

Durban High Court delays ICTSI's bid for Durban Container Terminal amid legal dispute

The Durban High Court recently ruled against International Container Terminal Services Inc (ICTSI), a Filipino port operator, in its appeal concerning the management of the Durban container port in South Africa. The court's decision effectively postpones ICTSI's potential takeover of the Durban Container Terminal Pier 2 until at least March 2025. ICTSI had aimed to acquire a 49% stake in the terminal, with Transnet, a state-owned entity, retaining the majority share. The partnership planned for 25 years, proposed an investment of approximately R11 billion (\$616 million) by ICTSI for new equipment and terminal upgrades.

The legal challenge originated from APM Terminals, a competitor and part of the Danish shipping conglomerate AP Moller-Maersk, which contested the tender process. APM Terminals highlighted irregularities, notably a solvency test that favored ICTSI by allowing the use of market capitalization instead of balance sheet equity for solvency evaluation, a criterion that other bidders were not permitted to use. This discrepancy led to ICTSI surpassing the solvency threshold more easily than its competitors, according to APM Terminals' court submissions.

ICTSI criticized the opposition from Maersk, stating that the dispute over what it deemed a "non-material and non-defined technicality" hinders South Africa's economic progress and the enhancement of its primary container terminal. The company expressed disappointment in the delay caused by the legal proceedings, emphasizing the importance of establishing a private-public partnership to strengthen the South African economy.

The company also commented on the court's decision, noting that it was not wholly unexpected given Transnet's decision not to appeal the initial interdict from October 2024. ICTSI remains committed to defending its position vigorously in the upcoming main case hearing in March 2025. The denial of the appeal was attributed to the temporary nature of the interlocutory order, as explained by Judge Robin Mossop, who noted that such orders are generally not appealable and are intended to be provisional until a final decision is reached.

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