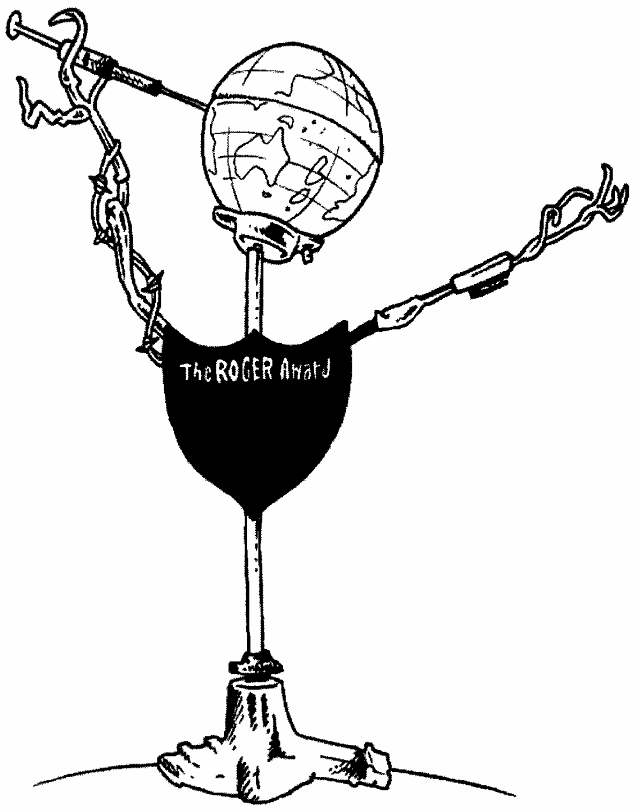
Roger Award 2006



For the worst Transnational Corporation operating in Aotearoa in 2006

Winner
Progressive Enterprises Ltd

Organised by
Campaign Against Foreign Control of Aotearoa (CAFCA)
GATT Watchdog

STATEMENT FROM THE JUDGES
February 2007

Geoff Bertram
Paul Corliss
Laila Harre
Mary Ellen O'Connor
Cee Payne- Harker
Brian Turner

2006 continued the run of record years for new foreign investment in New Zealand, with the Overseas Investment Office approving foreign takeovers totalling $20 billion, up from $14 billion in 2005.

Because the new 2005 Overseas Investment Act made us an even easier touch for foreign takeovers anything worth less than $100 million doesn't need approval. This means that that $20 billion is only the sum of the biggest sales overseas in 2006.

As more of our domestic market is captured by overseas owners employing us to sell things to our families and neighbours to make a profit for their overseas shareholders the Roger Award becomes more important.

Many of this year's nominees fall into this category. They don't produce goods in New Zealand for sale to overseas markets, earning us foreign exchange. Their New Zealand based activities are about supplying goods and services to local household and business consumers. The profit they make is sent off-shore, transferring a larger and larger share of New Zealand's wealth to overseas investors. Our blossoming balance of payments deficit then loads points onto our interest rates and we pay again for passing control of so much of our economy to overseas owners.

The range of nominations for this year's award really tested the judges – and with the Chief Judge unable to influence the decision on a leading contender due to a conflict of interest things came down to the wire.

All nominees were worthy of the criticism contained in the nominations.

Our final judging focussed on the central feature of the Roger Award, which is to recognise the trans-national corporation that has had the most negative impact in New Zealand in a particular year. Many of the nominees are worthy of lifetime awards for bad behaviour here and overseas, but with a sharper focus on bad behaviour in New Zealand in 2006 the field did narrow.

First, our comments on the five nominees who did not feature in our final run-off for a winner.

ABB

ABB is a Swiss company that supplies maintenance services to Carter Holt Harvey's Kinleith mill. It has been named as a supplier to Iraq's illegal weapons programmes and made a deal to supply North Korea with two nuclear power plants. At the time Donald Rumsfield was a Board member. Its customer lists reads like a who's who of international nasties. It has pleaded guilty to corruption charges relating to its Nigerian dealings. ABB's 100-strong maintenance operation at the Kinleith Mill wouldn't rate a mention on the balance sheet, but what annoyed its nominator and the judges was its audacity in successfully seeking an award for introducing a four-day flexible working week when it had only agreed to this as a result of union strike action. We politely recommend to the Equal Employment Opportunities Trust that they add some additional questions to their own nomination form for the Work-Life Awards so that HR practitioners and rich corporations can't take the credit for the hard won gains of collective industrial action.

Contact Energy

As Contact's nominator put it "it's difficult to know … how much of the blame lies with Contact and how much with the government and its restructuring of the sector…" but Contact is a huge player in an industry that has increased prices by 49% in the last 5 years. Its majority owner, Australian company Origin Energy now controls 28% of the retail market, 10 power stations, $4.3 billion worth of assets and $1.2 billion of revenue in New Zealand. In 2006 Contact announced a $280.9 million profit before increasing prices in Wellington, North Canterbury, West Auckland and the North Shore. Shareholder Association attempts to get more transparent decision making and an investigation into potential conflicts of interest between the majority owner, Origin, and Contact have been frustrated but a full takeover by Origin was prevented by local institutions in 2006. We agree with the nominator that the electricity sector needs to be brought back under effective democratic control – it would be good to see the new leadership at the Consumers Institute making advocacy on this market a priority!

ANZ

A very worthy nomination indeed. Last year's Roger Award was shared by the BNZ and Westpac – two giant Aussie banks – and an Award to the ANZ would also have been well-deserved. Along with other banks 2006 exposed a major rip-off of credit card customers – and the Roger judges want to give a special bouquet to Commerce Commission Chair Paula Rebstock who is at last starting to make that body act like a regulator (on that note we hope that Helen Clark noticed David Caygill's (the Deputy Chair) letter to Don Brash published in the *Hollow Men* and thinks carefully about fulfilling his ambitions to become the Electricity Commissioner). The ANZ pleaded guilty and was fined $1.3 million and has to repay $10 million to customers. The country's biggest bank, the ANZ naturally enough made the biggest profit - $1.01 billion on turnover of $2.76 billion. Yes, you did read that right. We can't think of a better definition of profiteering. And even with those sorts of profits they outsource communications work to cheaper markets. Finally, and very close to home, the ANZ's role in the sale to a fellow Australian trans-national of Feltex is one that is worthy of condemnation. The bank made it impossible for a local rescue bid to succeed, ensuring that New Zealand remains the safest place in the world for Australian business. There is a need for a thorough investigation of this debacle, and more evidence may well qualify the ANZ for a retrospective award in the future.

Toll

Toll has been condemned for its health and safety record, environmental practices and lack of investment in the past. In 2006 our nominators are becoming increasingly suspicious of Toll's tactics in its battle for public money to increase its profits from its virtual monopoly of rail services. However Toll's blackmail attempt with the Overlander failed (Government this time stood firm) and the threat to pull out of the Main Trunk was neatly trumped by Toll's business competitors, who in the form of Road Transport Forum Chief Executive Officer Tony Friedlander said they would be willing to put a rail freight service on the main trunk line if Toll wanted to pull out. This limitation on the company's real power seems to permit our Government to act brave and strong. On the upside, Wayne Butson of the Rail and Maritime Union has commented that industrial relations has been improving rapidly and that the current Toll CEO is a "straight shooter" ("Press", 24 May 2006). We'll give them the benefit of the doubt this year.

British American Tobacco

The judges' loathing of this nominee was palpable and we think it may well have a chance in 2007 as the Government moves to bring in explicit labelling and BAT does what it can to minimise the damage to its sales. In 2006 the introduction of tins for some cigarette brands known to be favourites with squeamish young women was a pre-emptive strike against the effectiveness of grisly labels. The company's defence of the Pou prosecution in the High Court was unattractive but expected. Unfortunately the law is the law and the courts have the job of interpreting it, for better or worse and Justice Graham's decision has not been challenged. For lifetime bad behaviour BAT rates highly on most Roger criteria. It's 75% market share makes it a dominant industry player (although this is one product we wouldn't like to see go down in price), it profits from a product that will kill 50% of its customers, it adds further misery to its target markets in the form of ill health and the high cost of addiction. It finds every loophole it can to promote its brands. It has some very able enemies in Parliament – from the PM to Hone Harawira – all power to them. This is one nominee that we can safely say NZ would be better off without, regardless of their ownership.

Our Final Two Nominees – Telecom And Progressive

For quite different reasons Telecom and Progressive came to the fore as the two trans-national companies with the most negative impact in NZ in 2006.

Because our Chief Judge had a conflict of interest and was unable to vote in this final round, the eventual winner was chosen by a majority of the remaining five judges.

Both these companies run very large domestic businesses providing for basic needs and employing or sub-contracting to thousands of people. Progressive operates in a competitive market but as one half of the duopoly with Foodstuffs it retains considerable power in our $11 billion supermarket industry. Telecom's monopoly of the local loop is coming to an end, but even with competition it will remain a dominant player with a customer base that will not shift easily to competitors, even when that might be in a customer's interests.

In 2006 both companies earned a place in the history of bad trans-national behaviour in Aotearoa. Both also lost their biggest battles.

Telecom In 2006

Telecom's charmed life as the monopoly with the longest record of resisting and undermining regulation seems to be coming to an end. But in a final fling in 2006, when one might have expected it to be a little more careful about its conduct, it continued to disappoint customers, argue every point with regulators, and so totally mismanage the roll out of "faster cheaper broadband" while frustrating its competitors that it probably cost NZ a fortune in lost opportunities and certainly took years off our nominators' and commentators' lives.

Much like Contact, the response could be "well of course a monopoly will game the system." And indeed Telecom's shareholders have profited handsomely from the endless gamesmanship with regulators and competitors alike. Or have they? There was certainly a point at which the corporate strategy could and should have changed in favour of an acceptance of fair competition. Who knows when that point was reached but it was certainly before 2006 and the ostrich factor has almost certainly cost Telecom, its owners and its customers heavily in preparation for running a successful business in a competitive environment.

They could start by looking after the real people hanging off the end of their copper wires for one thing. Their shoddiness in dealing with the plight of Canterbury's rural people during the biggest snow in 30 years, leaving many without communication for many days, was dreadful.

Progressive In 2006

After less than a year in the New Zealand supermarket industry, Australian retailing giant Woolworths had launched the biggest industrial attack seen in Aotearoa for years, locking out 600 distribution centre workers over their wish to negotiate a national agreement bringing pay rates at Auckland, Christchurch and Palmerston North up to a common standard.

While Progressive is by no means a monopoly, we note that a hard-driving push for market share means aiming towards monopoly, even when you know the outcome has to be duopoly (because even the New Zealand retail market is big and diverse enough to sustain more than one supermarket chain). Wherever possible, in sub-markets (particular locations around the country, particular industries or producers whose products aren't stocked by the competition) the company faces only very muted restraint attributable to the existence of a rival chain.

The retail grocery market is quite fiercely competitive; profit comes from volume more than margins for the big players and from margins rather than volume for the small ones. The coexistence of supermarkets and independent small stores reveals that price isn't everything. Customers are buying bundles of product characteristics, rather than just bulk produce, and they'll pay extra margins for perceived extra value (personal service, convenient location just down the road, trust and quality when your local store has built reputation with you, and, on occasion, social responsibility.) One of the really neat things about the Progressive story is the warning signs of customers switching their supermarket allegiances <u>against</u> the company, in direct contradiction to that infamous Progressive advertisement that assumed the New Zealand response to the lockout would be a redneck one. Ultimately it was the fear of losing profit as they lost patronage by turning off ordinary shoppers that almost certainly accounts for Progressive's about-face.

One of the Roger criteria is "cultural imperialism". While Woolworths enjoys friendly relations with Australian unions and Australian union counterparts were actively urging restraint on the company at their end, a similar openness to constructive relations with the union was off the agenda from the time that new management arrived early in 2006 to reform their new acquisition. Typical of the trans-national culture, there was a willingness to act off-shore in a way that would not be acceptable under the nose of home-country investors and stakeholders.

During the Progressive lock out the stunning silence of some of the biggest losers from it – suppliers who couldn't get their stock delivered or sold – was notable. Rather than leap to the company's defence in the public arena, after months of fighting with Progressive over supply contracts, they seemed to be quietly cheering from the sidelines as the kind of collective action denied them by the Commerce Act and the norms of competition allowed the workers at least to stand up for their rights. More than one supplier ensured that the picket lines were well-fed.

It's also great to have a nominee that brought out the best of us as New Zealanders. The more than $400,000 raised in a month to support the workers and the countless acts of kindness and solidarity showed a nation united against a simple unfairness.

The Runner Up - Telecom

The Winner – Progressive Enterprises Ltd

For the reasons above we award the 2006 Roger Award to Progressive Enterprises Ltd. As well as again stating for the record that this was a decision in which the Chief Judge, Laila Harré played no part, we make two further comments:

First, we hope that this Award will serve as a fitting end to a bad start in the relationship between Woolworths Australia and New Zealand. It does not mean that the battle need be a permanent one and we hope that the company will act on statements made by its Chairman at its 2006 AGM that the Board had charged its executives with improving relationships here. We would like to report on positive progress next year.

Second, an award of this nature to Progressive is not a stamp of approval for its locally owned rival Foodstuffs. Indeed competitive pressure from Foodstuffs's lightly unionised and generally lower paid workforce has contributed to Progressive's tactics. We wish the NDU all the best in its efforts to standardise supermarket wages at an even higher level than is present anywhere today through industry-wide collective organisation

Past Winners:

1997 Tranz Rail
1998 Monsanto
1999 TransAlta
2000 Tranz Rail
2001 Carter Holt Harvey
2002 Tranz Rail
2003 Juken Nissho
2004 Telecom
2005 BNZ & Westpac

ROGER AWARD REPORT 2006

A TALE OF TWO ROGERS (AND THEIR TRUSTY SIDEKICK)

The Roger Award was aptly named after the infamous Sir Roger Douglas, whose exploits in the 1980s left a path of destruction in their wake, so forceful that New Zealand is still suffering from the effects today. Whilst the first age of Rogernomics is over, but not quite buried, we find another Roger lining up to fill the role of promoting workers exploitation, Big Business profiteering and other such neo-liberal initiatives that are downright repulsive to anyone with a vague interest in social and economic justice. The latest Jolly Roger crown goes to Roger Corbett, the boss of Woolworths Australia, the company that has 100% ownership of the winner of the 2006 Roger Award, Progressive Enterprises.

Not only have we a new Roger but some of the very same characters from the first age of Roger make appearances in the second. Take for example Roderick Deane. Deane will be known by many for his role as the Chairman of the State Services Commission appointed in 1986.Deane and Douglas corporatised New Zealand's State-owned enterprises and reorganised the public sector, significantly reducing the numbers of public servants. In 1992, after having privatised it, Deane became the Chief Executive Officer (CEO) of Telecom (winner of the 2004 Roger Award). This very same gentleman appears on the board of Woolworths Australia.

Progressive Enterprises is a name now familiar to most New Zealanders. The month-long lockout in 2006 of the Progressive Enterprises distribution workers was a blatant display of anti-union bullying. It is greatly ironic to note that our recurring character Rod Deane is the chairperson of the Woolworths Australia People Policy Committee. The position is responsible for, among other things, ensuring a safe working environment is provided for all employees. One might effectively argue that a complete disregard for workers safety and well being occurred when for 28 days they were without wages, leaving families to struggle and starve.

Considering the lockout, the following words in Woolworths Australia's *Corporate Social Responsibility Report 2005* now have a very hollow ring: "Woolworths is committed to managing all its operations so as to ensure the safety, health and welfare of its employees and those with whom we do business...The safety and health of all of us carries the same priority as any other business function at Woolworths".

As is so often the case with Codes of Conduct, its content went completely ignored by Roger Corbett and Marty Hamnett (Progressive Enterprises' Managing Director at the time, since returned to Australia). They applied brutal economic pressure to force their employees back to work on terms dictated by their boss. Funny how the Code of Conduct is incredibly relevant when bosses are trying to prove serious misconduct and sack someone – yet is completely ignored when it comes to the conduct of the bosses themselves.

Economic Dominance - A Deadly Duopoly

The supermarket industry in New Zealand is dominated by a duopoly of two, Progressive Enterprises and Foodstuffs. Foodstuffs holds around 56.5% market share in New Zealand, with Progressive accounting for virtually all of the remaining 43.5%. Progressive operate the Countdown, Foodtown and Price Chopper supermarkets, while Foodstuffs controls the brands Pak'NSave, New World and Four Square. Whilst Foodstuffs promotes itself for being 100% New Zealand-owned, it is worth noting that its new distribution arm, Foodstuffs Fresh, is a 50% joint venture with an Australian company. Foodstuffs' profits are more likely to stay in New Zealand, even if they are distributed most unevenly. Foodstuffs' management also has strong links with the Business Roundtable and, like its other partner in the dominant duopoly, is not averse to anti union practices and is known to bully suppliers.

Many suppliers say the power of the Big Two is driving down quality and threatens their ability to stay in business. Yet due to the economic dominance of the duopoly, few suppliers feel able to speak out. In August 2004 a few suppliers talked to the *Sunday Star Times*, but only on the condition of strict anonymity. “These supermarkets couldn't give a toss about their suppliers or their customers. It doesn't matter what the customers want, it's just screwing as much money as possible out of us. Customers might get cheap prices but they aren't getting the choice they want” (*SST*, 22/8/04).

In 2004 Lisa Williams, the co-publisher of the *Grocers’ Review*, reported that suppliers’ margins were then being eroded by as much as 50%, with some fresh produce suppliers forced to cut margins from 10-15% to 3%. “The suppliers are certainly getting a raw deal from the supermarkets who – to be frank – are just very, very aggressive” (ibid.). And as the two supermarket chains squeeze suppliers’ margins, the manufacturers in turn apply pressure to their own suppliers to force their margins down. A supplier of ingredients to food manufacturers, who also wished to remain anonymous, expressed a sense of despair at the situation. Suppliers are forced to source cheaper ingredients and “quality goes out the window”. It ought to be of no surprise that Progressive's own data shows a massive increase in the number of times products had to be recalled after being sold to customers. Food recalls jumped 400% between 1998 and 2004, (with Progressive handling 130 in 2004 compared with two in 1998).

Progressive also has its own house brands, “Signature” and “Basics”. Private labels mean higher margins, more control and potentially more leverage to push for a discount. The supermarket brands continue to grow, another factor in decreasing margins for suppliers. Some suppliers accuse the supermarkets of devoting significantly more shelf space to their own products. Supermarkets may be right when they say the shelf placing reflects sales; however this could also reflect a chicken and egg scenario in many cases. Ironically, some of the house-branded wares are the same product as those sold under a manufacturer’s own name.

The *Grocers’ Review* Editor, John Corbett, said: “The crazy position is that many suppliers supply to people who also compete with them”. A Progressive insider stated: “Before, the supermarket could have been described as the place where Coca-Cola reached its customers; now it is the place where Coca-Cola competes with the private label to get to the consumer” (ibid.). Some suppliers are wary about discussing any innovative ideas with the supermarkets in the fear the supermarkets will swipe the idea for themselves as a house-branded product. In April 2006 Green MP Sue Bradford accused the Australasian supermarket chain of predatory behaviour when Woolworths Australia increased the amount suppliers had to pay to put their products on the shelves. These charges evolved out of advertising arrangements which saw supermarkets approach suppliers for a contribution towards producing catalogues and flyers. These charges have now ballooned to the extent that *Sydney Morning Herald* journalist Mark Dapin has heard of manufacturers being asked for exorbitant amounts just to stay listed at a chain: “That'll be half-a-million, thanks, otherwise ta-ta”[1]. Bradford, who is also the Government Spokesperson for the Buy New Zealand Made campaign, fears Woolworths Australia will run some small manufacturers out of business by imposing a three-fold increase in its advertising and promotion fee from 5% to up to 15% of sales. Suppliers who fail to agree to terms set by the supermarkets, such as margin reductions in exchange for prompt payment, can wait six months for the money they are owed.

An Expanding Empire?

Foodstuffs and Woolworths Australia have both made separate and competing applications to the New Zealand Commerce Commission for approval to take over The Warehouse. This would give either company a very significant foothold on the general merchandise market in New Zealand, to go along with their domineering position in the food market. If the Commerce Commission decides to turn down both applications, it may well be on the basis that The Warehouse Extra concept, a “hypermarket” incorporating both food and general merchandise, has the potential to offer a small degree of increased competition for the supermarkets.

At the same time that Woolworths Australia is applying to buy The Warehouse, many Australians are concerned about the prospect of Woolworths Australia picking up the pieces from the likely breakup and sale of the only other significant Australian supermarket operator, Coles. Australian *Herald Sun Business* commentator Terry McCrann says: “Under no circumstances can Woolies be allowed to buy any part of the dismembered Coles Group. For it to buy one petrol canopy, far less the Target chain, would be unacceptably anti-competitive” (*Herald Sun*, 27/2/07, “Woolies must be left out”). “To allow any discreet increase in [market] power even if it can argue it is narrowly weak in a particular market would be anti-competitive”[2]. Interestingly, McCrann also says the ACCC (Australian Competition and Consumer Commission) “erred badly some years ago” in

1 *The Press* (23/7/05), “In-store secrets”.
2 *Daily Telegraph* (28/2/07), “No part of Coles can go to rival”.

allowing Woolies to buy big chunks of the former number three chain, Western Australia's Foodland. One of these so-called chunks was the 2006 Roger Award winner, Progressive Enterprises.

When Workers' Rights Were Under Attack ……

They stood up and fought back. But this came at a price. That price was 28 days pay. In a nutshell the dispute was over the claim of Progressive Enterprises' workers for national bargaining. The bosses were against this for a number of reasons; one being the obvious industrial muscle this would give the workers. Other reasons included the cost – without a national collective agreement the company was getting away with paying far lower rates in different areas of the country, with Christchurch distribution workers on less then those in Auckland and Auckland workers on less then those in Palmerston North.

For a fuller report on the background of the dispute please see Joe Hendren's article, "Retrogressive Progressive: TNC Locks Out Distribution Workers; Families Without Pay For 28 Days" in Foreign Control Watchdog 113, December 2006. Watchdog can be read online at http://www.converge.org.nz/ watchdog/13/02.htm. Much of the material in this Judges' Report was sourced from that article.

On September 18th, 2006, the International Confederation of Free Trade Unions - Asian and Pacific Regional Organisation (ICFTU - APRO), a body representing 30 million workers in the Asia Pacific region, condemned the behaviour of Woolworths Australia/Progressive Enterpises. "This is heavy handed pressure by a major corporate employer to force low paid workers to relinquish their right to bargain collectively as guaranteed by ILO (International Labour Organisation) Conventions and New Zealand law". The ICFTU gave its full support to "the New Zealand distribution workers led by the National Distribution Union (NDU), the Engineering Printing and Manufacturing Union (EPMU) and the New Zealand Council of Trade Unions (NZCTU) in their efforts to exercise their legitimate rights and achieve a fair settlement" (ICFTU *Press Release*, 11/9/06, "Pacific Union Condemns Progressive Enterprises").

As is the script of any boss during an industrial dispute, Progressive Enterprises maintained throughout that the lockout was not affecting day-to-day business considerably. However, a month after the strike Woolworths' Australia Chief Executive Officer inadvertently recognised the value of the locked out workers when he discussed the reasons for poor New Zealand sales in September. "It was lack of product on the shelves...as soon as we got product back on the shelves our customer count and our sales returned. It was a matter of not having it". "New Zealand comparable sales were flat, mainly reflecting the industrial action in September". Woolworths reported New Zealand sales of $NZ1.052 billion in the 14 weeks to October 1. Lost sales were "nowhere near" the low tens of millions, but he refused to put a figure on it (*Press*, 24/10/06).

Media Control And Shaping Public Opinion

The same day that Progressive Enterprises locked its workers out of their jobs, the company launched a massive public relations offensive. It placed full page colour advertisements in all the major newspapers. These were headed in large type: "Supermarkets remain open despite strike action: Union demands threaten livelihoods". This was an attempt to mislead the public into blaming the distribution workers for going on strike. At this stage however, it was the bosses themselves who were taking the industrial action by imposing the lockout and threatening the livelihoods of their own staff. The advertisements carried the signature of Progressive Enterprises Managing Director, Marty Hamnett, himself an import from Woolworths Australia. It is worth noting that our own Jolly Roger, namely Roger Corbett, is also a non-executive director of Fairfax Media, which owns most of the major newspapers in New Zealand, including the *Press* and the *Dominion Post*. Whilst this in itself is not a great issue, it does allow easy access to the print media and allows for the shaping of public opinion in Progressive's favour.

The Game Plan

It is arguable that Progressive locked the workers out not to prevent a national collective agreement, but to prevent bargaining occurring on a national level – in other words, the age old tactic of divide and rule. The risk for the bosses of bargaining collectively is that industrial action can be taken during contract negotiations. If it is a national contract obviously action can be taken on a national scale – having a far stronger impact then regionally.

An offer made by Progressive directly to the distribution workers on September 11th is further evidence of such a strategy operating. A one year deal was offered for Christchurch, a two year deal for Auckland and a three year deal for Palmerston North. This proposed structure was designed to prevent the three distribution deals from coming up for renewal at the same time again. Progressive also attempted to bypass the unions by sending its "offer" directly out to members, a tactic that was rebuffed by the workers who maintained their resolve to make decisions collectively. Whilst they were highly sceptical of the motivations behind the offer, in the interests of good faith bargaining and being democratic organisations, the NDU and the EPMU put Progressive's "offer" to the members. It was unanimously rejected by workers on all three sites.

If You Don't Fight You Lose! – Why Losing Wasn't An Option

Whilst low income workers struggled to survive 28 long days without pay, their employer ran a high budget public relations campaign to break their resolve and force them back to work. The workers and their unions, the NDU and the EPMU staged a fightback over a key principle – the right of workers to bargain collectively for a collective agreement. The fallout for the union movement would have been considerable if a multimillion dollar corporation like Woolworths Australia/Progressive had succeeded in using starvation tactics to bully workers into submission. It would have become more difficult for all New Zealand workers to negotiate collective agreements. But thanks to the generous and active support of a wide range of New Zealanders the unions succeeded and Progressive failed. The workers retained their unity to gain one of their key demands – equal pay for equal work.

By refusing to bargain in good faith, Progressive issued a direct challenge to a key principle of the Employment Relations Act. In a speech to the NZ Council of Trade Unions in 2003 the Prime Minister, Helen Clark, said the Employment Relations Act was designed specifically to promote collective bargaining. While discussing a review of the Act she acknowledged in some cases "failure to recognise fully the rights workers have to bargain collectively is impeding the objective of promoting collective bargaining" (Helen Clark, 23/10/03, Keynote to CTU Conference). So the actions of Progressive Enterprises ought to have been a matter of policy and principle for a Labour-led Government. One would have hoped that Labour would have learnt the lesson of the 1951 waterside dispute – there is nothing to be gained from "fence-sitting". It was also interesting that many in the business community chose to stay quiet during the lockout, and if they did so, public comment was made quite late in the piece. Business NZ Chief Executive Phil O'Reilly attempted to drum up fears of "militant unionism" and the greater use of collective agreements. "We are seeing a trend where similar wage claims are being made across lots of employers who have lots of different circumstances in different regions, different markets and different levels of profitability". O'Reilly argued that this approach would "undoubtedly" lead to more industrial disputes because it took no account of the differences between an employer in South Auckland with 300 staff and one in Te Kuiti with 20 staff (*Sunday Star Times*, 10/9/06, "Employers fear union power push").

Support From the Beehive

Green MP Sue Bradford said: "The Green Party is totally behind the locked-out workers. The right to form national collective agreements is a basic one which workers in many other industries have successfully attained. It is appalling to see Progressive Enterprises applying such brute economic force to prevent its workers from negotiating one. I have the utmost respect for all the low-paid workers who have forgone 13 days' pay to express their anger at these bullying tactics..... It is a credit to the strength of the National Distribution Union" (*Press Release,* 6/9/06, "Boycott of Progressive Enterprises urged"). Green Party activists emailed letters of complaint to Progressive management, in particular asking them for the costings that Progressive used to justify its farcical claim the unions were asking for a 30% pay increase. And what response did they receive? "The details of the costing information is confidential to Progressive".

Maori Party MP Hone Harawira stood in solidarity with workers on the Auckland picket line and said he wanted to let the locked out workers know that "the Maori Party stands with them in this struggle and will be doing all we can, to support their claim for pay parity". He also called on the bosses to stop scare-mongering about "old style militant unionism" and "look at the facts. The issue is simple; the workers want pay parity, and the multi-national says no" (*Press Release*, 12/9/06, "Nothing Progressive about ripping off workers"). So in conclusion, Progressive Enterprises is a worthy recipient of the 2006 Roger Award. And in the words that echoed on the picket lines, WHEN WORKERS' RIGHTS ARE UNDER ATTACK – STAND UP FIGHT BACK and WHO'S GOT THE POWER? WE'VE GOT THE POWER. WHAT KIND OF POWER? UNION POWER!

And one final point – what this clearly displays is two Rogers do not make a right!

Financial Analysis Progressive Enterprises Ltd

- Sue Newberry

Financial Analysis of Progressive Enterprises (WOW)

- WOW controls 45% of New Zealand's grocery market but is not publicly accountable in New Zealand
- Woolworths financed the NZ$2.5 billion acquisition price by loading it all onto WOW as debt
- WOW is technically insolvent and depends on Woolworths' financial support
- $2.239 billion of the acquisition price is for goodwill, a phantom representing Woolworths' expectations of future sales growth and cost reductions
- Woolworths rewards its executives for achieving sales growth and cost reductions

Since its takeover by Australian company Woolworths in November 2005, the major supermarket chain still known to most New Zealanders as Progressive Enterprises might more appropriately be called WOW. That's the name of the companies through which Woolworths runs its activities in New Zealand. In its financial report for 2006, Woolworths Limited states that it obtained Progressive Enterprises Holdings Limited (a company registered in the state of Victoria) and all of its controlled entities for A$2.289 billion, this comprising A$959,005,951 in cash and the issue of 81,592,689 shares in Woolworths Limited. This purchase price, however, included 22 stores in Western Australia as well as Progressive's New Zealand activities, consisting of 216 supermarkets and convenience stores (Wright, 2005). The portion of the price attributed to the Australian stores was about A$270 million (Mitchell, 2005). In Australia, it seems that the cost of the New Zealand operations was, therefore, A$2.019 billion.

Of greater interest for the purpose of this analysis is how this takeover proceeded in relation to the New Zealand activities. Progressive Enterprises Holdings Limited ran

Progressive's New Zealand supermarket operations through several New Zealand companies. These companies were gathered under one of the companies, Foodland NZ Finance Ltd. A new New Zealand company, WOW (NZ) Supermarkets Limited was established in August 2005, with its shares owned by the Australian company, Woolworths. In November 2005, WOW (NZ) Supermarkets Limited obtained the shares of Foodland NZ Finance Ltd, and changed the name of that company to WOW (NZ) Finance Ltd. With this transaction, WOW (NZ) Supermarkets Limited obtained Progressive's New Zealand activities. The company structure today is:

#	Name	Where Incorporated
1	**Woolworths Limited:** Owns 100% of share in 2:	Australia
2	**WOW (NZ) Supermarkets Limited:** Owns 100% of shares in 3	NZ
3	**WOW (NZ) Finance Limited:** Owns 100% of shares in 4	NZ
4	**WOW (NZ) Holdings Limited:** Owns 100% of shares in 5	NZ
5	**FAL Insurance Limited** **Progressive Enterprises Limited:** Owns 100% of shares in each of 6	NZ
6	**Caledonian Leasing Ltd** **Countdown Foodmarkets Limited** **Foodtown Supermarkets Limited** **Fresh Zone Limited** **General Distributors Ltd** **S R Brands Limited** **Supervalue/Freshchoice Limited** **The Supply Chain Ltd** **Woolworths (New Zealand) Limited** **Wholesale Services Limited:** owns 100% shares in 7	NZ NZ NZ NZ NZ NZ NZ NZ NZ NZ
7	**Wholesale Distributors Limited**	NZ

This multi-layered structure may look complicated but it is straightforward for such a large operation. Starting from the bottom of this diagram and working upwards, the first point to note is that 100% of the shares at each level are owned by a company at the next level up. This means that, within New Zealand, WOW (NZ) Supermarkets Limited has full control of the shares of every company below it, and this is achieved simply by WOW (NZ) Supermarkets Limited acquiring the shares in WOW (NZ) Finance Limited. Further, because WOW (NZ) Supermarkets Limited is itself 100% owned by Woolworths Limited Australia, that acquisition gave Woolworths Limited Australia full control of every company shown in the levels below it, i.e. from WOW (NZ) Supermarkets Limited to Wholesale Distributors Limited.

The effect of this structure is that none of these New Zealand companies is required to publish full financial reports. The ownership structure means that Woolworths Australia Limited is both the owner of WOW (NZ) Supermarkets Limited's shares and appoints WOW's governing body. New Zealand's financial reporting regime allows reduced financial reporting requirements (known as differential reporting) under such circumstances. These less detailed financial statements are not published, although they are filed with the Companies Register and may be obtained quite easily by members of the public for a nominal fee (www.companies.govt.nz/cms).

WOW controls approximately 45% of New Zealand's grocery market, and its activities in New Zealand during 2006 aroused considerable concern. The basis on which WOW (NZ) Supermarkets Limited qualifies for differential reporting is, therefore, worth quoting: "**The Company** qualifies for Differential Reporting exemptions as it **has no public accountability,** and there is no separation between the owners and the governing body" (WOW (NZ) Supermarkets Limited, Annual Report 2006, p. 7, emphasis added).

For financial reporting purposes, "public accountability" is defined tightly. It relates to financial market participants if a company makes a public issue of shares or other financial instruments. All of WOW's shares and redeemable preference shares were issued to Woolworths and that was a private issue, rather than a public one. Consequently, WOW is accountable to its Australian shareholders, but it is not publicly accountable in New Zealand. Bearing in mind WOW's significance in New Zealand, and that the Australian shareholders appear to have financed the acquisition of Progressive's activities in New Zealand by loading the whole cost onto WOW as debt (as explained below), perhaps the circumstances under which a company should be deemed publicly accountable in New Zealand should be broadened.

The reduced financial report provided under the differential reporting regime impedes the ability to analyse WOW's activities. The report does at least provide some information to allow an outline of the initial financing of WOW, and the nature of the arrangements to acquire Progressive's activities in New Zealand by acquiring the shares in WOW (NZ) Finance Limited. This acquisition has imposed significant debt obligations on WOW. The report also provides some clues that may help to explain the pressure imposed on WOW to reduce its costs and which in turn puts pressure on New Zealand staff and suppliers to reduce their costs.

Initial financing of WOW (NZ) Supermarkets Limited

The establishment of WOW (NZ) Supermarkets Limited involved issuing 280.7 million $1 shares to Woolworths International Pty Limited, a subsidiary of Woolworths Limited, Australia. If Woolworths did pay WOW for those shares at the time of issue, WOW (NZ) Supermarkets Limited's annual report for 2006 suggests any such flow of cash was circular. That report shows that Woolworths owes WOW (NZ) Supermarkets Limited a similar amount ($274.4 million), thus implying that WOW passed the money back to Woolworths as a loan.

Acquisition of shares in WOW (NZ) Finance Limited

WOW (NZ) Supermarkets Limited acquired all of the shares in WOW (NZ) Finance Limited. As already explained, this acquisition gave WOW (NZ) Supermarkets Limited control of all the activities underneath WOW (NZ) Finance Limited. An understanding of this transaction is hampered by apparent errors in WOW (NZ) Supermarkets Limited's audited annual report (audited by Deloittes, Auckland). The explanation of the acquisition repeats the numbers stated in Woolworths financial report but substitutes the New Zealand company names and implies the amounts are NZ$. It states that the consolidated entity, i.e. the group headed by WOW (NZ) Supermarkets Limited, obtained "the shares in WOW (NZ) Finance Limited (formerly Foodland (NZ) Finance Limited) and its controlled entities for $959,005,951 in cash and the issue of 81,592,689 shares in WOW (NZ) Supermarkets Limited." The explanation also states that WOW (NZ) Supermarkets Limited shares were trading at $16.30 a share at the close of business on 2 November 2005. The information in Woolworths report related to Woolworths shares, Australian dollars, and all of Progressive Enterprises Holdings Limited's activities, which included the 22 Australian supermarkets. Woolworths says its shares were trading for A$16.30 in Australia on 2 November 2005. WOW (NZ) Supermarkets Limited's shares were not trading – if they had been trading WOW would be deemed publicly accountable and required to publish a full annual report. The description of the acquisition in WOW (NZ) Supermarkets Limited's audited financial reports is incorrect. Scrutiny of the details in the financial report reveals a different picture of the New Zealand end of this acquisition.

WOW (NZ) Supermarkets Limited's financial report shows that $2.5 billion of redeemable preference shares was issued to Woolworths. The terms and conditions associated with the redeemable preference shares, however, means they are shares in name only, and WOW's financial report shows them as borrowings. As would occur with borrowings (but not with ordinary shares), Woolworths retained the option to redeem the preference shares from WOW, that is, to demand their money back from WOW at any time, and payments are required in the same way that payment of interest is required. At the New Zealand end of this takeover deal, therefore, the acquisition appears to be totally debt financed by loading $2.5 billion of debt onto WOW.

The $2.5 billion in borrowings via redeemable preference shares helped to finance a total acquisition of $2.562 billion, comprising $155 million worth of the various assets and liabilities that one might expect, including inventories, equipment, and accounts payable, plus intangible assets of $2.408 billion. The intangible assets consisted of brands valued at $169 million, and the $2.239 billion remainder was "goodwill". Because when buying a company, the amount paid may exceed the values of the individual assets and liabilities, the logic is that the value of the whole must be greater than the sum of the parts. On that basis, the difference between what is paid and the values at the date of purchase of the identifiable assets and liabilities is called goodwill and reported as an asset. This is an accounting requirement. What it means in this case is that a very large portion of WOW's total reported assets in New Zealand is this phantom figure of $2.239 billion for goodwill. More about this goodwill and its implications later.

Debt Obligations imposed on WOW

WOW (NZ) Supermarkets Limited's financial report for 2006 suggests WOW is a company in financial difficulties. A common means of checking for such difficulties is to compare current assets (i.e. those relating to the next 12 months) with current liabilities (i.e. those to be settled in the next 12 months). WOW's current assets at balance date (25 June 2006) were $345 million and its current liabilities $3 billion. The current liabilities therefore exceed the current assets by $2.655 billion. Most of this is the $2.5 billion redeemable preference shares issued to Woolworths, and reported as a current liability because Woolworths can demand repayment at any time. This makes WOW appear insolvent, a point that required comment in the financial report. The report states that WOW is dependent on the continued financial support of Woolworths. Since the balance date, this debt has been rearranged, which may mean the debt no longer has to be reported as a current liability, but the comment about the rearrangement suggests that WOW remains totally debt financed. The effect of all this debt financing is that in order to earn a profit for its shareholder, which is Woolworths, WOW first has to pay interest on all of the debt raised ($2.5 billion) to finance its own purchase. Of course the interest payments also go to Woolworths, and Woolworths also seems to have borrowed back $274 million of the $281 million share investment to establish WOW (NZ) Supermarkets Limited.

Pressure on WOW (NZ) Supermarkets Limited to reduce its Cost Of Doing Business (CODB)

WOW's financial report does not contain the lengthy directors' and chief executive's reports that are normally included in published annual reports. It contains only the reduced information allowed under the differential reporting exemptions, along with the auditor's report. Because it lacks detail, information for this section comes from several sources besides WOW's financial report, including Woolworths' annual report for June 2006 and half year report for December 2006 which contain sections about its New Zealand supermarkets activities, and from newspaper commentary.

When Woolworths' acquisition of Progressive was announced in May 2005, expectations were that Woolworths would be aggressive in New Zealand, and that the acquisition may allow Woolworths to expand into Wal-Mart-style activities in New Zealand, perhaps by acquiring an interest in The Warehouse. Woolworths' chief executive of the time, Roger Corbett, was well-known for his links with, and admiration for, US giant Wal-Mart and its methods. Such a longer-term strategy might explain the "top dollar" acquisition price for Progressive (Wright, 2005). Corbett has since retired from Woolworths and is now a board member of Wal-Mart, but he continues with Woolworths as a consultant.

New Zealand manufacturers for Progressive were considered likely to be the first to feel the aggressiveness through "increased costs if Woolworths transplants its supply chain and logistics strategy which has taken A$3.2 billion out of the retailer's [Australian] cost structure but pushed additional costs back onto suppliers" (Mitchell, 2005). Corbett confirmed that transplantation of that strategy was the intention. "Our Project Refresh and Mercury projects are to a position of development that the systems we've developed in Australia in logistics networks and so on…the technology of that we're able to inject into the business in New Zealand, with obvious opportunities in significantly increasing efficiency, productivity, and therefore reducing costs" (Mitchell, 2005).

Woolworths uses particular numbers from financial reports as performance measures, and includes in its executive remuneration packages "variable remuneration" that is "directly related to the performance" of the company. The results that provide its executives with these rewards are sales, earnings before interest and tax (EBIT), percentage return on funds employed (ROFE), and percentage cost of doing business (CODB). It seeks increases in the first three measures, the first two of which are dollar measures and the third a percentage measure. It seeks reductions in the fourth measure, CODB, which is also a percentage measure. It is not apparent what variable remuneration, if any, has been paid in New Zealand, but it is worth knowing what those figures are and the intentions.

WOW has 45% of the grocery market in New Zealand and faces stiff competition from its major competitor, the local cooperative, Foodstuffs. Because WOW is loaded with debt, it must be able to service that debt but cannot afford to risk losing sales through higher prices. The structure of the grocery market in New Zealand suggests that WOW has a better chance of improving the other performance measures than this one. WOW's sales reported for the 34 weeks from the date of takeover until 25 June 2006 are $2.93 billion, and for the half year ended 31 December 2006 $2.33 billion.

WOW's reported EBIT in New Zealand for the same periods was $122.5 million for the period ended 25 June 2006. That is 4.5% of sales. For the half year ended 31 December 2006 it was $81.1 million which is 3.4% of sales. From WOW's perspective, therefore, EBIT deteriorated, largely because of the industrial action. Improving this EBIT measure will require increases in sales and/or decreases in costs. With interest excluded from the measure, the greatest scope for cost reductions will be from increasing gross profit, i.e. the amount left from sales after paying suppliers, and reducing other costs of operating. In its annual report comment on its New Zealand supermarket activities, Woolworths reports its expectations that "obtaining improved buying efficiencies" will help to increase this EBIT figure (p. 11).

WOW's gross profit for the period ended 25 June 2006 is reported as 22.01% from sales of $2.93 billion. For the half year ended 31 December the gross profit is reported as 21.63% from sales of $2.33 billion. In its half year report, Woolworths reports pleasure with progress in New Zealand, including improved buying terms and its work on systems integration initiatives that will produce "synergies… over a 2-3 year period" (p. 13).

CODB is selling, general, and administration expenses, excluding rent and depreciation, expressed as a percentage of sales. WOW's CODB for the period ended 25 June 2006 is reported as 17.83% (or $522 million) and for the half-year to 31 December, 18.15%. In its annual report, Woolworths reported expectations that these costs will be reduced by, for example, "streamlining support office functions, processes and systems between Woolworths and the current New Zealand businesses; and applying Woolworths' supply chain, inventory management and logistics technology to reduce supply chain costs and practices" (p.11). Evidently, the efforts to "improve" these performance measures have affected WOW's staff and suppliers in New Zealand. The increased percentage of costs could be brought about by a lower level of sales and/or an increase in costs. In its half year report, Woolworths acknowledges that WOW's New Zealand sales fell during the industrial action (p. 13).

For the purpose of calculating WOW's ROFE, Woolworths reports that funds employed at 25 June 2006 were assets amounting to $2.532 billion. The assets, therefore, include the goodwill of $2.239 billion. WOW's ROFE measure is EBIT ($122.5 million) for 34 weeks, and expressed as a percentage of funds employed ($2.532 billion) and is 4.8%. If this were annualised, it would be 7.4 %. The ROFE measure for Woolworths Australian supermarkets division is 66%, thus suggesting that, in comparison, WOW's New Zealand operation is performing poorly. For the half year ended 31 December, Woolworths reports that funds employed have increased to $2.594 billion. The negative impact from the industrial action is regarded as a one-off effect, so annualising the EBIT does not give an indication of what might be expected for the full year. If it were annualised, however, the ROFE would be 6.2%. The deterioration is brought about by an increased asset base on which it is calculated (from $2.532 billion to $2.594 billion) plus a fall in sales from the industrial action, and possibly, an inability to reduce costs to the extent sought because of the resistance mounted.

This ROFE measure could be improved by improving EBIT, which, as noted above, will require increasing sales while forcing down costs in New Zealand. Alternatively, the measure would be improved by reducing the amount of funds employed. Most of the amount of funds employed (88% at 25th June 2006) is goodwill. Information that explains the $62 million increase in funds employed is not available for 31 December 2006. Decreasing goodwill would require a decision that the goodwill is no longer worth the amount recorded for it.

Current accounting requirements specify that goodwill must be tested for impairment annually, i.e. to check whether it is still worth what was paid. WOW (NZ) Supermarkets Limited's financial report discloses that this test was conducted for the 2006 annual report and the decision made that goodwill is still worth the $2.239 billion. The impairment test was based on "cash flow projections from 2007 financial budgets approved by management and the Board. The cash flows are discounted to present value using pre-tax discount rates. The key assumptions used in the … calculations include sales growth, CODB reductions and discount rates… The assumptions regarding sales growth and COBD reductions are based on past experience and expectations of changes in the market" (WOW (NZ) Supermarkets Limited, 2006 annual report, p. 27). In other words, on the balance date of 25 June 2006, WOW expected to recover the $2.239 billion of goodwill through increased sales and reduced costs. Further, because goodwill is included in the funds employed amount for the purpose of calculating ROFE, Woolworths requires WOW to earn a return on it, and to improve the return. In its annual report for 2006, Woolworths reports expectations of "synergies" from WOW's activities in New Zealand over a "two to three-year period from date of acquisition" (p. 11). As noted above, Woolworths has repeated that statement in its half year report for 31 December 2006.

Where to next?

WOW's and Woolworths' annual financial reports cover the period to June 2006, and this period preceded the struggle with staff over employment conditions. Woolworths' annual report, which was signed in November, does not comment on these events. It states that Woolworths' "initial initiatives in the New Zealand market have been well received and we look forward to expanding on the goodwill we have developed and improving the overall shopping experience across this market" (Woolworths' annual report, p. 4). Woolworths half year report covers the period during and after the industrial action and, while admitting the first quarter (July to September) was "negatively impacted", reports "a return to normal operating levels in the second quarter… we believe we have almost recovered our market share position to pre-strike levels (p. 13). WOW is burdened with the debt incurred to finance the acquisition of Progressive's activities in New Zealand, and burdened by the enormous goodwill component of the acquisition price. The key performance measures which contribute to the variable portion of executive remuneration packages at Woolworths make it likely that efforts to force down costs in New Zealand will be continued in an attempt both to justify the acquisition price and to provide a return on that price.

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