COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case Number: Case No. 45/LM/Apr00

In the large merger between

Nasionale Pers Limited

and

Educational Investment Corporation Limited

Reasons for Competition Tribunal Decision

The Transaction

1. Nasionale Pers Limited (Naspers) and Educational Investment Corporation Limited (Educor) have agreed to establish a new company (NewEd). Educor and Naspers will, in exchange for shares in NewEd, dispose of their assets in distance and face-to-face education to the new company. The respective values placed on the relevant assets of Educor and Naspers are R870 million and R100 million, giving Educor an initial share of 89,7% in the new company and Naspers the remaining 10.3%. Naspers will, in exchange for cash, acquire an additional 29,7% of the shares of NewEd, leaving Educor with a 60% stake in NewEd and Naspers 40%. Naspers will however manage the new company. Moreover Educor will unbundle its share of NewEd, that is, distribute its share of NewEd to its approximately 3000 underlying shareholders. Accordingly Naspers will become the largest shareholder of the new company.

The Parties

2. **Nasionale Pers Limited (Naspers)** is a large diversified media group with significant interests in both print and electronic media. A wholly owned subsidiary in the group, National Education Group (Pty) Limited, with its division National Private Colleges (NPC), provides distance education through the LYCEUM and SUCCESS brands and face-to-face education on a limited basis through its MENTOR BUSINESS COLLEGE. The Education Division of the **Education Investment Corporation Limited** (Educor) comprises the face-to-

face education and distance learning education businesses that function at 183 campuses. Educor's other significant activity is in the field of recruitment. Educor's activities in the education field may be divided between distance learning and face-to-face education with the latter accounting for 68 per cent of turnover in the division in 1999. It encompasses certain well-known brands, for example, DAMELIN, ACADEMY OF LEARNING, RAPID RESULTS COLLEGE, and MIDRAND CAMPUS. It describes itself as "the dominant provider of private education in South Africa, from adult basic education and training, through tertiary to post-graduate and corporate training".

3. The transaction transforms Naspers' position in private education from that of a medium size player to the largest force in the sector. The synergies between the provision of education, on the one hand, and, on the other, Naspers' print and, particularly, electronic media interests are offered as the principal rationale for the transaction from its perspective. It is also motivated by a reluctance on the part of the Naspers group to remain active in a market in which it is a relatively small player. It was, in its estimation, faced with exiting the market or investing heavily in order to strengthen its presence. The present transaction thus affords Naspers the opportunity to catapult itself into the number one slot in private education.

4. Educor's activities are evenly divided between its recruitment and education businesses. From its perspective the transaction represents a decision to focus on one of its core competencies. The absence of perceived complementarities between its two dominant activities prompted this decision.

The Relevant Markets

5. The provision of secondary and tertiary education is obviously not part of the same market. Accordingly the first 'cut' in defining the relevant market is relatively straightforward – we are dealing with *at least* two relevant markets, namely the secondary market for education services and the tertiary market for education services. However, beyond this simple starting point, the identification of the relevant markets has proved to be a particularly complex exercise. Firstly, as is elaborated below we are of the view that the traditional trichotomy of primary, secondary and tertiary education has expanded with the introduction of a new market in 'further education'. And, secondly, within the categories of secondary and tertiary education traditional boundaries between, for example, the public and private sectors and distance and face-to-face education have shifted fundamentally. The fluid and uncertain state of education policy and the uncertainties that attach to its implementation further complicate market definition.

6. We have identified three markets relevant to this transaction:

7. First, there is a **market for secondary level education of young adults** who, for one reason or another, have not completed this level of education by the 'normal'

school leaving age. Many, although by no means all, of the students in private secondary education are already in employment. **In the Tribunal's view, then, a relevant market pertinent to this transaction is the provision of secondary education to young adults, that is those whose age or employment situation disqualifies them from attending public secondary schools.**

8. Accordingly, private secondary education providers do not compete with the massive public secondary education system, the services of which are not accessible to students past school-leaving age. However, the parties to the merger argued that the introduction of 'matric equivalent' qualifications available through the publicly funded technical colleges introduces an important element of competition between public and private providers of secondary education for the custom of secondary level students beyond school-leaving age. The basis for this argument is a policy decision – supported by the establishment of the initial legislative and institutional framework – to establish broad education bands populated by diverse institutions and course content and composition. In full bloom this system would replace the traditional matric with 'NQF4', that is, with a diversely-composed, generic qualification that enabled the student to pass onto the successively higher bands. The component elements of the NQF4 will include a matric but may also be composed of courses available through technical colleges and even through work experience. The upshot of this policy position, it was suggested, is that post-school leaving age students wishing to obtain a secondary school qualification – either because of its labour market currency or for the key that it provides to entering higher education – would no longer be restricted to obtaining a matric from the private sector providers but would be able to go the publicly supported technical colleges as well. Accordingly, the private sector providers of matric offer only one of several routes to acquiring an NQF4 qualification.

9. However, on closer examination it became clear that, while this argument represented an accurate view of the current policy intention and aspiration, it is far from the reality in the actual market place. The complete legislative framework is not yet in place to introduce NQF4 or 'matric equivalent'. The institutional framework, as manifest in the parlous state of the many of the technical colleges, is particularly threadbare. Moreover, it appears from submissions made by the Department of Education that education policy itself is far from settled. Accordingly, for the Tribunal to base its assessment of the relevant market on policy intentions a considerable distance from realization and themselves potentially subject to review presupposed a heroic leap of faith.

10. **The second set of relevant markets is comprised of a number of broadly defined courses in tertiary education.** Tertiary education is obviously more complex and varied than its counterpart at the secondary level. The Tribunal has in fact identified two distinct segments within tertiary education. The first will be referred to as **higher education,** while the second approximates closely to what educationalists refer to as **further education and training (FET).** These two

elements of tertiary education are distinguished by their entrance requirements. Entry to higher education requires, without significant exception, a reasonably good matric pass, although certain universities, notably Pretoria University, are recognizing FET courses which they have accredited, as complying with entry into selected higher education courses. The NASPERS colleges, particularly Success College, 'deliver' Pretoria University accredited FET courses. The entry requirements for FET itself are diverse but their defining character is that a significant range of learning opportunities at this level is accessible to students who are not in possession of a matriculation exemption.

11. There is clearly a strong element of product or course-specific segmentation within **higher education** insofar as a prospective student wishing to study engineering will not generally elect to substitute her choice with an accountancy course because of the offer of a less expensive option in the latter field. Demand substitution is more likely to occur within the broad chosen field of study, that is, if a desired choice is eliminated or becomes too costly to pursue, the student will look for an alternative education option in engineering, preferably one that does not offer employment prospects significantly inferior to that afforded by the more costly option. Furthermore a significant component of higher education is the provision of 'refresher education', that is education that furthers or updates previous education and career choices thus deepening course-specific segmentation – a nurse wishing to further his career would not choose a course in electronics in response to one or other monopolistic restriction in the market for further nursing courses. Segmentation of higher education markets is also provided by professional entrance requirements that oblige professionals following a particular career path to undertake specified courses of study.

12. It is however not appropriate to define the relevant markets in higher education more narrowly than this. Hence, although it has been suggested that public and private higher education belong to different markets, it is clear that the boundaries between public and private providers of higher education are changing significantly. The rise, in higher education, of what may best be termed franchising is an important development that has eroded the boundaries between public and private education. Here public universities accredit or franchise private education providers to offer courses under the university's imprimatur or trade mark. Public universities – notably, though by no means exclusively, through their business schools – are increasingly offering specialist diplomas frequently directed at mid-career 'refresher' courses. While certain of these are offered through accrediting private sector providers others are physically provided by the universities in direct competition with the private sector. Foreign universities are establishing campuses in South Africa effectively operating as private education providers in this country. The public subsidies available to South African universities and technicons may give them a competitive advantage over private sector providers although it should not be forgotten that the latter do not support expensive research nor are they obliged to support courses that are manifestly uneconomical.

13. It was also suggested that the higher education market is segmented between distance and face-to-face education. But this distinction is also being eroded – private education providers increasingly offer face-to-face tuition to students enrolled at public and private distance education institutions. Face-to-face tertiary institutions are increasingly offering distance learning opportunities. The internet will increasingly erode the distinction between distance and face-to-face education.

14. In summary then, the Tribunal is of the view that while there are clearly relatively narrow, course-specific relevant markets in higher education many of the other features that have traditionally segmented education markets – for example, private/public or distance/face-to-face - are in a fairly advanced state of transformation, a process that is likely to be hastened by technological developments.

15. **We conclude then that there exist a number of relatively narrow course-specific relevant markets in higher education. It is not possible, from an anti-trust perspective, to identify a single market in higher education, rather relevant markets will be identified with course content, the significant marker of boundaries between the various markets.**

16. Turning to **further education and training**, it is apparent that the traditional trichotomous division into primary, secondary and tertiary levels no longer encapsulates the entire spectrum of education. Another important level – a distinct set of relevant markets within tertiary education - has emerged where relatively focused, career-oriented courses are offered and where the target recipients are primarily those school leavers and young adults who are not in possession of a matriculation exemption, that is, who do not have the qualifications necessary to enter higher education. The courses available at this level constitute, or, at least, are perceived to constitute, currency in the labour market, and, in select instances, may also enable the student to enter a higher education institution.

17. As in the case of higher education there are clearly course-specific segments at this level. In past decades this level principally provided technical training to apprentices and artisans in mining and manufacturing. The technical colleges were the principal providers of these educational services. This array of technical courses is still provided at this level and the technical colleges remain significant providers. However, the demand for these skills and this training has declined significantly concomitantly with the rise of the services sector. The training associated with the requirement of a service economy is directed at providing a broad range of general managerial and administrative skills, what may be termed 'business services skills' – computing, financial management, marketing, office administration and the like. Although low-level business services skills, commonly dubbed 'secretarial courses', were historically available through

technical colleges, private educational providers have long been active in this segment. Moreover the business services skills demanded by the services and information economy are at a significantly higher level than those associated with secretarial training.

18. **This collection of courses constitutes a distinct, and, for anti-trust purposes, relevant market, the market for further education in business skills.** The rapid growth of this market, globally and domestically, and the strong prospect for continued rapid growth is confirmed in the overview entitled 'Education in South Africa' authored by Chris Elfick of Price Waterhouse and submitted by the parties to the merger. Elfick asserts that 'FET…is a critically important part of the education market' (p. 4). He provides data from the United States confirming the trend towards 'life-long learning' and, accordingly, the increased demand from adults for education services. Turning to South Africa, Elfick avers that 'labour legislation changes, particularly the introduction of the SAQA and NQF, together with the Skills Development Act, will create an impetus towards the provision of further education and training in South Africa's actual and potential workforce'.

19. There are course specific segments available underneath the broad umbrella of business services skills – some are oriented to particular business sectors (eg. Tourism) or functions (eg marketing) or classes of business (eg small business). However, on closer examination the proclaimed specialization frequently amounts to little more than the grafting of a particular specialised course onto a platform of generic business skills courses. A cursory examination of the course content of the range of 'management diplomas' offered by Success College and accredited by the University of Pretoria confirms this. Moreover demand substitutability will be considerably greater than in the case of higher education. The students have not already invested in a particular career which they are attempting to further and will therefore be influenced by relative prices and course availability in making their selections. In short, unlike higher education, the archetypal student profile is not that of the nurse deciding to specialize in say radiology, with possible encouragement and financial support from his employer. Rather it is a young adult, recently graduated from high school, casting around for employment and discovering that a further level of skill and further qualification is a requirement for entry into the labour market.

20. We note that there are strong quality segments in all education markets. Hence were two prestigious universities – or even secondary schools or providers of further education – to merge and achieve a powerful market position within its quality niche, the merged entity may be in a position to behave monopolistically while retaining the loyalty of their 'customers', despite the presence of apparent choice at the education level in question. The relevance of this point in this matter is explored below.

21. In conclusion then we identify three sets of relevant markets. These are:

- **the provision of secondary education to young adults, that is those whose age or employment situation disqualifies them from attending public secondary schools;**
- **a number of relatively narrow course-specific relevant markets in tertiary education;**
- **a market in the provision of business services skills to school leavers who are not qualified to attend university and to young adults already in employment.**

22. We will now assess the likely impact of the transaction on competition in each of these markets.

The Impact on Competition

Some Preliminary Observations

23. Merger evaluation presupposes a certain degree of speculation and conjecture. The adjudicator is called upon to estimate the future impact of a transaction on market structure and behaviour. While this is a nettle to be grasped rather than avoided, the worst effects of this conjecture can be ameliorated by solid research and data. This has, however, proved particularly difficult in this case. Firstly, the data inadequacies, even in respect of the most basic information, are striking. Secondly, given the terrible legacy that South Africa faces in the education arena, the extent of policy experimentation is understandably considerable. Moreover many of the structures, laws and institutions established to carry education into a new era are untested. Accordingly, even in those areas where the policy environment is relatively certain, it is well-nigh impossible to estimate with any degree of confidence the extent of the difficulties that will be encountered in implementation. We have accordingly been cautious and circumspect in our judgments and, where we have found strong cause for concern, we have been modest in the remedies that we have imposed.

24. Our conclusions are, however, influenced by the potential impact of anti-competitive practices on this particular sector and on the economy and society that relies upon its output – trained and educated citizens. It is trite to observe that we are dealing with a particularly important sector of the economy and one particularly damaged by South Africa's past. Even if the public sector makes significant strides in overcoming this legacy, it is reasonable to expect that the private sector will play an extremely, even increasingly, important role in the provision of education particularly to those who suffered the consequences of the apartheid system in 'seventies and 'eighties, students who either did not complete secondary education or whose schooling has left them unprepared for further education or the world of work. The report prepared by Chris Elfick and submitted by the parties strongly supports this contention: FET is becoming an increasingly important segment of education and private sector providers are increasingly important participants in this segment. Moreover, the interplay

between higher education providers in the public sector and those in the private sector is increasing, in the process according the latter an increasingly important role in higher education.

25. Accordingly, the access of would-be students to the private providers of education and the quality of the service provided will have a profound impact on the individuals lives of the students, on the competitiveness of the economy, and on the general well-being and stability of the society. Section 16(1)(a) of the Act requires the Tribunal to evaluate the transaction on competition grounds. Section 16(1)(b) requires the Tribunal to evaluate the merger on specified public interest grounds, one of which is the effect of the transaction on 'a particular industrial sector or region'. The potentially pervasive economic and social consequences of monopolistic structures and conduct in the education sector demand that the Tribunal pays particularly close attention to its public interest mandate.

The Secondary Education Market

26. As noted above we are concerned to examine the impact of the transaction on competition in the market in which secondary school education is made available to students beyond school-leaving age. We must underline that these students cannot gain access to secondary education provided by the public sector. In other words students beyond school-going age receive their education in a market absolutely segmented from that which serves their younger counterparts. Or more accurately, while students of school-going age may elect to receive their secondary education in the same institutions as those available to students beyond school-going age, the latter have no such choice.

27. Poor data have bedeviled evaluation of this merger. However, the picture that has emerged from data made available to the Tribunal suggests that the parties to the merger currently enjoy significant shares of this market and that, consequently, the degree of concentration will increase markedly as a result of the merger and the post-merger share of the new entity will be very powerful indeed. The estimation provided by the parties is that NewEd will provide Grade 12 (matric) tuition to approximately 12000 students. Estimates of the number of matric students in NewEd's private sector competitors vary widely. We are however persuaded that each of the component parts of NewEd – Naspers' National Private Colleges and Educor – has significantly more Grade 12 students than their largest competitor and that, accordingly, NewEd will, by this measure, dwarf its nearest rival. The report prepared by Professor Leach and submitted by the parties acknowledges a competitive overlap between the parties in the provision of matric (which, he concedes, constitutes a relevant market) but dismisses their share as a 'miniscule part of a very larger market'. This is certainly true in respect of those students who are eligible for entry to the public school system. It has, however, no meaning for those who cannot, by virtue of age or employment situation, enter the public school system. Our conclusion is that the parties will have a large share of this small but increasingly important market.

28. We outline below our views on entry barriers in private education. Suffice for now to say that we view barriers to new entry as high. Success in the delivery of education services depends to a significant extent on reputation and the length of time served in the market appears to be the crucial variable underpinning reputation. Accordingly we do not believe that the prospect of new entry will constitute an effective disciplinary force in the market.

29. We are therefore satisfied that if the secondary education market relevant to this enquiry is to be equated with *private* sector provision, then the merger generates a worrying increase in concentration. However, this equation was questioned by the parties who suggested that the introduction of the National Qualifications Framework and the choice of qualification routes built into that framework effectively meant that private sector providers were in competition with the relatively massive public education system. Moreover, it was argued that the subsidies received by the public sector institutions placed them at a competitive advantage to their counterparts in the private sector. In particular the Tribunal's attention was directed towards the provision by the technical colleges of level NQF4 education which, it was claimed, equated with the matric qualification.

30. On closer examination, however, this latter argument was not borne out. Certainly, the policy goal is that a NQF4 qualification will be composed of a range of substitutable options only one of which will be the secondary school Grade 12 or matric. The technical colleges will provide another route to an NQF4 or 'matric equivalent' qualification. However, this is not presently the case. At most it appears that higher education institutions may – and sometimes do - selectively recognize qualifications (including, in some instances, work experience) other than a 'matric exemption' for the purpose of admission to particular programmes. But this remains the exception; the rule, still overwhelmingly applied, is that a matric is the sole gateway to higher education. For those students beyond school-going age the reality of the present transaction is that the number of paths leading to this crucial gateway has diminished in consequence of the removal of a major competitor.

Higher Education

31. Although the merging companies are both active in higher education, the Tribunal has concluded that the transaction does not significantly diminish competition at this level.

32. The boundaries between public and private provision appear to be altering significantly at the higher education level. The private providers – and this is true of both the Educor brands and Naspers brands – are active in higher education as direct competitors of Technicons and, to a limited degree, of Universities. Clearly, however, there is a strong trend towards co-operation between the public universities and the private providers with the universities essentially franchising

– 'accrediting' – their intellectual property to the private providers. It appears that certain of the universities accredit courses offered by the private providers which then constitute an entrance qualification into certain of the programmes offered by the accrediting higher education institution. The private providers are frequently accredited for the purpose of providing face-to-face tuition to distance higher education students. The universities themselves are increasingly offering short diploma courses – the business schools are particularly active here.

33. The parties insisted that the public higher education institutions were robust competitors in this market. Moreover they insisted that the public subsidy privileged these institutions in the higher education market. This latter argument is not necessarily accepted. Indeed, in contrast with the publicly funded higher education institutions, the unsubsidized private providers are not compelled to support costly research programmes or manifestly un-economic teaching programmes and may, by virtue of their ability to 'cherry-pick' lucrative higher education niches, be the ones who are excessively advantaged in the competitive struggle. Be that as it may, competition at this level is active, as is the development of complementary relationships between certain of the public higher education institutions and the private providers. This is not impaired by this transaction.

34. Moreover, with respect to higher education we have earlier referred to the existence of a large number of course specific markets. It is thus pertinent to record that, at the higher education level, there is not significant overlap between the respective offerings of the Naspers' affiliated institutions and those of Educor. The parties made much of this absence of overlap, and, although we confirm that and acknowledge its pertinence in this evaluation, its significance may be exaggerated. Although we are of the opinion that entry barriers into the education sector are high, we hold that once active in the sector, in particular once a solid reputation has been established for an education brand, entry into new courses is relatively easy. The fact that the parties have tended to operate in separate niches may simply indicate that the threat of entry by the other established brand has maintained prices, and, hence, profits, at a competitive level and has therefore not encouraged new entry. This discipline will now disappear. However, these residual doubts notwithstanding, the Tribunal's overall conclusion is that the transaction does not significantly diminish competition in the higher education market and we shall not make any further enquiry into this market.

Further Education and Training – business services

35. The transaction's likely impact on competition in one of the markets for further education and training is of concern to the Tribunal. As already outlined above, this segment of tertiary education serves students who have completed secondary school but who have not received matric, or in certain instances a good enough matric – that is, students who are, exceptional cases notwithstanding, unable to obtain access to higher education. The job market nevertheless demands further

qualification of them and so they seek out providers of further education and training. Moreover, this level does, in limited cases, provide a pathway to higher education and, when the flexible qualifications framework envisaged by education policy ultimately kicks in, one would expect this level of education to constitute an increasingly important route into higher education.

36. We have identified two markets falling under the rubric of further education and training, these being distinguished by their broad course offerings. The two markets identified are the provision of technical education at the FET level; the second is the provision of business services training, including computer training, at the FET level. The merging parties do not appear to be very active in the market providing technical skills. Note that although Elfick avers that 'private institutions are starting to play an increasing role in technological training', it appears that their activity is in technical skills such as computing rather than in the provision of traditional artisan-type skills. This latter is the market traditionally served by the technical colleges. It is still served by the technical colleges although the scale of activity in this market has diminished considerably over the past two decades. Private education providers are however active in the market for the provision of business services. This, the further education and training market for the provision of business education services, is relevant for this transaction.

37. Within the ambit of the relevant market there are obviously separate courses on offer. However, as discussed above, the degree of substitutability between courses is likely to be considerably greater than in the case of higher education. Demand substitutability between courses is almost certainly greater insofar as the clientele comprise students who have not already invested in a specific career and who are simply casting around for a generic basket of skills that would enable them to seek employment. Moreover, the homogeneity between differently presented and niched courses is considerable. As we have already observed, a glance at Success College's array of management diplomas will evidence that the core of most of the differentiated courses is extremely homogenous.

38. Again the parties made much of the competition offered by the public sector, in particular the technical colleges, in this market. But, again this is not borne out by closer examination. By the education department's own admission the technical colleges are in a parlous state. They, like most education institutions, have suffered the consequences of apartheid. In addition these institutions have to re-tool themselves from their long past where they essentially provided technical skills and 'old economy' artisan skills to manufacturing, to one where they are called upon to provide the skills necessary for a service economy. The problem is persuasively identified by Elfick:

'The most significant factor limiting the ability of public higher education to compete effectively in the growing market for higher education is the slow pace at

which changes are made and new fields, technologies, programmes and courses are developed and adopted in order to satisfy the needs and wants of learners'.

39. Elfick refers to higher education here. While this assessment is pertinent with respect to higher education, it is, in our estimation, an even more accurate depiction of the problem confronting FET and the technical colleges in particular. Elfick acknowledges that the emphasis in public policy on primary and secondary education has squeezed the share of the public education budget available for tertiary education. The universities and technicons have struggled to cope with the massive transformation required of them. Their problems have been significantly exacerbated by budgetary cuts. The plight of the technical colleges is far more serious. They are yet to make the transition from servicing the technical education needs of a traditional manufacturing and mining economy, to catering for the requirements of a service and knowledge economy. Even in the best of circumstances this would have proved a demanding task. In the context of budgetary costs there is little basis for assuming that they will successfully carry out this project. These factors certainly call into question the claim that the technical colleges compete robustly with the private sector providers.

40. Again it has been difficult to estimate present, let alone future, shares in the FET business services market. The data are poor and there is no accepted formula for measuring the mix of full-time and part-time students in this market. What is clear is that most of the major private sector brands active in this market – Damelin, Summit, Intec, Success and others – are in the stables of one of other of the parties to this transaction. We should note that government regulation intended to eliminate 'fly by night' operators from the education sectors will, if successful, strengthen the position of established brands which will not fall foul of this regulation while their competitors at the margins of the market are eliminated or severely circumscribed.

41. We accordingly conclude that there is a strong likelihood that this transaction will substantially prevent or lessen competition in the further education and training market for the provision of business services skills.

Entry Barriers

42. It was suggested that entry barriers in the markets under consideration were very low and would ameliorate the effects of the increase in concentration that would flow from the transaction.

43. The Tribunal does not share this assessment. Reputation is an important ingredient for success in this market and this can only be established after long-standing participation. The length of time that the most successful brands – for example, Damelin, Success and Lyceum – have been in existence bears this out. We would accept that the barriers in the way of an established brand introducing a *new product*, a new course, are low. But this observation only serves to heighten

our concern at the effects of this merger. The argument suggests that the established brands in the Naspers and Educor camps may have acted as important competitors. Or, given the low entry barriers facing established competitors wishing to introduce new courses, they may have acted as a discipline over each others activities for fear of potential entry consequent upon monopolistic practices. This prospect is now eliminated by the proposed transaction. Given the barriers to a *new brand* entering the market, the Tribunal is particularly concerned at the exit of a strong competitor with established brands.

Countervailing Efficiency Gains

44. Some reference has been made to efficiency gains arising from the transaction. These references have generally centred around claimed synergies between education, on the one hand, and Naspers' electronic media interests on the other hand. Chris Elfick notes that,

'The ideal educational organization should have a strong combination of bricks and mortar, a critical mass of students, a quality education content base and a strong technology partner in order to use the distributed method'.

45. While we have no reason to question the claimed synergies, their realization does not appear to be contingent upon approval of the transaction. The synergies, should they exist, may as easily be realized by a business relationship between independent contracting parties. Indeed a dominant position in key education markets combined with Naspers' powerful position in electronic media may, in time, constitute a further barrier to entry into education markets.

Public Interest

46. The Tribunal has identified public interest concerns arising from the transaction under two headings.

47. The first concerns the impact of the transaction on 'a particular industrial sector'. This has been referred to above and here we simply re-state the point made: we are bound to accord the education sector a stature reserved for few others. Although we are naturally committed by the terms of the act to protect competition in all sectors of the economy, there is no question that the impact of monopolistic practices in the private education sector will reverberate more powerfully on the economy and society than would similar practices in most other sectors.

49. This transaction has also thrown up concerns with respect to the impact on small business and employment. Here we refer particularly to the Academy of Learning franchise operations – the small businesses allegedly affected - and to those in their employ. The Academy of Learning (AOL) is a division within Educor. A number of franchisees have submitted their concerns to the Tribunal. In brief,

they aver that they have had an extremely unhappy relationship with Educor. They claim that their franchise conditions have been unilaterally altered and that the new conditions imposed threaten their very existence. They fear that the new owners of the franchise will attempt to squeeze them further. They have asked the Tribunal to impose certain conditions on the transaction, notably to require the new owners to negotiate new franchise contracts.

50. Franchising occupies a complex place in anti-trust law. In particular it is frequently difficult to distinguish anti-trust disputes from commercial and contractual disputes. The Tribunal will not permit its role in merger evaluation to be used as an opportunity for resolving commercial and contractual disputes. We are however cognizant of the range of anti-trust problems implicit in the franchising relationship and we have provided a remedy that will at least ensure that the franchisees are actively engaged by the franchisor should the latter contemplate introducing any further changes to the franchise arrangement.

Findings and Order

51. We have found that the transaction will substantially reduce competition in two of the three markets relevant to this transaction. Firstly, the transaction is likely to reduce competition in the market in which those beyond school-going age receive secondary education; secondly, competition is likely to be compromised in the market for further education and training, in particular that segment that provides business-services education and training to students who are not qualified to enter higher education (i.e. Universities and Technicons).

52. We have elected, however, to approve the transaction, although our acceptance is subject to the fulfillment of certain conditions. The first condition is that the new company divest itself of Success College. The objective of a divestiture remedy is not punitive but it is rather to ensure the basis for continued competition. We chose Success for this purpose because is an established brand in each of the markets that cause concern and will remain a robust competitor in the hands of one of the new company's competitors. Yet, because it is not the 'flagship' brand in the new company, its divestiture will not unduly impede the new company's standing in the market.

53. We have, however, elected to postpone the implementation of our divestiture remedy pending an evaluation by the Competition Commission on the impact of the transaction on competition in the relevant markets in respect of the period from the date of our order to 31 December 2001. We require the Commission's report to be submitted to us by no later than 31 March 2002. At that time, should a panel of the Tribunal find that competition has indeed been substantially reduced and that the divestiture of Success College will assist in reversing that effect, it may order that the divestiture remedy be implemented. The new company is required to co-operate with the Competition Commission to enable it to carry out its monitoring task. The new company will naturally participate in

the Tribunal's evaluation. Should it be found that competition has indeed been impaired, the new company will be entitled to identify countervailing efficiency gains, if any, that have resulted from the transaction.

54. We have elected to impose a postponed divestiture remedy because of the unusually fluid and uncertain character of the environment in which these markets operate. We refer particularly to uncertainty surrounding developments in the public education system.

55. We have also imposed certain remedies designed to ameliorate the potentially negative consequences of the transaction for the public interest. The new company will be required, over the next two years, to identify and participate in joint programmes with the Department of Education aimed at building capacity in public education.

56. With respect to the concerns articulated by the Academy of Learning franchisees, the Tribunal requires that, should the merged firm wish, over the next two years, to alter the terms of the franchise agreements, it must consult with the franchisees.

______________________ 30 June 2000

D.H. Lewis Date

Concurring: N.M. Manoim, D.R. Terblanche