interest, fellow German law firm Gleiss Lutz’s alliance partners are often the second best friends of Hengeler Mueller and vice versa. It would seem that as long as conflicts of interest remain an issue, as long as clients exhibit a preference for selecting different firms in different jurisdictions, and as long as there are similarly situated firms in each country, the market will continue to have a space for such

¹⁴³ Albeit some of the US firms at the time offered generous bonuses that could push a junior associate’s salary above that amount. See Mathieu Klos, *Einstiegsgehälter für Anwälte: Hengeler erhöht auf 105.000 Euro*, AZUR, Dec. 18, 2007, available at http://www.azur-online.de/azhtml/karri_intro.html.

¹⁴⁴ For a listing of Hengeler Mueller attorneys, see Hengeler Mueller Website available at <http://www.hengeler.com/anwaelte/>.

¹⁴⁵ *Making Germany work: the US and English firms that entered the German market on the cusp of the millennium have had to work hard to establish themselves in the face of the international downturn and strong competition from local practices that resisted the temptation to merge. Developing a strong local client base has proved to be the key to success.* THE AMERICAN LAWYER, Jan. 27, 2005, at 58.

¹⁴⁶ *Hengeler Mueller*, JUVE HANDBUCH 2009/2010.

firms.¹⁴⁷ Though as with others, it remains to be seen whether Hengeler Mueller can maintain its preeminence over time.

The financial crisis has affected the firm, given its strong corporate practice, just as it has several of the top NY law firms. Moreover, Hengeler Mueller was at least initially not as involved in the restructuring of the German banking sector as one might have expected. Also, in comparison to its competitors Freshfields and Linklaters, the firm is said to lack the contacts to government that proved invaluable during this crisis. On the other hand, Hengeler Mueller believes “that the individuals of the firm are in demand as advisers particularly in times of crisis.”¹⁴⁸ For example, Hengeler Mueller has more recently been involved in a high profile banking matter involving toxic assets,¹⁴⁹ and also in advising the German Finance Ministry on the European Financial Stability Facility.¹⁵⁰

2. Gleiss Lutz:

Close behind in terms of prestige, Gleiss Lutz is a successful firm that grew from a Stuttgart-based anti-trust boutique to a full-service firm with renowned capabilities in corporate work, employment law, and public sector work. The firm also attracts some of the best German students, and generally only attorneys with doctoral degrees are promoted to partner.¹⁵¹ Gleiss Lutz has also created a scholarship, the Alfred-Gleiss Scholarship, to promising young scholars (and potential associates), to cover the cost of an LL.M. in the

¹⁴⁷ Gerhard Wegen, *The German Legal Market*, Address at Harvard Law School (Nov. 7, 2007); Sandburg, *supra* note 5, at 196.

¹⁴⁸ “*dass die individuellen Persönlichkeiten aus ihrer Sozietät gerade in Krisensituationen als Berater angefordert werden.*” Hengeler Mueller, JUVÉ HANDBURCH 2009/2010.

¹⁴⁹ Vov, RB, *Bad Bank steht: Hengeler, Mayer Brown und Lovells begleiten Milliarden-Auslagerung der WestLB*, JUVÉ, May 28, 2010.

¹⁵⁰ Christopher Tod & Marcus Jung, *Abgewiesen: Gauweiler scheitert mit Antrag gegen Euro-Schutzschirm, Hengeler berät BMF*, JUVÉ, June 11, 2010.

¹⁵¹ “*Partner sind bei uns allerdings traditionell promoviert. An diesem Grundsatz halten wir auch in Zukunft fest.*” Gleiss Lutz Website, available at <http://www.gleisslutz.com/de/karriere/qualifikation.html>.

UK or the USA.¹⁵²

From 1990-1993 Gleiss Lutz entered into a short-term mutually beneficial arrangement with Clifford Chance in Frankfurt whereby Clifford Chance learned more about the German legal market, and Gleiss Lutz learned more about servicing financial institutions. However, Gleiss Lutz did not want a merger with a UK or US firm, because they were the smaller partner and wanted to retain control and independence. It seemed unavoidable to the partnership that when you have 40-45 partners on the German end and 120 on the other, you are bound to eventually lose control and respect for your customs and traditions.

While the firm avoided an international merger, in the early 1990s Gleiss Lutz, did expand into Eastern Europe. The move was not designed as a prelude to an expansive international strategy, but rather because at the time their clients needed legal services while entering these markets, and there was not sufficient legal talent in that area to whom they could refer legal work.¹⁵³ Consequently, Gleiss Lutz set up offices in Berlin, Prague, and Warsaw – all places in which the socialist regimes had prevented the development of a talented pool of lawyers. Hungary by contrast, had a group of sophisticated lawyers who spoke English and German and who could handle very complex issues. Thus Gleiss Lutz was able to refer work to local attorneys, and had no need to establish an office in Budapest. Its primary referral partner in Hungary is Bán, S. Szabó & Partners. For years Gleiss Lutz maintained its offices in Poland and the Czech Republic, even as a core of young, educated, sophisticated, German- and English-speaking lawyers developed. Gleiss

¹⁵² *Karlheinz-Quack-Preis und Gleiss-Stipendium: Die Preisträger*, AZUR, July 29, 2008, available at http://www.azur-online.de/azhtml/karri_intro.html; *see also* <http://www.gleisslutz.com/de/karriere/stipendium.html>.

Lutz was reticent to close its offices there, given its established presence. However, it finally made the move to do so in 2010, and those offices joined the Austrian law firm of Schoenherr and its strong network in Central and Eastern Europe. In 2009, Gleiss Lutz opened an office in Düsseldorf, bringing in several laterals at the same time, which was unusual for a firm that relies mainly on its own internal growth.¹⁵⁴ And then in 2010, the firm made another surprising move by opening an office in Hamburg via a merger with a leading corporate boutique.¹⁵⁵ This recent growth has brought Gleiss Lutz up to over 260 attorneys in six German offices.

To meet its international needs, Gleiss Lutz is part of an alliance with the British firm Herbert Smith and the Dutch firm Stibbe, thus giving them a near global presence. This arrangement does have several advantages. For example, Gleiss Lutz is still able to handle international work competently as it does have alliance partners in other jurisdictions, but because the firms did not engage in a full-scale merger, the difficulty of lawyers managing lawyers from different jurisdictions and cultures is removed. The three alliance partners held their partner meetings in May 2009 in Berlin for the first time concurrently.

On the downside—and these problems are not unique to an alliance, but are prevalent among the international firms also—the alliance only works as well as lawyers are able to convince their clients to use their alliance partners in other jurisdictions. Moreover, strategy might not always be in alignment. For example, Herbert Smith opened an office

¹⁵³ Anja Hall & Tanja Podolski, *JUVE spricht mit... Dr. Rainer Loges von Gleiss Lutz*, JUVE, Dec. 29, 2008.

¹⁵⁴ *Gleiss Lutz*, JUVE HANDBUCH 2009/2010; Sandra Grillemeier, *Düsseldorf: Gleiss baut auch Praxis im Arbeitsrecht auf*, JUVE, July 8, 2009

¹⁵⁵ The merger partner was the law firm Rittstieg Rechtsanwälte, a leading corporate boutique that came about in 2000 as a spinoff from Bruckhaus Westrick Heller Löber around the time of the merger with Freshfields. *Gleiss Lutz opens a new office in Hamburg with Rittstieg*, GLEISS LUTZ PRESS RELEASE, June 28, 2010 available at http://www.gleisslutz.com/cms/press_release/en/1188.html; Anja Hall, *Überraschung in Hamburg: Gleiss Lutz gewinnt Rittstieg für Fusion*, JUVE, June 28, 2010.

just last year in Madrid, thus potentially encroaching on a relationship Gleiss Lutz has with the Spanish firm Cuatrecasas. A Gleiss Lutz partner emphasized the strength of the relationship with Cuatrecasas and doubted that they would develop strong ties with Herbert Smith's new office. By contrast, David Gold, a Herbert Smith partner, expressed the hope that Gleiss Lutz and the new Madrid office would develop strong ties.¹⁵⁶

In addition, to its alliance network, Gleiss Lutz has an established referral network. With the globalization of financial markets, Gleiss Lutz faced several options in trying to remain involved in large international financial transactions. Both setting up an outpost in New York with just a few lawyers, or establishing a larger office and then trying to compete in such a mature market of talented lawyers, seemed either foolhardy or not feasible. Instead, Gleiss Lutz maintains published relations with three top New York firms: Cravath, Simpson Thacher, and Paul Weiss. Additionally, Gleiss Lutz looks for other firms in various locations in the USA and in Europe that are best suited to client needs.¹⁵⁷

3. Graf von Westphalen:

Another example of a German firm that desired to stay independent is Graf von Westphalen. In 2001 Graf von Westphalen (then Graf von Westphalen Fritze & Modest) planned a merger with Osborne Clark. However, by April, Osborne Clark set up its own office in Frankfurt as the merger negotiations were not progressing. Sources report that Senior Partner Dr. Graf von Westphalen opposed the merger, and wanted to continue working in an independent law firm "that would report neither to London nor to

¹⁵⁶ Aled Griffiths, *Spanien: Herbert Smith eröffnet mit Linklaters-Partnern in Madrid*, JUVE, Apr. 28, 2009.

¹⁵⁷ Part of the why this referral network has been successful is due to attorneys such as Prof. Dr. Gerhard Wegen. Wegen is one of Gleis Lutz's star attorneys and rainmakers. He received his LL.M. from Harvard Law School in 1981, and does much traveling to stay in touch with many attorneys from within this referral

Bristol.”¹⁵⁸ The firm until recently had over 130 attorneys in seven domestic offices and in small satellite offices in Alicante, Brussels, and Shanghai. As part of its international strategy, Graf von Westphalen is a member of two international networks, the State Capital Law Firm Group and the Cicero League of International Lawyers – in fact, the firm is the only German member in both networks.

However, just this past summer, the firm split apart after differences in opinion regarding the strategic future of the firm, especially in light of recent changes advocated by the firm’s newly elected management. Name partner Dr. Graf von Westphalen along with the Cologne and Freiburg offices now operate under the name of Friedrich Graf von Westphalen & Partner, whereas the remaining offices continue under the existing name.¹⁵⁹

4. Summary:

Despite the merger mania and the expansion of UK and US firms, German-Domestic firms have managed to survive and thrive. German-Domestic firms run the gamut from full-service firms to expert boutiques. Ironically, this lively market of boutique and smaller firms is in part a product of the strategies of the large international firms to focus on certain practice groups at the expense of others.¹⁶⁰ Certainly, German firms have been required to adapt. While traditionally they were very independent, small organizations, they have become much more business-like and more managed than they formerly were, especially among the larger law firms. Other German firms, such as Gleiss

network. Chris Crowe, *Strange Pairings*, LEGAL BUSINESS, Mar. 2005; Gerhard Wegen, *The German Legal Market*, Address at Harvard Law School (Nov. 7, 2007).

¹⁵⁸ “[...] weder nach London noch nach Bristol berichten” JUVE RECHTSMARKT, Apr. 2001, at 26, quoted in Papendorf, *supra* note 9, at 140; see also Antje Neumann, *Neue britische Allianz für Graf von Westphalen*, JUVE, Dec. 10, 2002.

¹⁵⁹ Anja Hall & René Bender, *Zäsur: Graf von Westphalen-Büros in Köln und Freiburg spalten sich ab*, JUVE, July 2, 2010.

Lutz, would argue that they have resisted and escaped some of these pressures, though even Gleiss Lutz attorneys would likely admit that the firm is much more managed than it was a dozen years ago.

German firms have met the challenge of globalization in a variety of ways. Eschewing international merger partners, they have built up either formal or informal referral networks or alliances. The Gleiss Lutz alliance and the CMS network have been stable so far. However, other alliances have proven to be less successful. For example, the Denton International network, proved not to be sustainable. Begun in the 1990s as an alternative to an integrated merger, the UK firm Denton Hall, later on known as Denton Wilde Sapte had an alliance with the German firm Heuking Kühn Lüer Wojtek and several other continental-Europe based firms (in Austria, Belgium, Spain and Sweden). However, in 2003 the alliance came to an end. A Denton spokesman commented that alliances were “past their sell-by date.”¹⁶¹ Similarly, the BBLP alliance of Beiten Burkhardt in Germany, Moquet Borde & Associés in Paris, and two other continental firms, lasted in that constellation only from 1999 until 2001, until it also fell apart.¹⁶² Another example is that of the Pinsent Masons Luther Group (PMLG). Pinsent Masons and Luther went from a best friends relationship, to exclusive cooperation within a network, and then to a withdrawal of Pinsent Masons to cooperate instead with Salans.¹⁶³

¹⁶⁰ “One side effect of the changes at the Magic Circle firms has been the rise of small boutiques started by lawyers dissatisfied with their lives at the biggest firms.” Sandburg, *supra* note 5, at 196.

¹⁶¹ *Denton International nach Schweden*, JUVE, Mar. 22, 1999; Jörn Poppelbaum & Anne Boden, *Jetzt ist es offiziell: Denton International wird aufgelöst*, JUVE, Apr. 30, 2003.

¹⁶² Gr., *Wieder da: Toth-Feher verstärkt Corporate-Praxis von Paul Hastings*, JUVE, Feb. 10, 2005; CT, *Frankreich: Moquet Borde fusioniert mit US-Kanzlei*, JUVE, Jan. 22, 2004.

¹⁶³ Rachael Smith, *Exklusive Zusammenarbeit: Luther rückt näher an Pinsent Masons heran*, JUVE, Dec. 21, 2006; Marcus Jung, *Netzwerke: Pinsent Masons kooperiert künftig mit Salans statt mit Luther*, JUVE, June 2, 2009.

E. MULTI-DISCIPLINARY PARTNERSHIPS

The last category of German law firms discussed in this paper is that of Multi-Disciplinary Partnerships (MDPs). Unlike the USA where MDPs remain prohibited, in Germany MDPs are allowed by law. In fact many German law firms will have a few non-lawyer professionals such as tax experts or auditors as members or partners of the firm. Often these combinations of lawyers and non-lawyer professionals are in very small practice settings.¹⁶⁴ On the other hand, of Germany's largest law firms, at least 29 have one or more non-lawyer professionals in the firm. Some, such as P + P Pöllath + Partner or KSB Intax, have a considerable number of non-lawyer or dual qualified professionals, and have strong reputations in areas such as tax or in offering multi-disciplinary advice.¹⁶⁵ However, only four of the large firms actually have as many or more non-lawyer professionals as lawyers (percentage of non-lawyer professionals of total professionals given in parenthesis): Rödl & Partner (63%), Flick Gocke Schaumburg (49%), RP Richter & Partner (47%), and Esche Schümann Commichau (42%). Another feature of the German legal market has been the strong link, either directly or by association, between the big accounting firms and law firms, hence one other law firm, Luther, even though not an MDP, is also featured here:

1. Rödl & Partner:

This firm is a clear anomaly among large law firms. Founded in 1977 by a lawyer, who later qualified as a chartered accountant, the firm now offers audit, legal, and

¹⁶⁴ Laurel S. Terry, *German MDPs: Lessons to Learn*, 84 MINN. L. REV. 1547, 1571 (2000).

¹⁶⁵ For Example, at P + P Pöllath + Partners of 82 professionals, 9 are non-lawyer professionals (mainly tax advisors) and 6 are dual qualified as lawyers and tax advisors. See P + P Pöllath + Partners Website, available at <http://www.pplaw.com/en/professionals/index.php>. At KSB INTAX of 57 professionals, 12 are non-lawyer professionals (including both auditors and tax advisors) and 6 are dual qualified. See KSB INTAX Website, available at <http://www.ksb-intax.de/Berater.7.0.html>.

consulting services, with a specialty in foreign direct investment. At this point only 43% of their attorneys are located in Germany, making them by far the most international of all German 'law firms.' When one includes non-lawyer professionals, the balance shifts slightly towards their domestic market and 52% of their professionals are located in Germany. Some 63% of their professionals are non-lawyers. In Germany they have 145 attorneys and 334 non-lawyer professionals. Outside of Germany they have 192 lawyers and a further 244 non-lawyer professionals. The firm has grown to 84 offices in 37 countries, and is strongly concentrated in Central and Eastern Europe, but also has either offices or partner firms in the Americas, the Middle East, Asia/Pacific, and Africa. In some countries such as the USA that are more restrictive regarding MDPs, the firm provides only non-legal services.

Rödl & Partner has grown dramatically in the last decade. In 2001 the firm generated revenues of 138.2m Euro. Some 34.6m Euro were generated from legal services, which was only 25% of overall revenues, but was at the same time an increase of 50% on the prior year. The firm leadership had strategically repositioned legal services over the prior five years, to give it a more prominent role.¹⁶⁶ By 2005 the firm's turnover was 163.5m Euro, of which 55.1m Euro were generated abroad, and 108.4m Euro were generated in Germany.¹⁶⁷ By 2008 Rödl & Partner generated worldwide revenues of 209m Euro, of which 87m Euro were generated abroad and 122m Euro in Germany. Of their revenues, 108m Euro came from legal and tax advisory services and of that 63m Euro from legal and tax in Germany and of that in turn 42m Euro were solely from legal services in Germany. With a very steep pyramid, its revenues per equity partner were about 7m Euro.

¹⁶⁶ Jörn Poppelbaum, *Rödl: guter Umsatz, schlechte Wahrnehmung*, JUVE, June 27, 2002.

The firm has consciously expanded in areas where there are German subsidiaries, and especially likes to focus on international transactions that require advisory services in both the areas of tax and financing.¹⁶⁸

At this point, their professionals consist of: 337 Attorneys at Law, 242 Certified Public Accountants, 309 Certified Tax Advisors, and 193 Business/IT-Consultants. The firm revenue derives roughly equally from its three main service offerings: “34% [comes] from audit, 33% [from] legal services and 27% from tax consulting. The rest is earned from accounting-related advisory services.”¹⁶⁹

2. Flick Gocke Schaumburg, RP Richter & Partner, and Esche Schümann Commichau:

The remaining MDPs are all based wholly in Germany, and also offer a combination of legal and other non-legal professional services. Flick Gocke Schaumburg is a mid-sized firm that consists roughly half of lawyers and half of non-lawyers. Its some 225 professionals are spread out over four cities. RP Richter & Partner and Esche Schümann Commichau are both much smaller, with some 90 and 72 professionals respectively, and both have just slightly more lawyers than non-lawyer professionals. Esche Schümann Commichau is known for its Hanseatic roots and its connections to Hamburg’s *Mittelstand* corporations.¹⁷⁰

¹⁶⁷ Lorraine Cushnie, *Expansion boosts Rödl turnover figures*, THE LAWYER, Mar. 20, 2006.

¹⁶⁸ Sandra Grillemeier, *Umsatzzahlen: Rödl wächst in Deutschland langsamer als weltweit*, JUVE, July 7, 2009.

¹⁶⁹ Rödl & Partner Website, available at http://www.roedl.com/about_us/facts_figures.html.

¹⁷⁰ WILHELM TREUE, RECHTS-, WIRTSCHAFTS- UND STEUERBERATUNG IN ZWEI JAHRHUNDERTEN, ESCHESCHÜMMANN COMMICHAU, ZUR GESCHICHTE EINER HAMBURGISCHEN SOZIJETÄT, VON DER GRÜNDUNG DER KANZLEI IM JAHRE 1822 BIS ZUR GEGENWART (1997).

3. Luther:

The law firm Luther is not an MDP, though it is highlighted here as it is a good case study of the relationship between lawyers and accountants. The firm began in 1992 when some attorneys from the tax department of the accounting firm Arthur Andersen founded the firm of Freihalter Krüger & Partner. The law firm was actually one of the first in Germany to incorporate as a law firm with limited liability. In 1998 the firm added Andersen to its name, to show its ties to Arthur Andersen. Then in 2000 the firm merged with Hamburg and Berlin based Luther & Partner to become Andersen Luther and at the same time became part of Andersen Legal's international network. After Arthur Andersen dissolved in the wake of Enron, and Ernst & Young took over Arthur Andersen Germany, Andersen Luther merged with Menold & Aulinger, which was Ernst & Young's associated law firm. In 2005 the firm changed its name to Luther Rechtsanwaltsgesellschaft mbH, and at the end of the following year, the firm dissolved its association with Ernst & Young giving as their reason "the many legal restrictions on partnerships in Germany."¹⁷¹ Now the firm consists almost exclusively of lawyers, though it still retains a few non-lawyer professionals who are tax advisors.¹⁷² One unique feature, perhaps a legacy of its former associations with accounting firms, is its presence in some 12 cities around Germany. It is also one of the more international of German firms, with over 50 of its attorneys (17.5%) in one of six foreign offices, either in Europe or Asia. They are also a member of Taxand, a worldwide group of tax advisory firms that invites one firm per country into its ranks.¹⁷³

¹⁷¹ Luther Website, available at <http://www.luther-lawfirm.com/historie.php?lang=en>; see also Sven Aretz & Tanja Podolski, *Getrennte Wege: Luther und Ernst & Young lösen Verbindung*, JUVE, Aug. 24, 2006.

¹⁷² See also Mathieu Klos, *Luther: Umsatzsteigerung auch ohne Ernst & Young*, JUVE, Aug. 15, 2008.

¹⁷³ See Luther Website, available at <http://www.luther-lawfirm.com>; see also <http://www.taxand.com/>.

4. Summary:

Multi-Disciplinary Partnerships are perhaps one of the most interesting features of the German legal market. This is especially true as other countries debate the permissibility of such types of partnerships.¹⁷⁴ Aside from the MDPs discussed above, the Big Four accounting firms are all present in the German legal market, though they have not overrun the German legal market as some might have predicted. Their presence in Germany in the area of legal services has also morphed over time. After Ernst & Young ended their relationship with Luther, they founded E&Y Law GmbH at the end of 2008.¹⁷⁵ PricewaterhouseCoopers cooperated from 1998-2003 with the law firm Schultze & Braun.¹⁷⁶ It then had associations with two law firms Heussen/PcW Veltins and Schindhelm, though these associations came to an end because of regulatory issues by early 2005. PricewaterhouseCoopers responded by founding its own law firm, PwC Legal.¹⁷⁷ KPMG had a relationship with the law firm BBLP Beiten Burkhardt Rechtsanwalts-gesellschaft, which ended in 2004, and then at the end of 2006 into the spring of 2007, KPMG also started its own law firm, KPMG Rechtsanwalts-gesellschaft mbH.¹⁷⁸ KPMG Rechtsanwalts-gesellschaft mbH already has 150 professionals in 15

¹⁷⁴ Philippa Cannon, *The big six move in*. 16 INT'L FIN. L. REV. 25 (1997).

¹⁷⁵ See also Jat, *EY Law in Dresden: Mehrheit der Anwälte geht*, JUVE, Aug. 5, 2004; Till Mattes, *EY Law vorübergehend kopflos: Chef des internationalen Verbundes gegangen*, JUVE, Mar. 4, 2004; Jörn Poppelbaum, *Luther Menold setzt auf deutliche Integration bei Ernst & Young*, JUVE, July 3, 2003; Mathieu Klos, *Andersen und Menold sind handelseinig*, JUVE, June 21, 2002; *Ex-Schürmann-Team jetzt bei Andersen Luther*, JUVE, Aug. 22, 2000.

¹⁷⁶ Christoph Tillmanns, *PwC Veltins wechselt Führung, Name und Ausrichtung*, JUVE, July 3, 2003; Jörn Poppelbaum, *Schultze & Braun: Kooperation mit PwC aus eigener Initiative beendet*, JUVE, July 3, 2003. See also Schultze & Braun Website, available at <http://www.schubra.de/de/ueberschubra/unternehmensgeschichte.php>.

¹⁷⁷ Jörn Poppelbaum, *Eigene Wege: Auch Schindhelm setzt auf Unabhängigkeit von PwC*, JUVE, Feb. 24, 2005; Jörn Poppelbaum & Christoph Tillmanns, *Eklat bei Heussen: Partner vor der Entlassung, Büros in Düsseldorf und Köln werden geschlossen*, JUVE, Apr. 1, 2004; Antje Neumann, *Konsolidierung bei PwC-Kanzlei: Heussen löst Veltins ab*, JUVE, Oct. 10, 2002.

¹⁷⁸ Geertje Oldermann & Jörn Poppelbaum, *Nachzügler: Auch Ernst & Young gründet Anwaltskanzlei*, JUVE, Nov. 6, 2008. "Typische Beispiele seien die rechtliche Beratung beziehungsweise Vertragsgestaltung bei

locations (overall KPMG has 8,500 employees in 24 locations in Germany).¹⁷⁹ Deloitte & Touche maintains a relationship with the firm Raupach & Wollert-Elmendorff that has over 90 attorneys in seven locations throughout Germany, and that offers only legal services.¹⁸⁰ Clearly, the relationship of lawyers and non-lawyer professionals in Germany is also in flux and continues to change. The issues of the economics and the ethics of MDPs will continue to be debated in Germany and elsewhere.¹⁸¹

IV. CONCLUSION

A. GENERAL OBSERVATIONS

There has been incredible change in the German legal market in the past two decades. The number of attorneys in Germany has drastically increased. German lawyers have merged into law firms and now perform complicated legal work, as litigators, but especially as legal advisors. By the mid-1990s, as one commentator complained, the legal profession had already undergone the “transition from attorneys who understand themselves as a free profession of guardians of the greater interests of the common welfare,

Unternehmenskäufen oder die Durchführung einer Legal Due Diligence. Originäre Steuerberatungsleistungen erbringe dagegen weiterhin allein KPMG.” Jörn Poppelbaum, *KPMG entdeckt Rechtsberatung wieder: WP-Gesellschaft gründet eigene Kanzlei*, JUVE, May 3, 2007.

¹⁷⁹ See KPMG Website, available at <http://www.kpmg-law.de/en/955.htm>; Christopher Tod, *Berlin: KPMG Law holt Salans-Partner als neuen Standortleiter*, JUVE, Sept. 24, 2009.

¹⁸⁰ Their relationship has also been the subject of debate over time, and there is talk of whether there is to be further separation from Deloitte & Touche. See Jörn Poppelbaum, *MDP-Diskussion: Deloitte-Kanzleien vor der Trennung*, JUVE, Dec. 11, 2003; Raupach & Wollert-Elmendorff, JUVE HANDBUCH 2009/2010.

¹⁸¹ Mary C. Daly, *Monopolist, Aristocrat, or Entrepreneur?: A Comparative Perspective on the Future of Multidisciplinary Partnerships in the United States, France, Germany, and the United Kingdom After the Disintegration of Andersen Legal*, 80 WASH. U. L.Q. 589, 625-28 (2002); Laurel S. Terry, *German MDPs: Lessons to Learn*, 84 MINN. L. REV. 1547 (2000); Philippa Cannon, *The Big Six Move In*, 16 INT’L FIN. L. REV. 25 (1997), at 25; Bryant G. Garth & Carole Silver, *The MDP Challenge in the Context of Globalization*, 52 CASE W. RES. L. REV. 903 (2002); Yves Dezalay & Bryant G. Garth, *The Confrontation Between the Big Five and Big Law: Turf Battles and Ethical Debates as Contests for Professional Credibility*, 29 LAW & SOC. INQ. 615, 616 (2004); Laurel S. Terry, *MDPs: Reflections From the US Perspective*, 8 INT’L J. LEGAL PROF. 151 (2001); George C. Nnona, *Towards a Reformed Conception of Multidisciplinary Practice*, 56 CLEVELAND STATE L. REV. 533 (2008).

to becoming profit-driven service professionals.”¹⁸² The pace of transformation has only continued, and the past decade has been a period of change just as much as the one that preceded it. An indicator of this can be had by simply looking back to 2000: Oppenhoff & Rädler was part of an alliance with, but not yet merged into Linklaters. Wessing had not merged yet either. Several law firms were known by longer names indicating how recent their mergers were: Andersen Luther, Lovells Boesebeck Droste, Baker McKenzie Doeser Amereller Noack, and Clifford Chance Pünder.¹⁸³ The firm Gaedertz was still a year away from dissolving, with its attorneys subsequently finding homes in five different law firms,¹⁸⁴ and Haarman Hemmelrath still existed and was expanding rapidly.

There has been a tremendous increase in the speed of change, brought about by internationalization.¹⁸⁵ Many of the changes in the German legal market are comparable to what has happened in the UK or USA, and have logically been driven by the entry of the UK and US law firms. Law firms have grown in size, have become increasingly corporatized, and have seen large increases in terms of real income (and hours worked) for associates and partners, especially relative to other members of the legal profession.¹⁸⁶

¹⁸² “*anwaltschaftliche Selbstverständnis vom freien Beruf als Wahrer übergeordneter Gemeinwohlintereessen hin zum rein gewinnorientierten Dienstleister gewandelt*” Christian Wolf, *Maltez vs. Lewis - ein Lehrstück für den deutschen Anwaltsmarkt*, in *GRENZÜBERSCHREITUNGEN: BEITRÄGE ZUM INTERNATIONALEN VERFAHRENSRECHT UND ZUR SCHIEDSGERICHTSBARKEIT: FESTSCHRIFT FÜR PETER SCHLOSSER ZUM 70. GEBURTSTAG 1122* (Birgit Bachmann et al. eds., 2005); see also Hans-Jürgen Hellwig, Vice President of the Deutsche Anwaltverein and Head of the German Delegation to the CCBE, *The Legal Profession in Europe: Achievements, Challenges and Chances*, Address at the 50th Annual Meeting of the Netherlands Bar Association Amsterdam (Sept. 25, 2002), in 4 *GERMAN. L. J.* 263, 263-276 (2003) (on the challenges faced by the legal profession in reconciling its dual-purpose as a profession and as a business).

¹⁸³ Over time, the merged firms would shorten their names. See, e.g., *Drei Großkanzleien kürzen ihre Namen*, JUVE, May 23, 2002.

¹⁸⁴ These law firms were Quack Rechtsanwälte, Norton Rose, Bernstoff Zapp Miebach, Mayer Brown & Platt Gaedertz, and Latham & Watkins. These firms in turn continued to morph thereafter. JUVE HANDBUCH 2006/2007, at 629; see also John E. Morris, *German Law Firm Splinters*, THE DEAL, Jan. 31, 2001

¹⁸⁵ Papendorf, *supra* note 9, at 140-41.

¹⁸⁶ Christoph Hus, *Jura: Das Prädikatsexamen erleichtert die Jobsuche*, KARRIERE.DE, Nov. 1, 2008, available at <http://www.karriere.de/beruf/jura-das-praedikatsexamen-erleichtert-die-jobsuche-8049/>.

Other changes include the appearance of *JUVE*, the adoption of certain phrases and words of English legal jargon, the salary wars for associates, the dramatic increase in associate to partner ratios,¹⁸⁷ the emergence of managing partners and rainmakers, and simply the demands of modern practice.¹⁸⁸ Another significant change that has accelerated in the past ten years has been the evolution of an active lateral market. When UK and US firms first entered Germany, it was difficult to attract talent laterally, as lawyers were used to staying with the same law firm over the course of a career. However, now, though the majority of additions to law firms are still new recruits rather than laterals, the German legal market has developed a revolving door, in which lateral movements among firms has become a source of weekly news.¹⁸⁹ For example Dr. Geza Toth-Feher, who first became a partner at White & Case predecessor Feddersen Laule Ewerwahn Scherzberg Finkelnburg Clemm in 1998, went on to Weil Gotshal & Manges, Dewey Ballantine, Paul Hastings, and finally to his own private equity boutique, CB Equity Partners, in just a matter of a few years.¹⁹⁰ Not only attorneys, but whole offices are also apt to move, such as Shearman & Sterling's Mannheim office or Hogan & Hartson's Berlin office.

Of course there has been criticism of these developments, especially in a country with its share of skeptics of Anglo-American shareholder capitalism. However, apologists

¹⁸⁷ Some of the largest law firms have increase leverage ratios to 1:5 or even 1:6, thus hiring more associates while simultaneously decreasing their chances of making partner. See Claudia Tödtmann, *Die besten Adressen für Juristen*, WIWO.DE, May 16, 2005 available at <http://www.karriere.de/beruf/die-besten-adressen-fuer-juristen-6976/>.

¹⁸⁸ See Susan Hansen, *Tech revolution: German lawyers discover the BlackBerry*, THE AMERICAN LAWYER, Jan. 27, 2005, at 10.

¹⁸⁹ Gerhard Wegen, *The German Legal Market*, Address at Harvard Law School (Nov. 7, 2007); Heather Smith, *Continental gift: the dollar is down in Europe. American firms are anything but.*, THE AMERICAN LAWYER, Jan. 27, 2005, at 27.

¹⁹⁰ *Neue Partner bei Kanzleien*, JUVE, Mar. 22, 1998; *Weil, Gotschal & Manges holt Feddersen Partner*, JUVE, Dec. 22, 1999; *Dewey Ballantine: Toth-Feher nur mit kurzem Intermezzo*, JUVE, Dec. 11, 2003; *Wieder da: Toth-Feher verstärkt Corporate-Praxis von Paul Hastings*, JUVE, Feb. 10, 2005; *Unter eigenem Namen: Toth-Feher gründet Private-Equity-Boutique in München*, JUVE, July 5, 2007.

see the changes in the legal market as a necessary corollary to globalization. For example, *JUVE* editor-in-chief Aled Griffiths defends the continual corporatization and slimming of partnerships, because it is essentially for survival in the long-term in two ways: First, in terms of retention of powerful and motivated partners, and second, in terms of promotion, as rising stars cannot be promoted to partner, if the partnership is too congested by a band of semi-retired partners.¹⁹¹

B. THE FINANCIAL CRISIS

With only a brief delay, the world financial crisis hit home in Germany also. While the German legal market has not been as dramatically affected as perhaps the markets in London and New York, the market has not been spared either.¹⁹² There have been dramatic restructuring efforts among UK firms especially, but also among some German firms. However, there are limits to this, and employers in Germany are more restricted in their terminating of employees.¹⁹³ What has happened in Germany shares a resemblance to what has happened in the UK and the USA. Many sectors that were previously booming have seen a general decline or even absence of work, and at the same time there has been increasing pressure from cost-conscious clients, causing the large law firms to go on a saving spree.¹⁹⁴ Counter-cyclical practices involving restructuring and government

¹⁹¹ Claudia Tödttmann, *Deutsche Großkanzleien unter starkem Erfolgsdruck: Rechtsanwaltskanzleien wandeln sich*, WIWO.DE, July 22, 2004, available at <http://www.wiwo.de/unternehmer-maerkte/rechtsanwaltskanzleien-wandeln-sich-353604/>.

¹⁹² Richard Lloyd, *Lull Before the Storm?*, THE AMERICAN LAWYER, May 2009, at 78.

¹⁹³ D.M. Levine, "Ah, socialism: European regulations put strict limits on layoffs." THE AMERICAN LAWYER, Dec. 31, 2009, at 22.

¹⁹⁴ Jat, AN, Gr, Pop, *Reaktionen auf die Krise: Großkanzleien auf Sparkurs*, AZUR, Feb. 24, 2009; "Bei jeder Rechnung, die ich schreibe, ruft neuerdings kurz darauf der Firmenkunde bei mir an', stöhnte ein Anwalt aus einer der Top-10-Wirtschaftskanzleien. Und die Inhouse-Juristen rufen nicht etwa deshalb an, weil sie mit der Leistung unzufrieden seien, im Gegenteil. Das wird immer betont, erzählt er, an der Qualität der Arbeit liessen die Mandanten keinen Zweifel. Aber sie wollen alle eine Reduktionen der Rechnung. Egal aus welchem Grund, mit welchem Etikett, Hauptsache niedriger." *Linklaters muss entlassen. Prinz Harrys Ex,*

regulatory work have seen greater utilization. Some of those to benefit most from these developments were mid-sized law firm, who were able to garner more work, as suddenly very price-sensitive client became more willing to shop around for alternative legal service providers: “Notable has been the comparably comfortable positioning of most mid-market and speciali[z]ed firms, operating as smaller units, being more competitive in terms of pricing, and capitali[z]ing on their longstanding client base built up over years.”¹⁹⁵

Among the UK firms, restructuring efforts have been much more dramatic in London than in Germany. Allen & Overy, Clifford Chance, and Linklaters all conducted internal reviews, but ultimately made their heavier cuts in London. In Germany, many law firms froze salaries for associates during the crisis, and only starting in March 2010 did certain leading firms begin to resume salary increases.¹⁹⁶

One example of a firm weathering the storm is Freshfields. While the firm froze salaries across the board, with the exceptions of those associates promoted to Principal Associate, it did not lower salaries of attorneys in Germany. While its M&A and finance work slowed, its restructuring, employment law and bankruptcy groups experienced a boom. By January 2009 Konstantin Mettenheimer, co-Senior Partner of Freshfields was quite confident. In his assessment, the current recession would split the market: “The

Chelsy, soll Allen & Overy zieren, WIWO.DE, Feb. 3, 2009, available at <http://www.wiwo.de/handelsblatt/linklaters-muss-entlassen-prinz-harrys-ex-chelsy-soll-allen-overy-zieren-385974/>.

¹⁹⁵ THE LEGAL 500, Germany, available at <http://www.legal500.com/c/germany>; see also JUVE HANDBUCH, Navigieren ohne Kompass; Marcus Creutz, *Worauf Mandanten bei den Anwaltshonoraren achten sollten*, WIWO.DE, Dec. 12, 2008, available at <http://www.wiwo.de/finanzen/worauf-mandanten-bei-den-anwaltshonoraren-achten-sollten-381160/>.

¹⁹⁶ Antje Neumann & Mathieu Klos, *Aufgetaut: Mehrere Top-Kanzleien beenden Stopp bei Associategehältern*, JUVE, Mar. 12, 2010; Emma Sadowski, *Clifford Chance Begins Partnership Structure Review, Cuts Likely*, LEGAL WEEK, Apr. 2, 2009; Jat, AN, Gr, Pop, *Reaktionen auf die Krise: Großkanzleien auf Sparkurs*, AZUR, Feb. 24, 2009; *Top-Kanzlei Allen & Overy jetzt auch Opfer der Finanzkrise*, WIWO.DE, Feb. 20, 2009, available at <http://www.wiwo.de/unternehmer-maerkte/top-kanzlei-allen-overy-jetzt-auch->

former raging torrent of client work has become a regular river,” thus disadvantaging those firms that have commodity practices. Furthermore, he finds confidence in the fact that many current client matters are “crisis matters and those still go to the best law firms.”¹⁹⁷ So far Mettenheimer has been well placed in his confidence, and Freshfields has been able to hold itself relatively well: “The speed at which attorneys from the not necessarily connected areas of public and EU law, corporate and the banking praxis brought together their competencies, exhausted possibilities and explored limitations, will surely remain a milestone in German legal history.”¹⁹⁸

C. CONCLUSION

Only time will tell which law firms will thrive and continue to be profitable, and which strategies will prove to be successful in the long-term. Many firms in Germany, especially the UK and US firms, are much more focused on fields that were deemed strategically important, which in the last few years has been primarily corporate and finance related transactional work. Many have out-placed their so-called non-core practices. Law firms have faced and continue to grapple with the issue of whether to remain a full-service firm, whether to focus on certain legal practice areas, or whether to focus on client sectors (e.g., banking and finance, telecommunications, etc.).¹⁹⁹ From legal education²⁰⁰ to

[opfer-der-finanzkrise-388322/](#); Jörn Poppelbaum, *Schöne Neue Welt: Linklaters prescht mit drastischem Restrukturierungsprogramm vor*, JUVE, Feb. 28, 2009.

¹⁹⁷ “Die Zahl der Mandate ist von einem reißender Strom zu einem normalen Fluss geworden. [...] Viele Mandate sind einmalige Krisenmandate und die gehen immer an die besten Kanzleien.” Claudia Tödtmann, *Top-Kanzleien machen sich stärker Konkurrenz*, WIWO.DE, Jan. 4, 2009, available at <http://www.wiwo.de/unternehmer-maerkte/top-kanzleien-machen-sich-staerker-konkurrenz-382831/>.

¹⁹⁸ “Das Tempo, in dem Anwälte aus den nicht unbedingt verwandten Bereichen des Öffentlichen und EU-Beihilfenrechts, Corporate und der Bankenpraxis ihre Kompetenzen zusammenführten und Gestaltungsmöglichkeiten ausreizten, bleibt sicherlich ein Meilenstein in der dt. Rechtsgeschichte.” *Freshfields Bruckhaus & Deringer*, JUVE HANDBUCH 2009/2010.

¹⁹⁹ Papendorf, *supra* note 9, at 142-43.

the legal profession much in Germany is in flux, especially given the financial crisis. Ultimately, the legal profession in every country still remains a service profession, centered on knowledgeable lawyers who aim to help clients with their problems. As the German legal market evolves in its efforts to provide these services, it continues to be an interesting case study and guidepost.

Finally, what this paper does not highlight, but what is ever so apparent in this financial crisis, is that there is a human dimension, or better said, thousands of individual stories that are part of what is happening. As practice groups are deemed unprofitable, as law firms grow dramatically but then collapse, as partners jump on and off the lateral merry-go-round, individual careers and personal lives are affected. In the talk of numbers and prestige rankings, this should not be forgotten.

IV. APPENDIX

Year of Office Opening of Selected US Law Firms ²⁰¹						
Law Firm	Berlin	Cologne	Düsseldorf	Frankfurt	Hamburg	Munich
White & Case	2000		2000	2000	2000	2006
Baker McKenzie	1990		1999	1962		1997
Shearman & Sterling			1991	1991		2001
Latham & Watkins				2001	2001 ²⁰²	2005
Mayer Brown	1993	1999 ²⁰³		2001		
Jones Day				1991		2003
Cleary Gottlieb		2004		1991		

²⁰⁰ There are other changes afoot on the talent side of the legal market. The Bucerius Law School celebrated its 10th year anniversary in the fall of 2010, just as its alumni are now entering the labor market in larger numbers. The European Business School (EBS) now also plans to launch a private law school. See EBS Website, available at <http://www.ebs.edu/index.php?id=5560&L=0>.

²⁰¹ Selected list, including all US firms among the 68 largest law firms.

²⁰² Merged with Schön Nolte.

²⁰³ Melissa George, *Law and Border: Clients, Competitors Push Chicago Firms Overseas*, CRAIN'S CHICAGO BUSINESS, Apr. 26, 1999, at 13.

Weil Gotshal & Manges				2000		2004
Hogan & Hartson	2001					2004
Wilmer Hale	1993 ²⁰⁴			2008		
McDermott Will & Emory			2002			2002
Dewey & LeBoeuf				2002		
Skadden Arps				1990		2004
Orrick ²⁰⁵	2008		2008	2008		

²⁰⁴ Merged in 2002 with Quack Rechtsanwälte.

²⁰⁵ Merged in 2008 with Hölter & Elsing. *Orrick and Hölter & Elsing Agree to Merger, Berlin, Düsseldorf & Frankfurt to Bolster European Network*, ORRICK PRESS RELEASE, Sept. 15, 2008, available at http://www.orrick.com/news_events/releases.asp?action=article&articleID=7412.