

International Firms in Germany

by

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In recent years there has been significant movement in the German legal market.

Since the re-unification of West- and East Germany in 1989/1990, the subsequent market liberalisation and the arrival of international law firms, the German offices of leading US and UK firms and strong independent German firms have been competing for the best instructions in the strongest European economy.

Over the last three years or so, this competition has increased, and the market has seen some unprecedented events. Some of the leading US and UK firms in Germany have reduced their headcount radically and even closed entire offices, whilst other high ranking firms have entered the German market for the first time setting up greenfield offices, merging with smaller German independent firms or acquiring some of the German offices of international firms.

RECENT MARKET ACTIVITY

02/2012	<i>Dechert opens in Frankfurt</i>	06/2014	<i>Sidley closes in Frankfurt</i>
05/2012	<i>Quinn Emanuel opens in Hamburg</i>	09/2014	<i>Withers & Rogers opens in Munich</i>
06/2012	<i>Pinsent Masons opens in Munich</i>	09/2014	<i>Akin Gump opens in Frankfurt</i>
10/2012	<i>Osborne Clarke opens in Hamburg</i>	04/2015	<i>Orrick closes in Frankfurt, Munich</i>
01/2013	<i>Simmons & Simmons opens in Munich</i>	05/2015	<i>Reed Smith opens in Frankfurt</i>
02/2013	<i>Herbert Smith Freehills opens in Berlin, Frankfurt</i>	05/2015	<i>Goodwin Procter opens in Frankfurt</i>
04/2014	<i>Shearman & Sterling closes in Düsseldorf, Munich</i>	06/2015	<i>Olswang closes in Berlin</i>
05/2013	<i>Latham & Watkins opens in Düsseldorf</i>	07/2015	<i>Greenberg Traurig opens in Berlin with the Olswang team</i>
08/2013	<i>Quinn Emanuel opens in Munich</i>	01/2016	<i>Hausfeld opens in Berlin</i>
09/2013	<i>Hogan Lovells closes in Berlin</i>	01/2016	<i>DWF opens in Cologne, Munich</i>
11/2013	<i>Morrison & Foerster opens in Berlin (with the Hogan Lovells team)</i>	04/2016	<i>White & Case will close in Munich</i>
03/2014	<i>King & Wood Mallesons closes in Berlin</i>	2016	<i>Freshfields will close its Cologne office</i>
05/2014	<i>O'Melveney & Myers opens in Frankfurt</i>		

Quite disparate reactions can also be seen short of office closures or openings. In 2015, Clifford Chance reduced its headcount from 323 to 289 (including 17 partners), whilst for example CMS Hasche has increased total headcount numbers from 534 to 551 and partner numbers in the same period from 190 to 197. The German legal market is in a state of change.

GERMAN MARKET TRENDS

The development and consolidation of the global legal market is certainly a possible explanation, but there are a number of more complex and specific German trends:

- A new generation of in-house counsel has evolved, often trained and previously working in large international firms. The general counsel of 2016 is able and willing to take the role of the trusted adviser to the executive board and act as the transaction manager;
- In-house legal departments are growing and more legal work is being insourced;
- The “unbundling” of transactional work and instructing different law firms for different aspects of a matter at different price points has become much more common;
- A significant number of mid-tier firms have moved up the quality ladder and are able to deliver excellent service on mainstream transactions, but at much lower rates. This includes the international coverage, as almost all independent firms in the top 100 have either their own best friends networks or are part of one or more formalised international law firm networks;
- The first alternative legal service providers have been established in Germany; and even though they have not yet penetrated the market, the trend towards new and more efficient sourcing is irreversible;
- The big four accountancy firms are increasingly focusing on the German market. They have the resources and relationships necessary to make a significant impact.
- Clients are increasingly identifying opportunities to improve the efficiency of the provision of legal services. It is to be expected that fees, which are already well below average London City or US levels (average partner rate/hour: 410 US\$; top partner rate/hour: 494 US\$ (Banking/Finance); M&A partner/hour: 414 US\$¹), will come under further pressure;
- Finally, the recent strength of the exchange rate of the US Dollar and the British Pound Sterling as against the Euro has made it very difficult for German offices of US and UK firms to generate levels of profitability expected by those firms.

STRATEGIC CONSIDERATIONS

The diversity of reactions by firms to these trends reflects the difference and diversity of strategies applied to the German market. Firms looking at the German market need to consider the following key points:

1. There are now a wide range of US and UK based firms in Germany. Accordingly, being an international firm in Germany is no longer a differentiating factor. So firms need to be clear as to the clients and sectors they are targeting and why their particular offering is compelling.

¹ Source: www.JUVE.de

2. Given the domestic and international competition in Germany, any firm needs a clear market strategy. Being in Germany just because it is the largest European economy is not a sufficient reason of itself. Without a clear strategy, a firm risks failing to make a significant market impact and a disappointing financial return.
3. Market share and profits can in theory be acquired by way of a merger or looser combination with an independent German firm. However, German firms suitable for a long-term collaboration with US and/or UK firms have not remained independent due to a lack of opportunity to find a partner. Of the top 100 German firms (by headcount), 48 are independent. Of those suitable for a collaboration with a US/UK business law firm (excluding narrow niche practices), quite a large number have either officially stated that - at least for the time being - they will pursue their international strategy with a best friends network rather than look for a merger or other type of combination. On the other hand, Germany has recently seen two entire offices (approximately 35 and 55 fee earners respectively) change from a UK to a US firm (Hogan Lovells to Morrison & Foerster; Olswang to Greenberg Traurig). Similar events should not be ruled out in the wake of further changes in the market.
4. The starting point for a strategy for a firm's German operation should be the activities of the firm's current clients in relation to Germany and what these clients need. This will help to identify where the firm's initial market will be. Adding to that the firm should be clear about its particular strengths, and how those compare to the current level of supply and demand in the German market. Of the US/UK firms in Germany that have started with a greenfield operation, those who were the most successful decided to develop in close contact with selected clients, and started with their strongest and most well known practices duly adapted to the German market. This has allowed them to genuinely attract good people and to integrate them well, and at the same time to build business and not lose money. It is a process which needs rigour, focus and some patience, but it is much more realistic than hoping for a big leap into the market through senior lateral hires with first-class portable businesses.
5. Firms that have a German partner firm to merge or otherwise combine with need a realistic market approach and an effective integration plan. How does the partner firm's market correspond to the foreign firm, and how does it work vice versa? How will they integrate the German partner's existing practice and find common ground for its further development? US and UK firms should be aware that independent German firms may have different working styles and strategies, and the reason why they have stayed independent may have been that they did not want to give those up. As always, work done that satisfies a demanding professional client, results in a promptly paid invoice and produces an acceptable profit for the firm is the best platform on which to integrate. The more that can be shared between the fee earners of the UK/US firm and those of its German partner firm, the easier it will be to develop best practice and strategy.
6. Finally, the market entry and/or expansion strategy should take into account the trends set out above, in particular when it comes to planning the size of the operation in Germany. US firms have been, in general, rather successful in resisting the temptation

to try to gain market share by increasing their size and have focused much more strictly on profitability. It is no surprise, therefore, that of the 10 most productive firms in Germany (by revenue per fee earner) eight are from the US and the two others German independents². In particular looking at the examples of these mostly rather lean operations, it becomes clear that the notion of a critical mass for a German presence is questionable. Key is a client-centred, practice-focused, quality and innovation-driven and cost-conscious strategy.

IN SUMMARY

In summary, US firms considering establishing or expanding a presence in Germany should not rely on the big leap by way of lateral hired partners (or groups of them) with large portable books of business, but rather prepare their own strategy on the basis of their existing client base and their specific offering in relation to market demand. This will attract new clients and good lateral hires (perhaps groups of them) and help to lay foundations for a successful German practice.

About the Author

Michael Lappe, a German law qualified lawyer (Rechtsanwalt), is a senior consultant at Jomati Consultants LLP, London. He advises international business law firms on strategic issues concerning the continental European and in particular the German legal market.

Prior to joining Jomati, Michael was a partner of magic circle law firm Linklaters (from 2004 to 2010 German Senior Partner and Global Executive Committee member) and before that a partner of leading German firm Oppenhoff & Rädler, Linklaters' German legacy firm, for which he negotiated what became one of the most important law firm combinations in Europe.

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² Source www.JUVE.de