

**IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA**

**CASE NO: 73/LM/Nov10**

In the large merger between:

**WAL-MART STORES, INC (“Walmart”)**

Primary Acquiring Firm

And

**MASSMART HOLDINGS LIMITED (“Massmart”)**

Primary Target Firm

---

**WITNESS STATEMENT**

---

I, the undersigned

**ETIENNE DOYLE VLOK**

do hereby declare that:

1. I am the Director of the SA Labour Research Institute (SALRI), the research wing of the SA Clothing & Textile Workers' Union (SACTWU), of 3rd Floor, Industria House, 350 Victoria Road, Salt River, Cape Town.
2. This witness statement together with its annexures set out a summary of the submissions SACTWU wishes to make at the Competition Tribunal hearing into this proposed merger.
3. **Background**
4. SACTWU is a registered trade union, duly registered in accordance with the provisions of the Labour Relations Act 66 of 1995. It is the biggest union in the clothing, textile and leather industry, representing about 90,000 members throughout the country.

5. SACTWU is concerned about the impact of the proposed merger between Walmart and Massmart.
6. **SACTWU's concerns**
7. SALRI has compiled reports for SACTWU on the impact of the proposed merger. These reports were used as the basis for SACTWU's preliminary submission and supplementary submission to the Competition Commission on 21 January 2011 and 11 February 2011 respectively.
8. The confidential version of SACTWU's supplementary submission is attached as Annexure 1.<sup>1</sup>
9. Below we reproduce a part of the supplementary submission to summarise the competition and public interest concerns. It should be noted that the body of the attached supplementary submission contains meaningful and considered research on and analysis of the impact of the proposed merger as well as evidence to substantiate the statements made in the summary below.

## **"2 Summary of competition and public interest concerns**

2.1 The contents of this supplementary submission and the preliminary submission contain facts and reports regarding Walmart's past practices and international business methodologies, references to case studies and information on conditions within, and the importance of, the retail and manufacturing sectors within the South African economy. It is submitted that this information demonstrates that the proposed transaction cannot be justified on public interest grounds and, furthermore, that it may give rise to a substantial lessening or prevention of competition.

2.2 In order to place this information in the context of the Commission's obligation to investigate the likely effect on competition and on public interest grounds, we consolidate and summarise below the reasons why the proposed

---

<sup>1</sup> SACTWU's supplementary submission was made to the Competition Commission on the day (11 February 2011) that the Commission submitted its recommendation to the Competition Tribunal and therefore, while it is part of the record of this proposed transaction, we understand that the Commission did not take it into account in compiling its recommendation to the Tribunal.

transaction is likely to lead to a substantial lessening or prevention of competition and to substantial public interest concerns –

2.2.1 in many of the developing countries which Walmart has entered, its entry has been followed by consolidation and increased levels of concentration. It is submitted that, given similarities between the South African economy and those of some of the developing countries which Walmart has entered (such as Mexico), and in light of Walmart's international practices and business methodologies, the proposed transaction is likely to lead to increased levels of concentration in South Africa over the long-term. Given that the Commission's own investigations in other matters have indicated that the retail sector suffers from negative inherent structural characteristics<sup>2</sup>, it is submitted that this indicates the merger is likely to lessen or prevent competition within the retail sector;

2.2.2 in addition to Walmart's practices in developing countries, it should be noted that the South African retail sector is a mature sector, which has characteristics similar to the retail sectors in developed economies. In the preliminary submission, a number of examples have been cited of Walmart's entry and/or expansion in developed countries leading to negative effects on concentration levels (as well as negative effects on public interest issues such as employment and regional economies). These examples remain relevant to the assessment of the proposed transaction given the mature nature of the South African retail sector;

2.2.3 the proposed transaction will also result in decreased demand within the retail sector for locally-produced products and increased demand for import products (in respect of the merged entity and its competitors). This will lead to –

2.2.3.1 significant foreclosure (on an industry-wide basis) of domestic manufacturers and suppliers within the industries which supply the retail sector, in particular within the South African clothing, textiles, leather and footwear goods manufacturing industry ("the clothing and textile industry"), but also within the furniture goods industry, the plastics industry, the white goods industry, and the like.<sup>3</sup> The foreclosure effects will result in the closure and/or significant down-sizing of such firms' operations;<sup>4</sup>

2.2.3.2 significant job losses within the clothing and textile industry, in particular of predominantly black and female employees, who comprise the vast majority of employees in

---

<sup>2</sup> See the Commission's Final Executive Summary in respect of the Supermarkets Investigation (Case numbers: 2009Jun4482, 2009Jul4585; 2009Aug4596; 2010Feb4898; 2010Mar4949; 2010Mar4994; 2010Jul5237) ("the Supermarket Investigations").

<sup>3</sup> It is noteworthy that none of the domestic manufacturers of clothing and textile products which are suppliers to Massmart, which SACTWU is aware of, have contractual commitments from Massmart and their supply arrangements can be terminated immediately.

<sup>4</sup> It is submitted that this will lead to a substantial lessening or prevention of competition in the affected markets.

these industries, which will increase the social welfare support burden on the state;<sup>5</sup>

2.2.3.3 negative effects for the stability of the South African manufacturing sector and, in particular, the clothing and textile industry as well as possible further de-industrialisation of the South African manufacturing sector, following the serious injury suffered as a result of the global economic recession;<sup>6</sup>

2.2.3.4 negative effects on employment and economic activities in certain "non-metropolitan" geographic regions in South Africa;<sup>7</sup>

2.2.3.5 the ability of small businesses and businesses owned or controlled by historically disadvantaged persons ("HDI firms"), which firms are suppliers to the merging parties and their competitors, to become competitive, in that these firms will not have access to the resources and economies of scale available to potential foreign suppliers to the merging parties;<sup>8</sup>

2.2.3.6 significant increases in the South African trade deficit;<sup>9</sup>

2.2.4 the proposed transaction will also result in the merged entity (and its competitors) seeking to place increased pressure on suppliers to reduce prices and accept more onerous supply terms. This will have a negative effect on the ability of smaller retail firms to compete given their already existing disadvantage in terms of relative bargaining power, resources and ability to negotiate favourable import contracts.<sup>10</sup> (See the Commission's preliminary findings in the Supermarket Investigations regarding the inherent structural characteristics of the market and the positions of market power enjoyed by large manufacturers and suppliers<sup>11</sup>);

2.2.5 the proposed transaction will also lead to worsened conditions for employees in the industry. Walmart's practices indicate that its lowering of prices comes at a significant cost to employees, who are compelled to accept lower wages and working conditions. This negates any consumer welfare benefits claimed by the merging parties arising out of lowering prices and also raises significant public

---

<sup>5</sup> It is submitted that this is a substantial public interest ground for the purposes of section 12A(3)(b) of the Competition Act.

<sup>6</sup> It is submitted that this is a substantial public interest ground for the purposes of section 12A(3)(a) of the Competition Act.

<sup>7</sup> It is submitted that this is a substantial public interest ground for the purposes of section 12A(3)(a) of the Competition Act.

<sup>8</sup> It is submitted that this is a substantial public interest ground for the purposes of section 12A(3)(c) of the Competition Act.

<sup>9</sup> It is submitted that this is a substantial public interest ground for the purposes of section 12A(3)(d) of the Competition Act.

<sup>10</sup> It is submitted that this will lead to a substantial lessening or prevention of competition in the retail sector and that this is also a substantial public interest concern for the purposes of section 12A(3)(c) of the Competition Act.

<sup>11</sup> Commission's Final Executive Summary, Supermarket Investigations.

interest concerns, in that it will affect conditions within the retail sector and within specific geographic regions;<sup>12</sup>

2.2.6 finally, although Walmart suggests that consumer welfare will benefit from lower overall costs for products, its example is based on a developed nation economy example (the United States of America ("the US")) and assesses only the single issue of household costs, ignoring other consumer welfare aspects such as net employment levels within the industry, consequential effects on related industries and net disposable household income increases in the number of persons reliant on social grants, which in turn negatively impacts the fiscus. There are a number of studies which assess the overall "high cost" of low prices and indicate that lower costs of the nature of those which Walmart claims to achieve in other jurisdictions have a substantial negative effect on employment, local or regional economies and other public interest considerations. In South Africa, this is a particular concern given that the South African unemployment rate is significant, and substantially higher than that of economies such as the US economy. Therefore, foreign studies may give far less attention to negative effects on employment (while focusing on other aspects) than would be relevant in the South African context.<sup>13</sup>

2.3 It is submitted that, given the absence of specific legislation and an industry regulator for the retail industry and the manufacturing industries affected by the proposed transaction, the Commission's obligation to investigate public interest issues in regard to the proposed transaction is a primary obligation and not a residual one, as stated by the Competition Tribunal ("the Tribunal") in cases where there is suitable legislation or an industry regulator.<sup>14</sup> It is submitted that the likely effect of the proposed transaction cannot be adequately investigated unless the Commission investigates –

2.3.1 the overall industry and market conditions; and

2.3.2 the vertical integration and foreclosure issues of the proposed transaction, having regard to Walmart's position in the upstream market for the global procurement and supply of products substitutable with the products sold by Massmart.

2.4 The public interest considerations are significant. If the proposed transaction is to be approved, this should be subject to strict conditions which maintain the competitive structure of the relevant markets and which ensure that the public interest is not prejudiced."

---

<sup>12</sup> It is submitted that this is a substantial public interest concern for the purposes of section 12A(3)(a) of the Competition Act.

<sup>13</sup> It is submitted that this is a substantial public interest concern for the purposes of sections 12A(3)(a) and 12A(3)(b).

<sup>14</sup> *Distillers Corporation SA Limited and Stellenbosch Farmers Winery Group Limited*, Case No. 98/LM/Feb02.

10. In SACTWU's preliminary submission to the Competition Commission, we urged the Commission to recommend to the Competition Tribunal that the implementation of the proposed merger be prohibited.
11. In the case that the merger is approved, we developed and proposed several conditions to address issues of concern raised by SACTWU in submissions to the Commission. These conditions relate to procurement, future employment opportunities, notification of merger transactions, monitoring of compliance with these conditions and the duration of these conditions.
12. These proposed conditions are attached as Annexure 2.<sup>15</sup>



---

ETIENNE DOYLE VLOK

---

<sup>15</sup> SACTWU submitted these proposed conditions to the Competition Commission on the day (11 February 2011) that the Commission submitted its recommendation to the Competition Tribunal and therefore, while it is part of the record of this proposed transaction, we understand the Commission did not take it into account in compiling its recommendation to the Tribunal.