

# Tribunal erred in its Wal-Mart decision: ministers

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The Competition Tribunal erred in that it conducted the Wal-Mart/Massmart merger as if it were an adversarial process.

This was the position argued by three SA government ministers before the Competition Appeals Court on Thursday, 20 October 2011.

Leading the argument on behalf of the ministers, State Council Wim Trengove said on Thursday that the error in approving the R16.5 billion merger was compounded by the unfairness of the Competition Tribunal to allow discovery of certain information and documentation, that the scheduling of the hearings was too short.

These factors had led the Tribunal to making the incorrect decision.

Trengove implied in his arguments that far more time should have been given to the hearings and as they there was a large public interest factor, which centered on the ability of giant US retailer Wal-Mart to import products cheaply.

"The refusal of the enquiry of discovery, plus the timing all had a compounded impact that if they were properly done would have led to a very different conclusion," Trengove argued before Competition Appeal court Judge President Denis Davies.

Davies questioned Trengove on the issue around the scheduling saying that the government ministers' legal representatives could have argued that they were not happy with the scheduling when originally presented with it.

Trengove countered that they were not under the impression at the time that it was a final decision.

The three ministers, Economic Development Minister Ebrahim Patel, Trade & Industry Minister Rob Davies, and Agriculture, Forestry and Fisheries Minister Tina Joemat-Petterssen want the Competition Tribunal's decision reviewed by the appeal court and for stricter conditions to be attached to the deal.

However, it came to light in earlier in the proceedings that they could not determine how much stricter these conditions should be as the long-term impact of the merger could not yet be determined.

One of the conditions set by the Competition Tribunal was that Massmart/Wal-Mart would set up a R100 million supplier fund. The ministers argued that this was an arbitrary number and would not come near to the damage caused to local suppliers as Wal-Mart could source goods far cheaper overseas.

Cosatu affiliate union the SA Commercial Catering and Allied Workers Unions (Saccawu) were still to present their arguments for the decision to be overturned completely.

Massmart/Wal-Mart were due to present their arguments this afternoon.

Trengove was instructed by law firm Norton Rose.

The Wal-Mart / Massmart case was due to be argued by State Council Jeremy Gauntlett and David Unterhalter and they would be instructed by law firms Edward Nathan Sonnenbergs and Webber Wentzel.

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