in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance with obligations arising out of the order.

IN THE MATTER OF

STERLING DRUG INC.

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 7 OF THE CLAYTON ACT

Docket 8797. Complaint, Aug. 7, 1969—Decision, April 7, 1972.

Order modifying and adopting hearing examiner's decision dismissing complaint that a New York City drug firm selling a broad range of health and beauty aid products violated Section 7 of the Clayton Act in acquiring another New York City company manufacturing and selling health and beauty aids, household deodorizer and other non-food consumer products.

COMPLAINT

The Federal Trade Commission has reason to believe that Sterling Drug Inc., a corporation and the respondent herein, has merged with Lehn & Fink Products Corporation, a corporation, in violation of Section 7 of the Clayton Act, as amended (15 U.S.C. 18); therefore, pursuant to Section 11 of the Clayton Act, as amended (15 U.S.C. 21), it issues this Complaint, stating its charges in that respect as follows:

I Definitions

1. For purposes of this complaint, the following definitions are applicable:

(a) Proprietary Drugs—pharmaceutical preparations advertised to the public;

(b) Personal Care Products—perfumes, cosmetics, and other toilet preparations advertised to the public;

(c) Health and Beauty Aids—All products which are either proprietary drugs or personal care products, as defined above;

(d) Household Aerosol Deodorizers—products in aerosol form which are designed to purify air in the household by removing odors or destroying germs; and

(e) Nonfood Household Consumer Products—chemically-based products which are advertised to the public and used in the household, including health and beauty aids, household aerosol deodorizers, soaps and detergents, and a variety of cleaning and maintenance products.

II Respondent

2. Respondent, Sterling Drug Inc., is now, and was at the time of the subject merger, a corporation organized and existing under the laws of the State of Delaware, with its principal offices located at 90 Park Avenue, New York, New York.

3. In calendar 1965, the last full calendar year prior to the subject merger, respondent had net sales of $303,300,000 and was the 228th largest industrial corporation in the United States. On December 31, 1965, respondent's assets amounted to $221,175,000. During the ten-year period 1956 through 1965, respondent increased its sales by over 70 percent and its assets by more than 56 percent.

4. Respondent is now, and was at the time of the subject merger, engaged in the manufacture and sale of a broad range of health and beauty aid products. In calendar 1965, respondent's health and beauty aid sales amounted to approximately $90 million and accounted for approximately 45 percent of respondent's total domestic sales in that year.

5. At the time of the subject merger, respondent's health and beauty aids business included many nationally known brands which are leaders in their respective fields. The following is a partial lise of respondent's well-known brands: "Bayer" aspirin, "Phillips'" milk of magnesia, "Campho-Phenique" external antiseptic, "Cope" and "Vanquish" pain relievers, "Dr. Lyon's" tooth powder, "Z.B.T." baby powder, "pHisoHex" skin cleanser, and "Phisoac" acne aid.

6. Respondent is highly successful in achieving and maintaining brand allegiance toward its health and beauty aid products through the use of extensive advertising. Respondent's advertising expenditures are very substantial, both in absolute amount and in proportion to respondent's health and beauty aid sales. In calendar 1965 respondent spent approximately $31 million for all media advertising and was the 36th largest advertiser in the United States. For respondent's four largest selling products in that year, all of which were health and beauty aid products, advertising expenditures averaged approximately 25 percent of net sales.

7. The majority of respondent's advertising budget is directed toward network television. In calendar 1965 respondent spent approximately $18 million for network television advertising and was the 16th largest network television advertiser for that year.

8. Respondent markets its health and beauty aid products through its own national sales organization, which is divided into regions and districts and sells on a direct basis to wholesale and retail food, drug, department, variety and mass-merchandise outlets.

9. Respondent engages in a continuous research and development program in building for its near-term and long-term future in the health and beauty aid field. Like its product lines, respondent's research is highly diversified and is directed not only toward the development of new products but toward maintaining the brand allegiance of existing products.

10. In addition to its health and beauty aids business, respondent is engaged in the manufacture and sale of a number of other nonfood household consumer product lines, most of which it entered through acquisition. The brands acquired include the following: "Glis" spray starch, "Jato" spray cleaner, "Glisade" fabric finish, "Down-the Drain" drain cleaner, and "d-Con" insecticides and rodenticides.

11. At all times relevant herein, respondent has sold and shipped products in interstate commerce throughout the United States and engaged in "commerce" within the meaning of the Clayton Act, as amended.

III Lehn & Fink Products Corporation

12. Prior to the subject merger, Lehn & Fink Products Corporation ("Lehn & Fink") was a corporation organized and existing under the laws of the State of Delaware with its principal offices located at 445 Park Avenue, New York, New York.

13. Lehn & Fink was engaged principally in the manufacture and sale of a broad range of health and beauty aids, household deodorizers, and other nonfood household consumer products.

14. For the fiscal year ending June 30, 1965, the twelve-month period immediately preceding the subject merger, Lehn & Fink had net sales of $66,702,978. As of June 30, 1965, Lehn & Fink's assets amounted to $28,291,522. During the ten-year period 1956 through 1965, Lehn & Fink increased its sales by over 125 percent and its assets by approximately 117 percent.

15. At the time of the subject merger, Lehn & Fink's health and beauty aids business included many nationally-known brands, some of which were leaders in their respective fields. The following is a partial list of Lehn & Fink's well-known brands: "Medi-Quick" antiseptic products, "Stri-Dex" medicated products, "Dorothy Gray" and "Tussy" cosmetics, and "Noreen" and "Ogilvie" hair preparations.

16. Lehn & Fink was achieving and maintaining brand allegiance toward its health and beauty aids and other nonfood household consumer products through the use of extensive advertising. For the fiscal year ending June 30, 1965, Lehn & Fink spent approximately $12 million for all media advertising and was approximately the 102nd largest advertiser in the United States. For Lehn & Fink's five largest selling products in that year, three of which were health and beauty aid products, advertising expenditures averaged approximately 22 percent of net sales.

17. Lehn & Fink marketed its health and beauty aid products through its own national sales organization, supplemented in some instances by the use of brokers. Lehn & Fink's sales organization sold on a direct basis to wholesale and retail food, drug, department, variety, and mass-merchandise outlets.

18. Lehn & Fink's rapid growth in the ten-year period preceding the subject merger is attributable, in large part, to its diversified program of product research and development, which resulted in the successful introduction of a number of important new health and beauty aid products. These products include "Medi-Quick" antiseptic products, "Stri-Dex" medicated products, and various cosmetics and hair preparations.

19. Lehn & Fink was the leading firm in the national household aerosol deodorizer market. The company introduced its "Lysol" brand spray disinfectant-deodorizer in 1962 and, at the time of the subject merger, had captured 36 percent of the market. By August of 1968, approximately two years after Lehn & Fink was merked into Sterling, "Lysol's" market share had increased to 42 percent.

20. At all times relevant herein, Lehn & Fink has sold and shipped products in interstate commerce throughout the United States and engaged in "commerce" within the meaning of the Clayton Act, as amended.

IV The Merger

21. On or about June 28, 1966, Lehn & Fink was merged into respondent via an exchange of stock, pursuant to which Lehn & Fink stockholders received one share of a new preferred stock of respondent, convertible into 1 and ¼ shares of common and callable at $55 a share after five years, in exchange for each share of Lehn & Fink stock.

V The Nature of Trade and Commerce

A. *The General Market—Health and Beauty Aid Products*

22. In terms of Standard Industrial Classification categories, the health and beauty aid market is found wholly within Major Group 28—"Chemicals and Allied Products." Every product contained within the market falls into either Industry No. 2834 "Pharmaceutical Preparations" or 2844—"Perfumes, Cosmetics, and Other Toilet Preparations." The market consists of all products in those two industries which are promoted directly to the consumer.

23. Health and beauty aid products are generally pre-sold to the consumer through extensive advertising and promotion and are then purchased by the consumer primarily in retail, food, drug, department and mass-merchandise outlets. In comparison with the total range of products purchased by the typical household, these products are relatively low in price and relatively high in rate of turnover.

24. The health and beauty aid market is rapidly expanding. During the period 1947 through 1966 the dollar value of total shipments increased from approximately $710 million to approximately $3.5 billion. Together, respondent and Lehn & Fink accounted for approximately 3.5 percent of this total market.

25. The health and beauty aid market is characterized by an extraordinarily high degree of product differentiation, and the necessity of creating and maintaining consumer brand preference through advertising is a substantial barrier to entry into the market. A second major barrier to entry is the necessity of obtaining and maintaining widespread distribution through large numbers of retail outlets.

26. In order to successfully manufacture and sell a broad range of health and beauty aid products, a firm must possess the following competitive resources, among others:

(a) A chemically-oriented research and product development department capable of continually introducing new brands and maintaining consumer preference for existing brands;

(b) A financial base large enough to support continuous, substantial advertising expenditures; and

(c) An experienced national sales force capable of obtaining and servicing thousands of food, drug, department and mass-merchandise outlets.

B. The Primary Submarkets

27. The health and beauty aid market encompasses two primary submarkets: (1) proprietary drugs (pharmaceutical preparations advertised to the public); and (2) personal care products (including perfumes, cosmetics, and other toilet preparations advertised to the public).

28. Each of the submarkets is rapidly expanding. During the period 1947 through 1966 the dollar value of total shipments of proprietary drugs increased from approximately $328 million to approximately $1.1 billion; during the same period, the value of personal care product shipments increased from approximately $381 million to approximately $2.4 billion.

29. All of the statements contained in Paragraphs 23, 25 and 26, *supra*, describing competitive conditions in the health and beauty aid market, are applicable to each of the two submarkets.

30. Virtually all of the leading firms in the health and beauty aid market manufacture and sell products in both of the primary submarkets. Since the same technological resources, advertising abilities, and distribution channels can be applied to, and are necessary for success in both supermarkets, it is logical to expect manufacturers of proprietary drugs to continue to expand into personal care products and, conversely, to expect manufacturers of personal care products to continue to expand into proprietary drugs.

C. Specific Proprietary Drug Product Lines

31. Acne aids and external antiseptics are representative of the products which comprise the proprietary drug submarket. Each of these product lines was highly concentrated prior to the subject merger, as is illustrated by the following tabulation:

Product	Year	Dollar value of total sales	Percent of total sales accounted for by—	
			4 largest companies	8 largest companies
Acne aids	1963	$43 million	61	78
External antiseptics	1964	$41 million	41	55

32. All of the statements contained in Paragraphs 23, 25, and 26 *supra*, describing competitive conditions in the health and beauty aid market, are applicable to each of these specific product lines.

D. Household Aerosol Deodorizers

33. The household aerosol deodorizer market includes those products in aerosol form which are designed to purify air in the household by removing odors or destroying germs.

34. The manufacture and sale of household aerosol deodorizers is highly concentrated and has been dominated since 1965 by one nationally-known brand, Lehn & Fink's "Lysol" spray disinfectant deodorizer, as is illustrated by the following tabulation:

Year	Dollar value of total sales	Percent of total sales accounted for by: "Lysol"	Percent of total sales accounted for by: 7 largest companies
1965	$62 million	28	86
1966	$73 million	34	8[illegible]
1967	$77 million	34	88
1968 (8 mos.)	$54 million	41	84

35. Household aerosol deodorizers are pre-sold to the consumer through extensive advertising and are then purchased by the consumer primarily in retail food and drug stores.

VI The Violations Charged

36. The effect of the merger of Lehn & Fink into respondent has been, or may be, substantially to lessen competition or to tend to create a monopoly in the national health and beauty aid market, in each of the two primary submarkets contained therein, and in certain specific product lines in each of the following ways, among others:

(a) Lehn & Fink has been eliminated as an independent competitive factor in the manufacture and sale of health and beauty aids;

(b) Potential competition between respondent and Lehn & Fink has been eliminated in the manufacture and sale of proprietary drugs and personal care products;

(c) Actual competition between respondent and Lehn & Fink has been eliminated in the manufacture and sale of acne aids and external antiseptics; and

(d) Lehn & Fink's position as the dominant firm in the household deodorizer market has been, or may be, further entrenched to the detriment of actual and potential competition.

37. The merger of Lehn & Fink into respondent, as alleged above, constitutes a violation of Section 7 of the Clayton Act, as amended. (15 U.S.C. 18).

Mr. James Y. Wood, Mr. Robert J. Fulgency, and *Mr. David Zoll* supporting the complaint.

Mr. Herbert A. Bergson, Mr. Lionel Kestenbaum, and *Mr. Bruce P. Saypol, Bergson, Borkland, Margolis, and Adler,* Washington, D.C., *Mr. Sidney P. Howell, Jr., Rogers, Hoge, and Hills,* New

York, New York, and *Mr. James H. Luther*, general counsel, and *Mr. Gregor F. Gregorich*, Sterling Drug Inc., for respondent.

INITIAL DECISION BY WILLIAM K. JACKSON, HEARING EXAMINER

MAY 12, 1971

PRELIMINARY STATEMENT

The Federal Trade Commission on August 7, 1969, issued its complaint in this proceeding charging Sterling Drug Inc. (Sterling), a corporation, by its acquisition of Lehn & Fink Products Corporation (Lehn & Fink), a corporation, violated Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

The complaint alleges that the acquisition may have serious anticompetitive effects with a resulting substantial lessening of competition in the national health and beauty aid market and the submarkets thereof (a) proprietary drugs and (b) personal care products, and in two specific product lines (a) acne aids and (b) external antiseptics. Additionally, it is alleged that the acquisition may have caused a lessening of competition in the household aerosol deodorizer market.

Among the specific anticompetitive effects alleged in the complaint to flow from this acquisition are the following: (1) Lehn & Fink has been eliminated as an independent competitive factor in the manufacture and sale of health and beauty aids; (2) potential competition between Sterling and Lehn & Fink has been eliminated in the manufacture and sale of proprietary drugs and personal care products; (3) actual competition between Sterling and Lehn & Fink has been eliminated in the manufacture and sale of acne aids and external antiseptics; (4) Lehn & Fink's position as the dominant firm in the household aerosol deodorizer market has been, or may be, further entrenched to the detriment of actual and potential competition.

After being served with the complaint, respondent appeared by counsel and filed on November 3, 1969, its answer to the complaint denying, in substance, that the merger was illegal. Thereafter, between November 14, 1969, and November 5, 1970, four prehearing conferences were held for the purposes of simplification of the issues, obtaining admissions of fact and authentication of documents, discovery of relevant material, exchanging lists of exhibits and names of witnesses to be used at the trial, and the preparation of a concise statement of the contested issues of law and fact. In accordance with the examiner's pretrial order, both parties prepared and submitted a pretrial memorandum.

Hearings for the presentation of testimony and other evidence by complaint counsel began in Washington, D.C. on December 7, 1970, and concluded on December 18, 1970. Respondent's defense commenced at Washington, D.C. on January 11, 1971, and concluded on January 14, 1971. No rebuttal was requested and the record was closed on January 14, 1971. The Commission extended the time of the hearing examiner to render an initial decision until May 14, 1971, in view of the joint request of the parties for additional time to submit proposed findings of fact, briefs, and reply briefs.

Proposed findings of fact and brief in support thereof were filed by complaint counsel on February 18, 1971, respondent filed its proposed findings of fact and brief on March 10, 1971, and complaint counsel filed a reply brief on March 22, 1971.

Any motions not heretofore or herein specifically ruled upon, either directly or by the necessary effect of the conclusions in this Initial Decision, are hereby denied.

This proceeding is before the hearing examiner upon the complaint, answer, testimony and other evidence, proposed findings of fact and conclusions and briefs filed by counsel supporting the complaint, and by counsel for respondent. The proposed findings of fact, conclusions and briefs in support thereof submitted by the parties have been carefully considered by the examiner, and those findings not adopted either in the form proposed or in substance are rejected as not supported by the evidence or as involving immaterial matter.

For the convenience of the Commission and the parties, the findings of fact include references to the principal supporting items in the record. Such references are intended to serve as convenient guides to the testimony and exhibits supporting the recommended findings of fact, but do not necessarily represent complete summaries of the evidence considered in arriving at such findings.

Reference to the record are made in parentheses, and certain abbreviations, as hereinafter set forth, are used:

CX—Commission's Exhibit
RX—Respondent's Exhibit
CPF—Complaint Counsel's Proposed Findings and Conclusions
RPF—Respondent's Proposed Findings and Conclusions
RB--Respondent's Brief
CRB—Complaint Counsel's Reply Brief

The transcript of the testimony is referred to with either the last name of the witness and the page number or numbers upon which the testimony appears or with the abbreviation Tr. and the page.

Having heard and observed the witnesses and after having carefully reviewed the entire record in this proceeding, together with the proposed findings, conclusions and briefs submitted by the parties, as well as replies, the examiner makes the following:

FINDINGS OF FACT

I Identity and Business of Respondent and Acquired Company

A. The Respondent

1. Respondent, Sterling Drug Inc., is now, and was at the time of the subject merger, a corporation organized and existing under the laws of the State of Delaware, with its principal offices located at 90 Park Avenue, New York, New York. (Complaint, Par. 2; Answer, Par. 3).

2. In calendar 1965, the last full calendar year prior to the subject merger, Sterling had net sales of $303,300,000 and was the 228th largest industrial corporation in the United States. Sterling's assets were $221,175,000 on December 31, 1965. During the 10-year period 1956–1965 Sterling increased its sales by over 70 percent and its assets by more than 56 percent (Complaint, Par. 3; Answer, Par. 4).

As of December 31, 1965, Sterling's assets in the United States, including trademarks, goodwill and deferred charges amounted to $149,251,000; in addition, Sterling had foreign assets amounting to $71,924,000 (CX 24; RX 26; Pfister 1261).

In calendar 1965, the year prior to the acquisition involved in this case, Sterling's total sales in the United States of all products and services were $196,337,000; in addition, Sterling had consolidated foreign sales of $106,963,000 (CX 4(j), CX 19(k), CX 24; Pfister 1261).

3. Sterling's principal business is the manufacture and sale of proprietary drugs and other medicinal preparations, primarily prescription drugs. This comprised 90 percent of its total U.S. sales in 1965 (CX 4, CX 19, CX 24). Its U.S. sales of proprietary drugs in 1965 were $81 million (CX 24; Pfister 1261) and its U.S. sales of other medicinal specialties amounted to $71,735,000 (CX 34).

4. At the time of the subject merger, Sterling's business included many nationally known brands which are leaders in their respective fields. The following is a partial list of Sterling's well-known brands: "Bayer" aspirin, "Phillips'" milk of magnesia, "Campho-

Phenique" external antiseptic, "Cope" and "Vanquish" pain relievers, 'Dr. Lyon's" tooth powder, 'Z–B–T" baby powder, and "pHisoHex" skin cleanser (CXs 20–28; Elson 176–77, Johnson 204–05, Campbell 331, Elliott 522–23, Friedman 552–60).

5. Sterling's proprietary drug products are manufactured and marketed by its Glenbrook Laboratories Division (Berry 1455). Glenbrook's operations are concentrated predominantly in two product categories, analgesics and antacids/laxatives (Berry 1457).

(a) In 1965, analgesics comprised approximately 65 percent and antacids/laxatives comprised approximately 30 percent of the sales of Glenbrook Laboratories. Antacids and analgesics/laxatives have continued to account for 95 percent of Glenbrook's sales to the present (Berry 1457).

(b) Glenbrook's principal analgesic product is Bayer Aspirin, of which it sold \$41,672,000 in 1965 (CX 35, CX 44(e)). Its other proprietary analgesic products include Bayer Children's Aspirin, Cope, Vanquish and Fizrin (Berry 1458).

(c) Glenbrook's principal antacid/laxative product is Phillips' Milk of Magnesia in liquid and tablet forms, of which it sold \$18,-456,000 in 1965 (CX 35, CX 44(e), (f)). Phillips' Milk of Magnesia is an antacid when taken in small dosages and a laxative in large dosages (Berry 1462). Other proprietary antacid and/or laxative products produced by Glenbrook include Haley's M–O, Dr. Caldwell's and Fletcher's Castoria (Berry 1461).

6. Sterling's ethical pharmaceuticals, including prescription drugs and over-the-counter ethical specialties, are produced by its Winthrop Laboratories Division. The Sterling-Winthrop Research Institute in Rensselaer, New York is engaged in basic research, looking toward the development of new prescription drugs in approximately 50 categories of medicines in such diverse fields as arteriosclerosis, anesthesia, kidney diseases and infectious diseases (Tainter 1747–52, 1759–60).

7. Sterling has been highly successful in achieving and maintaining brand allegiance towards its products through the use of extensive advertising. Its advertising expenditures are very substantial, both in absolute amounts and in proportion to its sales. In calendar 1965, respondent spent approximately \$35 million for all media advertising, and was the 36th largest advertiser in the United States. For Sterling's four largest selling products in that year: Bayer Aspirin, pHisoHex, Phillips Milk of Magnesia liquid and Phillips Milk of Magnesia tablets, advertising expenditures averaged ap-

proximately 25 percent of net sales (CX 59(a), CX 44(e)-(f); Elson 176-77, Johnson 204-05, Campbell 331, Elliott 522-23, Friedman 558-60).

The majority of Sterling's advertising budget is directed toward network television. In calendar 1965, Sterling spent approximately $18 million for network television advertising and was the 16th largest television advertiser for that year (Complaint, Par. 7; Answer, Par. 8; CX 59(c)).

8. Sterling's Glenbrook Division which markets its proprietary drug and household products operates autonomously with its own national sales organization divided into regions and districts. Each Glenbrook salesman calls upon customers within his district and sells only products of Glenbrook Laboratories. Sales are made on a direct basis to wholesalers (drug and miscellaneous) and retailers (drug and nondrug, both chain and independent) (CX 48(e)-(f)).

9. At all times relevant to the case herein, respondent has sold and shipped products in interstate commerce throughout the United States and engaged in "commerce" within the meaning of the Clayton Act, as amended (Answer, Par. 12).

B. Lehn & Fink Products Corporation

10. Prior to the subject merger, Lehn & Fink Products Corporation was a corporation organized and existing under the laws of the State of Delaware with its principal offices located at 445 Park Avenue, New York, New York, (Complaint, Par. 12; Answer, Par. 12).

11. For the fiscal year ending June 30, 1965, the 12-month period immediately preceding the merger, Lehn & Fink had net sales of $66,702,978. As of June 30, 1965, Lehn & Fink's assets amounted to $28,291,522. During the 10-year period 1956 through 1965, Lehn & Fink increased its sales by over 125 percent and its assets by approximately 117 percent (CX 8, p. 14; Answer, Par. 14).

(a) As of June 30, 1965, Lehn & Fink's total domestic assets amounted to $22,568,072; in addition, it had foreign assets of $5,723,450 (CX 8).

(b) For the fiscal year ending June 30, 1965, Lehn & Fink's total sales in the United States of all products and services were $57,906,-200; in addition, Lehn & Fink had foreign sales of $8,796,778 (CX 8, CX 31).

12. The operations of Lehn & Fink and its subsidiaries were divided into three major groups accounting for approximate sales percentages as follows: the Consumer Products Group, 62 percent; the Industrial Products Group, 19 percent; and the International Group, 19 percent (CX 4(m)).

13. Within the Consumer Products Group, the Cosmetics Division produced and sold Dorothy Gray and Tussy cosmetics and Ogilvie Hair Preparations (CX 4(m)). Domestic sales of the Lehn & Fink Cosmetics Division for the fiscal year ending June 30, 1965, amounted to $20,094,400 (CX 31).

14. Domestic sales of the Consumer Products Group's L&F Products Division for the fiscal year ending June 30, 1965, amounted to $24,160,100 (CX 31). Included in this figure were sales of Lysol Brand Spray Disinfectant amounting to $12,230,000 and sales of Lysol Liquid Disinfectant amounting to $5,822,000 (CX 44(b)). Also included were sales of L&F's two proprietary drug items—Medi-Quik aerosol antiseptic, a first-aid product, which had domestic sales in fiscal 1965 of $2,036,000, and Stri-Dex medicated pads, sold for the treatment of acne, which had domestic sales in fiscal 1965 of $2,125,000 (CX 44).

15. Lehn & Fink at the time of the merger was achieving and maintaining brand allegience toward many of its consumer products through the use of extensive advertising. For the fiscal year ending June 30, 1965, Lehn & Fink spent approximately $12 million for all media advertising and was approximately the 102nd largest advertiser in the United States. For Lehn & Fink's five largest selling products in that year, advertising expenditures averaged approximately 22 percent of net sales (CX 6, pp. 3–4; CX 7, p. 3; CX 8, p. 4; CX 44 (b)-(c); CX 59 (a)).

16. Lehn & Fink marketed its consumer products through its own national sales organization, supplemented in some instances by the use of brokers. Lehn & Fink's sales organization sold on a direct basis to wholesale and retail food, drug, department, variety and mass-merchandise outlets (CX 4(n); CX 7, p. 3; CX 8, p. 4; CX 14(a)(b)).

17. Lehn & Fink's rapid growth in the 10-year period preceding the subject merger is attributable, in large part, to its diversified program of product development, which resulted in the successful introduction of a number of important new products. These products include "Medi-Quik" antiseptic products, "Stri-Dex" medicated products, and various cosmetics and hair preparations (CX 2; CX 5, pp. 6–7; CX 7, pp. 1–3; CX 9; CX 10; CX 29).

18. Lehn & Fink was the leading firm in the national household aerosol deodorizer market. The company introduced its "Lysol" brand spray deodorizer in 1962 and, at the time of the subject merger, had captured 36 percent of the market. By August 1968, approximately two years after Lehn & Fink was merged into Sterling, Lysol Spray's market share had increased to 42 percent (CX 38(e)).

19. At all times relevant herein, Lehn & Fink sold and shipped products in interstate commerce throughout the United States and engaged in "commerce" within the meaning of the Clayton Act, as amended (Answer, Par. 20).

II The Acquisition

A. Description of Transaction

20. On or about June 28, 1966, Lehn & Fink was merged into respondent by means of an exchange of stock, pursuant to which Lehn & Fink stockholders received one share of a new preferred stock of respondent, convertible into 1 and 1/4 shares of common and callable at $55 a share after five years, in exchange for each share of Lehn & Fink stock (Complaint, Par. 21; Answer, Par. 20).

B. Background and Motives for the Acquisition

21. Because of the then current value of Lehn & Fink stock, the transaction was attractive from an investment standpoint (Pfister 1254). In addition, Sterling was interested in the Lehn & Fink acquisition because of its desire to obtain a wider line of consumer products to distribute through its foreign business operations. Sterling had extensive manufacturing and distribution operations abroad and it was interested in Lehn & Fink's consumer lines, particularly Lehn & Fink's cosmetic formulations, for its overseas selling organizations. Unlike the United States, marketing conditions in many overseas countries are such as to facilitate common distribution of diverse consumer products (Pfister 1255, 1257, 1273–74). Sterling also considered that the acquisition would diversify its domestic operations by buying a going business in cosmetics and household products lines, different from any of Sterling's own operations (Pfister 1257). Sterling did not contemplate combining the U.S. operations of Lehn & Fink with its own, and there was no analysis made of, or consideration given to, any relationship between the companies' domestic manufacturing, research and development, distribution, marketing, advertising or other operations (Pfister 1258–59; Berry 1478; Tainter 1766). In fact, after the merger, Lehn & Fink's domestic business was not changed and it has continued to operate independently as had been intended and as commercial considerations required (Kirk 1379). Prior to the Lehn & Fink transaction, Sterling had not made any substantial acquisition of a public company with significant sales volume, *i.e.*, annual sales volume equal to $5 million (Pfister 1270, 1289).

22. Prior to the acquisition of Lehn & Fink, Sterling had not considered entering the cosmetics business by internal growth, it had