

European Commission  
Directorate-General for Competition  
Consultation Jurisdictional Notice  
Merger Registry  
B-1049 Brussels

November 20, 2006

Dear Sirs,

**Re: Draft Commission Consolidated Jurisdictional Notice**

***Introduction***

Atos Origin is an international information technology services company. Its business is turning client vision into results through the application of consulting, systems integration and managed operations. The company's annual revenues are more than EUR 5.5 billion and it employs over 47,000 people in forty countries. Atos Origin is the worldwide information technology partner for the Olympic Games and has a client base of international blue-chip companies across all sectors. Atos Origin is quoted on the Paris Eurolist Market and trades as Atos Origin, Atos Euronext Market Solutions, Atos Worldline and Atos Consulting.

Atos Origin provides IT outsourcing services to clients in twenty-three EU Member States.

In this context, Atos Origin wishes to make a few comments regarding IT outsourcing and its relation to control of concentration (as more specifically developed in paragraphs 23 to 25 of the Draft Commission Consolidated Jurisdictional Notice under Council Regulation n° 139/2004 (hereinafter the "Notice")).

***Comments:***

**1/ Object of control / Outsourcing services**

*In paragraph 24 of the Notice, it is mentioned that "as regards the provision of services, the assets transferred should include the required know-how (e.g. the relevant personnel and intellectual property) and those facilities which allow market access (such as, e.g. marketing facilities)."*

Comments:

- It is our understanding that for intellectual property assets to be part of a know-how which contributes to access to the market, such intellectual property assets should consist of specific developments, tailored to the needs of a business / category of clients, as opposed to standard licenses or assets, “off-the shelf” softwares or similar “commodity” software or licenses which may be obtained from third parties and which are widely used for the provision of IT services, whether for in-house activities or for IT outsourcing activities.
- Regarding the definition of those facilities which allow market access, it is our understanding that “marketing facilities” should include at least some marketing or sale and distribution personnel (as per reference to the Case COMP/ M.2478 – IBM Italia/Business Solutions/JV of 29 June 2001, in the context of a joint venture).
- We therefore suggest that these two criteria be further developed in the Notice, (namely that by “intellectual property assets”, it is meant specific developments tailored for the specific needs of a business and that by “marketing facilities” it is meant personnel allocated to sales and distribution), as in practice they will be essential to the definition of whether an IT outsourcing service may constitute a concentration or not.

## **2/ Change of control on a lasting basis / Outsourcing services**

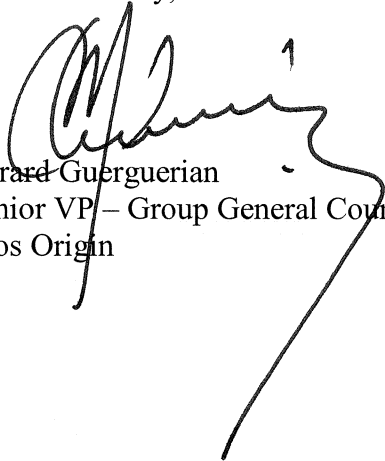
In paragraph 15 of the Notice, it is indicated that “*Control can also be acquired on a contractual basis.(...) such contracts must be characterised by a very long duration (without a possibility of early termination for the party granting the contractual rights).*”

In paragraph 26 of the Notice, it is indicated that “*a change of control on a lasting basis is not excluded by the fact that the underlying agreements are entered into for a definite period of time, provided those agreements are renewable. A concentration may arise even in cases in which agreements foresee a definite end-date, if the period envisaged is sufficiently long to lead to a lasting change in the control of the undertakings concerned.*”

Comments:

- A typical IT outsourcing agreement is signed for a definite period of time (usually shorter than the time period defined as constituting a lasting basis as per note 33 in the Notice). It typically contains a tacit renewal provision and some possibilities for earlier termination. In case of earlier termination or in case of termination at maturity, typical outsourcing agreements contain a possibility for the customer to re-in source assets and personnel back.
- In this context, it is often impossible to define at signing whether an IT outsourcing agreement will constitute a change of control on a lasting basis (e.g. if the contract is renewed at maturity or, on the contrary, if the contract is terminated early by the customer).
- We suggest that some additional guidelines be defined in the Notice in this respect. The only fact that such agreements are renewable should not be sufficient to qualify them as long-lasting agreements. The potential financial impact of any non-renewal or early termination clause should also be considered, as only clauses with a significant financial impact may be deemed to have an influence on the duration of the agreements.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'G. Guerguerian', with a long, sweeping underline that extends downwards and to the right.

Gérard Guerguerian  
Senior VP – Group General Counsel  
Atos Origin