



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## Government Notice

### MINISTRY OF TRADE AND INDUSTRY

No. 94

2012

#### NOTICE OF DETERMINATION BY MINISTER IN RELATION TO REVIEW OF DECISION OF NAMIBIAN COMPETITION COMMISSION IN RELATION TO THE PROPOSED MERGER:

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

#### PROPOSED MERGER NOTICE - WAL-MART STORES INCORPORATED// MASSMART HOLDINGS LIMITED: CASE NO.: 2010OCT0052MER

1. Please take note that I have on 8 March 2011 received from Engling, Stritter and Partners an application for review of the decision of the Commission on the merger of Wal-Mart Stores Incorporated and Massmart Holdings Limited (hereafter the Transaction).
2. On 18 March 2011, and before the review could commence, the merging parties applied to the High Court to declare Government Notice 75 in Government Gazette No. 4460 of 15 April 2010 and the four conditions attached to the approval of the merger by the Commission to be unlawful and invalid. The High Court granted the application on 28 April 2011.

3. On 1 June 2011 the Namibian Competition Commission and I as Minister of Trade and Industry noted appeals against the judgment and orders of the High Court. In a judgment handed down in the Supreme Court on 4 November 2011, the appeal was upheld and the merger application was referred for review to me as Minister of Trade and Industry in terms of section 49 of the Competition Act, 2003 (Act No. 2 of 2003) (hereafter the Competition Act).

**Determination:**

- 4.1 I have invited written and oral submissions and took note of those received. I hereby confirm the decision of the Commission which approves the merger of Wal-Mart Stores Incorporated and Massmart Holdings Limited (hereafter, together, the Merged Entity) subject to the following amended conditions. These conditions form part of the approval:
- 4.2 The Merged Entity must ensure that there are no retrenchments, based on the Merged Entity's operational requirements in Namibia, resulting from the Transaction, for a period of two years from the effective date of the Transaction (see note 1).
- 4.3 The Merged Entity must honour existing labour agreements and must continue to recognise representative trade unions in Namibia to represent the bargaining units, for a period of two years from the effective date of the Transaction (see note 2).
- 4.4 The Merged Entity must consult with the Minister of Trade and Industry with regard to the establishment of a programme of activities for domestic supplier development which the Merged Entity must implement. The Merged Entity must obtain the approval of the Minister of Trade and Industry for such programme within 12 months of the date of this determination (see note 3).

**Reasons:**

5. The reasons for this determination are:
  - a) The conditions originally imposed by the Competition Commission were considered by the High Court not to be specific.
  - b) Submissions made by the parties to this review and the public, both written and oral, during the opportunities provided for such submissions to be made, were taken into account in the formulation of the conditions attached to the approval of this merger.
  - c) The provisions of the Competition Act, in particular sections 2 and 47(2), were taken into account in making this determination in terms of section 49(3) of the Competition Act.
  - d) The conditions attached to the approval of this merger are imposed taking into account public interest considerations relating to potential risks to Namibia's economy and industrialization, employment as well as the growth of the Small and Medium Enterprise sector. I consider that the conditions strike an appropriate balance between the potential economic benefits of the merger and public interest considerations.
  - e) While conditions attached to the approval of a merger are important to safeguard the public interest, the Competition Act provides for substantive remedies over the entire duration of operations of the Merged Entity in Namibia, concerning potential restrictive practices and/or abuse of dominance.
  - f) A merger approval in terms of the Competition Act, whether conditional or unconditional, does not substitute for or affect any other law, any permission required under any other law, or the requirement for compliance with any other law.

**Notes:**

1. For the sake of clarity, retrenchments do not include voluntary separation arrangements, voluntary early retirement packages, and dismissals following unreasonable refusals to be redeployed in accordance with the provisions of the Labour Act, 2007 (Act No. 11 of 2007), as amended.
2. For the sake of clarity, the union currently recognized by Massmart Holdings Ltd is the Namibian Food and Allied Workers Union.
3. For the sake of clarity,
  - a) the approval of the merger takes effect from the date of this determination;
  - b) the programme must be implemented to improve the competitiveness of domestic suppliers;
  - c) activities in the programme must include skills development, technical support and assistance in relation to: production capacity, technology and inputs; meeting national and international quality standards; marketing and distribution;
  - d) the programme must prioritise small undertakings, in particular undertakings owned or controlled by historically disadvantaged persons; and
  - e) the beneficiaries of the programme may not be required to have an exclusive trading relationship with the merged entity.

**H. GEINGOB**  
**MINISTER OF TRADE AND INDUSTRY**

Windhoek, 16 March 2012

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