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The case of Ferrostaal

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The case of the Ferrostaal-Company is of interest for the Tax Justice & Poverty research project for three reasons: First, it is one example for a company with business contacts both in Germany and Zambia, second, it is less well researched than other companies active in Africa (e.g. the Deutsche Bank), third, it has even an indirect link to Nuremberg due to its earlier belonging to the Machine Factory Augsburg-Nuremberg (MAN).

History

Ferrostaal was founded in 1920 in the Netherlands as a trading company for steel products. There was a suspicious odour surrounding this company right from the beginning: It was rumoured that the main purpose behind this setup in the Netherlands (therefore the Dutch name) was the intention of German steel manufacturers to circumvent the post World War I sanctions imposed on Germany. Just one year later, the Gutehoffnungshütte obtained shares in Ferrostaal and eventually total control of this company.

Parallel to this, the Nuremberg based Eisengießerei und Maschinenfabrik Klett & Comp. was merged with the Maschinenfabrik Augsburg into the MAN corporation (*Maschinenwerke Augsburg Nürnberg*). MAN eventually developed into a truly Global Player in the field of trucks, buses, trains, motors, turbines, armament and other heavy industry items.

Ferrostaal came, together with its parent Gutehoffnungshütte, to the MAN Corporation in 1986. By then the main seat of the MAN was already in Munich, Bavaria.

Profile

Ferrostaals speciality is plant engineering and construction and in this field they were, at a time, quite successful: For a number of years the annual turnover of the company was and is around DM 1 billion, later the equivalent in Euro, or more. The number of employee ranged around 5,000 people. With that it still is categorized as a middle sized company in Germany, and they do indeed coordinate and manage the erection and complex and big industrial installations all over the world

All that, however, does not capture entirely the importance of Ferrostaal and its niche within German industries. Conversation partners from the business and investigative profession detailed that Ferrostaal does not always and/or only act on its own. According to them, Ferrostaal belongs to the category of businesses that are known to be a door-opener for other German companies by acting in a more or less transparent manner as their in-between-agents.¹ The idea behind that is that those companies take the risk and the other companies have the chance to get out of trouble if something “not so good” becomes public.

Scandals

Not surprising, therefore, that Ferrostaal’s name is linked with many tales of corruption, bribery and other unsavoury deals. Here, of course, one has to be aware that bribery in Germany was accepted and even (declared as “useful expenditure” (*nützliche Aufwendungen*)), tax deductible until February 1999. When Germany prohibited bribery in 1999, it was widespread practice not only with Ferrostaal to hide ongoing malpractice by just using other names e.g. “Consultancy fees” or “Provisions.”

One of the largest Ferrostaal projects is the Alcon smelter in Nigeria:² Rumour has it, that of a budget approaching DM 4 billion up to half of it was spent to bribe Sani Abacha and his family. State prosecutors were able, for example, to follow up a DM 460 million transfer from Ferrostaal to Sani Abachas son Mohammed on a bank account in Luxembourg. In the clearup of the Abacha affair, authorities froze assets of the Abacha family of DM 1.31 billion DM in Luxembourg, USD 645 million in Switzerland³ and EUR 185 million in Liechtenstein.⁴ The Alcon affair is one among Sani Abachas largest investment ruins of Nigeria. It was never completed and produced only little over a short period of time and ceased operations in 2000.⁵ Tax auditors and state prosecution opened investigation into the case in 2003 when they discovered bills which were much higher than bills usually are on average in this segment of business.⁶ The proceedings ended in 2005 when the former

¹ See also Ott, Kl. Zahltag für Ferrostaal. (30 October 2010). In: *Süddeutsche Zeitung*. Retrieved from <http://www.sueddeutsche.de/wirtschaft/millionenstrafe-wegen-korruption-zahltag-fuer-ferrostaal-1.1017962>

² ALSCON (Aluminium Smelter Company of Nigeria)

³ See: Berüchtigte Kundschaft. In: *Der Spiegel* 22/2000, p. 102

⁴ Ritzer, U. Dreckig, unaufrichtig, vulgär. (17 May 2010). In: *Süddeutsche Zeitung*. Retrieved from <http://www.sueddeutsche.de/geld/2.220/liechtenstein-dreckig-unaufrichtig-vulgaer-1.597433>

⁵ Only after the RUSAL company took over and overhauled the company, serious production started in 2008 <http://www.rusal.ru/en/about/51.aspx>

⁶ Herberman, J.D. Staatsanwalt ermittelt gegen Ferrostaal. (21 April 2012) In: *Handelsblatt*. Retrieved from <http://www.handelsblatt.com/archiv/millionen-fuer-nigerianische-despotenclique-staatsanwalt-ermittelt-gegen-ferrostaal/2159478.html>

Ferrostaal CEO, Klaus von Menges, and three others in charge accepted fines of EUR 50,000 and EUR 100,000 in turn.

But there are more links between Ferrostaal and Africa:

- Ferrostaal was also involved with Ziscosteel (ZIMSTEEL) in Zimbabwe.⁷ Ferrostaals involvement here was backed with money from the state owned Kreditanstalt für Wiederaufbau and amassed losses of EUR 40 million.⁸ Beyond that, there are rumours of tax trickeries which could, however, not be proven since Zimbabwean authorities were less than helpful in clarifying allegations.
- In South Africa, Ferrostaal is accused to have bribed in 2006 (then) president Thabo Mbeki R\$ 30 million, (then) future president Jacob Zuma R\$ 2 million and the ANC R\$ 28 million in order to secure a multi-billion U-Boat deal. All those involved in the alleged affair, including MAN-Ferrostaal CEO Klaus Lesker, deny the allegations and complain that such unfounded accusations damage the reputation of both Ferrostaal and its South African cooperation partners.⁹

Recent history

A major scandal blew in the year 2009 when tax auditors discovered strange posts when checking books and accounts of the mother corporation MAN in Munich, who was also in charge of anti-bribery compliance for Ferrostaal. An ensuing search at Ferrostaal Offices in Essen consolidated indications that Ferrostaal continued its (now prohibited) practice of bribing state officials, in this case in Greece and Portugal, ahead of the sale of U-Boats and that this practice was known and/or backed by the company's leadership. This discovery came very untimely: MAN was just about to sell 70% of shares into its subsidiary Ferrostaal to the Abu Dhabi state fund IPIC for EUR 450 million. In this situation, investigations relating to the suspicion of bribery were damaging for the reputation and value of a business acquisition: everybody can imagine that such investigations will deter prospective customers to make deals with Ferrostaal as long as the investigation is ongoing.¹⁰

An attempt to settle this conflict speedily was the offer of MAN to commission a private legal company to shed light into the shadows, the company being the same, which also assisted in the case of bribery by the German Corporation Siemens which eventually was settled for a fine of EUR 600 million. The Munich prosecution agreed initially, insisting that findings of this legal company would be communicated speedily. As the case dragged on, however, both communication and findings were not really satisfactorily for the prosecution,

⁷ Dhilwayo, Dominic (1997). Kiss of life for Zim steel, African Business, IC Publications Ltd. Gale, Cengage Learning, November 1997.

⁸ Balzli, B. Aggressive Advocaten (28 April 2008). In: *Spiegel Online*. Retrieved from <http://www.spiegel.de/spiegel/print/d-56756356.html>

⁹ Momberg, E. MAN Ferrostaal chief denies bribery claim. (31 August 2008) In: Independent Online. Retrieved from <http://www.iol.co.za/news/politics/man-ferrostaal-chief-denies-bribery-claims-1.414497#.UqNUDeJ1ic0>

¹⁰ From here on down: Bergmann, J. Das Gefangenendilemma. In: *Brandeins*, Vol 5/2012. Retrieved from <http://www.brandeins.de/archiv/2012/loyalitaet/das-gefangenendilemma.html> as well as findings from various interviews.

and this dissatisfaction amounted in yet another search at Ferrostaal offices in order to prevent information from “disappearing”.

At that stage, however, the business situation of Ferrostaal had deteriorated massively. Jobs had to be cut and there was the overall danger that the company has to file for insolvency or worse. This prompted yet another emergency meeting between representatives of the state prosecution on the one side and representatives of Ferrostaal and its owner on the other. During this meeting both company leadership and owner tried to find ways agreeable to the prosecution to settle and terminate the case, for example, that another legal company was agreed upon to “assist” the company already at work.

Beyond that, there are additional rumours, that economical and political pressure did its part: The ongoing investigation shed a bad light not only on the mother corporation MAN, but also a majority shareholder of MAN, the VW corporation – Germany’s largest carmaker. And, of course, there is the complaint by the larger business community that Ferrostaal, after all, was doing nothing different from others, and, if German businesses would stop this practice, business in many parts of the worlds would simply be impossible. This argument found its way up to the highest political level. According to informants, somebody high up in politics said allegedly in this context: ‘As long as the French, Brits and Americans don’t go tough on their business, we in Germany should not do that either – otherwise our export interests are damaged.’

The eventual conclusion of the case was widely and controversial debated, especially by those who hold the verdict(s) to be too lenient. Here, some suspected that the state prosecutor could not really prove that suspicious money transfers were used to bribe state officials,¹¹ others suspected that the case was terminated because of economical and political pressure. Whatever the reasons, this is the outcome:

- The main suspects (scapegoats?) confessed their misbehavior. They received a suspended prison sentence and had to pay fines of EUR 36,000 and EUR 30,000. The Ferrostaal company had to pay a fine of EUR 139.786.376 – most of which had to be paid by MAN, the then-owner of Ferrostaal and therefore in charge of supervising business practices at its subsidiary. The last tranche of this fine was paid in January 2014.¹² But questions remain: as became known later, Ferrostaal paid all legal expenses of the two persons sentenced in return of their promise not to appeal against the verdict. Ferrostaal was ‘very interested’ that the sentence came into force soon. One reason for this eagerness might have been the prosecutions’ threat to appeal against the verdict. This would have entailed the risk that the fine imposed during revisionary procedures could get increased. Luckily for Ferrostaal, the two accepted, and, even better: their legal costs were capped at EUR 715,000 each...¹³

¹¹ Ferrostaal soll 177 Millionen Euro Strafe wegen Korruption zahlen. In: *Spiegel online*. Retrieved from <http://www.spiegel.de/spiegel/vorab/a-770535.html>

¹² Bavarian Superior Court (2011, December 21). Press release retrieved from http://m.jusline.de/show_pm.php?feed=130590

¹³ Kuhhandel um Honorar. In: *Spiegel Online*. Retrieved from <http://www.spiegel.de/spiegel/print/d-84789674.html>

- IPIC eventually insisted to get out of the deal and MAN had to re-buy its shares for EUR 350 million only, making a loss of EUR 100 million.
- And yet: the MAN corporation was finally able to get rid of Ferrostaal by selling it to the Hamburg based MPC holding for EUR 160 million. Perhaps it was helpful that former Ferrostaal CEO Klaus Lesker¹⁴ was working at MPC at that time.
- Conveniently, the new owner, MPC holding, is, as a holding, under no obligation to publish an annual public balance sheet and reports and, finally, Ferrostaal changed its status from an AG (*Aktiengesellschaft*, public company) into a GmbH, which, also conveniently, requires fewer obligations to publicize annual balance sheets and reports...
- Last not least: Part of the arranged package was that the firm replaced the company which so far had been in charge with internal compliance towards Anti-Bribery regulations, by another company with a better reputation. By doing that, the company is adjusting to a (meanwhile) widespread standard practice among German businesses to do own internal supervision and communicating relevant results to public authorities. According to conversation partners, this practice diminished bribery by German companies considerably, one advantage being, that this kind of supervision by companies commissioned by the owner can do a much more efficient job than public prosecutors reliant on international cooperation of law-enforcement institutions.

Back to business: The promise

Beyond that, the company was full of good intentions: on the very day of the last verdict against Ferrostaal, on 20 December 2011, the new CEO of Ferrostaal, Jan Secher declared: “Now we can leave the past behind us and look forward. With the installation of a comprehensive compliance system and effective control mechanisms we took care that Ferrostaal from now on will be involved only in clean deals,” says Secher.¹⁵

Today, Ferrostaal’s annual turnover is once more approaching EUR 1 billion. The company employs around 4,500 people and is active in 40 countries worldwide.

¹⁴ See above, the case of South Africa

¹⁵ „Wir können jetzt die Vergangenheit hinter uns lassen und den Blick nach vorn richten. Dank der Einrichtung eines umfassenden Compliance-Systems und effizienter Kontrollmechanismen haben wir dafür Sorge getragen, dass Ferrostaal nur saubere Geschäfte betreibt“, so Secher. Quoted in the Press Release „Verfahren gegen Ferrostaal beendet“ 20 December 2011. Retrieved from [http://www.ferrostaal.com/de/unternehmen/news-publikationen/news/?tx_editfiltersystem_pi1\[cmd\]=detail&tx_editfiltersystem_news_pi1\[uid\]=1366&tx_editfiltersystem_pi1\[pointer\]=2](http://www.ferrostaal.com/de/unternehmen/news-publikationen/news/?tx_editfiltersystem_pi1[cmd]=detail&tx_editfiltersystem_news_pi1[uid]=1366&tx_editfiltersystem_pi1[pointer]=2)

But what about Zambia?

The case under examination

In cooperation with the South African Company Deulco Renewable Energies,¹⁶ Ferrostaal acquired from the Zambian Development Agency (ZDA) 191,103 hectares in the Muchinga Province, Mpika District, of Zambia. According to publications, Ferrostaal pledged to invest US\$ 400-500 million into the growing and processing of the *Jatropha* plant which is usually used for biodiesel.¹⁷ This project is in tune with Ferrostaal's engagement in the sector of recycling and renewable energies, until the present day an important branch within Ferrostaal's service portfolio.¹⁸

But: Since the Memorandum of Understanding was signed in 2009 under the previous government of Zambia, not much happened. There is a press release of Ferrostaal's partner Deulco, saying that a 'test phase' has been launched on the plot¹⁹ and Ferrostaal then Vice-President Horst Weretecki argued that it is a five year project starting 2011, so nothing to worry yet. On the other hand, Ferrostaal tells German activists in a letter from 20 May 2012 that nothing more than a test plantation has been agreed upon and since outcome is not satisfactory, Ferrostaal would withdraw from the plan for a large scale production.²⁰

The situation as of January 2014

Research undertaken by Zambian partners revealed other interesting details: In the Printout of the Patents and Companies Registration Agency (PACRA) there is only one Ferrostaal Company registered, namely Ferrostaal (Zambia) Limited with 2 December 2009. The company is registered for the sector "trading and repair of automotives", as "nature of business" is given "equipment, general trading". Ferrostaal Zambia Limited is clearly owned by Ferrostaal Germany: 4999 shares out of the issued 5000 shares are owned by Urs Vollrath, member of Ferrostaals Executive Committee,²¹ 1 share out of 5000 by some Andrew G. Howard. Mr. Howard is a lawyer, who, when visited, refused to give any information. Instead he referred all inquiries to the company lawyer, whose firm is also on register on the PACRA printout. The lawyer admitted to have filed the annual tax returns for Ferrostaal, but that he considers stopping to do it since Ferrostaal failed to pay him any fees and salaries for a longer

¹⁶ <http://www.aquaconcepts.net/deulco/>

¹⁷ German Firm plans to set up biofuels plant in Zambia. (June 12, 2009). In: *Global Times China*. Retrieved from <http://www.globaltimes.cn/content/436578.shtml>

¹⁸ See brochure: Environmental Technologies and Recycling. (2011) Retrieved from www.ferrostaal.com/uploads/tx_mfsmatrix/FS_Broschuere_Recycling_E_WEB.pdf

¹⁹ Deulco Commerce *Jatropha* test phase in Northern Province, Zambia. Press Release of March 2010. Retrieved from http://www.aquaconcepts.net/deulco/index.php?option=com_content&view=article&id=2:deulco-commerce-jatropha-test-phase-in-northern-province-zambia&catid=45:news&Itemid=50

²⁰ Mbanza, B./ Knapp, S. (August 2012) *Land ist Leben – Landrechte in Sambia*. Kirchliche Arbeitsstelle Südliches Afrika, S. 22. See also: Zambian Land Alliance, Caritas Zambia *Investigation into German Involvement in Landgrabbing in Zambia. Case study of Ferrostaal investment in Zambia*. Updated 2 February 2012.

²¹ See entry into the Handelsregister at 27. March 2012, retrieved from <http://handelsregister-online.net/neueintragung.cfm?cn=3729237>

period of time. Indeed: further information supplied by PACRA reveals that Ferrostaal has not submitted annual returns for the years 2012 and 2013. Since the company has not yet been liquidated as of January 2014, this failure is subject to penalties according to Zambian law.²²

There is no link to the intention to plant *Jatropha* in Zambian contracts and records, but following Zambian law a company can have different investment incentives for different projects. Hence: though Ferrostaal is registered with PACRA as a "Trading and Repair of Automotives Company", they are eligible to venture into another business and get incentives for that business. For example, the grant of a huge piece of government possessed land on which the *Jatropha* plantation could be established. But it did not stop here:

ZDA contact persons recalled that a Ferrostaal representative approached ZDA for the discussion on tax incentives on 9 January 2009, 11 months before Ferrostaal (Zambia) was even registered. Ferrostaal pledged investment of US\$ 1,000,000 – which is much less than the publicly circulated amount US\$ 400-500 million, but the amount was sufficient for talks on tax incentives to go ahead and to come to an agreement with ZDA, since every company investing more than US\$ 500,000 is entitled to incentives as specified by or under the Income Tax Act or Customs and Excise Act, e.g.

Fiscal incentives

- Company tax is charged on only 50 percent of profits earned in the first five years of profitability
- Dividends are exempted from tax for 5 years from the first year of declaration
- Zero customs duty for 5 years on machinery and equipment
- 100 percent capital allowances on infrastructure upgrade and improvements

Non Fiscal Incentives

- Free facilitation for application of immigration permits, secondary licenses, land acquisitions and utilities
- Investment Guarantees and protection from nationalization

In the talks preceding the agreement, the Ferrostaal representative pledged towards ZDA that 800 jobs will be created. When checking in the Mpika District in January 2014, only 21 people were employed to guard the plot of land and further inquiries revealed that also in the months and year before employment was not considerably higher and at any rate far away from the pledged figure of 800 jobs.

According to ZDA, Ferrostaal Zambia operations have probably ceased in 2012.

²² ,Annual Returns are filed on BN Form XIV, and must be submitted in duplicate. The normal filing is K30 per year. However, if the Annual Return Form is submitted after the expiration of three (3) months from the date of the financial year a late filing fee of K70 must also be paid together with the normal filing fee bringing the total to K100.' Retrieved from http://www.pacra.org.zm/index.php?option=com_content&view=article&id=90&Itemid=155

Open questions

But, there are still open questions: Even though ZDA argues, that Ferrostaal ceased operations in Zambia and that the land has been repossessed by government, two facts from 2014 hold against that:

First of all the fact, that, according to PACRA records, the company is not yet liquidated, but still registered and in operation, which is also confirmed by the visits to the Ferrostaal Representative, Mr. Howard, and the company lawyer.

And: the fact, that the plot of land is still guarded by 21 guards finally indicates that at least here somebody provides money to pay those guards.

On 9th October 2015 this report was sent via registered letter to Ferrostaal with the offer to comment on them. There was no reply.

Further reports from Mpika in 2015 did not provide evidence that the plot was used for some recognizable purpose, nor was the local population admitted back to the plot for settlement again.

One last effort was undertaken from the German end: In a letter, the Zambian Embassy in Berlin was asked whether they can inquire into the latest state of the plot of land in the Mpika district and the Ambassador replied on 12 July 2016 that the Embassy has “since conveyed the communication to our Ministry Headquarters in Zambia for follow-up by the relevant institutions and, hopefully, provide a more comprehensive response to your query.”

However, nothing more was said or heard in that case.

Some reports assert that the formerly customarily owned land had now been turned into state ownership and had been transferred to the use of ZAMPALM, a branch of the parastatal ZAMBEEF.²³ This could explain why there was no “comprehensive response” to our query from “Ministry Headquarters” in Lusaka and with that we stopped our inquiry into this case.

²³ FIAN/IGO/TNI/FDCL (2013) Fast track agribusiness expansion, land grabs and the role of European private and public financing in Zambia. Retrieved May 2016 from https://www.tni.org/files/download/13_12_fian_zambia_en.pdf