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MEDIA RELEASE

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Competition Appeal Court orders Wal-Mart to set up a multimillion rand Supplier Development Fund

THE Competition Appeal Court has instructed global retail giant Wal-Mart to set up a R240-million supplier development fund as a condition for it acquiring the South African retailer, Massmart.

In a long awaited decision, the court ruled on Tuesday that the fund was necessary to ameliorate the effect of the merger. It also increased the amount originally determined by the Competition Tribunal by R100-million.

In terms of the agreement, Wal-Mart has to pay a maximum of R200-million – which will have to be spent within five years – into a fund that it must establish within four months of the date of order.

This is over and above the approximately R40-million in expenditure already made by Wal-Mart – to develop suppliers in South Africa.

The three government departments involved in the appeal – the Economic Development Department, the Department of Trade and Industry (dti) and the Department of Agriculture, Forestry and Fisheries (DAFF) – are studying the decision closely.

But Economic Development Minister Ebrahim Patel, Ministers Rob Davies and Tina Joemat-Pettersson, in the dti and the DAFF, said: 'We largely welcome the decision of the court, to place a mandatory fund requirement on

Walmart and to increase the sum from R100-million to effectively R240-million. The judge openly praised the role of the three departments – and the trade unions – in these proceedings.’

‘The fund will address some of the concerns raised by the departments. And in this regard, it will devise funding projects aimed at minimizing the risk posed to South African suppliers by the merger,’ the three Ministers said.

The fund will also protect existing and potential micro, small and medium producers of South African products who run the risk of being harmed by Wal-Mart’s entry into South Africa. Importantly, the fund should also enable them to take advantage of Wal-Mart’s global value-chain, and incentivize the retailer to purchase products from South African producers, over and above products that it would, in any event, purchase.

Although the merged entity will administer the fund, the Appeal Court recognized the need for an advisory board to help it fulfill its objectives. The board will comprise two representatives of the merged firm, as well as one representative each of government, the trade union, SACCAWU, and the South African Small and Medium Enterprise Forum.

The intervention of the three departments (as well as their ongoing participation in these proceedings) was instrumental in raising crucial public interest issues that were not addressed by the Commission, which initially recommended that the merger be unconditionally approved.

As a result, both the Competition Tribunal and the Competition Appeal Court recognised the need to protect local suppliers and jobs by imposing adequate and effective conditions.

The three departments will be studying the decision with their legal representatives to check whether it will meet the test of saving jobs and industrial capacity in South Africa, and may issue a further statement in due course.

Issued on behalf of:

**The Economic Development Department;
The Department of Trade and Industry; and
The Department of Agriculture, Forestry and Fisheries**

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