

International pressures to privatise

For Privatisation by Stealth conference 16 March 2008

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There are many layers of vested interests and international organisations, private and public, which represent them, which have never stopped agitating for privatisation of public assets and services, despite resounding “noes” from electorates in New Zealand and around the world. There are transnational corporations which see the public sector as their next big leap in expansion. There are private agencies which act as lobbyists for these corporations, with covers of respectability of varying transparency. There are international agencies which have the power to bully, impoverish or undermine governments which resist. And there are international trade and investment agreements which give a legal basis if not for forcing privatisation, at least for making it very difficult to back out of it once it is in place.

Before sketching these various decks of the privateers’ ship, though, it is important to understand what privatisation means. Its most obvious form is the very public sale of assets owned by central or local government or community representatives such as community trusts. That can take various forms – breaking up a functioning organisation and selling it piece by piece as happened with the Ministry of Works and Development, partial sale like Auckland and Wellington airports and the end result of Air New Zealand’s privatisation, or sale in one piece, such as Telecom.

But there are many other ways of privatising the activities of government. Parts of its function can be contracted out. This can include services to the public such as waste collection by many local governments. It can include services that are internal to government functions, such as the cleaning or information technology needs of government departments. It can be the supply of goods and assets such as the lease of buildings, vehicles or computer equipment. It can be joint ownership by private interests and government.

What is obnoxious in privatisation is that it transfers control, changes the objectives, costs more, or takes a source of income, away from serving the public interest to serving a private one. Those were the concerns when the privatised rail service was run down instead of being maintained and developed for the needs of New Zealanders; or when the privatised Telecom maximised its dividend payouts rather than develop the modern telecommunications infrastructure that New Zealand needs.

The change in control or objectives can be direct as a result of the change of ownership, but it can also be more subtle. A publicly owned organisation which has to compete on equal terms with commercially driven corporations will end up behaving like them – as publicly-owned Genesis, Meridian and Mighty River do with privately-owned Contact Energy and Trustpower. It will also make any kind of planning or coordination of a sector much more difficult. The only advantage of some of the competitors being publicly owned (which is a substantial one) is that the profits of anti-social behaviour will at least benefit the public purse rather than private shareholders, often overseas. There is a similar risk with a partial privatisation, even if only a minority of shares are sold to private investors. The private investors will

demand prioritisation of profits over public interest objectives, and are likely to constantly demand that more of the organisation is sold, or that the government should accept financially attractive takeover offers.

Another effect of opening user-pay public services to private competition may be to gradually reduce the availability of the public service, as private entities cherry pick the most profitable parts of the service, making the public service increasingly expensive and less viable.

These concerns apply to the contracting out of many services. It *may* cost less to tender out cleaning services in a hospital, but medical staff, patients and their families are justified in being worried when hospitals look increasingly dirty, and the cleaning staff are demoralised or inexperienced. It may sound rational to hand the maintenance of a school over to a passing corporation but that forgets the trust that is placed in caretakers or cleaning staff, and the community security and care they can provide that go well beyond their contractual duties. What may save money in the short term may in the long run lead to loss of internal expertise and reliance on contractors who constantly ramp up the price.

In fact, what may appear to save money in the short term often in the long term becomes a drain either on the public purse, or on the clients of the public service. “Public Private Partnerships” (PPPs) and “Private Finance Initiatives” (PFIs) in various guises can hand over the operation of public facilities such as roads, schools and hospitals to a private corporation. While the theory is that the corporation is bound to serve the public interest by a contract spelling out its responsibilities, in fact the U.K. experience is that the contracts are costly to write, almost impossible to completely specify in a watertight way, and are secret, leaving the public no way to judge whether they are being honoured. They typically give the corporations a long term monopoly (often 25-35 years) over the running of the service, which they use to make money from ancillary services, at the cost of the public service’s clients, and to hike the cost to the government when unforeseen circumstances occur. While the theory is that risk is transferred to the private corporation, in fact the government must take over operation, at its own cost, if the private corporation goes bankrupt or walks away.

So when spotting the privatisation cheer-leaders, and when analysing the effects of pressures and rules on public policy, we need to be aware that it is not simply forcing the sale of public assets that is at stake. It is also commercialisation, loss of quality (sometimes to the extent of endangering lives, health and safety), loss of government income, higher costs, and loss of our ability to chart our own direction in important areas where we expect central and local government to make our lives better.

The Corporations

First the corporations, because it is they who profit directly from privatisation, as we know from New Zealand’s recent experience. I am not pretending here that these corporations are only transnationals based outside New Zealand. New Zealand companies are among those lobbying and benefiting from privatisation too – think of Infratil with its interests in airports and bus services or Carter Holt Harvey owner Graeme Hart who began his path to billionairehood by buying Government Print. But there are companies, particularly in the US, Europe and Australia, which are

constantly trying to expand at the expense of public services which will provide them with steady incomes often protected by natural monopoly status and explicit or implicit government funding or backing. Most of them are in the services sector, because that's what government operations usually are. Both News Corporation and CanWest (former owner of TV3) have regularly shown interest in buying TVNZ or at least TV2. The international banks would certainly be interested in snapping up the pesky Kiwibank if the opportunity came about, just as ANZ bought Postbank and then submerged it into its operations, and the National Australia Bank bought the Bank of New Zealand. Qantas and other airlines would be interested in Air New Zealand, having failed to form a cartel with it. The huge port owning companies like Hutchison Whampoa of Hong Kong or Dubai Ports World (which bought out the huge port owner P&O) want our ports as we know from Hutchison's interest in control of the Ports of Lyttelton and Auckland.

One of the sectors most focussed on benefitting from privatisation is dominated by companies like Veolia (and its subsidiaries United Water and Onyx, with links to the Vivendi group), TransPacific, Serco, and the VT Group (formerly Vosper Thornycroft) which have operations across the world, including New Zealand, in glamourless services often previously operated by local government including water treatment and reticulation, waste disposal, maintenance of parks, and cleaning and caretaking of public buildings such as hospitals, schools and government offices. Veolia for example boasts on its web site of its "mastery of the public-private partnership model"¹. Water is of course an area of high public concern, both in New Zealand and internationally, where it has led to the downfall of governments in Latin America. Veolia is already involved in New Zealand under the name United Water, headquartered in Australia. It operates in the Franklin, Papakura, Ruapehu, Thames-Coromandel, Waitomo, and Wellington, areas². A growth area for these services companies is building, operating and maintaining public schools, which is an expanding business for them in the U.K. (in which for example Serco and the VT Group are heavily involved), and National Party promises in this area are likely to have them drooling in anticipation.

Serco and the VT Group have substantial military contracts, including nuclear weaponry – hardly a suitable match of values for an education support provider. Serco's U.K. parent company, Serco Group Plc, boasts on its web site of providing training, engineering and operational support to the British, US, German and Australian armed forces, and managing the UK Atomic Weapons Establishment which "covers the whole life cycle of nuclear warheads in a single establishment – design, manufacture and assembly, in-service support and decommissioning and disposal". It does this jointly with US arms manufacturer, Lockheed Martin, and British Nuclear Fuels Ltd³. The VT Group formerly known as Vosper Thornycroft – carries out similar work to Serco but also builds "advanced surface warships including Frigates, Corvettes, Fast Attack Craft and Mine Counter Measure solutions to Offshore Patrol Vessels and Patrol Craft" according to its web site⁴.

Perhaps even more frightening are the so-called Private Equity investment corporations, whose growth in the last few years has been phenomenal – though it is possible their activities will be curtailed by the current credit crisis. They introduce a further extreme degree of commercialisation into their operations. They are typically investing for at most 3-5 years – often shorter if an attractive offer comes along. They

have no interest in any particular industry or sector, as long as they can see opportunities for profit. One example is the Australian based Ironbridge. In the last two years it has acquired Mediaworks (the owner of TV3, C4 and New Zealand's second largest radio network, RadioWorks) and the large New Zealand waste company, EnviroWaste, also a result of corporatisation and then privatisation of waste services by the Auckland Regional Council. EnviroWaste runs waste services for a number of local governments including half shares in running Canterbury's only approved landfill at Kate Valley. When buying Mediaworks, Ironbridge's New Zealand representative, Kerry McIntosh, defended the company against the charge that the company had no media experience by stating: "Ironbridge did not know much about waste either before buying EnviroWaste"⁵. Ironbridge also owns a chain of aged care facilities and a backpacker hostel chain in New Zealand, and in Australia, acute hospitals, a pharmaceutical company, a barbeque retailer and a furniture chain among other sectors it presumably didn't know much about either⁶.

To give a relevant example of private equity's profit-first behaviour, Ironbridge bought EnviroWaste in December 2006. Before it had even completed the purchase, it tried to onsell the South Island assets and its share of Manawatu Waste to the huge predatory Australian waste company, Transpacific Industries (which had already bought the largest New Zealand waste company, Waste Management Ltd). The Commerce Commission not unreasonably, blocked the proposal, but Transpacific did buy some of the assets, including the half share in Canterbury's sole landfill at Kate Valley.

But Ironbridge is a relatively small player in this area. Australia's Macquarie Group specialises in buying up infrastructure on a global scale, with interests in 25 companies around the world. In New Zealand it has interests in one of the country's largest aged care groups (including some formerly owned by churches), large commercial property holdings, and minority interests in many other companies. Internationally it owns four large airports (including Sydney's Kingsford Smith, two in Rome – in the process of being sold – and in Birmingham and Bristol in the U.K.)⁷ and Thames Water in the U.K.⁸. It would certainly have an interest in further airport sales in New Zealand, reportedly showing interest in Auckland International Airport which is currently on the block. But this is by no means its limit: it has an interest in any kind of infrastructure including water, roads and electricity, and privatisation explicitly. Its head in New Zealand is former National Party leader, Jim McLay, of whom we will hear more shortly. It has made a practice around the world of employing former politicians⁹.

Further afield there are enormous Private Equity companies trawling the globe for quick money opportunities. Just to give you a taste, from the ownership of our news media alone, in the first half of 2007, Providence Equity Partners, The Carlyle Group, Kohlberg Kravis Roberts, CVC Asia Pacific, Thomas H Lee Partners LP, and Bain Capital LLC, in addition to Ironbridge Capital, all tried to take or took major interests in our news media. There are many more. Among them are not only anonymous investors out for an extraordinary rate of return though. For example, the Carlyle Group has close links to the former Reagan and George Bush senior administrations and the US military and intelligence system. HT Media Ltd, the company in the Ironbridge group which bought MediaWorks, is 26.3% owned by the Singapore government, not the greatest friend of press freedom¹⁰. Bain Capital, which bought

out a part owner of our largest radio network with another investment company in 2007, was run from 1984 until 1999 by co-founder Mitt Romney, former governor of Massachusetts and US Republican hopeful in the 2008 presidential election, enabling him to amass the kind of fortune needed for such a gamble. He was still an investor in it in 2007.¹¹

And finally among the direct commercial beneficiaries from privatisation, don't forget the financial advisers, the banks and the other middlemen. Macquarie boasts of its prowess in this area, listing its advisory role in numerous privatisations, including Wellington International Airport, the National Provident Fund's property portfolio, South Taranaki District Council's Egmont Electricity, Tauranga's electricity operations (merged with Trustpower), Wellington City Council's Capital Power Ltd, and Taupo's electricity assets. But there are specialists, some of which reduced their operations when it became clear that the rush to privatise was over, at least for a while. Many of them are overseas owned too. In the first nine months of 2007, US\$153.1m in fees were made from advising on merger and acquisition deals in New Zealand. Goldman Sachs JBWere was the top mergers and acquisitions adviser in New Zealand pulling in a tidy US\$20.5 million (NZ\$28m) in fees from four deals; Credit Suisse (of Switzerland) was second, with US\$14.3m from six deals, then UBS, ABN Amro, Deutsche Bank, Citibank, Duff and Phelps, Macquarie Bank, Grant Samuel and First NZ Capital¹². Clearly they have an interest in such deals proceeding, and privatisations are as lucrative a source as any. They are not simply passive advisers, clicking the ticket as it passes: they are active advocates for more deals. Financial advisers to the board of Auckland International Airport Ltd, First NZ Capital and Credit Suisse, consistently advised selling a controlling interest to the Canada Pension Plan Investment Board despite the majority of the Airport board's opposition due to its likely long term effects. And in January last year, Goldman Sachs JBWere were (again) advocating the sale of TV2¹³. Completely disinterested advice of course.

The lobbyists

Not only do these vested interests make their own cases and bring pressures to bear, with the ultimate threat being to leave New Zealand and take their money with them, but they organise their own lobby groups which try to provide a façade of advocating in the public interest rather than the narrow commercial benefit which is all too obvious when a corporation advocates an asset sale or commercial contract. The lobby groups are both New Zealand specific and international.

There are the well known business lobby groups such as the Business Roundtable, the local Chambers of Commerce, the American Chamber of Commerce, and Business New Zealand. The Business Roundtable is of course notorious for its advocacy of privatisation as the universal cure, but one group also worth noting is the Wellington Chamber of Commerce which has appointed Charles Finny, a former senior Trade Negotiator with the Ministry of Foreign Affairs and Trade (MFAT), as its Chief Executive Officer. Former MFAT trade officials have shown up in a variety of business lobby groups, including the Trade Liberalisation Network, the Asia New Zealand Foundation, the APEC Business Advisory Council, and of course the National Party. Finny makes a practice of loudly applauding any new trade agreements but in particular urging the government to go further in opening New

Zealand to the services transnationals in those agreements. As we will see, this is an important part of cementing existing privatisations and expanding the effect of them.

One group is particularly significant however, in the context of privatisation. In 2004, a number of companies formed the New Zealand Council for Infrastructure Development (NZCID). What could be more public minded than trying to remedy the crippling underspending on infrastructure of the 1980s and 90s due to a religious faith that the “free market” would provide all of New Zealand’s needs? Its leadership and policies gave it away. At inauguration it was headed by the same Jim McLay who used to be head of the National Party and then became chairman of Macquarie New Zealand, which we have already seen is one of the biggest infrastructure owners in the world with a well established interest in taking over public assets and services. (McLay is still on the group’s board, and is now “Patron” of the organisation.) The group advocates much greater spending on infrastructure, so much so that according to McLay the government couldn’t possibly do it all, and “The private sector must partner with the Government to fill that gap”. The Council was formed to promote public-private partnerships¹⁴. While including a small number of local governments among its members, plus TransPower (telling us something about its self-image), its majority constitutes a roll call of financiers, engineering firms, construction companies, major services corporations and law firms (many of them subsidiaries of overseas corporations) which would be expected to benefit from the private sector taking over public services¹⁵. It is disturbing to see public bodies participating in this sham of disguising private interests as public need. The organisation has received recent government recognition by being represented on a Steering Group to investigate the feasibility of a PPP for the huge new roading project in Auckland, the Waterview Connection¹⁶. It seems difficult to believe that the Steering Committee, which also includes representatives of the Auckland Chamber of Commerce and Business New Zealand, alongside government officials, will come up with any answer but yes.

A more specialised lobby group is the Education Forum, a subsidiary of the Business Roundtable. It advocates for private education, and anything approaching that. Recently its most public face, Norman LaRocque, Policy Advisor and former Treasury employee, gave a presentation to a World Bank Institute forum in Egypt, advocating a variety of Public Private Partnerships in education¹⁷.

Internationally there are even more powerful lobbies that have a powerful effect not only on the governments of the economic superpowers, the U.S.A. and the European Union, but also on international agencies which are the main legislators and enforcers of privatisation like the World Trade Organisation. We’ll cover those international agencies below, but I’ll just add here that some – like APEC (Asia Pacific Economic Co-operation) – have business lobbies built into their structures, for the express purpose of keeping the pressure on for further trade and investment liberalisation, and others, like the International Monetary Fund and the World Bank, are so integrated through their senior executives with the private finance sectors of the U.S.A. and EU that it is difficult to disentangle them.

I’ll mention just one group of these international lobbies, but there are many, many others. The US Coalition of Service Industries and the European Services Forum (ESF), represent the interests of the huge corporations across the services sectors of

these two economies. This sector makes up about 70% of the production of those economies. Both the groups and their individual members are hugely influential in both setting the direction of existing trade and investment agreements, and in the creation of new ones. The international lobby group, the Global Services Coalition, of which the European Services Forum and the Wellington Chamber of Commerce are members, lobbies in a similar direction. The ESF has, according to European researchers,

privileged access to documents, negotiators and policy-makers at the highest level, the ESF has successfully lobbied the EU to adopt the most aggressive of positions despite the opposition of developing countries to the negotiations.¹⁸

The US Coalition of Service Industries has a similarly privileged position within the highest levels of the US government. It says on its own website:

CSI was formed in 1982 to ensure that US trade in services, once considered outside the scope of U.S. trade negotiations, would become a central goal of future trade liberalization initiatives. It played a major role in shaping the General Agreement on Trade in Services (GATS) and in the advocacy effort leading to the 1997 WTO Basic Telecommunications and Financial Services Agreements. CSI actively engaged in services negotiations in the WTO, the Free Trade Area of the Americas, and free trade agreements with Chile and Singapore.

CSI's ability to use services trade negotiations to advance the interests of its members is unmatched... CSI is above all an advocacy organization, aggressively representing the interests of its members in all US and international forums where CSI can advance our members' trade expansion goals.¹⁹

Its members include powerful US peak bodies like the American Bankers Association and the American Institute of Certified Public Accountants, but also some of the largest corporations in the world, powers in their own right, such as financial corporations American Express and Citigroup, telecommunications operators like AT&T and Verizon, information technology giants IBM and Microsoft, news media transnationals including News Corporation, and other well known names like Halliburton and Walmart.²⁰ Their power is attested to by their successes in the World Trade Organisation. Its agreement on services, the General Agreement on Trade in Services (GATS) was effectively their creation. As David Hartridge, a former Director of the Services Division of the WTO stated: "Without the enormous pressure generated by the American financial services sector, particularly companies like American Express and CitiCorp, there would have been no services agreement and therefore perhaps no Uruguay Round [the negotiations that led to the WTO's creation] and no WTO". According to Harry Freeman of American Express, "The U.S. private sector on trade in services is probably the most powerful trade lobby, not only in the United States but also in the world"²¹.

The enforcers

There are a number of international agencies, both private and public, which have the power to bully, impoverish or undermine governments which resist policies such as privatisation.

The International Monetary Fund (IMF) and the World Bank are the most well known. The IMF gains power over countries when they get into debt sufficiently that they have to borrow from it. At that point it imposes what it calls “conditionalities” which follow a recipe very similar to that carried out by the 1984-90 Labour government and the 1990s National government, including gutting of government services, wide-ranging privatisation, and deregulation. Such programmes have impoverished developing countries around the world. Michel Chossudovsky’s book, “The Globalization of Poverty”²², spells it out in excruciatingly painful detail. The World Bank specialises in what it calls “development aid”, through loans, grants and advice. This usually goes hand in hand with IMF loans, and the World Bank frequently insists on recipients carrying out IMF conditions as part of its package. Its advice and the projects it supports strongly favour private interests and privatisation.

The New Zealand government is not currently in debt to the IMF, so is not subject to its conditions. The Rogernomics and Ruthenasia blitzkriegs of the 1980s and 1990s did to us what many countries have had imposed on them by the IMF. It reports annually on every member government including New Zealand and comments on matters of economic policy, including levels of taxation, government spending and debt. Particularly during the 1980s and 1990s these reports were treated by the media in a similar way to the credit rating agencies’ ratings reports, of which more shortly. If we do ever have to borrow from the IMF again, the consequences could be severe.

Although the World Bank has been forced in recent years to acknowledge its failures, which included private involvement in often disastrous major electricity and roading projects and in health and education, it promotes privatisation in a number of ways. For example, the U.K. and Japanese governments sponsored a World Bank Public-Private Infrastructure Advisory Facility to “help developing countries improve the quality of their infrastructure through private sector involvement”. Jane Kelsey provides evidence that it

operates through generously paid consultants and supports only privatization options. Their activities include policy and legislative reforms that make countries PFI-ready, and propaganda campaigns of ‘consensus building’ to overcome domestic resistance. The focal sectors are energy, telecommunications, transport and water. The main regional focus has been sub-Saharan Africa, commonly building on [IMF conditions]. Cambodia and China are other target markets.²³

The World Bank has a series of “Privatisation Toolkits” on its web site for “policymakers and reform leaders”²⁴. These include hugely controversial and sensitive areas such as water, sanitation, telecommunications, waste, ports and highways. Both the IMF and World Bank are dominated by the US and EU, and are facing loss of credibility to a degree that is difficult for even the institutions themselves to ignore.

There are other ways of enforcing these kinds of policies on a country like New Zealand. The most tangible threats used are trade sanctions and capital flight, or refusal by private or public agencies to renew loans when they come due. New Zealand is particularly susceptible to both threats because of the importance of trade to its economy (unlike larger economies like the U.S.A.), its high dependence on foreign investment (one of the highest in the OECD), and its extreme level of overseas debt (at September 2007, equal to almost four times the country's annual income from abroad, of which over a half is due for repayment in 12 months or less)²⁵. In addition there are threats of loss of goodwill and access to the corridors of power in countries important to us such as the EU, U.S.A. and Australia.

The threats of capital flight come constantly. Corporations routinely make statements that this or that policy which they dislike will frighten away investors or may lead to them not investing any further. Some threats are real; many are simply routine posturing which can be taken for what they are worth.

They are backed up by the credit rating agencies. There are an increasing number of these but the best known ones are Standard and Poor's Corporation and Moody's Investors Services. Their bread and butter (and they are simply profit-driven firms like any other; they have no special legal status) is to rate the credit-worthiness of companies who pay them to do so. There is an increasing cynicism about their operations. Most of the financial corporations in the U.S.A. that are currently making huge losses because of the low quality of the loans they made or bought, were rated by such agencies which failed to give any warning of the quality of the loans or the impending crisis. The same has been true of some of the finance companies currently in trouble in New Zealand.

The political power of Standard and Poor's and Moody's however comes from the ratings they give of the so-called "sovereign debt" of governments. We need to be clear what this means. It is solely a rating of how likely it is that a government will repay its debts. It is not designed to investigate the soundness of the borrowers in the rest of the economy (who in New Zealand account for the great majority of the debt), nor about the soundness of the economy itself, except to the degree that it impacts on the government's financial position. But it is interpreted by the media as somehow a rating of the health of the economy and the soundness of the government's policies. One of the objectionable aspects of these ratings which lends credence to the media's reaction is that they include an assessment of political risk. This is by its nature extremely subjective, and is coloured by the political and commercial outlooks of the rating agencies and their commercial customers who will make use of the information. Hence business-friendly policies, including privatisation, rate highly. In 1991 for example, Standard and Poor's endorsed Ruth Richardson's welfare-slashing "mother of all budgets", saying it was a step in the right direction, and both it and Moody's maintained a similar commentary throughout the 1990s²⁶. Backing off from privatisation can threaten a country's rating.

But they can also have a more subtle effect. The rating agencies look at government debt levels – or more precisely, the level of debt on the government's balance sheet. A government can remove debt from its balance sheet by privatising directly, or by entering into arrangements such as public-private partnerships which notionally

transfer the cost of the capital and the risk out of government. In fact as we know, that risk still exists. No government can afford to allow a public service to disappear because a private provider has abandoned it. Further, the government will be paying for it through the agreement with the private contractor. In substance it is little different from debt, but from accountants' and credit rating agencies' viewpoint, debt has been reduced. So the ratings given by the rating agencies encourage governments to privatise directly or through arrangements like PPPs. Or put another way, the credit rating agencies will tend to criticise governments which maintain control over their public services.

The most direct enforcers against New Zealand lie in the World Trade Organisation and in various low profile international arbitration tribunals. The WTO runs Dispute Panels, which rule on disputes involving WTO members. If for example another government, usually acting on behalf of private commercial interests based in that country, asserts that New Zealand has breached any of the WTO's 60 agreements, annexes, decisions and understandings, it can force New Zealand to appear before a dispute panel which takes a very trade-oriented and hence commercially-oriented view of the dispute, whether or not it has substantial social and environmental implications. If the panel finds against us, the complaining party may be awarded the right to take trade actions such as raising tariffs or withdrawing market access from New Zealand goods or services, if the New Zealand government does not change our rules (often involving a change of law) to bring them into line with the panel's interpretation of the WTO's rules. This is an unequal confrontation. A hundred million dollars worth of trade sanctions against New Zealand would be far more serious than a hundred million dollars worth of sanctions against the U.S.A., which would barely notice it because of its much greater size. We will look at how the WTO's rules apply to privatisation shortly.

The international arbitration tribunals come into play in enforcing trade and investment agreements New Zealand has signed with Thailand, Singapore, Chile, Brunei, Hong Kong and China. They are appointed by the parties to the dispute and unless the parties allow it, they are generally held in private. The public may not even be aware of the existence of a dispute

The most obnoxious of these provisions, which applies to an investment agreement New Zealand has had with Hong Kong since 1995, and is the subject of negotiations just beginning with the US, Chile, Singapore, and Brunei, allows private investors to challenge New Zealand laws in international tribunals in the World Bank, United Nations, or elsewhere (depending on the agreement). There is a growing number of cases that have been made public which frequently concern privatisations which have gone wrong, at least ten of them concerning water privatisations²⁷. Awards against governments extend into hundreds of millions of dollars. Governments in South America have faced numerous claims, and some of them are now withdrawing from these arrangements, though they may still be subject to existing agreements for many years to come. Argentina, which had to take drastic action in the interests of its people during its recent financial crisis, has been subject to hundreds of millions of dollars of claims as a result. In Europe, Poland has faced large investor claims when public opinion forced the government to stop part way through privatisations²⁸.

The international agreements

International agreements signed by successive New Zealand governments in the last two decades form the legal framework for the formal enforcement mechanisms I've just described.

Some of the agreements have no enforcement mechanism and function largely by bringing pressure on the governments involved. These include the Closer Economic Relations agreement with Australia and agreements signed in the OECD, which are intended to limit government options in policy areas, including investment and services, that contribute to pressures to privatise, or to encourage further privatisation once it has begun. The International Monetary Fund has rules that are intended to limit our options in regard to international payments and capital movements. As long as we do not have to borrow from the Fund, it is difficult for it to enforce these, but like the OECD, it is a powerful mechanism for bringing pressure to bear on New Zealand governments, via signals to international investors and other governments.

The principle agreement with enforcement mechanisms relating to privatisation is the World Trade Organisation. New Zealand has also signed trade agreements with Thailand, Singapore, Chile and Brunei, and is negotiating several others. These include one virtually completed with China (which is still secret), and an extension of the Singapore/Chile/Brunei (the P4) agreement into investment and Financial Services. The US has joined the P4 negotiations, raising the stakes considerably.

The main agreement in the WTO that affects privatisation is the General Agreement on Trade in Services (the GATS). The bilateral and regional trade agreement provisions on services are modelled on the WTO agreement, though often strengthening it further. So I will describe the WTO GATS agreement rather than go into detail on the services provisions in the others. In addition the bilaterals and regionals have provisions on investment, competition and government procurement which heighten the pressures.

Services are important because virtually all government operations concern services rather than the production of goods. The defenders of the GATS agreement assert that it does not mandate privatisation, and that is true. However it quite deliberately creates leverage for private service providers to expand their involvement in the provision of public services. The way it works is that governments make commitments to open up specific service sectors of the economy to foreign suppliers. New Zealand has made some of the widest commitments covering professional services, telecommunications, broadcasting and other audiovisual services such as film making, construction, retail and wholesale distribution, financial services, tourism, and much of the transport sector including rail. It also included private education. There have been some additions since then in the bilaterals and regionals. Further areas have been offered in the current glacial negotiations in the WTO.

Once commitments have been made, in those sectors the government may no longer limit the number or size of suppliers, give preference to local suppliers, or apply economic needs tests (such as preventing a private delivery company from cherry picking the most profitable postal services which may threaten the viability of the publicly owned Post Office which still has to carry the most expensive services).

Preference may not be given on the basis of the supplier being not for profit or government owned. The government may still use subsidies (or government funding) but where private New Zealand companies receive such funding, foreign ones are entitled to it on at least as favourable terms.

So as public services, or parts of them, are privatised through arrangements like PPPs, or services are provided by subsidising private service providers rather than directly funding public ones, foreign providers of the committed services are immediately entitled to enter into those markets. It becomes very difficult to roll the privatisation process back. Indeed, it gives a green light to the kinds of corporations I have described to grab those markets as we saw in the disastrous and tragic electricity privatisations of the 1990s.

There is an exception in the GATS providing that it does not apply to “services supplied in the exercise of governmental authority”. These are defined as services “supplied neither on a commercial basis, nor in competition with one or more service suppliers”²⁹. This Article is portrayed by defenders of the GATS as exempting public services from GATS rules. But as more and more of the services become privatised through PPPs and similar arrangements, or where, as in health and education, public services coexist with private hospitals and educational institutions, the exception becomes less and less operational.

Public health and education are not among the services New Zealand has made commitments to in the GATS. However the nature of PPPs and PFIs is to divide these services up into areas in which commitments were made. If a private corporation runs the cleaning, catering, delivery, transport, car parking, engineering and architectural services of a hospital or university, these are not covered by education but by many other sectors which may be subject to the GATS. Jane Kelsey estimates that a PFI hospital would involve a minimum of 60 other subsectors including Professional, Computer and related, Real Estate, Rental leasing, Communications, Construction, Distribution, Environmental, and Financial services. The cat may therefore be out of the bag: once contracting out of those supposedly ancillary public services begins, it will be very difficult ever to return them to the public sector except on the basis of a competitively neutral tender against the private sector – or if the private contractor defaults on a contract because there is not enough profit to be made on it. Effectively a PFI hospital or school would be a private institution where the necessary health or educational professionals work. Any concept that those other services are not ancillary but essential to the integrated running of the whole institution would have disappeared.

PPPs and PFIs, and any relationship in which the government pays some entity to perform public services, transforms the provision of public services into one of government “purchase” of services – known in the trade jargon as government procurement. The WTO has a voluntary agreement on government procurement which New Zealand is not a member of. However the bilateral and regional agreements do typically cover government procurement, including services. So even if services are not covered by the GATS or similar provisions, once this transformation into a “purchase” has been engineered, it may fall under a government procurement agreement which again usually requires suppliers of the other signatories

to the trade agreement to be given at least as favourable treatment in bidding for this work as any New Zealand party. Again, this can lock in a privatised arrangement.

In addition the bilateral and regional agreements typically cover investment. New Zealand also has two investment protection agreements with Hong Kong and China. We have yet to see how they will be dealt with in the China Free Trade Agreement. If you remember the failed proposal for a Multilateral Agreement on Investment (the MAI) in the OECD, you will have some idea of the nature of these provisions. At their worst they allow private foreign investors to challenge the actions of governments directly, giving them an extraordinary status not allowed to the citizens or companies of the country itself. I have already given some examples of how these are being used to force governments to either continue with unpopular and expensive privatisations or pay hundreds of millions of dollars to the corporations in supposed compensation.

As I mentioned, negotiations have begun to extend the agreement New Zealand already has with Singapore, Chile and Brunei to include investment and Financial Services (which includes banks, insurance, and other important parts of the economy). The US has been allowed to join the negotiations, which the government is hoping will be the first step towards a full free trade and investment agreement with the US (a forlorn hope in fact, because of increasing opposition to such agreements in the US Congress, and particular sensitivity over our agriculture imports). However even if limited to investment, the US is likely to be arguing for investor-state disputes procedures similar to those that have led to the outcomes I have mentioned. Its published assessment of what it regards as New Zealand “trade barriers” also indicates that it will aiming to demolish our overseas investment rules that provide a degree of control over sales of land – and as from a few days ago, strategic assets on sensitive land – to overseas parties³⁰.

Finally, these agreements now often include provisions on competition, a comparatively new area which some major powers would like to see introduced into the WTO. The danger of such provisions is that the service corporations see them as a means to force open services which are normally reserved for public provision, providing them substantial new sources of income.

These agreements should be seen for what they are: an exercise in wielding power, in order to bring about economic policies favourable to private commercial interests in general, and the economic interests of the most powerful economies of the world in particular. Privatisation is one of those policies.

¹ <http://www.veoliaenvironnement.com/en/group/> accessed 23 February 2008.

² See its web site <http://www.uwi.com.au> (accessed 24 February 2008).

³ <http://www.serco.co.uk/markets/defence/index.asp> and <http://www.serco.co.uk/markets/nuclear/index.asp>, accessed 24 February 2008.

⁴ <http://www.vtplc.com/shipbuildinggroup/> accessed 24 February 2008.

⁵ “Agent for private equity in NZ”, by Gareth Vaughan, *Press*, 22 August 2007, p. C4.

⁶ <http://ironbridge.com.au/invest.htm> accessed 24 February 2008.

⁷ <http://www.macquarie.com.au/magroup/index.htm>, accessed 24 February 2008.

http://www.thameswater.co.uk/UK/region/en_gb/content/Section_Homepages/Section_Homepage_000527.jsp?SECT=Section_Homepage_000527

⁹ “Macquarie: government by private enterprise”, by Kate Askew and Lisa Murray, *Sydney Morning Herald*, 21 August 2006.

¹⁰ Decision Sheet of the Overseas Investment Office approving the acquisition of CanWest MediaWorks (NZ) Limited by HT Media Ltd, Decision Number 200710068, 11 June 2007.

¹¹ “Romney’s Fortunes Tied to Business Riches”, by David D. Kirkpatrick, *New York Times*, 4 June 2007, <http://www.nytimes.com/2007/06/04/us/politics/04bain.html>, accessed 27 January 2008.

¹² “Goldman Sachs top for M&A services”, *New Zealand Herald*, 1 October 2007, http://www.nzherald.co.nz/topic/story.cfm?c_id=257&objectid=10466969.

¹³ “Call to cash in on TV2 sale and let TV One drop ads”, by Gareth Vaughan, *Press*, 26 January 2007, p. B14.

¹⁴ “No need for ‘master plan’”, by James Weir, *Press*, 20 July 2004.

¹⁵ See its web site <http://www.nzcid.org.nz> for details.

¹⁶ “Government to investigate feasibility of PPP for Waterview Connection”, media release by Annette King, 7 February 2008,

<http://www.beehive.govt.nz/release/government+investigate+feasibility+ppp+waterview+connection> accessed 8 March 2008.

¹⁷ “Infrastructure Public Private Partnerships in the Education Sector”, by Norman LaRocque, PPPI Workshop, World Bank Institute, 18-20 June 2007, Cairo, Egypt, http://www.educationforum.org.nz/documents/presentations/Egypt_June_2007.ppt accessed 2 March 2008.

¹⁸ “Corporate Power over EU Trade Policy: Good for business, bad for the world”, by Myriam Vander Stichele, Kim Bizzarri, and Leonard Plank, Seattle to Brussels Network, www.s2bnetwork.org, Brussels 2006, p.6.

¹⁹ <http://www.uscsi.org/about/>, accessed 2 March 2008.

²⁰ From the USCSI web site.

²¹ Quoted by Jane Kelsey in forthcoming book about the General Agreement on Trade in Services.

²² “The Globalisation of Poverty: Impacts of IMF and World Bank Reforms”, by Michel Chossudovsky, Zed Books, London, 1998. New edition “Globalization of Poverty and the New World Order”, Oro, Ontario: Global Outlook, 2003 – see <http://www.globalresearch.ca/globaloutlook/GofP.html>.

²³ Quoted in draft of forthcoming book on the General Agreement on Trade in Services.

²⁴ <http://rru.worldbank.org/Toolkits/>, accessed 2 March 2008.

²⁵ GDP and International Investment Position for year ended September 2007, Statistics New Zealand.

²⁶ “Reclaiming the Future”, by Jane Kelsey, Brudget Williams Books, 1999, pp.81-83.

²⁷ “Tribunal finds several treaty breaches in Argentine treatment of water firm”, by Luke Eric Peterson, *Investment Treaty News*, 26 July 2006, published by the International Institute for Sustainable Development (<http://www.iisd.org/investment/itn>).

²⁸ “Poland embroiled in new arbitration over privatization reversal”, by Luke Eric Peterson, *Investment Treaty News*, 13 June 2007; “Poland says talks progressing with Eureko as arbitration damages phase continues”, by Luke Eric Peterson, *Investment Treaty News*, 5 February 2008, published by the International Institute for Sustainable Development (<http://www.iisd.org/investment/itn>).

²⁹ GATS Article I.3

³⁰ The Office of the United States Trade Representative, which is responsible for negotiating international commercial agreements, publishes an annual assessment of what U.S. companies regard as “trade barriers”. See

http://www.ustr.gov/Document_Library/Reports_Publications/2007/2007_NTE_Report/Section_Index.html