



Labour Research Service

ASSOCIATION NOT FOR GAIN
Incorporating the Trade Union Library
Registration number; 1986/002993/08

“Knowledge is too important to be left in the hands of the bosses”

MASSMART / WALMART MERGER

SUBMISSION BY THE LABOUR RESEARCH SERVICE COMMENTING ON THE CONDITION OF THE MERGER CONTAINED BELOW:

- 1.3 The merged entity must honour existing labour agreements and must continue to honour the current practice of the Massmart Group not to challenge SACCAWU's current position, as the largest representative union within the merged entity, to represent the bargaining units, for at least three (3) years from the effective date of the transaction.

Following the initial offer by Wal-Mart to purchase Massmart in September 2010, the Labour Research Service was commissioned by UNI Global Union to complete research on the structure and operations of Massmart and the conditions of the workers at the company in order to understand the position of workers in the context of the proposed deal.

The research found evidence that workers at Massmart experienced a high level of victimisation and a hardening of management attitudes which they attributed to the desire by Massmart management to make the company “globally competitive” or order to attract a global retailer as a buyer, and specifically Wal-Mart. There is confirmation of this in terms of Massmart’s disclosed strategy to attract a buyer, particularly Wal-Mart, with whom they had a long relationship.

We therefore submit that a commitment to ‘honour existing labour agreements’ by the merging parties is somewhat hollow in the face of Massmart’s practice prior to the merger where the well-being of workers across the retail and related sectors has been the price of being “globally competitive”.

POSITIONING FOR TAKE-OVER, RELATIONSHIP WITH WAL-MART

In a presentation in November 2010 to investors, analysts and media, Mark Lamberti, founder, one-time CEO, now chairperson of Massmart stated on behalf of the board that “The relationship (with Wal-Mart) which commenced in 1990 has resulted in: exposure of many Massmart executives to aspects of Wal-Mart’s operations & training, many shared retail principles & business values, mutual respect¹”. We do not know the nature of the relationship, it is not specified, but the statement made shows a formal rather than a casual relationship at an operational and strategic level, with shared values over an extended (20 year) period, ever since the formation of Massmart.

This is a far longer period than the date of introduction that current Massmart CEO Grant Pattison gave at a presentation at the Gordon Institute of Business Science (GIBS) in February 2011 stating the relationship began

¹ Massmart presentation “Wal-Mart confirms intention to make a firm offer to acquire a controlling interest in Massmart: Presentation to Investors, Analysts and Media”, 29 November 2010

in 2004². After a casual meeting in 2004, Pattison states Massmart executives began meeting with retired Wal-Mart executives from 2007.

Pattison further confirmed that rumours of Wal-Mart's interest in Africa began to surface in 2008 and that, given Massmart's long-term strategy of being bought by a global retailer – Massmart took action³. An Economist article notes:

*"Ten years ago Massmart, which is South Africa's leading wholesale warehouse business, decided that it needed a global partner. Wal-Mart began sniffing around South Africa three years ago, seeking a toehold on a continent where consumer spending power has risen sharply in the past decade. The obvious partner was Shoprite, Africa's biggest grocer. But Massmart increased its allure by rushing into the food-retailing business, and the gamble paid off."*⁴

The long-stated intention of Massmart to be acquired by a global retailer was further confirmed by Pattison at the GIBS where he stated that Massmart positioned itself to be bought by a global retailer in order to participate in the globalisation of retail. "...the first time they [Wal-Mart] were here, I made it absolutely clear that we were available for sale," Pattison told a forum at the (GIBS)⁵.

We do not know why the CEO and the chairman of Massmart have different ideas of when the relationship between Massmart and with Wal-Mart commenced. However, even the shorter timeline sets the context of the actions of Massmart in the years from at least 2008 including the retrenchments and the acquisitions and sell-offs, high dividend payouts and general strategy that was described by the competition tribunal in 2009 as 'sinister'⁶. Certainly the statements by Massmart chairman Mark Lamberti to "take out competitors" and "force them into a position where they make no money. We cannot allow our competitors to flourish. Our margins may have to drop to fend off competitors" do not sound like one of healthy competition, they sound much like Wal-Mart's strategy of selling products below cost price and taking a loss on them in order to undermine the business of competitors.

How Massmart management understood and strategised over what it means to be "globally competitive" and an attractive target for a global retailer influenced its actions not over a matter of months but rather of years, at least since 2008. It must be questioned whether this is a healthy attitude to being competitive that should be supported in South Africa.

These actions include but are not necessarily limited to:

1. Dividends being poured out of the country to shareholders while workers are at pains to improve their wages and conditions
2. Relationship with Massmart workers that have been deteriorating in particular since 2008 and send a worrying signal of how Massmart/Wal-Mart may envision future relationships with regards to:
 - a. Retrenchments which began in 2008 when the serious "sniffing around" by Wal-Mart began
 - b. The deteriorating relationship with the union and workers noted by Massmart and unions
 - c. The changing down of conditions of employment for workers, victimisation

² Moorad, Zeenat, 'Wal-Mart/Massmart - the makings of marriage', BusinessLIVE , 17 February 2011

³ Ibid. "It was our strategy to be bought by a global retailer; we didn't have to wonder about how we were going to deal with it, or whether our shareholders would like it, or whether management would come along. We sent them [Wal-Mart] a very clear message - if you want to chat to us we're ready and we had some good ideas," he added.

⁴ (http://www.economist.com/node/18185732?story_id=18185732&fsrc=rss)

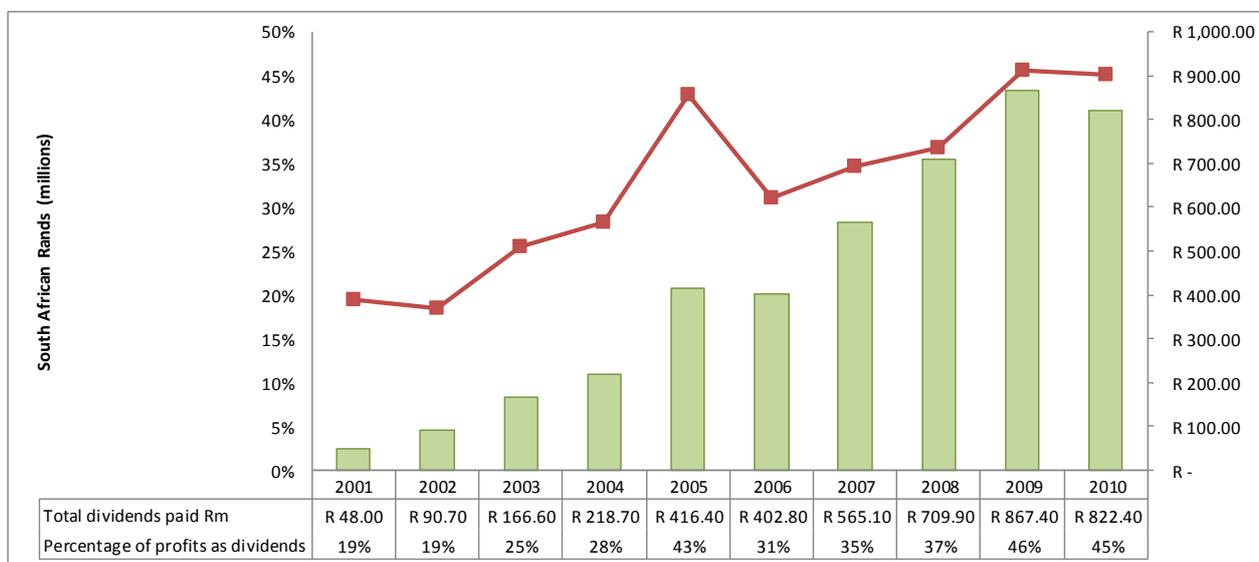
⁵ Moorad, Zeenat, 'Wal-Mart/Massmart - the makings of marriage', BusinessLIVE , 17 February 2011

⁶ Crotty, Ann, 'Massmart plan for a fund to take out rivals 'sinister' – tribunal', Business Report on December 2, 2009

1. VALUE TO SHAREHOLDERS NOT WORKERS

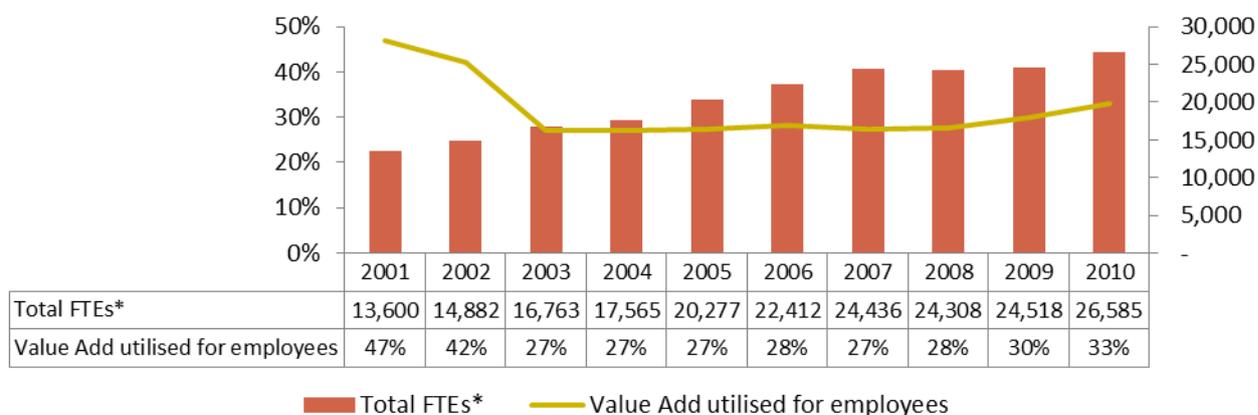
Over the years Massmart has paid a higher and higher percentage of profits to shareholders as dividends while workers are at pains to improve their pay and working conditions. It is noteworthy too is that in 2009 Massmart workers went on strike for a R460 increase in wages, while the company paid a record R867 million in dividends to its shareholders.

MASSMART TOTAL DIVIDEND PAYOUT AS A PERCENTAGE OF PROFIT BEFORE TAX FOR THE YEAR



The value added statement of a company shows the total wealth created, how it was distributed to meet certain obligations and reward those responsible for its creation, and the portion retained for the continued operation and expansion of the company. The proportion of the wealth created applied to employee wages and salaries dropped dramatically in 2003 and has not recovered. When compared to its competitors, Massmart distributes far less of its wealth to employees. In the same year Shoprite distributed 58% and Pick 'n Pay 65% of wealth to employees as salaries, wages and other benefits.

EMPLOYMENT FIGURES AND VALUE ADDED EMPLOYED COMPARED



*Full-time equivalents: includes all permanent employees and the permanent equivalent of temporary employees and contracted workers (Massmart Annual Report 2010, 47)

2. MANAGEMENT RELATIONSHIP WITH WORKERS

Retrenchments

The company states that the retrenchments at Massdiscouters in 2009 had nothing to do with a possible take-over. The Competition Commission concurred in their report that because there was no note of the retrenchments being influenced by the possible take-over in the board minutes of 2010 when they entered into discussions with SACCAWU, there was no connection between the two.⁷ However, given that (1) Massmart and Wal-Mart have been in a relationship for at least six, or up to sixteen, years where Massmart executives had been exposed to Wal-Mart operations & training, (2) Massmart had a stated aim of being purchased by a global retailer (3) Wal-Mart had already been sniffing around in 2008 and in 2009 (not 2010 as is stated by the Commission) Massmart noted that “we clearly moved from a speculative environment to Wal-Mart is deciding whether it's coming into Africa...It was our strategy to be bought by a global retailer; *we didn't have to wonder about how we were going to deal with it, or whether our shareholders would like it, or whether management would come along. We sent them [Wal-Mart] a very clear message - if you want to chat to us we're ready and we had some good ideas*”⁸. The retrenchments, which began in October 2009 were therefore right within the timeframe of increasing Massmart's appeal to Wal-Mart at a time that would have been critical and cannot therefore be separated from the offer which followed without firm evidence of which there is none. Why evidence of a connection was only sought in board minutes – let alone board minutes of 2010 when the retrenchments began in 2009 - and not in the stated company strategy should be questioned.

The deteriorating relationship between management and the union

At the same GIBS presentation Pattison made several unsubstantiated statements concerning workers at Massmart, their feelings concerning the deal with Wal-Mart and their relationship to the union to which 38% of them⁹, according to Massmart's own figures, belong. In the presentation he states that “It really is an exciting time for employees. And just so you are absolutely clear, our employees aren't driving any protest: you'll see there has been no strikes, no protests; in fact I would suggest that they have gone as far as to tell the union not to get in the way. All good for our employees”¹⁰. To make an uncorroborated comment concerning the relationship, not just between management and the workers but between unions and their own members, should be challenged and the commitment (though not condition) that Massmart/Wal-Mart have made to maintain existing relationships with organised labour might therefore be seen to have a negative outcome for workers as the relationship as it currently stands is antagonistic.

Pattison's statement is seen in the context of deteriorating relationship between Massmart and the unions, in particular since 2008.

Looking at the annual reports over the past decade, there is very little mention of the relationship between Massmart and the trade unions. However, over the past two years, there has been discussion of it and it has not been positive.

⁷ Competition Commission Report - 2010Nov5445 Wal-Mart and Massmart Non confidential for unions, p. 41 – 43

... retrenchments took place at various Game Stores and they commenced retrenchments during October 2009. ... Although from the merger record in particular the Wal-Mart board minutes it's clear that Massmart representatives (CEO and CFO) visited Wal-Mart in the USA and UK during May 2010 in anticipation of a potential buy-out no correlation between the retrenchments and the potential sale to Wal-Mart could be found in the Massmart board minutes of 2010.

2010Nov5445 Wal-Mart and Massmart Non confidential for unions p. 42 of 52

⁸ GIBS presentation, BusinessLIVE, ibid.

⁹ Massmart Annual Report 2010 – again, this figure is different from the Commission's report which “the majority of Massmart's employees are unionized” - 38% is not a majority and it would be important to know where the Commission got its figures.

¹⁰ GIBS presentation, BusinessLIVE, ibid.

2009 Annual Report "... increased the stridency of populist rhetoric and the vigour of socio-economic demands, both indicative of a more open democracy. Service delivery rioters, striking workers, obstructive taxi owners, and officious youth leaders all contributed to an environment conducive to the first ever protracted dispute between certain Massmart divisions and organised labour"¹¹.

2010 Annual Report "Labour relations were unfortunately strained in Massdiscounters as management sought more labour flexibility from the labour union, SACCAWU, in order to extract productivity improvements from our three-year investment in the supply chain. Unfortunately, we were unable to reach resolution and had to resort to retrenchment, which was devastating for those employees. ..."¹²

The dispute between the workers and Massmart are recorded by SACCAWU as centring on the following as of June 2010¹³:

DISPUTES WITH WORKERS (SACCAWU PRESS RELEASE, JUNE 2010)

- Retrenchment of 1500 workers, 700 permanent and 800 flexi-time employees
- The imposition of ultra-flexi time contracts
- 40 hour rolling week with Sundays as normal time
- Compressed working week without overtime
- Sunday and Public holidays compulsory work
- All those not faced with retrenchment to reapply for their positions under new terms of employment
- All re-applications to be considered after interviews to include psychometric testing, failing workers will be demoted
- All those that will remain in employment will be given new job titles, job descriptions and for many new salary rates
- The introduction of new Green Light technology that requires tertiary vocational training and the refusal by the company to offer any training to staff except for management.

The changing down of conditions of employment for workers, victimisation

Pattison does not substantiate his statement that workers would like the union out of the way, and that they are excited about the deal. The Labour Research Service¹⁴, held a workshop with Massmart workers in February 2011 where three key points became apparent. (1) These workers do want the union to be involved because (2) they are being increasingly victimised by Massmart in what they understand to be a long-term strategy of Massmart to create a culture of repression (3) in preparation for the deal.

While there have not, at the date of writing, been protests and strikes in relation to the deal, there have, been strikes and protests in relation to the conditions under which Massmart workers already work.

Key issues highlighted by the Massmart workers is that far from sticking to "existing agreements" Massmart has, over the past period been changing working conditions arbitrarily. They noted in particular that in their work environment:

1. Instructions are given for workers to work in departments that they do not work in and when this is pointed out to the manager then they are put before a disciplinary hearing for not carrying out instructions.

¹¹ Massmart Annual Report 2009, p. 25

¹² Massmart Annual Report 2010, p. 27

¹³ SACCAWU Press Release, June 2010

¹⁴ Report available from Labour Research Service

2. Disciplinary hearings don't follow procedures and dismissals or final warnings are dished out at the hearing.
3. Workers have also been given warnings and dismissed for not packing goods in the manner that it was set out for this, even though goods have never been packed in the set out manner before.
4. Workers have been dismissed for making simple errors when workers were not even given a warning before for the same kinds of mistakes.
5. At Makro it has been customary for workers who work two Saturdays a month to get a "day-off". However, management has introduced a rule that if a worker takes leave in that month then the worker loses the day off. This is clearly an attempt to get rid of the "benefit" which has not been negotiated but was customary in the company for many years.
6. Jobs that become vacant either through resignation or dismissal are not filled again and duties are allocated to existing workers
7. Conditions of employment are settled with employees individually and are often worse than what has existed before – especially making working time on a Sunday, that was considered as over time, normalise time.
8. There has been an introduction of performance management where all employees are continuously assessed according to performances standards that were not agreed and often arbitrary.

The general sentiment of the participants was that due to the take-over by Wal-Mart, workers, including the shop stewards, feel intimidated in the workplace by the fact that they can lose their job and livelihood in an instant.

From their experience the participants believe that this situation has been created so that by the time Wal-Mart takes over, workers would already be used to working in an intimidating environment in which they remain for the reasons given by the CEO of Massmart:

"Also I suppose it would be fair to say that an employee of Massmart can say well, at least it is us that got bought by Wal-Mart so if it's true and I certainly don't agree that it's true that competitors are going to suffer and suppliers are going to suffer, the employees of Massmart should be fine".¹⁵

The statement itself makes no sense – either competitors and suppliers are going to suffer, and therefore Wal-Mart/Massmart employees should feel lucky to even have a job, or they are not, in which case Wal-Mart/Massmart workers are not going to have anything in particular to be grateful for on this count.

The precarious current relationship between Massmart workers and management, the union and management is what will carry over into the new company if the commitment by the merging parties is allowed to stand as the only assurance workers have. And since Massmart itself is not sticking to the current agreements, there is little to no reason to believe that Wal-Mart unless conditions of the buy-out force them to.

It is hoped that South Africa's global competitiveness is generally understood something other than the race to the bottom for workers in terms of both wages and conditions in order to achieve lowest prices. A ruling against the merger, or a ruling with strict conditions and monitoring placed on the merging parties, would therefore not have been, as the Commission stated, an 'adverse' ruling, but a positive ruling, positive for the workers not just in Massmart but in all sectors of the national economy. Further, given, as economist Dr Azar Jammine stated in January 2011, that "Wal-Mart only wants to use South Africa as a gateway to Africa and they can afford to comply with our strict labour laws because in other African countries the laws are much more relaxed.", it is

¹⁵ Ibid

perhaps South Africa's duty as the regional head office of Wal-Mart/ Massmart and certainly the regional power, to impose conditions on any deal that would protect workers wherever this company operates in the region.

The issues noted are relevant because they highlight what Massmart management understands global competitiveness and how this differs from how South African workers and government should view the same concept. Looking at the strategies of the company over the past years in the light of this statement reveals that to Massmart management global competitiveness implies high dividends to foreign shareholders, turning over smaller competition in takeovers and sell-offs, an attitude to competitors that earned the censure of the Competition Tribunal, and victimisation of workers who, despite Pattison's statements, are not in support of the merger and should be aggressively protected.

It is further noted that any promises made by the current Massmart management should be understood as being made prior to a new owner, Wal-Mart, taking control of the company. Therefore, a commitment from them is not sufficient; conditions must be set on the new entity that would arise after any proposed deal.

The downgrading of working conditions is contrary to South Africa's economic development through decent work. Development cannot be achieved when workers are increasingly pressurized to be flexible, and to accept lower conditions and a general uncertainty concerning their livelihoods; it must be concerned with advancing the social and economic welfare of South Africans.

While Wal-Mart claims that it "respects and honours pre-existing union relationships", it must commit to going further as, given its stated aim of growing the company both within and outside of South Africa, new unions and operations will also require recognition that does not currently exist. It is not just existing union relationships that should be honoured, **but the right to new relationships.**

In all respects it is essential (1) that there is **a monitoring system in place** (2) **the rights exercised by workers under South African law, are extended throughout Wal-Mart /Massmart operations and that the company is held to these standards wherever it operates.** Further that it respects not just the existing contracts and agreements but the processes of reaching those agreements. External monitoring of this commitment is essential given Wal-Mart's history of transgression and the deteriorating relationship between worker representatives and management.

The 2010 Massmart annual report notes that "Massmart views the percentage of unionised staff as an indicator of commitment to freedom of association". This is not the view of the new entity that would be dominated by Wal-Mart. The new entity must therefore commit to the four core conventions of the ILO including the prohibition of child labour (ILO 138 and 192), the prohibition of forced labour (ILO 29 and 105), non-discrimination (ILO 100 and 111) and freedom of association and the right to collective bargaining (ILO 87, 98 and 135) in all operations.

While, as noted in statements by the company, Massmart is committed to local procurement, this does not protect local producers and manufacturers as imported goods can and are procured locally resulting in very little benefit to the local and national economy. A condition of the deal should therefore be a commitment from Wal-Mart/Massmart not only to procure locally but to procure locally produced and manufactured products. Without this commitment, as the CEO of Shoprite has stated as recently as the 25th of February, where Wal-Mart/Massmart goes, the other retailers will follow. While Massmart management might deny now that more imports are part of the plan, it is again the merged entity, not the current entity that must be held to conditions of supporting local producers and manufacturers.

In conclusion there needs to be a commitment by the new entity to (1) create one bargaining forum for all its operations in South Africa and to ensure that the minimum wages and benefits complies with Decent Work; (2) provide resources to ensure that the workers are organised to play a meaningful role as a stakeholder in the company.

The Labour Research Service is an independent NGO that provides research and information on the labour market.
LABOUR RESEARCH SERVICE: tel: +27 (0)21 447 1677 | fax: +27 (0)21 447 9244 | email: saliem@lrs.org.za | www.lrs.org.za
postal: PO Box 376, Woodstock, 7915 | physical: 7 Community House, 41 Salt River Road, Salt River, 7925