

Public Hearings on Walmart – Massmart

These public hearings have been internally postponed by the committee for some time now, awaiting the outcome of the Competition Authorities' hearings on the merger between Walmart and Massmart. Although these public hearings do not relate to the facts or questions of law involved in the merger enquiry before the Competition Authorities, the committee wished to avoid a perception that it was stepping into the arena of the Competition Authorities on a matter before it. The committee has been made aware of the notice of appeal dated 27 June 2011 which the South African Commercial, Catering and Allied Workers' Union (SACCAWU) has filed with the Competition Appeal Court. The committee can again postpone these hearings, but the questions of employment, industrial development, local manufacturing and economic development that the Portfolio Committee has to report on to the National Assembly, are starting to outweigh the risk of perception.

In terms of National Assembly Rule 67 which prohibits members from referring to issues subject to judicial decision, as well as out of respect for the separation of powers between the legislature and the judiciary, the approval of the Walmart-Massmart merger and the conditions imposed by the Competition Tribunal cannot be entertained during these public hearings, as these issues form the basis for the appeal.

These conditions firstly relate to labour affairs, including the upholding of existing labour agreements; not retrenching workers and possible re-employment of employees retrenched during June 2010. Secondly the conditions relate to the status of SACCAWU as the largest representative union within the merged entity. Lastly the conditions relate to setting up a supplier development fund and establishing a training programme.

The committee thus requests that all presenters avoid referring to these issues and rather focus on the impact of this merger and mergers in general – on employment, industrial development, local manufacturing and economic development. The parties involved in the dispute before the Competition Appeal court are aware of these hearings and will be presenting to these hearings. The committee hereby invites the parties to the Walmart – Massmart appeal to alert the committee to any issue which they feel may be subject to judicial decision.

The committee does not wish for these public hearings to be ineffective, but the Committee also does not wish to intrude on the arena of the Competition Appeal court. The purpose of these public hearings is not to scrutinise the Walmart – Massmart deal, nor to prescribe to the Competition Authorities as to what conditions should be imposed on the merger, if the appeal is not upheld, but rather to get first hand input on the impact of mergers on employment, industrial development, local manufacturing and economic development.