

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT Case No : 73/LM/Nov10

CC Case No : 2010NOV5445

In the large merger between :

Wal-Mart Stores, Inc.

Primary Acquiring Firm

And

Massmart Holdings Limited

Primary Target Firm

WITNESS STATEMENT OF GRANT PATTISON

1. Background and qualifications

1.1. I obtained a BSC Eng degree (*cum laude*) from the University of Cape Town in 1991. I worked at Anglo American from 1992 to 1996, following which I moved to The Monitor Company.

1.2. In 1998, I was employed by Massmart Holdings Limited ("**Massmart**"). I remain employed at Massmart and have thus been involved in Massmart's business for almost 13 years.

1.3. I have held the following positions within Massmart –

1.3.1. Executive Assistant to the Chief Executive Officer;

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- 1.3.2. Projects Executive - Responsible for Projects, Channel, IT, Massmart International Commerce and Supplier Liaison;
 - 1.3.3. Managing Director of Game;
 - 1.3.4. Managing Director of Shield and Furnex;
 - 1.3.5. Managing Director of Jumbo Cash & Carry;
 - 1.3.6. Chairman of Masscash;
 - 1.3.7. Group Commercial Director;
 - 1.3.8. Deputy Chief Executive Officer; and
 - 1.3.9. Chief Executive Officer and Chairman of all Divisional Boards.
- 1.4. I have thus been directly exposed to all aspects of Massmart's business and to the wholesale/retail sector in South Africa. I am also the Co-Chairman of the Consumer Goods Council of South Africa.
- 1.5. I believe that I am suitably qualified to talk to all aspects of wholesale/retail in South Africa, with particular reference to the business of Massmart.

2. Description of the Massmart group

- 2.1. Massmart is a high volume, low margin retailer and wholesaler of –
 - 2.1.1. grocery products, namely the full range of supermarket products including food, cigarettes, health and beauty products, non-edible consumables such as detergents and house care products, certain liquor lines (such as grocer's wines and beer) and general merchandise (such as house- and home-ware, stationery, toys, basic appliances, basic hardware and the like);
 - 2.1.2. liquor;
 - 2.1.3. general merchandise, namely a wide range of products including office equipment and stationery supplies; home improvement supplies, tools and

accessories; outdoor and garden furniture; pool equipment and supplies; audio equipment, video equipment and computer electronics; large and small household appliances; housewares; sports clothing, footwear and equipment; and outdoor and camping clothing, footwear and equipment; and

2.1.4. home improvement/DIY products and building materials.

2.2. Massmart's various trading companies are grouped into four divisions, comprising those chains which serve similar target markets and business models, as follows –

2.2.1. the Massdiscounters division comprises retail stores trading under the names Game and Dion Wired. DionWired offers an upper-end range of hi-tech appliances and audio and digital products, through 12 stores in South Africa. Game offers a wide range of general merchandise and non-perishable groceries to the value seeking end consumer in the LSM 5 to 10 socio-economic group, through 85 stores in South Africa;

2.2.2. the Masswarehouse division comprises the Makro chain of large wholesale club outlets, which market a broad range of food, liquor and general merchandise to commercially affiliated resellers and upper income, end-consumers, predominantly in the LSM 6 to 10+ socio-economic groups, through 14 stores located in Gauteng, Western Cape, Eastern Cape and Kwa-Zulu Natal;

2.2.3. the Massbuild division comprises the Builders Warehouse, Builders Express and Builders Trade Depot chains which sell hardware and home improvement/DIY products and building materials, through 80 stores located regionally in South Africa. These products are predominantly for the construction, augmentation, refurbishment or decoration of homes owned by consumers in the LSM 6 to 10+ socio-economic groups; and

2.2.4. the Masscash division comprises predominately wholesale (cash & carry) outlets supplying grocery products, liquor and general merchandise to independent traders who target lower income consumers in the LSM 1 to 6 socio-economic groups, through 66 stores located across South Africa.

However, the Masscash division has recently embarked on a retail strategy to enable it to sell grocery products, liquor and general merchandise directly to lower income consumers in the LSM 2 to 7 socio-economic groups. This is already underway through 26 stores located across South Africa. In addition, the Masscash division includes the Shield voluntary buying organisation serving independent traders who target similar lower income consumers.

2.3. For greater detail on the various store types that constitute each of the four Massmart operating divisions, please refer to Item 14 of Schedule 5 to the Form CC(4)(2) filed by Massmart as part of the merger notification lodged with the Competition Commission (the “**Commission**”) on 3 November 2011.

3. Massmart’s expansion strategy

3.1. *Introduction*

3.1.1. Massmart's current strategy (i.e. in the absence of the proposed transaction) entails a high level of extensive and comprehensive planned investment in expanding its operations both in South Africa and further afield on the African continent.

3.1.2. On the basis of Massmart’s current strategy, it is anticipated that Massmart will –

3.1.2.1. expand its existing floorspace by approximately 8% in 2011, with the creation of approximately 2 796 full-time employment positions;

3.1.2.2. expand its existing floorspace by an estimated further 8% in 2012, with the creation of approximately 2 279 full-time employment positions; and

3.1.2.3. expand its existing floorspace by an estimated further 5% in 2013, with the creation of approximately 1 328 full-time employment positions.

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3.1.3. Massmart's projections of the effect of the proposed transaction on the counterfactual set out in paragraph 3.1.2 above) are as follows –

3.1.3.1. given the systemic and operational integration, as well as strategic planning that must take place post the closing of the proposed transaction, it is anticipated that the full benefit of the introduction of Wal-Mart Stores Inc. ("**Wal-Mart**") will only translate into measurable benefits some time after the closing of the proposed transaction. Consequently, Massmart's projection is that the implementation of the proposed transaction will have no real impact on Massmart's projections for 2011. It is therefore anticipated that Massmart will expand its existing floorspace by approximately 8% in 2011, with the creation of approximately 2 796 full-time employment positions (i.e. no change from Massmart's existing plans);

3.1.3.2. once the period of integration in 2011 has run its course, Massmart anticipates that the merger benefits attributable to Wal-Mart will become more evident in 2012, [**Confidential Information Removed**]; and

3.1.3.3. in 2013, Massmart estimates that it will [**Confidential Information Removed**].

3.1.4. Massmart also intends to -

3.1.4.1. [**Confidential Information Removed**]

3.1.4.2. expand into a number of additional African countries.

3.2. *Growth of the Core Business*

3.2.1. Supply Chain: It is a global trend that retailers are investing in supply chain development to reduce the cost of moving goods from manufacturer to supplier. The range of solutions is complex and vast but, most significantly, Massmart is [**Confidential Information Removed**]. There are many reasons to do this, but

the most important is that this is the most efficient method for both supplier and retailer and enables Massmart to improve the productivity of its assets.

3.2.2. Private label: Again, as a global trend, there is an opportunity for retailers to reduce the costs of supply by owning several consumer brands themselves. It is not Massmart's intention to replace supplier-owned brands but rather to augment their offering. [**Confidential Information Removed**]. In Massmart's case, private label products currently contribute approximately [**Confidential Information Removed**] % of purchases and may increase to as high as [**Confidential Information Removed**] % should this initiative be successful.

3.2.3. Financial Services: [**Confidential Information Removed**]. We have a Game and DionWired card, and are about to launch a Builders Warehouse card.

3.3. *New Formats and Categories*

3.3.1. Massmart constantly seeks to innovate. [**Confidential Information Removed**].

3.3.2. [**Confidential Information Removed**].

3.3.3. [**Confidential Information Removed**]

3.3.4. [**Confidential Information Removed**]

3.3.5. For further detail in this regard, please refer to Exhibit 5 to the merger filing, which is a copy of [**Confidential Information Removed**].

3.3.6. Massmart has also begun to convert its current General Merchandise discounter format, Game, into a Super Store format "Game Foodco", by adding a full range of groceries. Massmart has also begun to increase its food retail offering to its Makro Warehouse Club format.

3.3.7. Furthermore, we draw the Competition Tribunal's (the "**Tribunal**") attention to Exhibit 17 to the merger filing, which comprises documents prepared for Massmart's Strategy Review Conference on 25 May 2010. Such documents

set out, *inter alia*, Massmart's retail strategy for the period 2011 to 2013. In particular, we refer the Tribunal's attention to the following portions of Exhibit 17, namely -

3.3.7.1. document entitled "*Massmart Strategy Document 2011 to 2013*" (dated May 2010), at paragraph 7 on page 18;

3.3.7.2. document entitled "[**Confidential Information Removed**]" (dated 15 April 2010), at paragraph 5 on page 60;

3.3.7.3. document entitled "*Massdiscounters Strategy Document*" (dated May 2010), at paragraphs 7 to 9 on pages 22 to 40, in relation to "Game", and paragraph 10 on page 57, in relation to Dion Wired;

3.3.7.4. document entitled "*Makro Strategy Document*" (dated May 2010), at paragraph 6 on page 14;

3.3.7.5. document entitled "*Masscash Strategy Document*" (dated May 2010), at Annexure C ("**Confidential Information Removed**"); and

3.3.7.6. document entitled "*Massbuild Strategic Intent Document*" (dated April 2010), at paragraph 6 on page 16.

3.3.8. It is possible that, should these initiatives be successful, within 5 years, [**Confidential Information Removed**].

3.3.9. Massmart is also considering ways of having a greater presence in [**Confidential Information Removed**].

3.4. *Organic and Acquisitive Growth*

3.4.1. New Stores: Through Massmart's four Divisions, it operates several very successful formats and each of those formats has plans to open new stores (a total of between 50 and 100 stores before the end of June 2013). It must be

noted that the plans to open stores are a result of detailed market analysis and market research and that Massmart will continue to open new stores that generate sufficient financial returns to justify the investment risk. [**Confidential Information Removed**].

3.4.2. Africa: Included in Massmart's organic expansion plans is an extension of the footprint of all of its formats into countries in Africa outside of South Africa. Given the challenges of securing property generally, Massmart's rate of expansion in this regard is more difficult to predict. [**Confidential Information Removed**]

3.4.3. [**Confidential Information Removed**]

3.5. *Sustainable Growth*

3.5.1. BEE: Massmart is committed, both morally and legally, to BEE and is proud of achieving a level 3 status. The proposed transaction, and some technical hurdles, will reduce that score, but plans are being put in place to improve Massmart's score every year thereafter. All parts of the scorecard are important, but Massmart is particularly proud of its Employment Equity score. A focus for the next few years is improving Massmart's procurement score.

3.5.2. Climate Change: Massmart subscribes to the reality of climate change and is committed to playing a role in addressing this problem. Massmart has two programs. One is to reduce its own generated carbon footprint. The second is to work with Massmart's suppliers to reduce theirs.

3.5.3. Governance: Massmart believes that good governance is a pre-requisite to being a great company. Massmart is therefore committed to complying with all of the various codes applicable to a company such as Massmart.

3.6. *Leadership and Transformation*

Massmart recognises that, ultimately, the competitiveness of an organisation is entrenched in the quality of its leadership. Therefore, Massmart has established a virtual University which focuses on internal leadership development. In particular, this supports the

implementation of an internal *Succession* process, which seeks to ensure the supply of future leaders. Massmart's *Graduate Program* which employs approximately 50 graduates per annum (mostly historically disadvantaged) and trains them for twelve months before trying to place them in positions throughout the group, has been running for four years. Both programs constitute empowerment measures to address the diversity of senior management.

4. Massmart's view as to how Wal-Mart will assist its expansion and growth aspirations

4.1. In the process of Massmart's due diligence of Wal-Mart, Massmart sought to understand Wal-Mart's intentions in the event that Wal-Mart is able successfully to acquire Massmart. Massmart has understood that Wal-Mart's philosophy is "*local management for local customers*" which is in fact a philosophy shared by Massmart in its own regional expansion. In testing that philosophy, I took comfort from the fact that –

- 4.1.1. Wal-Mart wants to retain all current management and wanted to understand that we have a strong succession process;
- 4.1.2. Wal-Mart wants to retain a local Board and a local listing;
- 4.1.3. Wal-Mart is committed to complying with South African legislation, governmental policies and socio-economic objectives, including, without limitation, a particular focus on BBBEE and Employment Equity;
- 4.1.4. Wal-Mart believes in respect for the individual;
- 4.1.5. Wal-Mart's ethical standards are as strong as Massmart's (if not stronger);
- 4.1.6. Wal-Mart's commitment to governance is as strong as Massmart's (if not stronger);
- 4.1.7. Wal-Mart's commitment to ethical sourcing is as strong as Massmart's (if not stronger);

- 4.1.8. Wal-Mart wants to retain the Massmart Employee Share Option Scheme and Management Incentive Scheme in their present forms;
 - 4.1.9. Wal-Mart wants to retain and improve our relationships with organised labour;
 - 4.1.10. Wal-Mart has confirmed to Massmart that these philosophies have been applied to other countries in which it operates, such as the UK, Mexico and Chile; and
 - 4.1.11. Wal-Mart is in agreement with the general strategic and operational direction of Massmart, with a view to improving rather than changing its approach.
- 4.2. From the outset of discussions, I have been clear that Massmart is very eager to access the Wal-Mart Intellectual Property. [**Confidential Information Removed**] I have recommended that, should the proposed transaction be successful, Wal-Mart should "*open their cupboards*" and allow Massmart to select what it thinks will be of most value to the Massmart business. Having been exposed to and understood their "Integration" process, I am comfortable that this will be the mode of operation going forward. In essence, Massmart will select and deploy those Wal-Mart practices that are viable in the South African and African context and which enhance the execution of Massmart's strategy.
- 4.3. Massmart is a large, successful operator in African markets. Massmart has significant local expertise and general retail expertise. I have no doubt that we will learn much from Wal-Mart as it is 10 to 15 years further down the development track than Massmart. I also believe, however, that Wal-Mart will learn much from Massmart.
- 4.4. In light of the above considerations, I believe that Wal-Mart will not significantly deflect Massmart from its strategic destination, but will rather assist Massmart in getting there faster and with less risk (i.e. mistakes). Massmart will draw on Wal-Mart's experience [**Confidential Information Removed**]. Massmart can always learn how to be better retailers and serve customers better.
- 4.5. Nevertheless, [**Confidential Information Removed**]. The major benefit that Wal-Mart will bring to Massmart's expansion plan is a limitation of risk. Wal-Mart has significant global

experience in [**Confidential Information Removed**]. In short, Wal-Mart's control over Massmart will not alter this strategy, but will simply enable Massmart to engage in such strategy with a lower risk of failure.

5. The competitiveness of the South African wholesale / retail sector

5.1. The wholesale and retail markets we serve in South Africa are far from homogeneous and characterised by a number of different segments. Broadly put, such segments include –

5.1.1. food wholesale / cash & carry;

5.1.2. food retail;

5.1.3. home improvement / DIY products and building materials; and

5.1.4. general merchandise.

5.2. The *wholesale food sector* is in a state of decline. Traditionally, low income areas within South Africa have largely been served by small and informal retailers which have principally obtained their goods from cash & carry wholesalers such as Massmart and Metro Cash & Carry. However, with the exception of Woolworths, all of the major grocery chains active in South Africa have now begun extending their store networks into areas previously primarily served by independents, spazas, and hawkers, using both their pre-existing store brands and formats (e.g. Shoprite/Checkers) and sub-brands and formats targeted specifically at lower income consumers (e.g. the Boxer brand used by Pick & Pay). This penetration by the major retailers into lower income areas has served to erode the customer base of the cash & carry wholesalers.

5.3. The *retail food sector* in South Africa is concentrated in the hands of four groups namely, Shoprite, Pick n Pay, Woolworths and Spar. South Africa's major retailers operate in a highly competitive environment where the margins are slim. Despite this, they run innovative, sophisticated and profitable businesses. They have good infrastructure (including buying structures, regional offices and store locations). Furthermore, they have developed centralised procurement systems with distribution centres located in major metropolitan areas, spread throughout the country. While the traditional focus of the four

major retailers has been on consumers in the upper LSM range, they are shifting their focus towards markets historically served by independent traders, spazas, and hawkers.

5.4. The *home improvement / DIY products and building materials* sector is generally regarded as a cyclical one and, at present, the trend appears to tend towards consolidation. Nevertheless, it remains a highly competitive sector with the presence of numerous effective competitors such as Cashbuild, Mica, Iliad, Italtile and Massmart's Massbuild operations.

5.5. Given the disparate nature of goods that make up the *general merchandise* category, this sector in South Africa is contested by major competitors including, amongst others, Massmart, Pick n Pay, Ellerines, Shoprite, Incredible Connection, Hi-Fi Corporation, JD Group, Mr Price and various suppliers. Whilst Massmart's operating divisions (i.e. Massdiscounters and Masswarehouse) enjoy significant market shares in this sector, it remains a fiercely contested and highly competitive space. It also bears mention that this sector is characterised by the highest proportion of imported goods.

5.6. Approximately [**Confidential Information Removed**]% of Massmart's turnover is attributable to its operations in each of the *food wholesale* and *home improvement / DIY and building materials* sectors. It is my understanding that –

5.6.1. Wal-Mart has limited experience in the *home improvement / DIY and building materials* sector in which our Massbuild division operates; and

5.6.2. the cash & carry wholesale operations of our Masscash division have evolved through years of experience in what is very much a South African context.

It is my view, therefore, that the implementation of the proposed transaction is unlikely to have any material impact on Massmart's operations in either of these sectors.

5.7. To my mind, Massmart stands to benefit most in the *food retail* sector into which it has significant expansion aspirations. The proposed transaction will allow Massmart (the fifth largest participant in this sector, substantially behind the 4 major retailers) to draw on the skills, systems and processes already developed, tried and tested by Wal-Mart with a view [**Confidential Information Removed**]. Wal-Mart's global leadership in sourcing

[**Confidential Information Removed**] will introduce new skills and technologies to assist Massmart in becoming a significant distributor of locally produced [**Confidential Information Removed**].

5.8. Be that as it may, one cannot lose sight of the fact that Wal-Mart is seeking entry, through the proposed transaction, into a mature, sophisticated and innovative trading environment, characterised by well-established, entrenched competitors. In my experience, it is extremely difficult for firms in such an environment to increase their market shares in any given product category by a significant amount and for an enduring period. Not only is this a costly exercise (since it is generally achieved either through investment or the lowering of margins), but the responsiveness of competitors is such that market share growth is capable of rapidly being offset by the reactions of competitors. Thus, market share growth tends to be transient in nature and costly to achieve. It follows, therefore, that the incumbent participants in each of the broad markets described above can be expected to react to Wal-Mart's entry as they would to any other competitor intent on encroaching upon their market shares. In fact, I understand that Shoprite has already begun implementing a competitive response to Wal-Mart's entry.

6. Massmart's approach to procurement

6.1. At the outset, it is important to note that Massmart does not have a formal procurement policy. Rather, its procurement *philosophy* is based on good retail practice. Most important in this regard is Massmart's focus on diversity of supply : Massmart endeavours to procure supplies from a variety of sources in order to diversify risk. Massmart does not take decisions based on short-term pricing considerations and, for simple commercial reasons, cannot be reliant on a small pool of suppliers.

6.2. Massmart does not, therefore, pursue price of supply at all costs. It balances efficiency of supply with supplier diversity.

6.3. Ultimately, Massmart's procurement philosophy is driven by consumer choice. Massmart procures products from suppliers because consumers buy those products from Massmart. The most important factor is therefore whether the product sells, and not from where that

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product is sourced. Other than for the purposes of diversity of supply and BBEE considerations, it is irrelevant to Massmart whether a particular product is locally manufactured, locally assembled with all or some foreign components or fully imported.

6.4. Massmart is simply not able to dictate consumer choice. As indicated in paragraph 5 hereof and paragraph 6 of Exhibit 1 to the merger filing, there is sufficient competition in each of Massmart's business units for consumers to go elsewhere if they are not satisfied with Massmart's product range (including as a result of breadth of choice, pricing and quality of products).

6.5. Suppliers also make their own decisions relating to local versus international manufacture based on their own commercial considerations. It is my understanding, for example, that some suppliers of white goods can, in the space of a year and with relative ease, adopt any one or more of the following methods of production for specific lines -

6.5.1. assemble locally, using locally manufactured products;

6.5.2. assemble locally, using a combination of locally manufactured and imported components;

6.5.3. assemble locally, using only imported components; and

6.5.4. import fully assembled products.

All of this is outside Massmart's control.

6.6. In particular, it is worth noting that food commodities (wheat, maize, sugar, oil, and the like) are traded on the global markets and depend on supply and production dynamics that can significantly shift local/import proportion in very short periods. These commodities form the basis for any production in South Africa and therefore "*local content*" can shift fast, is managed by the suppliers, and is beyond the control of Massmart.

6.7. Within this paradigm, Massmart certainly attempts to procure its products as cheaply as possible. However, as indicated above, price is not the sole determinant of Massmart's procurement philosophy. In fact, Massmart's business is premised on the assumption that all of Massmart's major competitors are able to procure goods from suppliers at substantially

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similar prices. The differentiating factor, therefore (over and above servicing customers better), is the ability to move the product from the factory floor to the store shelf more efficiently than its competitors, thereby obtaining a competitive advantage. If this approach is successful, it will allow both the suppliers and the merchant to be more profitable, while offering lower pricing to consumers. It is important to note in this regard that a large portion of the cost of products is manageable. These costs include transportation costs, holding costs (through better planning and stock management) and the management of supply chain inefficiencies (such as damages, waste, stock losses, and the like).

6.8. In any event, in the context of security of supply, local procurement strategies (as opposed to the importing of goods) are important for firms such as Massmart for, *inter alia*, the following reasons, namely –

- 6.8.1. consumers' local tastes and local product regulations and specifications;
- 6.8.2. the security of supply afforded by domestic suppliers, compared to international suppliers;
- 6.8.3. the transport and logistical costs associated with importing a product;
- 6.8.4. supply volatility and lead times associated with imports (for instance the strike action that disrupted South Africa's major ports in May 2010). In particular, higher lead times of supply attract associated costs, such as the cost of higher stock levels to account for such lead times;
- 6.8.5. environmental factors (such as droughts and floods);
- 6.8.6. commodity pricing; and
- 6.8.7. volatility in exchange rates.

6.9. Thus, the decision to procure goods locally or to import same draws on far more than a simple price comparison. The above considerations serve also to highlight the folly of placing too much emphasis on foreign procurement strategies to the exclusion of a strong local supplier base.

- 6.10. With reference to products *sourced* from local suppliers, but *imported* by them, the value-add of those local suppliers determines their competitiveness, as the cost of sourcing the product from the manufactures, irrespective of their location, is likely to be very similar for all parties. The value-add, other than managing supply chain costs together with the retailer, lies primarily in the ownership and management of the Brand. A well-managed Brand communicates a price-quality trade-off, trust, support and service, warranties, reliability, ethics, and related considerations. Whilst it may be possible to source a similar product from the same manufacturer, it would have to be under a different Brand and therefore, it is the management of the Brand that is the source of the competitive advantage. As long as consumers desire that Brand, we will source it from that supplier. When that is no longer the case and the value-add of the Brand is less than the price premium it generates, then consumers stop buying it, and then so does Massmart.
- 6.11. It bears emphasis that current local procurement initiatives on the part of Massmart are undertaken to fulfil Massmart's commercial strategy and to satisfy its customers' needs. Current patterns of procurement are primarily determined by fundamental economic considerations, such as innate competitive advantages in production, the strength of local preference for domestic brands, the minimum quantities that can be viably imported, the magnitude of transport and storage costs, the degradation of product quality in transit, the importance of security of supply, and the extent to which local servicing and support are required. As the acquisition of Massmart by Wal-Mart will not have a material impact on these fundamental economic determinants, the basic procurement patterns currently seen within the Massmart business are unlikely to be changed significantly by the proposed transaction. Simply put, local procurement is being, and will continue to be, pursued by Massmart and Wal-Mart because it makes commercial sense to do so.
- 6.12. Massmart is the industry leader in BBBEE, achieving an Empowerdex rating of AA. As evidenced by its latest BBBEE scorecard, Massmart scores 12.55 points out of a maximum of 20 for preferential procurement; and 15 out of 15 for enterprise development. Self-evidently, this is something on which Massmart places substantial importance. Nevertheless, while corporate social responsibility cannot be ignored by firms operating in South Africa, local procurement in the wholesale/retail arena is commercially justifiable as profit-maximising conduct in its own right. Moreover, there are good reasons to expect the

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existing level of procurement from BBBEE suppliers to be maintained after the Wal-Mart acquisition, including -

- 6.12.1. in many cases, BBBEE suppliers to Massmart provide it with local services, which, by their nature cannot readily be replaced by international suppliers. In other cases, where the BBBEE supplier is supplying Massmart with goods for resale, the products concerned are primarily targeted at black consumers, and BBBEE suppliers are competitively well-placed to meet their demand. An example of one such set of products would be black health and beauty products. Moreover, to the extent that Massmart increases its sales of such products with the expansion of its retail network into lower LSM markets, and to the extent that the Wal-Mart acquisition quickens the pace of that expansion or ultimately results in a larger retail network than otherwise, opportunities for BBBEE suppliers will be increased by the merger;
 - 6.12.2. a strong BBBEE scorecard delivers tangible commercial benefits which will continue to influence the procurement and commercial practices of Massmart after the acquisition by Wal-Mart. These benefits arise from the enhanced opportunities which a strong BBBEE scorecard provides for supplying public bodies, as well as in making Massmart an attractive source of supply for other commercial firms, whose own BBBEE scorecards benefit from association with the Massmart scorecard. For example, **[Confidential Information Removed]**;
 - 6.12.3. another area in which BBBEE credentials are important is in supply to feeding schemes. **[Confidential Information Removed]**.
- 6.13. Within Masscash alone, suppliers who requested to see its BBBEE scorecard supplied over R**[Confidential Information Removed]** of goods in 2009 and R**[Confidential Information Removed]** in 2010. Moreover, Massmart estimates that R**[Confidential Information Removed]** of business was won and R**[Confidential Information Removed]** lost by Masscash, Massbuild, and Makro in the last year on the basis of its BBBEE scorecard. Inevitably, this is likely substantially to underestimate the amount of business at stake as it considers only that business known by Massmart to have been influenced by BBBEE

considerations. There will undoubtedly be other business where Massmart's BBEE scorecard has played a role, but where this has not been readily apparent.

6.14. Thus, Massmart is committed to procuring from historically disadvantaged and SMME suppliers, not only for the benefit of the suppliers, but for its own commercial advantage. In its response to the Department of Economic Development (the "EDD") dated 28 October 2010, Massmart explained that *"[it] currently sources [Confidential Information Removed]% [of its products] from SMMEs. There are no plans to reduce this number as they play an important role in balancing the power of the large suppliers. With [Massmart's] BEE plans it is more likely that the current SMMEs grow into large enterprises as [it] increase[s] procurement from them. WHAT IS LIKELY TO CHANGE: [Massmart] cannot envisage any change under Walmart ownership"*.

6.15. The above statements were clarified both to the EDD and in a letter to the Commission dated 7 December 2010 in which it was submitted that Massmart does not classify suppliers as SMMEs or otherwise in its database. Consequently, the *[Confidential Information Removed]%* figure referred to in Massmart's response to the EDD is an *estimate* derived from an analysis of suppliers from which Massmart purchases less than R*[Confidential Information Removed]* worth of goods in any given year – on the assumption that relatively modest annual sales to Massmart are more likely to be attributable to SMMEs. Self-evidently, Massmart has no way of establishing whether or not a particular supplier who sells it, for example, R*[Confidential Information Removed]* worth of stock in any given year has similar relationships with other customers – thereby making it less likely that such a supplier will fall to be categorised as a SMME. Moreover, the debate around precisely what characterises a SMME is a fiercely contested, unsettled space where differing opinions abound.

6.16. Massmart does not in any way prevent sourcing of products based on the size of the supplier. *[Confidential Information Removed]*

6.17. Notwithstanding this, Massmart's experience is that it is very difficult to find small manufacturers that meet the requisite national standards. Massmart has sought the

assistance of various organisations (such as Empowerment SA, the National Small Business Council, Shanduka Black Umbrellas, and most recently, the SMME Forum) to assist it in identifying SMME manufacturers, but has met with limited success in this regard.

6.18. In any event, were it Massmart's strategy to move towards sourcing more of its products internationally post the implementation of the proposed merger (which is unlikely to be the case), this will not have a significant negative effect on the South African manufacturing and supply sectors for the simple reason that the wholesale / retail sector in South Africa is a mature and competitive one, characterised by a number of alternative channels to the market. I would be very surprised if Wal-Mart adopted a procurement strategy that differs substantially from Massmart's. It would in my view be illogical for Wal-Mart to pursue low prices at all costs or to bypass the South African supply chain – it makes far more sense from a commercial perspective for suppliers and retailers to build a mutually beneficial and sustainable relationship. This will certainly not be the case if Wal-Mart attempts to bypass the South African supply chain, or to squeeze prices to the degree of unsustainability. Wal-Mart may, however, be able to replace some international agents, based outside South Africa, or at least reduce the charges they apply

6.19. On the basis of the foregoing, I am of the view that the focus of the trade unions, the EDD, the Department of Trade and Industry (the "DTI") and the Department of Agriculture, Forestry and Fisheries (the "DAFF") on local procurement targets is misplaced. This is dealt with in further detail in paragraph 8 below.

7. Employment considerations

7.1. As appears from paragraph 5 hereof, Wal-Mart's acquisition of control over Massmart will not have the effect on local suppliers that has been alleged in various submissions filed with the Tribunal in this matter. In particular, Wal-Mart will not bring about a massive change to the manner in which Massmart procures products. In the first instance, Massmart is already an efficient procurer of products and Wal-Mart's abilities in this regard will give rise to benefits (if any) only at the margin. Secondly, it is entirely incorrect to assume that Massmart's (and indeed Wal-Mart's) procurement strategy is premised on squeezing

suppliers for the lowest possible price. In this regard, Massmart's (and, as I understand the position, Wal-Mart's too) competitive advantage flows from developing a relationship with suppliers, so as to develop a mutually beneficial, efficient way to move goods from the factory floor to the store shelf. It is simply not good commercial practice to squeeze a supplier to the extent that that supplier's business becomes unsustainable.

7.2. Trade union negotiations take place on a decentralised basis within Massmart's various operating divisions, namely Masscash, Masswarehouse, Massbuild and Massdiscounters. It is important to note that only 38% of Massmart's entire workforce is currently unionised. **[Confidential Information Removed]** It is thus clear that Massmart respects the rights of its employees and the trade unions that represent them.

7.3. Massmart has always formally expressed its desire to be the first employment choice for career retailers and has worked hard to attract employees who see Massmart as a career destination. This will not change following the acquisition of control over Massmart by Wal-Mart as it is a self-serving approach – if employees are happy in their jobs, an employer can attract better quality employees and will get more out of them.

7.4. The concerns around the impact of the proposed transaction appear to me to be based on speculation which is, in any event, not specific to this particular transaction and its implementation in South Africa. Furthermore, I am particularly proud of South Africa's modern Constitutional democracy and the institutions created to give effect thereto (for instance the Civil and Criminal Courts, CCMA, Labour Courts, Commission and Tribunal, Human Rights Commission, Constitutional Court and Equality Court, to name a few). I can see no great opportunity, under the watchful eye of these institutions, for the wanton and sustained abuse of human rights by an employer (whether in the context of labour relations or otherwise).

7.5. Massmart's position in relation to the employment considerations is further borne out by the very clear characterisation of the proposed transaction by both Massmart and Wal-Mart as a vehicle for growth and expansion. From Massmart's perspective, the proposed transaction will enable the merged entity to implement Massmart's pre-existing expansion plans with

more confidence and on an expedited basis, particularly in light of Massmart's current emphasis on expanding its fresh grocery operations.

7.6. It is specifically denied that Massmart has been adjusting its operational practices in preparation for a takeover by Wal-Mart. While Massmart was certainly aware of the possible entrance of Wal-Mart into the South African market, there was no certainty that Massmart would be the target (or in fact that Wal-Mart would not choose to enter South Africa on its own as a greenfields operation). In Massmart's constant endeavours to become more competitive, it has been engaging in a process to implement international best practice to prepare for global competition. As far as I am aware, all other South African wholesalers / retailers have attempted to do the same (with varying degrees of success).

7.7. The fact that Massmart's reaction to the global competitive environment has been interpreted by SACCAWU as a negative shift in Massmart's approach to organised labour, and an effective adoption of "*Wal-Mart's notorious anti-Union practices*" is unfortunate and misplaced.

7.8. I turn now to address the allegation that the retrenchment of approximately 500 employees during or about June 2010 (the "**Game Retrenchments**"), effected by the Masdiscounters division, was somehow linked to the proposed transaction. The background to the Game Retrenchments is as follows –

7.8.1. during October 2009, Masdiscounters made several changes to its management structure aimed at improving the alignment of its organisational structure and capabilities to its long-term strategy. Thus, Masdiscounters sought to eliminate duplication and enhance efficiencies, whilst ensuring that it continued to re-invest in the correct areas. Consequently, the creative use of new information technology and the elimination of duplication became a business imperative;

7.8.2. the investment in regional distribution centres, new technology and the consolidation of workflows indicated that fewer employees were required (as a result of fewer positions available). This gave rise to the consideration of

retrenchments in certain areas of the Massdiscounters business. To elaborate, (i) the advent of the Distribution Centres necessitated a review of staffing structures where duplication of effort occurred; and (ii) initiatives that leverage global technology with a focus on ensuring efficient execution of process in response to a very competitive retailing market, were introduced into Massdiscounters. For instance, interventions such as Space Planning , Green Light Receiving and RF scanners, and Deposita served to reinforce Massdiscounters' goal of remaining sustainable and competitive; and

7.8.3. factors such as (i) the existence of two Game stores servicing the same catchment area in Nelspruit; (ii) the opening of the new l'Langa Mall development in Nelspruit; and (iii) difficulties experienced by Massdiscounters in re-negotiating of the lease of its existing Game store situated within the Nelspruit Riverside Mall, caused Massdiscounters to determine that the only feasible and sustainable business strategy for Game in Nelspruit would be to take on larger premises in the l'Langa Mall development and to reduce the two existing Game stores to one.

7.9. Consequently, Massdiscounters resolved to meet with the representative trade union, SACCAWU, under the auspices of the Commission for Conciliation and Mediation (the "CCMA") to facilitate a retrenchment process in terms of section 189A of the Labour Relations Act, No 66 of 1995 (as amended). Consultations between SACCAWU and Massdiscounters commenced on 8 February 2010 and ended on 19 April 2010 with SACCAWU declaring a dispute with Massdiscounters. A follow-up meeting with SACCAWU was subsequently held on 23 and 24 June 2010, during which the parties sought to find ways to reduce the number of potential retrenchments. The meeting ended with no agreement being reached and the Game Retrenchments proceeded to be finalised.

7.10. For completeness, I point out that the Game Retrenchments were the subject of subsequent (i) strike action on the part of SACCAWU (which was largely unsuccessful with some 31 employees participating); a lock-out on the part of Massdiscounters (which was challenged by SACCAWU as being unlawful before the Labour Court and dismissed with

costs); and an unsuccessful attempt by SACCAWU to initiate the conciliation machinery of the CCMA (which failed on jurisdictional grounds).

7.11. Importantly, the Game Retrenchments had their origins in operational requirements arising out of the business and strategic imperatives attendant upon Massdiscounters from October 2009 to June 2010. This period clearly predates any agreement between Massmart and Wal-Mart regarding the proposed transaction (such as that contemplated under the Firm Offer) or understanding in this regard (such as that contemplated under the Expression of Interest). Consequently, the Game Retrenchments are not attributable to or associated with the proposed transaction.

7.12. Lest there be any residual doubt in this regard, the following circumstances, in my view, eliminate the alleged possibility of a nexus between the Game Retrenchments and the proposed transaction –

7.12.1. on 26 September 2010, Massmart received from Wal-Mart the Expression of Interest. Despite having known for some time that Wal-Mart was interested in acquiring a target in South Africa, Wal-Mart's selection of Massmart as the preferred target was only revealed to Massmart on the aforementioned date;

7.12.2. the Expression of Interest was followed by a SENS announcement issued by Massmart in accordance with its obligations as a listed company under and in terms of the JSE Listing Requirements, the Securities Regulation Code on Takeovers and Mergers, and the SRP Rules;

7.12.3. it beggars belief to suggest that Massmart would elect to initiate concrete steps such as the Game Retrenchments in anticipation of an uncertain, future proposed transaction unless it had a significant degree of comfort that the proposed transaction in question would eventuate. Importantly, however, that degree of comfort would necessitate the publication by Massmart of a SENS announcement. This publication only occurred on 26 September 2010, long after the finalisation of the Game Retrenchments; and

7.12.4. given that Massmart's SENS announcement was published after its receipt of the Expression of Interest on 26 September 2010, the overwhelming conclusion is that no proposed transaction (potential or otherwise) existed between Massmart and Wal-Mart at the time of the Game Retrenchments – such that the more plausible explanation therefor is that described above. Moreover, in its referral of the matter to the Tribunal, the Commission concluded that it “*could not find any evidence suggesting that these retrenchments and reengineering strategy was done in anticipation of the proposed acquisition*”.

7.13. For the reasons set out above, the Game Retrenchments were motivated by operational requirements that both pre-dated and were independent of, the proposed acquisition by Wal-Mart of control over Massmart. Consequently, the Game Retrenchments are in no way attributable to the proposed transaction (whether directly or indirectly).

8. Engagement with stakeholders

8.1. On or about 26 September 2010, Wal-Mart made a preliminary, non-binding proposal which, if successful, could result in Wal-Mart acquiring the entire issued share capital of Massmart.

8.2. With effect from 27 September 2010, Massmart embarked upon an extensive communication drive aimed at introducing the proposed transaction to a diverse array of stakeholders. Key stakeholder interaction around the proposed transaction included communication with –

8.2.1. Massmart's employees (with a specific focus on the beneficiaries of the Thuthukani Empowerment Trust);

8.2.2. Government departments and institutions (including the Reserve Bank, the EDD, the DTI and the Commission);

8.2.3. organised labour (i.e. trade unions);

8.2.4. Massmart's suppliers (by way of Supplier Workshops held in Sandton, Cape Town and Durban); and

- 8.2.5. journalists, analysts and other media representatives.

- 8.3. My interaction with the EDD and various trade unions is addressed in detail below.

- 8.4. I was contacted by Minister Patel of the EDD shortly after the announcement of Wal-Mart's proposal and requested to attend a meeting regarding the proposed transaction at the DTI campus in Pretoria. This meeting was held on 7 October 2010, following the public announcement of the proposed transaction, and attended by, amongst others, Ministers Patel and Davis.

- 8.5. At this meeting, it was proposed that Massmart meet with a working group to further explore the proposed transaction. Shortly after the above meeting, I understand that Minister Patel established a panel for the purpose of advising the EDD on the likely implications of the proposed acquisition by Wal-Mart of a majority stake in Massmart (the "**Panel**"). To the best of my knowledge, this Panel included the deputy director-general of economic development Neva Makgetla, Standard Bank group economist Goolam Ballim, Industrial Development Corporation CEO Geoffrey Qhena and Iraj Abedian from Pan-African Investment and Research Services.

- 8.6. I met with the Panel on 26 October 2010. During this meeting, the possibility of establishing local content targets was one of a number of propositions put to me. My response was as follows –
 - 8.6.1. Massmart has no means of accurately reporting on its local content per product category. While Massmart can easily ascertain whether its products are sourced locally or from abroad, it cannot discern the import content of the products that it sources locally. Thus, a particular product that it sources from a local supplier could be imported by that supplier, assembled by that supplier using only imported components, assembled by that supplier using a combination of local and imported components, assembled by that supplier using only local components, or manufactured by that supplier locally;

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- 8.6.2. I was unaware of any regulatory standard on the definition of “*local*” in the relevant industries;
- 8.6.3. it is inadvisable for the Government to seek to promote local procurement through the imposition of asymmetric regulations on one competitor in the wholesale / retail sector. The obvious, immediate consequence of such an approach is that this will distort competition to the detriment of the merged entity; and
- 8.6.4. if this were to become Government policy, I suggested that the protection, promotion and enhancement of the local food production, manufacturing and supply sectors can only be achieved through well-formulated, governmental regulations, applicable to the entire sector, and capable of meaningful implementation and monitoring. I suggested that Massmart is well placed to assist Government in this regard and volunteered Massmart’s assistance.
- 8.7. Despite my having made an offer to meet directly with the Panellists to further discuss the proposed transaction, I did not receive an invitation to do so. Instead, I received two letters from the Director General of the EDD, Richard Levin, dated 22 October 2010 and 25 October 2010 respectively (copies of which are **Annexures “GP 1”** and **“GP 2”** hereto), seeking from Massmart information relating to its activities and the proposed transaction. Massmart’s responses to these letters were sent to the Panel, through Andile Mabizela, on 28 October 2010 (copies of which are **Annexures “GP 3”** and **“GP 4”** hereto). Massmart’s procurement data requested in Annexure “GP 1” hereto was sent to the Panel (once again, through Andile Mabizela), on 10 November 2010 (a copy of which is **Annexure “GP 5”** hereto).
- 8.8. At no stage during Massmart’s interaction with the EDD or the Panel was it ever communicated to Massmart that our responses were in any way incomplete, inadequate or submitted too late. In fact, the first time that I became aware of such allegations on the part of the EDD was upon my reading of the Submission on behalf of the EDD, the DTI and the DAFF, dated 28 February 2011.

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- 8.9. On 26 January 2011, in a letter addressed to me by Richard Levin (a copy of which is **Annexure “GP 6”** hereto), Minister Patel invited me to attend a meeting for the purposes of discussing the Panel’s findings. In this letter, Richard Levin informed me that *“we require information from you regarding imports. You gave us information on what you import directly and what you buy locally, including from importers. In addition please give figures on the percentage of products on your shelves that are imported, using the same breakdown by type of commodity. Please send this information to nmakgetla@economic.gov.za, preferably by Friday.”* This data was duly collated and sent to the EDD two days later on 28 January 2011. It was reiterated, in the covering email (a copy of which is **Annexure “GP 7”** hereto), that the collation of data involved estimates by our merchants as this data is not captured on our systems, and that, consequently, we have no means of evaluating the empirical accuracy of the exercise.
- 8.10. The meeting requested by Minister Patel in Annexure “GP 6” took place on 3 February 2011 and was attended by me, Llewellyn Steeneveldt, Minister Patel, Richard Levin and Gavin Hartford. During this meeting, Minister Patel –
- 8.10.1. informed me that he had discussed with Wal-Mart in a meeting in Davos that Massmart/Wal-Mart should make a *“statement of intent”* in relation to labour (employment) standards and support of local manufacturers, SMME’s and BEE procurement;
- 8.10.2. asked whether Massmart would be prepared to participate in an EDD facilitated *“social dialogue”* with trade unions and other social partners with an interest in the proposed transaction (the **“Social Dialogue”**); and
- 8.10.3. requested more granularity in relation to the procurement data contained in Annexures “GP 5” and “GP 7” hereto.
- 8.11. I responded to each of the foregoing requests as follows –
- 8.11.1. as regards the *“statement of intent”*, I handed Minister Patel a draft document prepared by Massmart which reflected Massmart’s position on the various topics raised by Minister Patel and the Panel. A copy of the draft *“statement of*

intent is **Annexure "GP 8"** hereto. Self-evidently, Massmart's position as set out in that document accords with my views expressed to Minister Patel during our first meeting (see paragraph 8.6 above). At the request of Minister Patel, I sent an electronic version of the draft "*statement of intent*" to the EDD and invited them to amend such document by including wording with which they were comfortable so that Massmart was better able to understand and consider with precision what was expected of them;

8.11.2. Massmart acceded to the request to participate in the Social Dialogue (as set out below); and

8.11.3. Massmart is unable to provide procurement data with greater specificity than that contained in Annexures "GP 5" and "GP 7" hereto, as this would be tantamount to guesswork on our part with no prospect of empirical verification by us. This is, self-evidently, an approach with which Massmart is not comfortable (as reflected in my comments to Minister Patel during our first meeting described in paragraph 8.6.1 above).

8.12. I have received no further meeting requests from either the EDD or the Panel.

8.13. The Social Dialogue can be divided into two separate streams – the first being interaction between Massmart and SACCAWU in relation to SACCAWU's demands around the proposed transaction (the "**SACCAWU Dialogue**"); and the second being broader dialogue between Massmart and various stakeholders with an interest in the proposed transaction (the "**Stakeholder Dialogue**").

8.14. The SACCAWU Dialogue commenced on 9 February 2011 and was facilitated by the EDD's Gavin Hartford. The trade unions represented at the meeting were SACCAWU and Uniglobe. I attended the meeting on behalf of Massmart, together with my assistant, Zandile Manana. At the commencement of the meeting, I made it clear that Massmart viewed the Social Dialogue as an opportunity for Massmart, organised labour and other stakeholders to meet with a view to deliberating on key matters of mutual concern affecting the management of their future relationship. I emphasised that Massmart did not view it as a forum for the

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negotiation of terms that could be used in the hearing before the Tribunal, and was not prepared to participate further if this perception was incorrect. Gavin Hartford allayed my concerns in this regard. During the first SACCAWU Dialogue meeting, SACCAWU was invited to table its demands which amounted to fifteen in all. Massmart was then invited to respond to each demand.

8.15. The second SACCAWU Dialogue meeting took place on 16 February 2011 and was attended by Gavin Hartford, Zandile Manana and me, and representatives of SACCAWU. The meeting afforded SACCAWU an opportunity to articulate its views on Massmart's response to its fifteen demands tabled at the first SACCAWU Dialogue meeting.

8.16. The third SACCAWU Dialogue meeting, which continued the discussion from the previous meeting, took place on 22 February 2011 and was once again attended by Gavin Hartford, Zandile Manana and me, and representatives of SACCAWU.

8.17. In my view, the discussions engaged in during the SACCAWU Dialogue meetings have been very useful in improving Massmart's understanding of SACCAWU's concerns and *vice versa*. Whilst neither party has necessarily accepted the other's position, I am hopeful that some common ground will be reached in the weeks ahead. It is my understanding, in this regard, that further meetings are scheduled for this purpose.

8.18. The first Stakeholder Dialogue meeting took place on 15 February 2011 and was attended by Gavin Hartford, Zandile Manana and me, and representatives of SACTWU, SACCAWU, NUMSA and Union Network. The object of the meeting was for the interested parties to discuss the proposed transaction, with a particular focus on local procurement and job losses. The topic of procurement targets was raised during the meeting and rejected by Massmart. An alternative approach was proposed by Massmart and rejected by the trade unions present at the meeting.

8.19. The second Stakeholder Dialogue meeting took place on 22 February 2011 and was attended by Gavin Hartford, me, and representatives of SACTWU, SACCAWU and Union Network. At the opening of the meeting, I recorded my disappointment at the poor attendance from the other trade unions which had expressed an interest in participating, and

suggested that their absence served to diminish the credibility of the Stakeholder Dialogue process.

8.20. During this meeting, the parties discussed a draft document prepared by Gavin Hartford pursuant to the first Stakeholder Dialogue meeting, aimed at recording those matters where the parties had purportedly achieved consensus or some degree of alignment. This was the first time that I had received the proposed wording as discussed with the Minister on 3 February 2011 (see paragraph 8.11 above), which was after the Commission's referral of the matter to the Tribunal. This clearly contradicts allegations around a "*hardening*" of Massmart's position vis-à-vis the EDD and other stakeholders after having received a favourable recommendation from the Commission. In addition, the document had evolved from a "*statement of intent*" to a Memorandum of Understanding with Unions and now contained a schedule of procurement targets – a concept that I had specifically rejected first in October 2010 and in subsequent meetings with the trade unions and EDD since then. To date, no consensus has been achieved in relation to the precise nature, formulation and content of the document.

8.21. The third Stakeholder Dialogue meeting was scheduled for 2 March 2011, but cancelled by Gavin Hartford.

8.22. On 19 November 2010, Tebogo Khaas, the Founder and President of the SMME Forum, contacted Massmart and requested an opportunity "*to introduce the Forum to [Massmart] and identify any potential areas of co-operation between our respective organisations*". This request was accommodated and a meeting with Llewellyn Steeneveldt was held on 24 November 2010. A second meeting between Tebogo Khaas and Llewellyn Steeneveldt took place on 1 December 2010, at the offices of the SMME Forum. This was followed by a third meeting between them on 8 February 2011. During the above meetings, the participants, *inter alia*, explored opportunities for Massmart to benefit the members of the SMME Forum.

8.23. In light of the foregoing, it is apparent that –

8.23.1. Massmart has been, and continues to be, prepared to interact in meaningful dialogue with all stakeholders with an interest in the proposed transaction;

8.23.2. Massmart is committed to promote procurement of South African manufactured goods and services and will work closely with the EDD, DTI, DAFF, organised labour and other stakeholders to identify opportunities to support and develop local manufacturing with the objective of contributing to job creation. Importantly, however, such initiatives must be addressed at an industry level; and

8.23.3. at no stage during Massmart's engagement with stakeholders (including the EDD and the Panel) around the proposed transaction has it indicated any preparedness to accept a legally binding commitment to maintain and scale up local procurement. Rather, Massmart's outright rejection of asymmetric regulation of this nature was made apparent to the EDD and DTI during our first meeting on 7 October 2010.

9. Massmart's views on conditions

9.1. I am strongly of the view that it is not possible to impose procurement targets of the nature sought by the trade unions and the Government Departments. If Massmart / Wal-Mart tried (or was forced) to do this alone, it would be severely prejudiced as against its competitors and the obvious repercussion is that the merged entity would not be able to compete on an equal footing with its competitors. The likely outcome is that the merged entity will be forced to shed jobs as its competitors gain market share at its expense.

9.2. In addition, being forced to buy from particular suppliers would skew negotiations in favour of such suppliers, and normal market forces would no longer determine the outcome of negotiations. This will clearly have substantial, unintended competitive consequences. In particular, this will remove the incentive for local suppliers to become more efficient.

9.3. The ultimate effect of such targets will be to raise pricing. Consumers will be forced to fund inefficient suppliers / manufacturers, or buy the products they want from other retailers.

9.4. Put another way, the proportion of goods ultimately sourced from local manufacturing will change over time and fluctuate according to market forces. The majority of these market

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forces are outside of Massmart's control. Massmart cannot commit, by itself, to the current levels of procurement from local manufactures, not because we are not supportive of local manufacturing, but because to do so would fundamentally undermine the functioning of a competitive market.

9.5. On any basis, any such procurement targets can only be effective if they are –

9.5.1. Government legislated;

9.5.2. Government regulated; and

9.5.3. applicable across the entire value chain (in that it must apply equally to all retailers and suppliers).