Resistance proves futile in Wal-Mart merger

By Zeenat Moorad

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Foreign investment is vital for SA's economic prosperity and its lofty job creation target - and this will stop government from any further attempts to stymie Wal-Mart's 51% acquisition of local retail player Massmart (MSM).

The country's investor-friendly image was somewhat restored Friday, when the Competition Appeals Court dismissed pleas from labour unions and three ministries to have the R16.5bn deal re-examined.

"Looking at the recent Budget speech, government indicated that it was looking to attract increased levels of FDI.

"There is enough savvy from some [members] in government to apply strong pressure on them [the three ministers] not to appeal. They are well aware of the importance of investor perception," Abri du Plessis, portfolio manager and CEO at Gryphon Asset Management told I-Net Bridge/BusinessLIVE.

A possible appeal would mean that the case goes to the Supreme Court in Bloemfontein, SA's second highest court.

A test case

After a long and arduous ordeal, Friday's stamp of approval means that the transaction, dubbed as test case for SA in the eyes of global investors, has now been independently endorsed by all three arms of the competition authority in SA.

It gives the US giant a perch in Africa and access to its often quoted one billion potential consumers.

The entrance of a global player the size and strength of Wal-Mart is likely to add a healthy dose of competition to the retail sector, dominated by the reigning Big Four: Shoprite (SHP), Pick n Pay (PIK), Woolworths (WHL) and Spar (SPP).

The Competition Tribunal first approved the deal late last May, subject to four caveats: the companies honouring existing labour contracts, the reemployment of 503 retrenched employees that were let go in 2010 from a Game store in Nelspruit, the setting up a R100m fund to assist local suppliers and manufacturers, and no jobs cuts for two years.

However, three government departments and the SA Commercial Catering and Allied Workers Union (Saccawu) bizarrely contested the decision, shaking investor confidence and tainting the reputation of a country whose economic and political stability has been a major draw card in attracting FDI.

Viewed as a spectacular 'own goal'

Although the government ministers denied being anti-investment, the move was viewed as a colossal boo-boo, one that would no doubt deter other foreign-owned companies from injecting cash into SA.

The appeal was heard in October.

Though Friday's ruling from appeals court Judge President Dennis Davis upheld the tribunal's approval, he accepted that there were legitimate concerns about the effect of the deal on small producers and employment.

The court ordered a study be commissioned by three experts representing the merging parties, Saccawu and the government on how local small and medium sized suppliers could participate in Wal-Mart's global value chain and ensure that benefits from the merger flowed into this sector of the economy.

The experts have two months to produce the report.

Union disappointed

Saccawu's media officer Mike Abrahams said the union was both disappointed and vindicated by the ruling, while Economic Development Minister Ebrahim Patel said government had every intention of cooperating with the study.

It's unclear if this condition will negate the merging companies' robust progress around the fund thus far - they have already identified key projects.

"We've done all the due diligence work. I think we're ready to start spending, we have put the necessary internal governance and processes in place to make sure that that money is spent effectively," CEO Grant Pattison said last month, fortuitously noting that the companies' had already reached out to unions and government on how the money should be best spent.

Last year they appointed the ex-CEO of the Consumer Goods Council of South Africa (CGCSA) to head up the R100m fund.

The court also ordered, in line with Saccawu's submissions that the 503 employees retrenched by Massmart at its Game store in Nelspruit in the run up to the merger, must be reinstated.

Massmart has already appointed an external agency to locate the former employees.

No punches pulled

"We've been through what I would call round one. Finding them, contacting them and seeing where they live as many of them have moved. We're making them offers and a number of them have joined the business already. We are now going to enter into round two and so on," Pattison said.

Business Unity SA (Busa) said the ruling successfully balanced the need to project SA as an "investor-friendly" economy, while simultaneously addressing the concerns around job losses and the role of small and medium suppliers.

"It remains essential, if SA is to attain its growth and development goals, to make the country a destination of first choice for foreign investment and for such investors to feel welcome," Busa Deputy CEO Raymond Parsons said.

Economists.co.za's Mike Schussler pulled no punches.

"It seemed quite foolish to try and stop inward investment by a major foreign company...we were shooting ourselves in the foot. We need to just get on with it, and welcome foreign investment.

"We've not been particularly successful at attracting foreign investment. This is the biggest foreign investor we've had for quite a number of years. I'm always wondering why government wants less jobs," the economist told I-Net Bridge/BusinessLIVE.

In what was seen as a "too little, too late" quip, Trade and Industry minister Davies on Friday stressed that government's opposition to the deal was not a general statement on its attitude to foreign direct investment. He labelled criticisms of government's involvement in the matter along these lines as "red herrings."

In the end, Wal-Mart's persistence in entering the SA market and its commitment to the deal has paid off.