

Appeals court approves Wal-Mart/Massmart merger with conditions

The Wal-Mart/Massmart merger has been approved, subject to conditions including no retrenchments, by Competition Appeals Court President Judge Dennis Davis.

By [Paul Vecchiatto](#) ^{9 Mar 2012}

Davis along with two other judges delivered the verdict today, Friday 9 March 2012.

Conditions imposed include the reinstatement of 503 workers who were retrenched in 2010 and a study to be complied by a team from Wal-Mart, the unions and the government ministers to be completed within three months and to be paid for by Wal-Mart.

The study, Davis ruled, would form the basis of the final conditions to be imposed on the merger.

Davis ruled that the merger would not be sent back to the Competition Tribunal due to time constraints.

The case was heard over three days in October last year after the Competition Tribunal had ruled in favour of the merger in February.

Economic Development Minister Ebrahim Patel, Trade & Industry Minister Rob Davis and Agriculture Forestry and Fisheries Minister Tina Joemat-Pettersson brought their review application to have the Competition Appeals Tribunal's approval sent back for reconsideration.

The three ministers argued in their application that the tribunal had not granted government enough time to argue its case against the merger or to have stricter conditions imposed.

In particular, the ministers wanted the R100 million supplier development fund increased to R500 million.

They argued that Wal-Mart's entry into the local market would be detrimental to small manufacturers as the US retailer was able to command much lower prices from foreign-based suppliers.

According to their heads of argument the merger could have "potentially devastating" effects on local jobs and that there was no evidence that Wal-Mart would create 15 000 jobs.

Supporting them was the labour movement Cosatu affiliate the SA Commercial Catering and Allied Workers Union (Saccawu) that wanted the merger overturned completely.

In particular it cited that Wal-Mart had developed an international reputation for being anti-union.

The union had also argued that it wanted an agreement to be the sole employee representative organisation with the merged company and it wanted 500 workers retrenched by Massmart in 2010 reinstated.

It also wanted the merged companies to be prevented from spending less on local procurement than it had before the merger.

Wal-Mart/Massmart had argued that neither the ministers' nor the union's cases had any merit and should be

dismissed with costs.

Davis and his two assessors had either to confirm, amend or set aside the tribunal's decision, or remit the matter back to it for a further decision.

However, Davis appeared during the hearings not to like the latter route as he feared the matter would then bounce between his court and the tribunal.

At one stage during October's hearings Davis likened Wal-Mart's entry into SA to a "hurricane" although he pointed out that neither the union nor government appeared overly concerned about the consumers' rights lower prices.

In a press release distributed this afternoon, Wal-Mart and Massmart stated that "The companies fully appreciate the Court's role in seeking to reconcile the potentially complex legal, economic and public interest considerations in this case. We do however respectfully disagree with the Court's finding that the historical retrenchment of 503 employees was closely linked to the merger."

Commenting, Massmart CEO, Grant Pattison said: "It is important to emphasise that notwithstanding the differences of opinion that have been expressed during this process, we want to build good relationships and enter into constructive partnerships with government, organized labour and other interested parties."

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