



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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CONTENTS

Page

GOVERNMENT NOTICE

No. 222	Notice of application for review of decision of Commission in relation to proposed merger: Wal-mart Stores Incorporated // Massmart Holdings Limited	1
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Government Notice

MINISTRY OF TRADE AND INDUSTRY

No. 222

2011

NOTICE OF APPLICATION FOR REVIEW OF DECISION OF COMMISSION IN RELATION TO PROPOSED MERGER

Competition Act, 2003 (Act No. 2 of 2003)
(Section 49(2), Rule 32(1))

WAL-MART STORES INCORPORATED // MASSMART HOLDINGS LIMITED
CASE NO.: 2010OCT0052MER

1. Please take notice that on 9 February 2011 the Namibian Competition Commission (the Commission) conditionally approved the proposed merger between Massmart Holdings Limited and Wal-Mart Stores Incorporated. The approval was subject to four conditions.
2. Notice is hereby given that on 8 March 2011, I received an application on behalf of Wal-Mart Stores Incorporated, in terms of Section 49(1) of the Competition Act, 2003 (Act No. 2 of 2003), for review of the decision of the Commission in relation to the merger concerned.
3. Before this review could be undertaken, Wal-Mart Stores Incorporated applied to the High Court to have the four conditions attached by the Commission to the approval of the merger declared invalid. This application was opposed by the Commission and the Minister of Trade and Industry.

4. The High Court on 28 April 2011 declared the conditions to be invalid. The Commission and the Minister of Trade and industry appealed to the Supreme Court. The Supreme Court on 4 November 2011 upheld the appeal and ruled *inter alia* that the review of the Commission's conditional approval of the merger by the Minister of Trade and Industry should proceed, commencing on the date when the judgment was given, save in respect of the fourth condition. The Supreme Court held that the fourth condition falls away in light of the invalidity of Government Notice No. 75 of 2010 issued by the Minister in terms of section 3(4) of the Foreign Investment Act, 1990 (Act No. 27 of 1990).
5. Section 49(3) of the Competition Act provides that the Minister must make a determination of the review either overturning the decision of the Commission, amending the decision of the Commission by ordering restrictions or including conditions or by confirming the decision of the Commission.
6. The nature of the review is thus to review the Commission's decision to grant conditional merger approval, subject to the following conditions:
 - 6.1 The first condition states that the merger should allow for local participation in accordance with section 2(f) of the Competition Act, 2003, (Act No. 2 of 2003) in order to promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons.
 - 6.2 The second condition states that there should be no employment losses as a result of the merger.
 - 6.3 The third condition states that the merger should not create harmful effects on competition that may give rise to the risk of the market becoming foreclosed to competitors, especially small and medium enterprises.
7. A copy of the application of Wal-Mart Stores Incorporated for review, which sets out the grounds on which Wal-Mart Stores Incorporated seeks the review, may be obtained from the Ministry of Trade and Industry, Brendan Simbwaye Square, Block B, Room 235, Corner of Uhland and Goethe Streets, Windhoek, Namibia.
8. Interested parties are invited to make written submissions, within **fourteen (14) days** after the date of publication of this notice, to me in regard to any matter to be reviewed.

H. GEINGOB
MINISTER OF TRADE AND INDUSTRY

Windhoek, 11 November 2011
