



Michael Rake  
Chairman KPMG International  
Senior Partner KPMG UK

8 Salisbury Square  
London  
EC4Y 8BB  
United Kingdom

Tel +44 (0) 20 7311 8197  
Fax +44 (0) 20 7311 1610  
DX 38050 Blackfriars

Office of the Chief Accountant  
Securities and Exchange Commission  
450 Fifth Street NW  
Washington DC 20549  
USA

24 July 2002

Ladies and Gentlemen

### **KPMG (UK and the Netherlands)/Atos Origin SA Transactions**

We hereby request that the Staff of the U.S. Securities and Exchange Commission (the "*Commission*" or "*SEC*") advise that, based upon and subject to the matters presented herein, the Staff will not recommend that the Commission take enforcement action against KPMG LLP ("*KPMG U.K.*"), KPMG Holding N.V. ("*KPMG NL*") or any of their respective subsidiaries (collectively, the "*U.K./NL Accounting Practices*"), or any other firms conducting audit activities for SEC registrants under the name "KPMG" or derivations thereof or otherwise as part of the KPMG network of firms, or any other entity that would be considered part of KPMG under Rule 2-01(f)(2) of Regulation S-X (collectively "*KPMG*"), asserting that KPMG is not "independent" of its audit clients or their affiliates, as defined in Rules 2-01(f)(6) and 2-01(f)(4) of Regulation S-X, as a result of Atos Origin S.A. or any of its affiliates (collectively, "*Atos*") being considered an "associated entity" of KPMG or otherwise a part of KPMG for purposes of Rule 2-01 of Regulation S-X or the activities of Atos otherwise being attributed to KPMG following the completion of the transactions described below.



KPMG LLP,  
KPMG LLP, a UK limited liability partnership,  
is a member of KPMG International,  
a Swiss association

KPMG LLP is registered to  
carry on audit work by the  
Institute of Chartered  
Accountants in England and

Wales and authorised by  
the Financial Services  
Authority for investment  
business activities

Registered in England No OC301540  
Registered office:  
8 Salisbury Square,  
London EC4Y 8BB

## Legal Analysis

The federal securities laws require that financial statements filed with the Commission by public companies, investment companies, broker-dealers, public utilities, investment advisers and others be certified (audited) by independent public accountants.<sup>1</sup> The federal securities laws also authorize the Commission to define “accounting, technical and trade” terms used in the federal securities laws.<sup>2</sup>

The Commission has adopted Rule 2-01 of Regulation S-X regarding the independence of accountants.<sup>3</sup> The general standard set forth in Rule 2-01(b) provides that:

The Commission will not recognize an accountant as independent, with respect to an audit client, if the accountant is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that the accountant is not, capable of exercising objective and impartial judgment on all issues encompassed within the accountant’s engagement.<sup>4</sup>

Rule 2-01(b) further provides that:

In determining whether an accountant is independent, the Commission will consider all relevant circumstances, including all relationships between the accountant and the audit client, and not just those relating to reports filed with the Commission.

The preliminary note to Rule 2-01 states that, in considering the standard set forth in Rule 2-01(b), the Commission looks to, among other criteria, whether a relationship or the provision of a service “creates a mutual or conflicting interest between the accountant and the audit client.”<sup>5</sup>

Rule 2-01(c) applies the standards set forth in Rule 2-01(b) to particular circumstances in which an accountant’s independence is considered to be impaired.<sup>6</sup> Such circumstances may include, among other things, the existence of a financial relationship or a business relationship between the accountant and the audit client.

With respect to financial relationships, Rule 2-01(c)(1) provides that an accountant will not be considered independent if “the accountant has a direct financial interest or a material indirect financial interest in the accountant’s audit client. . . .” Under Rules 2-01(c)(1)(i)(A) and (D), such a financial interest in an audit client includes a direct or material indirect investment by the accounting firm, any covered person or immediate family member in the audit client. Under Rule 2-01(c)(1)(i)(E), such a financial interest also includes investments by such persons in entities over which the audit client has the ability to exercise significant influence, or which exercise significant influence over the audit client.

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<sup>1</sup> See, e.g., 15 U.S.C. 77aa(25), (26), 15 U.S.C. 78l, 78q, and 78m, 15 U.S.C. 79e(b), 79j, 79n, 15 U.S.C. 80a-8, 80a-29, 15 U.S.C. 80b-3(c)(1).

<sup>2</sup> See 15 U.S.C. 77s(a), 15 U.S.C. 78c(b), 15 U.S.C. 79i(a), and 15 U.S.C. 80a-37(a).

<sup>3</sup> See Revision of the Commission’s Auditor Independence Requirements, Exchange Act Release No. 43602, Fed. Sec. L. Rep. (CCH) ¶ 86,406. (Nov. 21, 2000) (effective Feb. 5, 2001).

<sup>4</sup> 17 C.F.R. 210.2-01(b) (2001).

<sup>5</sup> *Id.* § 2.10.2-01 (para. 2 of Preliminary Note).

<sup>6</sup> See *id.*

<sup>7</sup> In the case where the audit client has the ability to exercise significant influence over the investee entity, independence will be impaired if either (i) such persons have a material investment in the entity or (ii) such persons have a direct or material indirect investment in the entity and the audit client has an investment in the entity that is material to the audit client. In the case where the investee entity has the

With respect to business relationships, Rule 2-01(c)(3) provides that an accountant will not be considered independent if:

at any point during the audit and professional engagement period, the accounting firm or any covered person in the firm has any direct or material indirect business relationship with an audit client, or with persons associated with the audit client in a decision-making capacity, such as the audit client's officers, directors or substantial stockholders.

The Commission's interpretations of Rule 2-01 are collected in Section 600 of the Codification of Financial Reporting Policies (the "*Codification*"), entitled "Matters Relating to Independent Accountants." Section 602.02.e of the Codification addresses business relationships - such as joint ventures, limited partnership agreements, and investments - that may impair an auditor's independence. That section provides, in part, that:

Direct and material indirect business relationships . . . with a client . . . will adversely affect the accountant's independence with respect to that client. Such a mutuality or identity of interests with the client would cause the accountant to lose the appearance of objectivity and impartiality in the performance of his audit because the advancement of his interest would, to some extent, be dependent upon the client.

KPMG believes that it would not have a "mutual or conflicting interest" or a "direct or material indirect business relationship" with, or a "direct financial interest or material indirect financial interest" in, any of its audit clients that are also clients of, or enter into business relationships with or invest in Atos, or in which Atos invests, as a result of the transactions described herein. Accordingly, KPMG's independence will not be deemed impaired pursuant to Rule 2-01 or any other provision of the Commission's independence rules. This conclusion is based on the condition that Atos is not and will not become an audit client within the meaning of Rule 2-01(f)(6) and the other conditions detailed in this letter, which, among other things: (1) limit at the outset, and within three years eliminate, the KPMG equity interest in Atos; (2) impose limitations on the use by Atos of the "KPMG" name; (3) require a strict separation of the corporate governance and management of KPMG and Atos; (4) prohibit any revenue or profit sharing between KPMG and Atos; (5) restrict any joint marketing agreements between KPMG and Atos; and (6) restrict any shared services between KPMG and Atos.

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ability to exercise significant influence over the audit client, independence will be impaired if either (i) such persons have the ability to exercise significant influence over the entity or (ii) such persons have a direct or material indirect investment in the entity and the investment in the audit client is material to the entity. Consistent with its existing compliance procedures, KPMG will monitor investments by Atos in any KPMG audit clients, and investments by any KPMG audit clients in Atos, to ensure compliance with Rule 2-01(c)(1)(i)(E). In this connection, KPMG has identified one audit client that may have significant influence over Atos. KPMG does not believe that the investment by this audit client in Atos is material to the audit client. KPMG has established procedures to ensure that with respect to that audit client no "covered person" within the meaning of Rule 2-01(f)(11) will receive shares of Atos in the transactions or otherwise hold shares of Atos.

Codification of Financial Reporting Policies, Section 600-Matters Relating to Independent Accountants, reprinted in Fed. Sec. L. Rep. (CCH) ¶ 73,251, et. seq.

## Factual Background

### *The Netherlands Purchase Agreement*

Pursuant to the Share Purchase Agreement, dated June 4, 2002 (the "*Netherlands Purchase Agreement*"), and other agreements specified therein (the "*Netherlands Ancillary Agreements*"),<sup>9</sup> KPMG NL and the consulting partners of KPMG NL who will cease to be partners of KPMG NL upon the closing of the sale (the "*Netherlands Consultants*") have agreed to sell all interests in the consulting business of KPMG NL (the "*Netherlands Consulting Practice*") to Atos in exchange for an aggregate of 1.014 million shares of Atos common stock,<sup>10</sup> €86.1 million in cash and contingent warrants to subscribe for 412,500 shares of Atos common stock (the contingent warrants will be allocated only to the Netherlands Consultants).

### *The U.K. Purchase Agreement*

Pursuant to the Agreement for transfer of business, dated June 4, 2002 (the "*U.K. Purchase Agreement*"), and other agreements specified therein (the "*U.K. Ancillary Agreements*,"<sup>11</sup> together with the Netherlands Ancillary Agreements, the "*Ancillary Agreements*" and, together with the Netherlands Purchase Agreement and the U.K. Purchase Agreement, the "*Transaction Agreements*"), KPMG U.K. and the consulting partners of KPMG U.K. who will cease to be partners of KPMG U.K. upon the closing of the sale (the "*U.K. Consultants*" and together with KPMG U.K., the Netherlands Consultants and KPMG NL, the "*Sellers*") have agreed to sell the consulting business of KPMG U.K. (the "*U.K. Consulting Practice*" and, together with the Netherlands Consulting Practice, the "*Consulting Practices*"), to Atos in exchange for an aggregate of 2.643 million shares of Atos common stock and €336 million in cash. The U.K. Purchase Agreement also contemplates the transfer of contingent warrants to subscribe for one million shares of Atos common stock to certain U.K. Consultants.

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<sup>9</sup> The Netherlands Ancillary Agreements are the Division of Services Agreement (the "*NL DSA*"), the Shared Services Agreements (the "*NL Shared Services Agreement*") and the Trademark Sublicensing Agreement (the "*NL Trademark Agreement*").

<sup>10</sup> As a result of French corporate law constraints, equity at closing will actually consist of Atos bonds mandatorily redeemable on a 1:1 ratio exclusively for shares of Atos common stock with a maturity of 12 months from closing, whereupon the underlying Atos common stock will be issued without additional consideration being due. The bonds are subject to restrictions on transfer prior to maturity. References in this letter to shares of Atos common stock received as consideration include references to the mandatorily redeemable bonds.

<sup>11</sup> The U.K. Ancillary Agreements are the form of Division of Services Agreement (the "*U.K. DSA*"), the form of Shared Services Agreement (the "*U.K. Shared Services Agreement*" and together with the NL Shared Services Agreement, the "*Shared Services Agreements*") and the Trademark Sublicensing Agreement (the "*U.K. Trademark Agreement*" and together with the NL Trademark Agreement, the "*Trademark Agreements*").

In total, the Sellers will receive 3.657 million shares of Atos common stock plus €422.1 million in cash and contingent warrants to subscribe for 1.4125 million shares of Atos common stock from Atos in exchange for the Consulting Practices. Atos common stock is traded in the public securities markets in France, but is not currently listed or quoted on any U.S. exchange or national quotation system. Approximately 1.828<sup>12</sup> million of the shares of Atos common stock issuable in the transaction will be held by the U.K./NL Accounting Practices and their partners; the remainder (approximately 1.829 million shares)<sup>13</sup> will be held by or for the benefit of the Netherlands Consultants, the U.K. Consultants and other persons (e.g., consulting employees) who, as of the closing, will become employees of Atos or its subsidiaries and will no longer be partners or employees of the Accounting Partners.<sup>14</sup> All of the contingent warrants will be held by the Netherlands Consultants and the U.K. Consultants.

Other key terms of the proposed transactions are:

- 1 For three years, KPMG NL will not compete with Atos by engaging in the provision of Consulting Services,<sup>15</sup> and for four years, KPMG U.K. will not compete with Atos by engaging in the provision of Consulting Services.<sup>16</sup>
- 2 After consummation of the transactions, there will be no corporate governance, management or direct or indirect financial ties between KPMG and Atos (other than KPMG's ownership of Atos common stock and certain rights and related restrictions regarding the timing and manner of sale of such common stock (e.g., the common stock may not be sold for 12 months following the date of closing (the "lock-up") and any such sale must be in an amount, and conducted in a manner, that is not expected to adversely affect the market for Atos common stock).

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<sup>12</sup> This includes the approximately 272 thousand shares of Atos common stock that will be sold by the Stichting Administratiekantoor NLC (the "Selling Foundation") to cover expenses related to the sale of the NL Consulting Practice.

<sup>13</sup> This includes the approximately 61 thousand shares of Atos common stock that will be sold by the Selling Foundation to cover expenses related to the sale of the NL Consulting Practice.

<sup>14</sup> In the case of KPMG NL, the consideration initially will be received by the Selling Foundation for the exclusive benefit of certain persons who were accounting and consulting partners of KPMG NL as of October 1, 2000. In the case of KPMG U.K., the consideration initially will be received by KPMG LLP, other than the contingent warrants, which will be received by the U.K. Consultants. References in this letter to ownership or receipt of consideration by other parties refers to such party's expected receipt of beneficial interest in such consideration.

<sup>15</sup> Under the NL DSA, "Consulting Services" means those services provided by the Netherlands Consulting Practice to its clients immediately following the effective date, which consists of Consulting Services currently provided by NLC Holding B.V. (listed in Appendix A of the NL DSA), including without limitation, Systems Integration and Integrated Solutions Services and any new Consulting Services. The three year time period for the NL DSA corresponds to maximum time period for the provision of services under the relevant Shared Services Agreement.

<sup>16</sup> Under the U.K. DSA, "Consulting Services" means those professional services set out in Schedule 1 to the U.K. DSA and identified therein as "Consulting Services" together with the New Services and Changed Services agreed in relation to the Consulting Business from time to time in accordance with terms of the U.K. DSA. The four year time period for the U.K. DSA corresponds to maximum time period for the provision of services under the relevant Shared Services Agreement.

- 3 The 3.657 million shares of Atos common stock to be received by the Sellers will represent approximately 7.7 percent of the issued and outstanding Atos common stock. After the closing, and as a result of the transactions, the U.K./NL Accounting Practices and their partners will own less than 3.8 percent of the issued and outstanding Atos common stock. No other KPMG entity will receive Atos common stock or any other consideration in connection with the transactions.

For the purposes of this letter, the percentages of the issued and outstanding Atos common stock to be owned following the closing of the transactions are calculated based upon the approximately 43.854 million shares of Atos common stock issued and outstanding on July 22, 2002 plus the 3.657 million shares of Atos common stock to be issued upon the closing of the transactions, but not adjusted for shares of Atos common stock issuable upon exercise of the contingent warrants.

#### Conditions to No-Action Confirmation

In connection with this request for no-action confirmation, the U.K./NL Accounting Practices and KPMG agree that any such confirmation will be subject to the following conditions:

1. As a result of the transactions, KPMG (through the U.K./NL Accounting Practices and their partners) will have a beneficial interest in no more than 1.828 million shares of Atos common stock (approximately 3.8 percent of the issued and outstanding Atos common stock) immediately following the closing. KPMG (including any partners receiving common stock of Atos) will dispose of all such shares of Atos common stock within three years of the closing date.
- 4 Atos will be entitled to use a variant of the "KPMG" name in the U.K. and the Netherlands (e.g., "Atos KPMG Consulting") for a transitional period of two years, with the possibility of an extension for a third year, subject to the conditions that:
  - 4.1 All publications, letterhead and stationery, name plates, office signage, websites and business materials clearly designate the Consulting Practices as being wholly owned by Atos and not KPMG U.K., KPMG NL or any other member firm of KPMG International (e.g., a wholly owned subsidiary of Atos);
  - 4.2 Atos will not represent in any publication, advertisement, press release, name plates, office signage, business cards or other similar material that it is the same firm, or controls, manages, governs or is affiliated with KPMG; and
  - 4.3 KPMG will not represent in any publication, advertisement, press release, name plates, office signage, business cards or other similar material that it is the same firm, or control, manage, govern or are affiliated with Atos, the Consulting Practices or any other affiliate, subsidiary or division of Atos.
- 5 Atos and KPMG will maintain separate corporate governance, management and financial structures and interests, including separate supervisory boards and boards of directors, executives, employees, capital, credit lines or facilities, client databases, governing documents, operating policies, financial operations and financial and

accounting policies.<sup>17</sup> Atos and KPMG will not exert financial or other influence over the other party's corporate governance, management and financial structures or interests (except that KPMG may exercise its voting rights in respect of its Atos common stock and the U.K./NL Accounting Practices may exercise their rights under the lock-up and the agreement regarding the manner of the sale of Atos common stock received as consideration).

- 6 After closing, KPMG will not accrue, pay to or receive from Atos any royalty, interest, dividend or other payment, whether or not tied to the performance of what is currently the Consulting Practices, except for dividends payable to all Atos shareholders and payments required to be made under the Transaction Agreements (e.g., working capital adjustment (U.K. Purchase Agreement) and net debt adjustment (Netherlands Purchase Agreement)), which payments are described in Annexes A and B hereto and do not depend on the post-closing results of the Consulting Practices or Atos. Accordingly, KPMG and Atos will not share profits or revenue from the Consulting Practices or any other engagements or agreements. Subsequent to the transactions and prior to the disposition by KPMG of the Atos common stock received in the transactions, when Atos and KPMG provide professional services to the same client, they will do so only pursuant to separate individual agreements with that client. During this period, Atos and KPMG U.K., KPMG NL or any other KPMG national practice that has divested its consulting business will not enter into any prime/subcontractor relationships, provided that existing prime/subcontractor relationships may be completed in accordance with their existing terms. In addition, each of KPMG and Atos may purchase the other's services for its own account in exchange for customary, arm's length compensation and may agree to supply its services to the other upon demand or otherwise in exchange for such customary, arm's length compensation.
- 7 KPMG and Atos may, but will be under no obligation to, refer clients to one another. KPMG and Atos may not pay referral fees or other compensation for such referrals to each other nor to any subsidiary, affiliate, employee or agent of the other party. KPMG and Atos will not enter into any co- or joint marketing, advertising or similar agreements or arrangements that are inconsistent with the foregoing conditions or that do not clearly state that KPMG and Atos are separate firms or companies.
- 8 KPMG U.K. and KPMG NL will each provide certain services to their respective Consulting Practice in accordance with separate Shared Services Agreements for internal accounting (KPMG U.K. only), information technology services, office facilities and other services specified in the relevant Shared Services Agreement.<sup>18</sup> The services provided will have varying terms, will be transitional in nature, will terminate after a limited time (none longer than four years for KPMG U.K. and none longer than three

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<sup>17</sup> There will be no contractual right of KPMG to representation on the Atos Supervisory Board and no service on the Atos Supervisory Board by any then-active KPMG partner or employee or former partner or employee with continuing financial ties to KPMG other than under fully-funded post-retirement benefit plans available to broad categories of former personnel.

<sup>18</sup> Under the U.K. Shared Services Agreement, KPMG U.K. may receive design and graphics services from the former U.K. Consulting Practice. This service may be terminated by either party with three months notice to the other party.

years for KPMG NL) and are subject to earlier termination by Atos. Services and facilities will be provided or shared in accordance with the Shared Services Agreements subject to the constraints that (i) the Consulting Practices are physically separate from KPMG and the U.K./NL Accounting Practices, (ii) charges are determined on an arm's length basis and (iii) appropriate provision is made so that confidential information is not communicated between KPMG and Atos (including the Consulting Practices). The pricing provisions of the Shared Services Agreements are set on a cost allocation basis and will not generate a profit for KPMG. Atos will procure office space, other than as a sublessee or assignee of KPMG, for the former Consulting Practices no later than the dates on which existing leases expire as to space now shared by the Consulting Practices and other KPMG businesses. KPMG and Atos will have separately secured office space (e.g., separate floors with cross-access restricted) with distinct office signage such that, if they are in adjacent physical locations, their offices will be clearly distinguishable from one another.

- 9 KPMG will not enter into any separate licensing agreements with Atos with respect to the intellectual property owned by Atos.
- 10 KPMG will consent to periodic reviews by the Commission's Staff or an independent party designated by the Staff to ascertain that KPMG is complying with the conditions herein provided.
- 11 In accordance with the NL DSA and the U.K. DSA, respectively, at closing, KPMG NL and KPMG U.K. will cease engaging in the provision of Consulting Services (other than in certain limited respects, with respect to KPMG U.K., in relation to the provision of Business Advisory Services and Public Sector Advisory Services and as necessary (provided ancillary) to the provision of KPMG U.K.'s remaining services, and, with respect to KPMG NL, the provision of Business Advisory Services). The U.K./NL Accounting Practices may after four years (U.K.) and three years (The Netherlands) provide Consulting Services to the extent applicable law and Commission rules permit the provision of such services by accounting firms consistent with independence requirements. Upon completion of the disposition of the Atos common stock in accordance with paragraph 10, KPMG and Atos will be free to contract and enter into business relationships with one another as would any other two independent entities (including prime/subcontractor relationships).
- 12 The Atos common stock received by KPMG in connection with the transactions will be sold as soon as practicable, subject to market conditions, after the expiration of the lock-up (12 months from the closing date) but in no event later than 36 months after the closing date.

#### Certain Confirmations

In connection with their request herein, KPMG and the U.K./NL Accounting Practices hereby confirm to the Staff that:

2. After closing, KPMG will continue to be subject to the independence requirements of the U.S. securities laws and the SEC's independence rules and



interpretations issued thereunder to the same extent as it was so subject prior to the closing.

- 13 Each of the U.K./NL Accounting Practices hereby represents to the Staff that it agrees to the above conditions and that a copy of this letter (and any final agreement on this subject) has been (and will be) provided to Atos. Atos will expressly acknowledge that it has been provided a copy of this letter. Each of the U.K./NL Accounting Practices further represents to the Staff that it is not aware of any provisions of the Transaction Agreements or any agreement or instrument referred to therein that is inconsistent with this letter in any material respect.
- 14 The U.K./NL Accounting Practices have provided a copy of the Transaction Agreements (including without limitation the schedules, exhibits and annexes thereto) to the Staff.

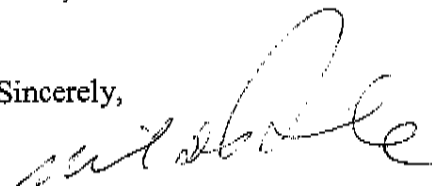
Confirmation Requested

Based upon the foregoing representations and subject to compliance with the foregoing conditions, the U.K./NL Accounting Practices, on behalf of KPMG, hereby request that the Commission's Staff advise that, if a KPMG audit client is also a client of, enters into a business relationship with, invests in, or is invested in by Atos, the Office of the Chief Accountant will not assert, on any of those grounds, that KPMG's independence from that audit client has been impaired.

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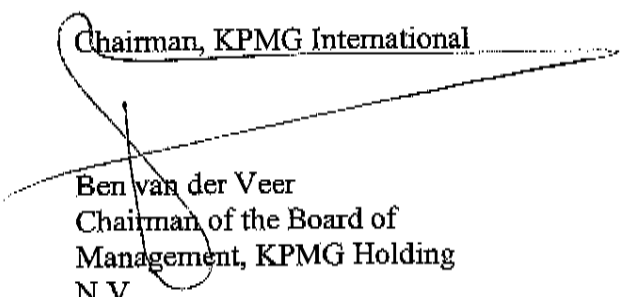
If you have any questions or need any additional information concerning the foregoing, please do not hesitate to call Mike Rake at +44-20-7311-8197 or Ben van der Veer at +31-20-656-7337 or John T. Bostelman or W. J. Clayton of Sullivan & Cromwell, the U.K./NL Accounting Practices' outside counsel in this matter, at 212-558-3840 or +44-20-7959-8440, respectively.

Sincerely,



Mike Rake  
Senior Partner, KPMG LLP, a  
Limited Liability Partnership

Chairman, KPMG International



Ben van der Veer  
Chairman of the Board of  
Management, KPMG Holding  
N.V.

copy to: John T. Bostelman, Esquire  
W. J. Clayton, Esquire  
Sullivan & Cromwell

Edward Greene, Esquire  
Cleary, Gottlieb, Steen & Hamilton

POSSIBLE PAYMENTS UNDER  
THE U.K. AGREEMENT AND THE U.K. ANCILLARY AGREEMENTS

*Capitalized terms used herein and not defined in this letter have the meanings ascribed in the U.K. Purchase Agreement and the U.K. Ancillary Agreements.*

**Net Working Capital Adjustment**

*(Sections 5.09, 5.10, 18.09 and Schedule 12 of the U.K. Purchase Agreement)*

Customary closing net working capital provision that, to the extent that the U.K. Consulting Practices' net working capital is higher or lower than £34 million at closing, the excess or shortfall will be paid by the Atos subsidiary that is purchasing the U.K. Consulting Practice ("Atos U.K.") or by KPMG U.K., as the case may be. In addition, at closing, Atos U.K. will pay KPMG U.K. an amount equal to the value added tax liability in the Working Capital Statement.

**Continued Insurance Coverage**

*(Section 7.03 of the U.K. Purchase Agreement)*

Insurance coverage provisions whereby:

- (i) If Atos U.K. cannot, on usual commercial terms, procure professional liability insurance in respect of the pre-closing conduct of the U.K. Consulting Practice at a cost not more than 20 percent higher than Atos Origin S.A.'s professional liability insurance rates as of January 1, 2002 (the "Atos Rate") but it can obtain insurance on usual commercial terms, KPMG U.K. will pay one half of the amount by which the cost of such insurance is greater than the Atos Rate; and
- (ii) If Atos U.K. cannot procure professional liability insurance in respect of the pre-closing conduct of the U.K. Consulting Practice for up to US\$50,000,000 per event or series of events in aggregate per year, KPMG U.K. will indemnify Atos U.K. to the extent that it could have recovered from an insurer for the costs arising out of claims in respect of the pre-closing conduct of the U.K. Consulting Practice up to US\$50,000,000 per event or series of events in aggregate per year.

**Indemnification by Atos**

*(Sections 12.01 and 12.02 of the U.K. Purchase Agreement)*

Indemnity provision whereby Atos U.K. has agreed to indemnify (i) KPMG U.K. from liability with respect to the Assumed Liabilities, and (ii) the KPMG U.K. Group with respect to liability related to the Guarantees.

*(Sections 18.03(b) and 18.13 of the U.K. Purchase Agreement)*

Indemnity provision whereby Atos U.K. has agreed to indemnify KPMG U.K. against costs and expenses to the extent that it requires KPMG U.K. to participate in contesting the determination that the sale and purpose of the Consulting Business results in value added tax liability and for the

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When amounts in respect of value added tax payments are not made when due, interest accrues on such outstanding amounts at one percent per annum above the marginal lending facility rate published by the European Central Bank.

VAT amount where KPMG U.K. cannot make an appeal without first paying the VAT amount.<sup>4</sup>

*(Sections 10.01 and 10.02(b) and (c) of the U.K. Purchase Agreement)*

Indemnity provisions whereby Atos U.K. has agreed to indemnify KPMG U.K. for claims or losses incurred by KPMG U.K. in relation to the Consulting Contracts, whether before or after closing or as a result of the failure of Atos U.K. to comply with its obligations in relation to its performance of the Consulting Contracts. There are also indemnities in relation to any assistance given by KPMG U.K. to enable Atos U.K. to enforce its rights under the Consulting Contracts and in relation to any liabilities which may be incurred by the KPMG U.K. group appointing Atos U.K. as its subcontractor under any Consulting Contract which has not been novated or assigned.

#### **Indemnification by KPMG U.K.**

*(Section 13.02 of the U.K. Purchase Agreement)*

Indemnity provision whereby KPMG U.K. has agreed to indemnify Atos U.K. against liability (i) in relation to the Excluded Litigation and Excluded Liabilities and (ii) in relation to liability as a result of statements made prior to March 2002 to members of the Disclosed Scheme regarding levels of projected benefit.

*(Section 19.04 of the U.K. Purchase Agreement)*

Indemnity provision whereby KPMG U.K. has agreed to indemnify Atos U.K. for breaches, if any, of Exceptional Warranties, with limitations, subject to a liability cap in relation to such Exceptional Warranties equal to the purchase price.

#### **Relevant Claims**

*(Sections 20.03 and 20.04 of the U.K. Purchase Agreement)*

KPMG U.K. will make payments in respect of breaches, if any, of the Warranties given by KPMG U.K. (each a "Relevant Claim"), other than in relation to Tax or an Exceptional Warranty, but only to the extent that such Relevant Claim is greater than €300,000 and the aggregate amount of all Relevant Claims exceeds €5,000,000, in which case the whole amount will be payable (subject to a liability cap equal to twenty percent of the purchase price for such Relevant Claims and for any claim for breach of any other provision of the U.K. Purchase Agreement).

#### **Indemnification for Improper Liability Transfer**

*(Section 17.02 of the U.K. Purchase Agreement)*

Indemnity provision that to the extent that a liability has been improperly transferred or retained, the party improperly transferring the liability will indemnify the party to whom the liability was transferred and the party improperly retaining the liability will be indemnified for the liability retained.

#### **Value Added Tax Repayment and Reimbursement**

*(Sections 18.12 and 18.14 of the U.K. Purchase Agreement)*

Provision whereby a party to the U.K. Purchase Agreement is required to reimburse or make up any shortfall of amounts in respect of value added tax to the other party.

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<sup>4</sup> See Footnote 1 to this Annex A.  
<sup>5</sup> See Footnote 1 to this Annex A.

### **Investigation Costs**

*(Sections 23.01(d) and (f) of the U.K. Purchase Agreement)*

The indemnified party is indemnified against the costs of providing the indemnifying party with access to documents, premises and personnel to investigate an indemnity claim.

### **Employee Cross-Indemnity**

*(Part II of Schedule 1 and Part II of Schedule 4 to the U.K. Purchase Agreement)*

Customary cross-indemnity provisions with respect to claims related to the Transferring Employees and Consulting Partners before and after closing.

### **Shared Services**

*(U.K. Shared Services Agreement)*

The U.K. Shared Services Agreement contemplates payment for the receipt of services, as described therein. Any overdue payment carries interest at the rate of two percent over the base rate of Barclays Bank at the due date.

Provision whereby the service provider has agreed to indemnify the service recipient in relation to damages for breach of the U.K. Shared Services Agreement. Damages are unlimited in amount in the event of fraud, fraudulent misrepresentation, where it is illegal to exclude liability or death or personal injury caused by negligence. Otherwise, the amount of the damages available is capped at the aggregate cost of the service which is the subject of the breach for the year in which the breach occurs.

### **Division of Services**

*(U.K. DSA)*

Provision for payment of damages in the event that the innocent party to a breach suffers direct loss, including any loss of profits of that innocent party to the extent that they have resulted directly from the breach of the U.K. DSA.

Michael Rake  
Chairman KPMG International  
Senior Partner KPMG UK

8 Salisbury Square  
London  
EC4Y 8BB  
United Kingdom

Tel +44 (0) 20 7311 8197  
Fax +44 (0) 20 7311 1610  
DX 38050 Blackfriars

## Annex B

### POSSIBLE PAYMENTS UNDER THE NETHERLANDS PURCHASE AGREEMENT AND THE NETHERLANDS ANCILLARY AGREEMENTS

*Capitalized terms used herein and not defined in the letter have the meanings ascribed in The Netherlands Purchase Agreement and The Netherlands Ancillary Agreements.*

#### **Net Debt Adjustment**

*(Section 2.02.01 of the Netherlands Purchase Agreement)*

Customary closing Net Debt provision that, to the extent that the Net Debt is higher or lower than the Estimated Net Debt at closing, the excess or shortfall will be paid by the Atos subsidiary that is purchasing the NL Consulting Practice (“Atos NL”) or KPMG NL, as the case may be.

#### **Failure to Transfer KPMG Priority B.V. Interest**

*(Section 5.09 of the Netherlands Purchase Agreement)*

If the Closing occurs before the Drop Dead Date and a waiver of Priority B.V.’s preemptive rights regarding KPMG Priority B.V. cannot be obtained to permit the transfer of KPMG Beheer N.V.’s interest therein to the Company, the Selling Foundation will pay Atos NL €2.3 million.

#### **Untrue Warranties**

*(Section 8.02 of the Netherlands Purchase Agreement)*

The Selling Foundation will pay direct damages if its warranties are untrue but only to the extent that a loss is greater than €300,000 per individual breach and that the whole amount is greater than €5,000,000, in which case the whole amount will be payable (subject to a liability cap equal to a portion of the purchase price, except for untrue warranties relating to Taxes where the liability cap equals the purchase price).

*(Section 8.07 of the Netherlands Purchase Agreement)*

Atos Origin S.A. is liable for the direct damages relating to any of its warranties being untrue.

#### **Sufficiency of Provisions**

*(Section 9 of the Netherlands Purchase Agreement)*

The Selling Foundation has agreed to indemnify Atos NL for damages to the extent that provisions in the Accounts are insufficient or are non-existent with respect to certain matters, subject to a maximum liability of 100% of the Purchase Price.

#### **Capital Duty**



KPMG LLP

*KPMG (UK and the Netherlands)/Atos Origin SA  
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*(Section 10 of the Netherlands Purchase Agreement)*

Atos NL has agreed to indemnify the Selling Foundation to the extent that any capital duty is due with respect to the equity portion of the purchase price.

#### **Continued Insurance Coverage**

*(Section 12.04 and 12.05 of the Netherlands Purchase Agreement)*

Insurance provisions whereby:

(i) If Atos NL cannot, on usual commercial terms, procure professional liability insurance in respect of the pre-closing conduct of the Company at a cost no more than 20 percent higher than Atos Origin S.A.'s professional liability insurance rates as of January 1, 2002 (the "Atos Rate") but it can obtain insurance on usual commercial terms, the Selling Foundation will pay one half of the portion of the cost of such insurance which is in excess of the Atos Rate; and

(ii) If Atos NL cannot procure professional liability insurance in respect of the pre-closing conduct of the Company for up to US\$50,000,000 per event or series of events in aggregate per year, the Selling Foundation will indemnify Atos NL to the extent that it could have recovered from an insurer for the costs arising out of claims in respect of the pre-closing conduct of the business of the Company up to US\$50,000,000 per event or series of events in aggregate per year.

#### **Shared Services**

*(Netherlands Shared Services Agreement)*

The Netherlands Shared Services Agreement contemplates payment for the receipt of services, as described therein.