Sticky Fingers
KPMG and the Accountancy Oligopoly

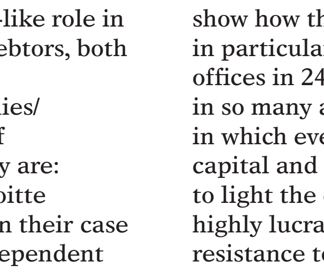
John Barker

Capitalism is a mode of production, not a system. True, it has its own internal patterns of circulation, dynamics and crises, but it has always depended on external kick-starts like the looting of South American gold and silver; colonial real politik; state infrastructure – both material and as protectorate; war; and a variety of nominally neutral intermediaries. These intermediaries mainly consist of corporate lawyers, credit-ratings agencies, and accountants/auditors. They are profit-making in their own right but take their share by increasing the *totality* of privatized surplus value. In the ongoing crisis of this mode of production however, this has also taken the form of realising – or attempting to realise – potential future surplus value in the present, as if it had already been created.

At its simplest, this has involved an over-valuation of capitalist assets. One of the intermediaries that has connived with or been instrumental in this over-valuation have been the credit-ratings agencies, an oligopoly of three. For a brief period there was talk of limiting their power – and perhaps there will be regulations – but almost immediately on the back of the Crunch-and-Squeeze they resumed their god-like role in deciding the interest rate at which debtors, both public and private, should pay.

The accountancy/auditing companies/ partnerships are a global oligopoly of four, all with histories of merger. They are: PricewaterhouseCoopers (PwC), Deloitte Touche, Ernst & Young, and KPMG. In their case there is little talk of post-Crunch independent regulation, even though it is valuation which should be their expertise. They have not been subject to even temporary blame though they were both consultants and auditors for Northern Rock (PwC), HBOS (KPMG), and Royal Bank of Scotland (Deloitte Touche). This particular 'conflict of interest' was addressed in the USA by the Sarbanes-Oxley Act of 2002, but the Act did not prevent the over-valuations that precipitated the Crunch. It helps the oligopoly's freedom of action that they control the regulatory agencies of the accountancy sphere, and, in the UK, that they are integrated into government. This involves profitable consultancy contracts with government and a revolving-door between government and oligopoly personnel. At the same time, they undermine the financing of this very same protectorate government via a proactive role in tax evasion.

Auditing has a necessarily captive clientele, and these four audit 99 of the FTSE 100 top UK companies. They are, all in all, an especially privileged group. In addition, by lobbying receptive governments, especially New Labour, they have all the tax advantages of being partnerships, while now enjoying a large degree of the limited liability accorded to non-partnership companies. Now, in the wake of the Crunch-and-Squeeze, they are, according to Prem Sikka, lobbying for yet more protection from claims against them by investors in their role as auditors.



This investigation focuses on KPMG which had worldwide profits of $20 billion (roughly £11bn), of which £1.6bn came from its UK operation. The investigation was prompted by KPMG's role, as administrators, in attempting to deny the UK workers of Visteon their rightful redundancy money. Most of the evidence about KPMG's many legal scrapes comes from the UK and the USA though they are global issues. This is intertwined with regulatory systems which, despite Sarbanes-Oxley, are industry-dominated, and raises the question of whether, given that it is a global mode of production, it is possible to talk of an "Anglo-Saxon" capitalism with distinctive neo-liberal characteristics. This is outside the purpose of this investigation, but it's hard not to notice how Gordon Brown *talks* big about global financial and reform, and then cries foul at all *attempts* to seriously regulate financial capital based in London.[1] Given that it is an ad hoc, Big Four-dominated institution that determines international accounting standards, it suggests that these characteristics are functional to global capital as a whole.

The present crisis is making for all kinds of anger as its impact on not-bankers and not-auditors is felt, and will be felt for years to come. The intention of this investigation is to help put the spotlight on the outrageous and shameless actions of this auditor/tax avoidance oligopoly. It aims to show how the oligopoly in general, and KPMG, in particular – a worldwide organisation with offices in 24 tax havens – has their sticky fingers in so many areas of economic and political life, in which everything it does is to the benefit of capital and the individual rich.[2] It also brings to light the elitism that rationalizes both its highly lucrative government consultancy, and its resistance to formal regulation which it does not control. It is that form of anti-democratic elitism which says that only the few who are in the know can understand the complexities of finance and contracts, even when those in the know are self-interested.

Flexible Futures

A prominent characteristic of KPMG is their virtuosity in self-aggrandisement, as they persistently advertise their supposed virtues in their own publications. Investigative reporting back in 2002 revealed they would take a £500 fee for an hour of advice on personal tax avoidance.[3] It's the case that the role of administrator, one of several that it plays, is not a major source of its revenues.[4] In 2009 they acted for Ford Motor Company and its spin-off Visteon, in attempting to deny redundancy money to workers in Belfast, Enfield and Basildon.

When Visteon was spun-off from Ford in 2000, workers were given contracts mirroring those of Ford car workers. This would mean that they would get 12-18 months' wages as redundancy money. When Visteon in the UK was liquidated, KPMG as its administrators started from the position that the workers were not entitled to anything other than a cash payment equal to 16 weeks' pay, whether you had worked there 15 years or not. Its argument; that Visteon was a separate entity from Ford, and had been so since 2000.

Media slimeballs joined in, saying things were different from how they were in 2000, and that they couldn't expect contracts from then to be applicable. But in this case KPMG backed down in the face of successful occupation and picketing of Visteon plants.

- In June 2007, 1100 workers at KwikSave were made redundant with no promise of payment from them as administrators.
- In March 2008, redundancies were made without any consultation at Texol Technical Solutions, Dundee.[5] KPMG's Blair Nimmo said they took their position as administrators "extremely seriously", and advised the workers involved that they could talk to "their local Citizens' Advice Bureau".

Nothing could show how aloof the partners of KPMG are from the realities of poor people on the receiving end. If, and that's an *if*, there is a local office of the Citizens' Advice Bureau, there are likely to be queues around the block for those times in the week when it is open to give advice. Instead, from this other planet, KPMG offer up what they call a Downsizing Service: "The provision of independent and professional advice to staff in redundancy situations can assist a company in negotiating, implementing and delivering on an efficient and non-confrontational severance package." Non-confrontational? The Visteon workers would have been screwed had they not either occupied or then picketed the company's plant with the company's machinery inside. Independent? Who pays for a Downsizing Service? Efficient? Efficient for whom?

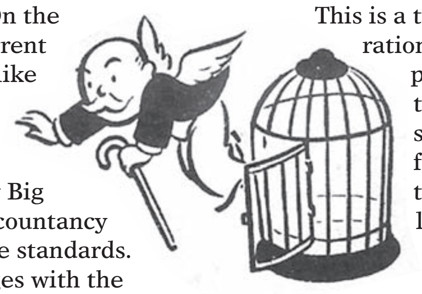
Fact is, KPMG likes having it all ways. On the one hand in a briefing on redundancies it argues that they are not necessarily the best way for companies to react to the "experience of downturn". Why? Because, as KPMG's Human Resources director, Dave Condor, pointed out (in commenting on a survey by the company itself) making redundancies will cost employers on average £10,000 per head – which could take several months to recoup. In the cases above it would seem KPMG are doing their best to lower that average. While talking of taking the advantages of retaining staff into consideration, KPMG produced another report on the virtues of outsourcing, in which it identifies 31 cities "which are rapidly emerging as leading pretenders to the traditional powerhouses such as Bangalore, Chennai or Shanghai", and tips Buenos Aires, Winnipeg and Belfast. Perhaps in the latter case it has in mind those redundant Visteon workers? None of this has stopped the pats-on-the-back KPMG has received for instituting sabbaticals and other forms of temporary lay-offs for its own staff at the beginning of 2009 under the title "Flexible Futures".

Oversight(s)

It is as auditors that the "Big Four", who audit 97% of the FTSE 350, which by law must be audited, are most legally privileged. The other privilege being that they operate as partnerships with the tax perks this entails, but which in theory make them liable for unlimited losses of companies they have audited and are subject to legal redress by investors. In recent years the Big Four have gained a considerable measure of limited liability with their duty being defined as to the company, and the principle that only the individual partner concerned is liable.[6]

In theory, auditors have comprehensive powers. The recent House of Commons Treasury Select Committee on the Banking Crisis refers to their privileged position: "Apart from the regulator, nobody else has the right to delve into a company's records, speak to their staff about decisions made and strategies being pursued."[7] KPMG has the biggest client list in the UK, and this function, as for all the oligopoly, "gives them easy access to senior management and helps them to sell bolt-on services," like consultancy and tax avoidance. The concept of auditing is for the public interest but the client is not the public. The dangers of wishing to please the client (as has been the case with the ratings agencies) exist even without the bolt-ons, but these augment the dangers. As with the credit-ratings agencies, there is a built-in conflict of interest: they are being paid to give a true financial picture by those who employ them to do so.

With such powers as they have, auditors, especially the Big Four, have no excuses when they are shown to have gone along with untruthful financial reporting whether through laziness or a self-interested disinclination to challenge the senior managements of clients. On the other hand, there is a fault in current reporting standards themselves, like mark-to-market asset valuation. Compliance with the standards did not produce transparent accounts, but then it is the partly Big Four-controlled International Accountancy Standards Board which makes the standards.



In 2002 KPMG "settled" charges with the US Securities and Exchange commission (SEC) for "improper professional conduct" as auditors for Gemstar-TV Guide International Inc, which had overstated its revenues by $250 million. This settling meant neither admission nor denial, but in the wake of Enron's collapse such not-proven deals are worth a lot to the oligopoly. KPMG repeatedly relied on what Gemstar management told it, despite the powers KPMG has and even when what they were told contradicted their own audit work. The SEC's regional director, Randall R. Lee, talked, however, only of the "dangers of auditors who rely excessively on the honesty of management".

In 2003 the SEC this time filed charges in an alleged accounting fraud involving KPMG and Xerox; again, for improperly booked revenues. KPMG LLP's chairman and chief executive Eugene O'Kelly described this as a "great injustice". He went to say that, "At the very worst this is a disagreement over complex professional judgements." Nevertheless, despite this 'too-complex-for-anyone-not-in-the-game' line, KPMG paid out $80m in compensation in 2006.[8]

The largest case brought against KPMG is one that comes out of the Crunch-and-Squeeze. At the end of March 2009 it was announced that the liquidators of New Century, the collapsed US subprime mortgage lender, were suing the auditors for $1bn, claiming that it "assisted in the misstatements and certified the materially misleading financial statements" filed by the lender. The accusation being that KPMG was responsible for the collapse because, as the FT put it, "it allowed the lender to use inappropriate accounting that led it to underestimate the provisions it needed to cover bad loans. This made its position look better and gave it access to more funds." The case is as yet unresolved but the liquidator's complaint is that KPMG silenced questions raised by its own experts for fear of upsetting its client. In response to such a question the auditor leader's email reads: "As far as I'm concerned we are done. The client thinks we are done. All we are going to do is piss everyone off."

And they are still at it: This year the US audit watchdog PCAOB – created by the Sarbanes-Oxley Act – has accused KPMG of failing to "test some clients' assumptions and internal controls in several cases."[9]

In the UK "serious negligence" was admitted in June 2008 in the matter of KPMG auditing Independent Insurance, with 500,000 policy-holders including London Fire Brigade, which had collapsed in 2001. Purposeful negligence would be more apt: not checking contracts (stop-loss reinsurance) that they knew to be suspicious and thereby a loss of £105m became a profit of £22m. The admission and the pay-outs involved took seven years. The time-lag is not unusual in such cases, and, as with many British enquiries, the heat was long gone.

The most revealing cases however involve the arms manufacturer BAE Systems, and HBOS, one of the British banks caught by the Crunch before the Squeeze. KPMG were and are BAE's auditors. New Labour has made BAE untouchable by the Serious Fraud Office in relation to bribes to secure the company's biggest Saudi contract. Some detail did however emerge in *The Guardian*[10] in 2004 when BAE's Novolyte dirty-washing vault in Switzerland was brought to light, and the fact that it had set up secret subsidiaries in the British Virgin Islands (BVI), a tax haven where KPMG has what is in effect a subsidiary but over which the SFO has no investigative power. In response to the article a spokesman for the auditors said: "We do not consider the matters raised by *The Guardian* as representing a failure on the part of KPMG. UK company law requires only that principal subsidiaries are listed in a group's accounts."

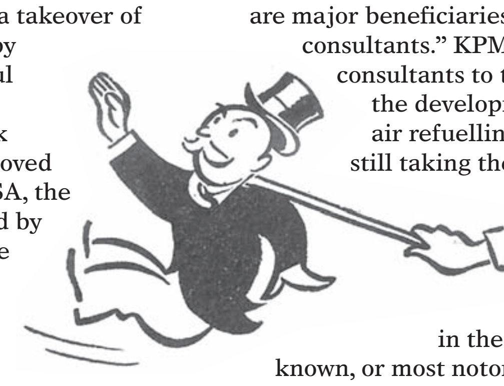
This is a typical resort to letter-of-the-law rationalisation and is, besides, a moot point. Prem Sikka pointed out at the time that these subsidiaries should have been disclosed as BAE formed and appointed directors to them. More important, the letter-of-the-law argument did not say whether KPMG was aware of these BVI undisclosed subsidiaries. The presumption can only be at best that the auditors turned a blind eye, as is also what appears to be the case of Siemens; a bribery scandal that is still out in the open and has become a cinematic political drama in Greece.

HBOS

There is an in-built conflict of interest in auditing *per se* since the auditor is paid by those they are making a financial check on. This is amplified when they are consultants to those whose accounts they are checking. Such consultancy work now forms a major part of oligopoly revenues and is a normal progression in the UK.[11]

Prem Sikka and John Dunn note "...the importance of audit as a vehicle for securing other, more lucrative business. Audit provides an opening for accountancy firms to impress their potential industrial or commercial employers with zeal about punctuality, meeting deadlines, attention to detail, the value of surveillance..."[12] To which we might add, 'turning a blind eye'; as is clear from looking at the auditing record and failures of KPMG and others of the Big Four.

With HBOS, so Crunched as to require a forced Lloyds Bank takeover, no legal wrongdoing is suggested. Neither is it exceptional – Deloitte Touche's role in the Royal Bank of Scotland (RBS) fiasco being another spectacular case.[13] But it is revealing both as to the nature of regulation and supervision in this world, and is a stark example of KPMG's ability to pontificate in areas where it has shown itself incompetent. The relationship was not new. KPMG had been auditor/consultants/tax advisers to HBOS since 2000, in which time it has been paid £55.8m in audit fees and £45.1m in other fees. These other fees included its provision of 30 "integration experts" during HBOS's Northern Rock-style ambitious phase for a takeover of Abbey. Allegations were made by HBOS's former head of risk, Paul Moore, that an aggressive sales culture was undermining its risk policy changes which were approved by KPMG.[14] According to the FSA, the changes were "fully investigated by KPMG which concluded that the changes made by HBOS were appropriate." What was odd was the very fact of Moore's complaints being referred to KPMG for further investigation when KPMG themselves were the auditors. If any of Moore's allegations had been shown to be true, "it would have reflected badly on the auditor's own assessment of internal controls and such like." Something similar may happen if the FSA's belated investigation into the actions of RBS executives takes place, given that Deloitte Touche, the bank's expensive auditors, and the rest of the Big Four, have been invited to bid for work linked to the investigation. In fact, as Prem Sikka has pointed out: "All banks claim to have complied with extant accounting standards, but their published accounts are opaque. Accounting rules and auditors have allowed banks to show toxic assets at inflated values".[15] This was done by allowing an accounting practice called 'mark-to-model' which allowed banks to estimate values for financial instruments.



None of this prevented KPMG from sponsoring this year's British banker's annual international conference, the theme of which was that lawmakers and regulators needed to take care not to "over-regulate". Nor from KPMG producing an 'Integrity Survey', the latest of which is for 2008-9. It has tables measuring how employees believe "policies and procedures are easy to bypass or override", and "rewards are based on results not the means used to achieve them". All this as if such questions had nothing to do with KPMG itself. As if the firm itself had never overridden policies in the interest of profit.[16] A similar spurious objectivity is presented in the 'Looking Back' section of its own 2008 Corporate Social Responsibility (CSR) survey. "The first part of the decade," it reads, "was marred by corporate scandals with companies coming under scrutiny for dubious accountancy practices and corporate government approaches. This caused regulators, shareholders, employees and consumers to demand better ways of tracking the health and value of a company – ways that included a departure from the traditional financial report." Dubious accountancy practices? Besides which, the problem was not with the "traditional", but in the black holes of what does *not* have to be reported.

Neither has any of this prevented them from playing the objective wise-after-the-event-guy in a glossy KPMG publication entitled 'Rethinking Banks' Approach to Risk Management'. It is as if the HBOS events had never occurred; as if KPMG were not being sued as auditors in the case of New Century for the kind of *inappropriate* accounting that contributed to the Crunch-and-Squeeze. The glossy instead talks of "streamlining" risk management responsibilities, of "better information for decision-making", the need for "robust data", and changing the "prevailing organisational culture". This culture is what KPMG itself is integral to. Meanwhile the good ship KPMG sails on, the past is the past, and havens ahoy!

Trojan Horse

In the case of KPMG, it is its relationship with governments – an across-the-range involvement with public private partnerships, consultancy gigs, and privatizations of all sorts – that stands out; a relationship that flourishes despite the auditing failures described. Their sponsored City of London KPMG Academy had Gordon Brown and Ed Balls there for its opening in September 2009. KPMG claim themselves to have advised on over 1700 PPP projects and to be the pre-eminent PPP adviser in the USA.[17] In the UK, Prem Sikka talks of how "government departments have been colonised by accountants and accounting technology with little evidence of any improvement in government accountability or performance. Accounting firms are major beneficiaries of the state feeding of consultants." KPMG were appointed as consultants to the Ministry of Defence in the development of the RAF's air-to-air refuelling fleet in 1999, and were still taking their whack from this project (The Future Strategic Tanker Aircraft) in 2008. At the time, it was the largest Private Finance Initiative (PFI) made in the UK. These are the best-known, or most notorious, forms of public private partnerships. John Heartfield estimates that the major consultancy firms, the Big Four plus McKinsey and Capita, had taken £70bn from this work by 2006.[18] From Craif and Brooks he quotes the estimate that NHS PFI deals of £5bn would earn a straight £2bn for the advisers that brokered them.[19] They are a pre-Crunch-and-Squeeze form of Private Profit / Public Risk. There is also strong anecdotal evidence of single line invoices from the biggest consultants to government, invoices for millions of pounds.[20]

Not content with being simply one more outfit profiting from privatisation arrangements and the political connections involved, KPMG's Corporate Finance department talks of having provided "cutting edge" and "industry-leading" advice for Public Private Partnerships, and as procurement consultants.[21] In reality with PPP, as in its auditing work, KPMG is unconcerned about conflicts of interest whereby it advises that public contracts be carried out by one of its own clients.[22]

It also benefits from what has become acceptable, the revolving door of personnel to and from government to specific profit-making entities:

- It has been allowed to place secondees in sensitive departments in the Inland Revenue, Department of Trade and Industry, and the Serious Fraud Office; allowed when its record in tax-avoidance schemes was well-known.
- It loaned KPMG-man Rees Aronson to serve as the Labour Party's finance director for a year.
- In September 2009, it emerged that the Department of Health – from whom KPMG receives consultancy fees – former commissioning chief Mark Britnell, a prime mover in health privatization, is to join KPMG.
- It sponsored and had a KPMG partner on an 'independent' commission set up by a Labour think-tank to promote PFI deals.

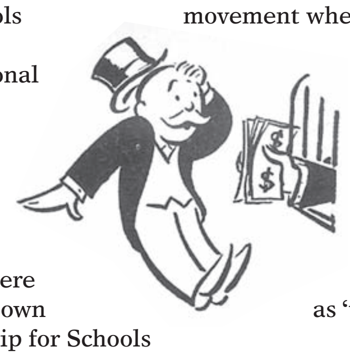
This latter instance is hardly exceptional in an era of think-tank reality, when it is hard to know what research in almost any field is not financed by self-interested parties. In this respect, it is hard to match KPMG in its brazenness. Thus they have produced their own 'Effectiveness of Operational Contracts in PFI' survey (2007). It praises "innovation" and calls for "flexibility", so that the "current style of rigorous competitive tendering for contracts under narrowly-defined PFI" is not the norm. It does this even though there is no evidence of "narrowly defined" contracts in this, their own survey. The message appears to be, 'Nothing too rigorous please!' And then, the Foreword, with a cheek that takes the breath away, says: "We hope this survey will help to inform the debate – all too easily hijacked by politically motivated and emotive sound bites – about how to deliver the best value for money public services."[23] This when the debate has in fact been hijacked by self-interest while KPMG talks of the benefits to innovation from PFI, and that most contracts are performing well.

KPMG presents itself as friend to that innocent abroad, the public sector, saying: "We share a vision of a world in which public services requiring capital assets can be provided efficiently and effectively for the lowest cost compatible with the quality of service demanded." This friendship is necessary, apparently, because, "PPPs are complex transactions and project teams may lack specialist experience. This can put the public sector at a disadvantage in negotiations with potential partners with considerable global experience."[24] At which point in come KPMG's seasoned professionals. They would appear not to have been of much use in their self-proclaimed role as protectors of the innocents. Edward Leigh MP, Chairman of the Commons Public Accounts Committee, also noted the insufficient commercial experience of public sector contract managers, but his take was rather different, saying: "The public sector has allowed itself to be taken for a ride ... changes during a 25-30 year contract are inevitable, but they should not be costing the taxpayer an arm and a leg." This is especially so given how vehicles have been created by British companies with PFI contracts that can be switched into offshore funds: "Effectively companies avoid tax on most capital gains from refinancing the contract, or on extra cash squeezed out of the government to pay for additional services."[25]

KPMG also qualifies this protection of the innocent role – at which it would seem to have been so ineffective – just in case this might imply that the private sector is predatory. So it goes on to talk of how beneficial is "private sector business insight." And then, talking of the need to sell the whole business to the public, it talks of the necessity of the "political will to drive through PPPs over the long term ... Without it, private sector operators may divert key resources elsewhere."

This, to put it mildly, is a moot point. For one thing, such projects are, relatively speaking, without risk. And for another, it is hardly coincidental that in a period of surplus capital, companies and corporations have been so keen to pile into the education and health sectors where, previously, their role had been limited.

KPMG has recently produced its own evidence that "performance" in PFI-built schools is higher than the average. In its own publication, 'Effectiveness of operational contracts in PFI', they talk of 45% of education contracts reporting "very good" performance; and 58% happiness both in education and health with "operational relationships". The biggest problem experienced in both sectors, it says, were cutbacks in public funding. This is its own account of things. Whereas, Partnership for Schools (yet one more of New Labour's unelected bodies with power) a quango in which the consultancy firms have influence, has been accused of bullying local authorities, who risk being cut out of Building Schools for the Future if they don't accept new schools and costly ITC systems.[26]



Privatization Bagmen

Where things get really seedy is in the 'developing world' in which KPMG acts as a privatization consultant-enabler. To state the obvious, privatization is based on the ideological assumption that "efficiency" can only be achieved by those pursuing private profit, whether as individuals, corporations or partnerships. Once again the UK Government, via its Department for International Aid has been prominent in giving out such consultancy contracts, especially under Clare Short. It sold the UK as a leader in worldwide privatisation with briefings sponsored by members of the oligopoly. Contracts went to the free market fundamentalists of the Adam Smith Institute, but it is the oligopoly that has done best, as has been documented by John Hilary of War on Want[27] and again by Action Aid.[28] The World Bank, with its own ideological commitment to privatisation, which has the added benefit to international capital of increasing the dependency of basic services consumers, is another contractor. A key role of the contracted consultancies is to "bypass the democratic process, with debate restricted to a small coterie within favoured government ministries."[29] To ensure this role, specific project aid is frequently dependent on recipient acceptance of such consultants.

Citing *Privatisation International* for their relative placing in 1999, Hilary notes that KPMG took second place to PricewaterhouseCoopers in the number of privatisation mandates it held. Second place reflects their relative size, but for KPMG it still amounted to 153 such contracts, and in 2003 it was the chief beneficiary of DFID contracts. In one instance cited by Hilary, both KPMG and PwC were consultants on a World Bank-backed electricity privatisation in Orissa. It is a reform programme described as "a fiasco" by *The Hindu* reporting on the findings of the Kanungo Committee's report on what had happened.[30] It had resulted in retail power tariffs being increased while peak shortages continued. Electricity has been a favourite area for contracts and KPMG, was appointed to provide advisory services in both Africa and India.

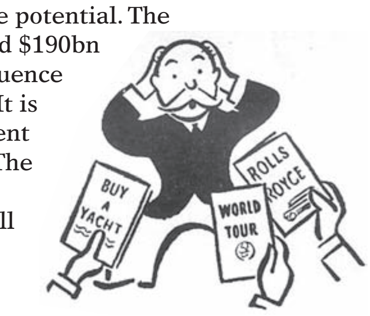
The privatization push has not been matched by the development of agencies to regulate the new basic services contractors. In many countries where there has been such development, John Hilary notes "privatization consultants have been appointed to advise on the reform of existing regulatory institutions or the creation of new ones in order to regulate the privatised service."[31] He cites such a role played by PwC in the Bahamas, Jamaica, and Panama. Meanwhile, in 2002, KPMG was contracted for a similar role in Bangladesh to increase transparency and raise public standards in its finance ministry. This when finance minister Rahman was the very same person who had founded and headed KPMG's own local operation. This is very dark farce. DFID's line was that this was a part of an effort to ensure that UK aid money was being properly spent. The contract was worth £15m. The good ship KPMG, however, sails on, oblivious to the existence of real events. "KPMG member firms make a critical contribution to the world every day."[32]

In fact they play a double role in privatisation mania. The World Bank has made a pincer movement whereby governments are less able to finance health and education responsibilities as a result of pressure to get rid of import taxes, a previously major source of revenue. But on an even larger scale 'developing world' governments are denied revenue by that form of tax avoidance by multinational companies known as 'transfer pricing'.

Soak the Bloody Poor

There has been a sustained campaign over the last year from Christian Aid[33] and the Tax Justice Network (TJN) on the tax losses caused by transfer (mis)pricing, with an emphasis on the impact on the 'less-developed' world. More recently there has been a burst of interest and political rhetoric on the matter of tax avoidance generally; a conjuncture of in-the-know whistleblowers; money laundering-for-terrorism talk, and the Crunch-and-Squeeze with its consequential crisis of national deficits. A common factor has been the existence of tax havens, a large number of which are British dependencies. The 24 tax haven offices and 'projects' of KPMG is a far higher number than others of the oligopoly. These havens are found in the Bahamas, the Cayman Islands, the Turks and Caicos, Channel Islands, and the British Virgin Islands. Britain's direct takeover of the scandal-hit Turks and Caicos, and now the bankruptcy-hit Cayman Islands, has increased public focus on the havens. This is not incidental – the OECD has estimated that $5 trillion lies in tax havens, and a partner from KPMG (Ginish Vanvari) estimates $225bn in tax is lost worldwide – but necessary to capital accumulation in the present period.[34]

Transfer (mis)pricing between, but mostly *within*, trans-national corporations is possible because they are required only to produce annual "global consolidated accounts" rather than country-by-country accounts which is the demand being made by Christian Aid and TJN for G20 implementation. Without it the price of components, intellectual property rights, management services, and so on, can be priced at will according to their tax avoidance potential. The estimate is that between $160bn and $190bn per annum is being lost as a consequence of capital flight and other means.[35] It is the other fork of the pincer movement for privatizations described above. The country-by-country policy aim is no guarantee that such (mis)pricing will disappear, but then policy is never enough.



It is also – or should be – well known in the 'developed world'.[36] In 2003 a set of illegal US tax shelter varieties (Blips, Flips, Opis and SOS) set up by KPMG in the USA were discovered with the help of a whistleblower. These shelters helped wealthy clients avoid paying $2.5bn which they should have rightfully paid. This is a criminal offence, and in 2005 the US member firm of KPMG International (KPMG LLP) was accused of fraud. In 2007, by paying a fine of $456m and agreeing to some minor conditions, the criminal charges were dropped. Its instigators were not however low-level employees who could be given the rotten apple treatment, but senior partners. The US justice system is strong on the pragmatism of plea bargaining, but once again it was crucial to KPMG that it avoided *criminal* conviction. With the help of Judge Lewis Kaplan and the selective application of constitutional rights, it was not convicted. Two individuals, only, were finally convicted in December 2008. The response of KPMG CEO Timothy Flynn echoes the narrative provided by every official wrongdoer in recent years, whether it be failed bank or criticized prison governor. He said: "KPMG is a better and stronger firm today, having learned much from the experience."

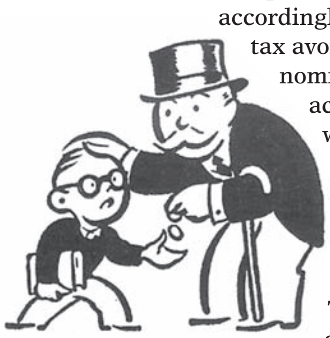
This was not, however, an isolated case to learn from. The collapse of WorldCom as well as

Enron revealed a set of tax avoidance schemes, and prompted Sarbanes-Oxley. Citing the US Bankruptcy Court in 2004, Prem Sikka describes how WorldCom, advised by KPMG, "used a variety of strategies to avoid taxes at home and abroad. Transfer pricing techniques alone enabled it to amass $20bn of revenues on which it paid little or no corporate taxes."[37] In the same paper Sikka, citing US Senate Committee on Permanent Investigations in 2003, describes how KPMG created a 'Tax Innovation Centre', which was treated as a profits centre.[38] Significantly, the Committee concluded that "the penalties for non-compliance are much less than the potential profits from selling the tax product." In 2005 KPMG was condemned again by the same committee.

Meanwhile, KPMG's new UK boss at the time, John Griffiths-Jones, complained that they had come in for some of the blame heaped on the US branch. "It is not something that happened here and we should acknowledge that," he said. He went on to say that they had no need of such things. "From our perspective our success is mostly a London story. There is lots of money flowing through the City and it's our transactions service business [their role with HBOS, for example] that is benefiting from it." There is, though, plenty of evidence to suggest that this disinterest in tax avoidance is not true. An internal study by Her Majesty's Revenue and Customs (HMRC) concluded that 50% of the Big Four's tax fees came from "commercial tax planning" and "artificial avoidance schemes."[39]

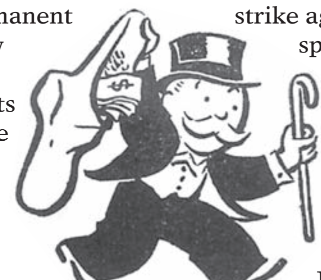
The Guardian has often given opinion space to Prem Sikka and his revelations about the Big Four. In February 2009, catching the recent conjunction of factors that have highlighted tax avoidance and tax havens, the newspaper went further with "a tax gap debate". It highlighted some KPMG tax avoidance schemes, two of which were designed by one of KPMG's prominent "wealth advisors". These for once were outlawed at tribunal but are being appealed, with a KPMG spokesman saying: "This type of highly technical tax planning was widely available in the tax marketplace at the time." The language is extraordinary: "highly technical" – so easily misunderstood then by non-specialists; "planning" – the common-sense planning of any sensible person; "widely available" – ie, that's OK then, it was normal; "the tax marketplace" – which suggests a commodity like any other, susceptible to the bargain hunter.

The Guardian followed up its series by revealing an internal KPMG memo from head of tax, Sue Bonney, on how to avoid answering questions about tax, but also providing template answers just in case they could not be avoided. "Tax is a business cost to be managed like any other," she says. And that, "tax avoidance is legal. KPMG is compliant with the disclosure regime and accordingly transparent." This hardly renounces tax avoidance, and tells us once again that nominal 'transparency' is no guarantee of accountability. Instead she says: "We work ourselves to a set of principles which govern what we will and will not undertake." Self-regulation as usual, but, in addition, it turns out, it is working with government on key tax "policy dilemmas which face the Treasury at the moment and where we are actively engaged with them as they work out their response to those challenges." But if tax avoidance is legal, how is the challenge of making sure all tax is paid to be realised so that, say, public services do not need to be cut?



Who Guards The Guards?

It's a reasonable rule of thumb that the use of an anachronistic image to describe present-day reality is going to be dodgy. As the same old banality is wheeled out to oppose enforceable regulation, we're entitled to ask: 'Red tape – in the computer age?' What is actually meant are things like health and safety regulations for workers. Regulations of this type have been hollowed out over the years and replaced by self-regulation. This is one characteristic which has encouraged the notion of an Anglo-Saxon capitalism. With the oligopoly, one of the most dangerous rationalisations of self-regulation is that only the self-interested have the expertise to regulate. Tax schemes are "highly technical" and cynical revenue overvaluation, as in the case of Xerox, are "complex professional judgements". At this year's KPMG-sponsored British Banker's Association annual, its Financial Services partner, Bill Michael, made a pre-emptive strike against regulation in his keynote speaking slot saying, "Complexity is here to stay".



This rationalisation has been used repeatedly in response to demands for serious regulation, one of which has been directly aimed at the oligopoly's compromising disciplinary action and regulatory independence by Peter Montagnon.[40] The regulatory institution, the Financial Reporting Council (FRC), is full of senior figures from the oligopoly, and responded to Montagnon's criticism that there might be conflicts of interest by saying that though this might be the case more independent regulation could leave it looking "out of touch." Out of touch from whom?

An attack on the predominance of the Big Four as a "dangerous time bomb" by Alexander Shaub (Director General of internal markets at the EC) before another self-interested group, the European Federation of Chartered Accountants, was rejected on the grounds that "it could discourage auditors from developing genuine expert knowledge of a company's affairs."[41] Here they've upped the ante – it's not just expert knowledge they alone have, but *genuine* expert knowledge.

New Labour, with its fetishizing of self-interested professionalism, has embraced this with enthusiasm. So much so that, despite its presence in so many tax havens, KPMG was selling advice to the government on tax havens like Belize. Now, KPMG's Sue Bonney talks of working with the Treasury on key tax policy dilemmas. This doesn't come from nowhere; of the 18 or more people KPMG has placed in government departments over the years, three were loaned to the Inland Revenue. An Inland Revenue internal report of 2000 talked of these placements helping to "modernise" itself with outsiders while feeling that "one of our difficulties is that people often perceive a potential conflict of interest." This is classic New Labour: it's not that there is a conflict of interest, it's that people might *perceive* it to be so.

In practice, regulation remains in the hands of the self-interested. At the Parliamentary Select Committee inquiry into the banking crisis[42] some serious issues were raised as to the Big Four's record:

• The payment to auditors for non-audit (consultancy) work[43]
• The failure to seriously question the ability of borrowers to repay loans
• The non-disclosure of off-balance sheet vehicles' liabilities (which the USA's Sarbanes-Oxley Act does aim to deal with)
• The committee went so far as to "be concerned about the issue of auditor independence", and even "the concentration of audit work in so few major firms."[44]

Yet each time, these concerns were referred back to the Financial Reporting Council as if this had a monopoly on expertise and was neutral.[45] In reality, it is an ad hoc institution full of Big Four-associated personnel, including chairman Peter Boyle who trained and worked for Coopers & Lybrand, precursor of PwC.[46] On the auditor/consultant conflict of interest issue he said it would "take note" of the concern and would be publishing a review of "ethical standards for auditors", but pre-empted this by saying that the FRC did not judge such situations to be impairing auditor independence. The FRC's Audit Inspection Unit and the Institute of Chartered Accountants of England and Wales (ICAEW) chimed in to say that the "quality of auditing in the UK remained fundamentally sound with no systemic weakness."[47]

If this is the case, then it can only mean, in light of the Crunch, that accountancy standards are not up to scratch, and yet these standards are imposed by the International Accounting Standards Board. On this the usual rationalisation was presented to the Committee by Brendan Nelson, KPMG's Vice Chairman, who said that the Board "was looking at the complexity in financial statements and seeing whether they needed to be restructured to make them easier to understand". But this Board is itself compromised as it is partly funded by the Big Four (through a foundation registered in a tax haven) who also appoint their own representatives to its committees and impose standards internationally. This form of modern neo-colonialism not only facilitated the Crunch, but, as Prem Sikka puts it, has almost no reference to "principles of honesty of social responsibility."

The Ethics Business

KPMG is a significant, worldwide, profit-driven servicer of capital. In some sectors, like the supermarket oligopoly, the tactic of naming and shaming has had some impact in the matter of super-exploited workers in the sub-contracted chains of food production. Shamed because of their ethical pretensions. KPMG has no such direct chains, though there are those who clean its offices. KPMG is seemingly shameless in what it does and yet is thin-skinned. Its grotesque company song was ridiculed on a web site, prompting a complaint in pompous legalese by a senior manager for global brand and regulatory compliance of an absence of agreed contract. At the same time it can switch from letter-of-the-law rationalisations of its shameful behaviour to grandiose ethical and green claims at will.

Sometimes it is sheer front, as with its Integrity Survey and its marketing of a programme called 'The Ethical Compass' to business schools nationwide. This consists of videos, case studies and role plays designed to get students engaged in a thought process about the kind of ethical choices they will have to make.[48] OK, so they're marketing it. OK, it is obviously a recruiting tool, but according to audit partner Scott Szabo it will help young accountants to be "prepared to recognize ethical issues and take action before an ethical violation takes place".

More significant in its own eyes is its role in Corporate Social Responsibility. CSR is yet anther slice of 'self-regulation' in which the corporate world decides what is socially responsible. KPMG produces the CSR survey, cited above, and, being KPMG, there has to be a large dollop of self-praise: "KPMG member firms make a critical contribution to the world every day". A survey of its own staff in all member firms "indicated that 79% wanted to use their skills to directly support an NGO or charity". And, in case you haven't had enough: 'KPMG Values' state that each member firm is "Committed to Our Communities... Using the Millennium Development Goals as our blueprint we have embarked on an initiative entitled the 'KPMG Global Project'."[49]

For itself, its claim to Brownie points centres around its green/sustainability credentials.[50] However, KPMG has had to take second place to PricewaterhouseCoopers in the profitable and murky world of carbon trading,[51] despite a KPMG Carbon Management Systems which supports a Carbon Disclosures Board, formed to get climate change information into mainstream reports. But at the same time there is also a KPMG Carbon Advisory Group with "a dedicated team of 200 professionals" with "vast experience and understanding of the carbon market". So what do they do? It works on the basis that "climate change is an economic issue, which, like other strategic business concerns, should be addressed at board level in order to maximize the potential business benefit."[52] In addition, it offers itself as a leader in the "field of sustainability". With its own KPMG Global Sustainability Services it is, it says, a "market leader in offering assurance and verification services for sustainability reports."[53]

What Then?

The gap between what KPMG does in the services it offers capital, and the flim-flam with which it advertises itself, opens it up to naming and shaming, just as the Crunch has revealed its self-interested incompetence and the suffering this is causing. This is not an unimportant possibility, but it has never been enough in itself to change much. What this investigation has tried to show is not just this gap, but the *comprehensive* nature of the profit-making services KPMG offers as representative of the Big Four. It is this comprehensive nature which offers the possibility of anti-capitalist alliances against this oligopoly that is integral to the present phase of the capitalist mode of production, and which connived at the crisis which capital is using to its own benefit.

The most effective anti-capitalist actions are at the point of production and defensive struggles against new enclosures. It is those actions that are self-organised and self-empowering which are the most profound. This does not however preclude the possibility of wider alliances. It's hardly news that sectarian comfort zones have weakened 'anti-capitalism' in Britain for a very long time. Partly this is because of a paralyzing fear of 'reformism'. Measures that shift wealth and confidence away from the rich are only reformist when they define the limits of the how-and-what can be achieved.

At the present moment when, predictably, global financial regulation rhetoric is just that and nothing more, and it is capital that is profiting from its own crisis – by further oligopolisation, downward pressure on wages and further concentration of land ownership – there are still counter-opportunities which have the potential to unite disparate groups against its regime. The most immediate is that of tax avoidance and tax havens which, as I've argued, are not extraneous to the power of capital. Popular anger on this has been understood by governments, and on this issue they – often prompted by whistleblowers – are taking the reformist route of very partial restrictions on the activities of tax havens.

This is especially true in Britain when over half the world's havens are in British dominions. Gordon Brown *talks* of "an international agreement for the exchange of information in relation to taxes." What is required are *real* consequences from such information exchange, and this will only happen by outside pressure. An alliance to make this pressure will include those groups pushing both for country-by-country accounts to prevent transfer (mis)pricing, and for "automatic information exchange" with compulsion on British-controlled tax havens. As it stands, none of the Big Four are willing to support country-based reporting of profits; and the "automatic" exchange proposal is rejected on the grounds that it impinges on "privacy and confidentiality". These are people who have many times calculated that the gains from tax avoidance outweigh any penalties from nation states which buy into the myth that the 'free' market is cost-free.

As the severe cuts in public spending take effect, tax avoidance will provoke more anger. What is required for this to produce more than reformism?

- Tactical picketing, as witnessed with Visteon.
- As surveillance of the incomes of the poor is increased, the question to be asked: 'Privacy and confidentiality' for whom?
- Being persistent in highlighting $5trn of black money functional to the capitalist mode of production in its present phase.
- Being persistent in challenging the pro-profit bias, incompetence and elitism of self-interested consultants who have infiltrated government.
- Challenging not just the free market's claim to efficiency in the optimum use of resources by the 'free' market, but the sheer cost of its infrastructure; all those analysts, auditors, financial 'advisers', financial traders, and consultants.
- Never forgetting that the same KPMG that sponsors the City of London Academy, and talking green, is bleeding you dry with the same smiling self-righteousness.

Notes

1. It is perhaps with the UK in mind that the ultra-neoliberals who opposed the Sarbanes-Oxley Act and the demands it makes on tighter financial reporting by corporations and companies themselves complained that it reduced the USA's international competitive edge against foreign service providers, introducing an overly complex regulatory environment. This familiar argument was made by familiar names like Newt Gingrich, Michael Bloomberg and the Wall Street Journal. The British version is non-statutory.
2. The self-interest in the role it plays in the collective self-interest of capital is shown by the earnings of its partners. In 2006 the average income of some 500 plus partners was £680,000. In 2008 it had risen to £806,000. Back in 2006, its retiring head of the UK operation Mike, now Sir Michael, Rake earned £3.6 million plus a knighthood for "services to accountancy".
3. *The Guardian* 1st July 2002: The journalist Liz McGregor and KPMG advisor Caroline Keene.
4. Though PwC is doing very well out of 'unwinding' Lehman Brothers. In the present Crunch-and-Squeeze, redundancies may also be a growing area of work.
5. Those made redundant argued that KPMG had not just fired people arbitrarily, but had failed to give them the full facts about what redundancy entailed. The lifeaftertexol web site described how they were given "government statutory redundancy forms which were part pre-filled by KPMG. Most people will have filled the form in very quickly but it has only been latterly – after seeking legal advice – that we have discovered it [receiving statutory redundancy payments] conflicts with going down the unfair dismissal route. None of this was explained to us."
6. The Limited Liability Partnership Act of 2000 kept the perks but gave audit firm partnerships limited liability, in that the main liability was placed on the individual auditor; this, according to *Accountancy Age* (29/03/2001), after threats from Ernst & Young and Price Waterhouse to shift their partnerships offshore to Jersey. Prem Sikka also alleges that the architect of the policy was Stuart Bell MP who went on to become a consultant for Ernst & Young; a fairly typical case of 'revolving doors' within the power elite. In the 2006 Companies Act it was established that their duty is to the company as a legal person and not to any other stakeholders. It permitted auditors and directors to negotiate limits to auditor liability. Now, according to Prem Sikka, in the wake of the Crunch-and-Squeeze, they are lobbying for yet greater protection. The same steady dilution of auditor liability laws has followed a similar path in the USA, though there at least a Public Company Accounting Oversight Board (PCAOB) was created by the Sarbanes-Oxley legislation, and has been critical of KPMG on several occasions.
7. See paragraph 223: www.publications.parliament.uk/pa/cm/200809/cmselect/cmtrasury/519/51909.htm
8. Other pay-outs in the face of shareholder lawsuits were in the cases of Rite Out 2003, $125m; Lernout and Hauspie 2004, $120m. An ongoing case with Fannie Mae involves that hybrid company suing KPMG for wrong advice, and KPMG counter-suing on the grounds of being given wrong information. At the same time both are trying to blame shareholders. In October 2008, Australian regulators began legal action against KPMG for negligence over its auditing of collapsed property developer Westpoint.

9. *Accountancy Age*, 23rd June 2009
10. http://www.guardian.co.uk/world/2007/may/14/bae.armstrade
11. It is on this relationship that Title II of Sarbanes-Oxley places restrictions.
12. 'Auditors: Keeping the Public in the Dark', Association for Accountancy and Business Affairs, 1999
13. They doubled their fees from state-financed RBS from £31.4 million to £58.8 million while signing off its 2008 accounts as a "true and fair view".
14. Nicholas Paler, *Citywire* 11th February 2009
15. *The Guardian* 22nd December 2008
16. In this recent 'Integrity Survey' it has a section on how organisations respond to misconduct whistleblowing (and therefore the likelihood of whistleblowing), as if it hadn't been called in to investigate just such misconduct in HBOS with which it had been so involved – this section reports that the lowest rates of reported misconduct were in the "highly regulated industries such as banking and finance".
17. KPMG, 'Global Infrastructure and Projects'.
18. John Heartfield, 'State Capitalism in Britain', *Mute* magazine 24th June 2009
19. Craif and Brooks, 'Plundering the Public Sector', Constable p133
20. This author will attempt to pursue this through FOI channels.
21. KPMG, 'Global Infrastructure and Projects"
22. Jeevan Vasagar and Rob Evans, *The Guardian*, 1st July 2002
23. KPMG, 'Effectiveness of Operational Contracts in PFI', 2007
24. KPMG, 'Public Private Partnerships', 2009
25. David Hencke, *The Guardian* 4th March 2008. In which he describes HSBC setting up a shell called Anne's Gate Property plc for £311 million for the Home Office Headquarters. When the building was ready to be occupied, 80% of the shell company's ownership was transferred to the Guernsey-based HSBC Infrastructure Company.
26. *The Observer*, 12th July 2009
27. 'Profiting from Poverty', 2004
28. Action Aid, 'How aid conditions continue to drive utility privatization in poor countries'
29. 'Profiting from Poverty', 2004, p11
30. *The Hindu*, issue 10, May 11th-12th 2002
31. 'Profiting from Poverty' 2004, p11
32. 'How KPMG Ensures Active Participation in Cross Border CRS Programmes'
33. In three well-researched pamphlets: 'The Morning After the Day Before'; 'Death and Taxes, The True Toll of Tax Dodging'; 'False Profits: Robbing the Poor to Keep the Rich Tax Free'.

34. Their importance was indicated when Alan Greenspan rationalized not regulating them by saying such regulation would drive them further underground. He did nor specify where the further undergrounds might be.
35. With Nigeria, Pakistan, Vietnam and Bangladesh the biggest losers.
36. There is also 'legal' avoidance as factored in by private equity buy-outs where profits are offset against the repayment of leveraged debt.
37. Prem Sikka, 'Enterprise Culture and Accountancy Forms', New Masters of the Universe
38. The Committee found that it used "aggressive marketing tactics to sell its generic tax products, turning tax professionals into tax product salesmen." None of the innovative tax 'products' were disclosed to the IRS. Using reverse Trojan Horse tactics KPMG claimed that "many of the [KPMG] specialists are ex-IRS [US Inland Revenue Service] employees."
39. Richard Murphy of TJN has described a standard way in which this is done. To get a series of artificial steps past the HMRC and the courts, the argument is that tax avoidance is not the purpose of convoluted arrangements, but is rather for pressing commercial reasons and that any tax benefit is simply a welcome incidental effect.
40. Montagnon is the head of investment for the Association of British Insurers which controls 20% of shares on the British Stock Exchange. Significantly, his complaint was made in August 2006 before the Crunch.
41. *The Guardian*, 17th December 2004
42. www.publications.parliament.uk/pa/cm/200809/cmselect/cmtreaury/519/51909.ht
43. This was raised by the Pensions Investment Research Company.
44. An attack on the predominance of the Big Four as a "dangerous time bomb" by Alexander Shaub (Director General of internal markets at the EC) to another self-interested grouping, the European Federation of Chartered Accountants four years ago, was rejected on the grounds that "it could discourage auditors from developing genuine expert knowledge of a company's affairs." Here they've upped the ante, it's not just expert knowledge they alone have but genuine expert knowledge.
45. Others include Sir Michael Rakes, chairman of KPMG until 2007; Ian Mackintosh, another Coopers & Lybrand-man, as chair of the Accountancy Standards Board; and Eric Anstie, former partner at Ernst & Young.
46. Peter Montagnan, another pension fund representative had, in pre-Crunch 2006, raised the matter of regulatory non-independence and was told that though there might be a conflict of interest in this, more independent regulation could leave it looking "out of touch".
47. CFO.com 29th November 2007
48. http://www.cseurope.org/csolutions.php?action=show_solution&solution_id=529
49. It is especially keen to boast of its 'International Green Initiative' which aims to reduce its own carbon footprint, based on its recycling of old technology equipment. On the strength of its Montvale (New Jersey) campus it was added to a list of Top Green-IT organizations by *Computerworld*.
50. See, Y. Schreuder: 'The Corporate Greenhouse', Zed Books pps 169-71
51. KPMG, 'Your Business Ready for the Low carbon Economy?'
52. KPMG, 'Global Sustainability Services'