It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in their business organization such as dissolution, assignment, incorporation or sale resulting in the emergence of a successor corporation or partnership or any other change which may affect compliance obligations arising out of this order.

IN THE MATTER OF

THE SPERRY AND HUTCHINSON COMPANY

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 8671. Final Order, February 16, 1973.

Order reaffirming previous Commission order, 73 F.T.C. 1099, as to Counts I and II of the complaint and requiring respondent, among other things to cease setting a maximum number of stamps to be dispensed by its retail licensees in relation to the purchases by such retailers' customers and conspiring with others to enforce its policy of limitation.

FINAL ORDER

Whereas, The Commission issued its original order in this case on June 26, 1968, [73 F.T.C. 1099,1226] from which respondent appealed to the United States Court of Appeals for the Fifth Circuit, seeking review of the issues relating to Count III of the complaint herein, and

Whereas, The Fifth Circuit reviewed the issues relating to Count III of the complaint, respondent having abandoned any challenge to those portions of the order relating to Counts I and II of the complaint, and

Whereas, The Commission petitioned the Supreme Court of the United States for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit from its decision adverse to the Commission, and

Whereas, The Supreme Court granted said writ and, upon its review of the issues relating to Count III of the complaint,

ordered the case remanded to the Commission for such further proceedings as may be appropriate, [405 U.S. 233] and

Whereas, The case has been remanded to the Commission, and

Whereas, The Commission has decided to republish as final the following portions of its order, relating to Counts I and II of the complaint, which were neither challenged by respondent nor judicially reviewed by the Courts:

Now therefore, it is ordered, That respondent, The Sperry and Hutchinson Company, its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the issuing, distribution, sale, or the redemption of trading stamps in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Putting into effect, maintaining, or enforcing any plan or policy under which contracts, agreements, or understandings are entered into with any retailer which have the purpose or effect of:

(a) fixing or establishing the maximum number of trading stamps which may be dispensed by retailers to their customers in relation to such customers' purchases of goods or services; and

(b) requiring, expressly or by implication, or suggesting to or inviting any retailer to dispense trading stamps on a basis not to exceed a specified number of trading stamps in relation to purchases by such retailer's customers of goods or services.

2. Securing adherence to a scheme or policy of foreclosing the dispensing of trading stamps at the retail level in excess of any specified ratio of stamps to goods or services sold, by terminating or threatening to terminate or cancel, or refusing to enter into contractual relationship with, or threatening to refuse to deal with, any retailer, or taking any other affirmative action which goes beyond the mere declination to deal with a customer who will not observe such policy.

3. Combining, conspiring, or otherwise knowingly acting in concert with any other person to cause any retailer to dispense trading stamps in any specified ratio of the number of stamps to goods or services sold.

4. Communicating in any way with any other trading

stamp company, or acting in any way in response to any communication from any trading stamp company, with respect to the ratio of the number of trading stamps dispensed in relation to goods or services sold by the retailer.

It is further ordered, That the respondent, within sixty (60) days after the effective date of this order:

(a) notify in writing all of its sales employees, sales representatives, and licensees of the provisions of this cease and desist order; and

(b) reform all contracts with retailers or others who dispense S&H green stamps to the public to conform with the provisions of this cease and desist order.

It is further ordered, That respondent, the Sperry and Hutchinson Company, shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

THE SPERRY AND HUTCHINSON COMPANY

Docket 8671. Notice, Feb. 16, 1973.

Notice of Commission action to reconsider findings of fact, conclusions, opinion and final order relating to Count III of the complaint; granting both sides opportunity to file briefs and reply briefs; and advising of intent to schedule oral argument not earlier than ten days after the date set for the filing of reply briefs.

NOTICE OF COMMISSION ACTION TO RECONSIDER PORTION OF THE ORDER AND TO PERMIT PARTIES TO SUBMIT WRITTEN AND ORAL ARGUMENT

The Supreme Court of the United States [405 U.S. 233] having remanded this case to the United States Court of Appeals for the Fifth Circuit with instructions to remand the case to the Commission for such further proceedings not inconsistent with the Supreme Court's opinion, as may be appropriate, and the case having been remanded to the Commission by the said Court of Appeals, the Commission has determined to reconsider its findings of fact, conclusions, opinion and final order relating to Count III of the complaint.

To facilitate reconsideration of the matter relating to Count III of the complaint, complaint counsel and respondent are hereby granted thirty (30) days from the date of receipt of this notice to file with the Commission briefs (not to exceed sixty (60)

pages) as to whether respondent's practices, though posing no threat to competition within the precepts of the antitrust laws, are nevertheless (1) unfair methods of competition, and/or (2) unfair or deceptive acts or practices. Of particular interest to the Commission is the extent to which there is evidentiary support in the record that the challenged practices may be unfair to the consuming public, stamp exchanges or retailers. Ten days from the date of receipt of the brief, each side may file a reply brief (not to exceed fifteen (15) pages).

The Commission intends to schedule oral argument in this matter not eariler than ten (10) days after the date set for the filing of reply briefs.

IN THE MATTER OF

AVNET, INC.

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

Docket 8775. Complaint, Dec. 1, 1969—Decision, Feb. 16, 1973.

Order requiring a New York City diversified manufacturer, processor and marketer of numerous items consisting principally of electronic, automotive and consumer products, among other things to divest itself of all assets, stocks, properties, rights, privileges and interests as a result of its acquisition of Guarantee Generator & Armature Co., doing business as International Products & Manufacturing Co. Respondent is further prohibited from making any acquisitions of stocks or assets within the automotive electrical unit rebuilder industry for 10 years without prior Federal Trade Commission approval.

AMENDED COMPLAINT

The Federal Trade Commission having reason to believe that Avnet, Inc., respondent herein, has violated the provisions of Section 7 of the Clayton Act, as amended, 15 U.S.C. Section 18, by acquiring Guarantee Generator & Armature Co., d/b/a International Products & Mfg. Co., issues this amended complaint pursuant to Section 11 of that Act, stating its charge in that respect as follows:

I

1. For the purpose of this complaint, the following definitions shall apply:

(a) "Automotive electrical units" consist of any or all of the following items: generators, alternators, starters, starter drives, armatures, solenoids, and voltage regulators.

(b) The term "rebuilder" is synonymous with "re-manufacturer," and only applies to those engaged in rebuilding automotive electrical units.

(c) (1) The relevant line of commerce is the "rebuilders' supply industry," consisting of firms ("suppliers") engaged in the manufacture and/or supply of various new parts, materials, and equipment ("supply of new parts") to rebuilders.

(2) A relevant sub-line of commerce limits the rebuilders' supply industry by excluding the supply of new parts to rebuilders who, pursuant to an agreement with that supplier, rebuild and furnish automotive electrical units to said supplier or its designee.

(3) The term rebuilders supply industry does not include the supply of new parts to those engaged in the manufacture of automobiles, trucks, buses and related self-propelled land vehicles.

II

RESPONDENT

2. Respondent, Avnet, Inc. ("Avnet"), is a corporation organized and existing since 1955 under the laws of the State of New York, with principal executive offices located in the Time & Life Building, New York, New York.

3. Respondent is a diversified manufacturer, processor and marketer of numerous items consisting principally of electronic, automotive, and consumer products. For fiscal 1967, respondent's net sales exceeded $146 million. Net income was $9.3 million, and assets totaled $99 million in that year.

4. As the result of a program of expansion through merger and acquisition respondent has significantly increased its corporate growth in recent years. Between the years 1960 and 1968, respondent has acquired more than twenty companies including a number of profitable concerns engaged in manufacturing and marketing automotive parts and machinery, including alternators, generators, starters, and ignition systems and their components primarily for the replacement parts market. In 1966, respondent established an Automotive Process and Equipment Division, comprised principally of concerns acquired by respondent and engaged in the manufacture or distribution of automotive replacement parts. For the year ending June 30, 1967, respond-

ent's Automotive Process and Equipment Division accounted for $31.6 million of the company's aggregate net sales, establishing respondent as an important factor in the automotive aftermarket.

5. At all times relevant herein, respondent sold and shipped its products in interstate commerce and engaged in "commerce" within the meaning of the Clayton Act.

III

VALLEY FORGE PRODUCTS, INC.

6. On July 31, 1964, respondent acquired substantially all the assets of Valley Forge Products, Inc. ("Valley Forge"), for $2,415,000. Prior to its acquisition by respondent, Valley Forge was a corporation organized and existing under the laws of the State of New York, with its executive office and principal place of business located at 370 19th Street, Brooklyn, New York.

7. At the time of its acquisition by respondent, and for many years prior thereto, Valley Forge was engaged in the manufacture and supply of replacement ignition parts for motor vehicles and of various equipment, tools, and component parts used by rebuilders. The business acquired from Valley Forge was re-established in part as a division of respondent and, since 1966, has been conducted in the Automotive Process and Equipment Division of respondent.

8. In the year prior to its acquisition, Valley Forge had sales of $4.8 million and total assets of $2.4 million. At the time of acquisition, Valley Forge sold its products to independent distributors and rebuilders throughout the United States, was an important supplier of a complete line of parts to rebuilders, and was an acknowledged leader in the manufacture and supply of quality-built field coils. Approximately 50 percent of Valley Forge's sales were to rebuilders.

9. At all times relevant herein, Valley Forge sold and shipped its products in interstate commerce and engaged in "commerce" within the meaning of the Clayton Act.

IV

GUARANTEE GENERATOR & ARMATURE CO., d/b/a
INTERNATIONAL PRODUCTS & MFG. CO.

10. Prior to its acquisition by respondent on January 31, 1965, Guarantee Generator & Armature Co., d/b/a International Prod-

ucts & Mfg. Co. ("IPM"), was a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business located at 850 Ogden Avenue, Chicago, Illinois.

11. At the time of its acquisition by respondent, and for many years prior thereto, IPM was, and continues to be, engaged in the manufacture and supply of a comprehensive line of equipment, tools, component parts and supplies used by rebuilders.

12. During the year prior to acquisition, IPM had sales and assets of $12 million and $5 million, respectively. Sales were made to over 5,000 independent distributors and rebuilders located primarily in the United States. In fiscal 1964, IPM's sales to rebuilders were approximately $11.3 million. IPM was and is still considered the leader in supplying a full line of parts, materials and equipment to rebuilders.

13. At all times relevant herein, IPM sold and shipped its products in interstate commerce and engaged in "commerce" within the meaning of the Clayton Act.

V

TRADE AND COMMERCE

14. The automotive parts rebuilding industry constitutes a significant segment of the important multi-billion dollar automotive aftermarket for replacement parts. Rebuilt parts have continued to gain acceptance and, in some instances, are in direct competition with new units for replacement purposes. For many products the rebuilder can offer a rebuilt unit equal in quality to a new unit at a lower price. The expanding area of automotive electrical unit rebuilding, constituted as a highly fragmented industry primarily made up of many small concerns, forms a solid sub-segment of the rebuilding industry. Rebuilt generators, starters, starter drives, and armatures have achieved such widespread acceptance that in comparison to the use of new parts, they completely dominate the replacement parts aftermarket.

15. In 1964 the rebuilders' supply industry was highly concentrated. Sixteen firms supplied virtually the total volume of equipment and parts furnished to rebuilders. The total value of their supply during that year approached $24 million. Three firms supplied rebuilders with products valued at $16 million and were considered by rebuilders as being their major suppliers, and the only concerns able to furnish a complete line of equip-

ment and rebuilding parts. IPM ranked first in sales in that year with a volume of $11.3 million and was the single most important factor in the supply of parts and equipment to rebuilders. While IPM accounted for over 47 percent of industry sales, Valley Forge ranked third on a volume of $2.4 million accounting for 10 percent of industry sales. Combined, IPM and Valley Forge accounted for approximately 57 percent of total industry sales to rebuilders in 1964, with the four leading companies accounting for approximately 79 percent and the eight leading firms controlling 92 percent of such sales.

16. Since 1963, a series of acquisitions and mergers involving five of the sixteen suppliers referred to in Paragraph 15 has significantly altered the structure of the rebuilders' supply industry. The merger movement, precipitated by respondent's acquisition of IPM, challenged herein, has tended to solidify further an already highly concentrated industry to the detriment of substantial actual and potential competition.

VI

THE ACQUISITION

17. On or about January 31, 1965, respondent acquired substantially all of the assets and business of IPM for $7,537,533. Upon consummation of this acquisition, the business of IPM was conducted through the Guarantee Generator & Armature Division of respondent. However, since 1966, the business of IPM has been conducted through the Automotive Process and Equipment Division of respondent.

VII

EFFECTS OF ACQUISITION

18. The effects of the acquisition of IPM by respondent may be substantially to lessen competition or to tend to create a monopoly in the manufacture and/or supply of parts, materials, and equipment to rebuilders throughout the United States, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. Section 18, in the following ways among others:

(a) Substantial actual and potential competition between respondent and IPM has been, or may be, eliminated;

(b) The combination of the business of IPM as a result of the acquisition challenged herein, with respondent's existing busi-

ness as a leading supplier of parts, equipment, and materials to rebuilders of automotive electrical units, and respondent's position as an important manufacturer and marketer of replacement parts for sale in the automotive aftermarket, constitutes a major restructuring of the rebuilders' supply industry and may tend unduly to:

i. increase barriers to the entry of new and effective competition in that industry;

ii. deprive smaller, limited-line rivals of an equal opportunity to compete for sales to rebuilders thereby entrenching respondent in its acquired dominant and monopolistic position;

iii. increase previously existing high levels of concentration; and

iv. precipitate additional acquisitions or mergers between other rebuilders' suppliers which effect may be to eliminate actual and potential competition; and

(c) Rebuilders of automotive electrical units may have been denied the benefits of free and open competition to their detriment and to the detriment of the general purchasing public and ultimate consumer.

19. The acquisition by respondent, as alleged in Paragraph 17 constitutes a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. Section 18.

Mr. K. Keith Thurman and *Mr. Jere W. Glover* supporting the complaint.

Wilmer, Cutler & Pickering, Washington, D.C. by *Mr. Howard P. Willens, Mr. Daniel C. Schwartz* and *Mr. Stephen F. Black* for respondent.

INITIAL DECISION BY WILLIAM K. JACKSON, HEARING EXAMINER

MARCH 3, 1972

PRELIMINARY STATEMENT

The Federal Trade Commission on April 1, 1969, issued its complaint in this proceeding charging Avnet, Inc., a corporation, by its acquisition of Guarantee Generator and Armature Co., d/b/a International Products & Mfg. Co., hereinafter referred to as IPM, violated Section 7 of the Clayton Act, as amended (15 U.S.C. Section 18). Thereafter on December 1, 1969, the Commission amended its complaint in several material respects.

The amended complaint alleges that the effects of the acquisition of IPM by respondent may be substantially to lessen competition or to tend to create a monopoly in the manufacture and/or supply of parts, materials and equipment to rebuilders throughout the United States, in the following ways, among others:

1. Substantial, actual and potential competition between respondent and IPM has been, or may be, eliminated;

2. The combination of the business of IPM as a result of the acquisition challenged herein, with respondent's existing business as a leading supplier of parts, equipment, and materials to rebuilders of automotive electrical units, and respondent's position as an important manufacturer and marketer of replacement parts for sale in the automotive aftermarket, constitutes a major restructuring of the rebuilders supply industry and may tend unduly to:

a. increase barriers to the entry of new and effective competition in that industry;

b. deprive smaller, limited-line rivals of an equal opportunity to complete for sales to rebuilders thereby entrenching respondent in its acquired dominant and monopolistic position;

c. increase previously existing high levels of concentration; and

d. precipitate additional acquisitions or mergers between other rebuilders' suppliers which effect may be to eliminate actual and potential competition; and

3. Rebuilders of automotive electrical units may have been denied the benefits of free and open competition to their detriment and to the detriment of the general purchasing public and ultimate consumer.

After being served with the amended complaint, respondent appeared by counsel and filed on January 14, 1970, its answer to the amended complaint denying, in substance, that the merger was illegal. Thereafter, on January 26, 1970, August 20, 1970, October 16, 1970, and October 30, 1970, four prehearing conferences were held pursuant to pretrial orders of the hearing examiner 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, together with a summary of their proposed testimony, 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 February 1, 1971, and concluded on February 25, 1971. Pursuant to a request by respondent for further discovery, a two and one-half month adjournment was granted prior to the presentation of respondent's defense. During this period respondent presented to the examiner several subpoenas *duces tecum,* all of which were issued. On May 6, 1971, after having indicated that it had completed all its discovery requests, respondent commenced the presentation of testimony and other evidence in its defense. Except for several brief adjournments, the hearings continued until September 13, 1971, during which time respondent called approximately 59 witnesses. On October 18 and 19, 1971, complaint counsel called three rebuttal witnesses and the record was closed on October 19, 1971. The record in this matter consists of 5,663 pages of testimony and 354 documentary exhibits.

Pursuant to an application of the hearing examiner based on a joint request by the parties, the Commission by order of November 5, 1971, ruled that the parties file their proposed findings of fact, conclusions of law and briefs 50 days after the closing of the record or on or before December 8, 1971; that both parties thereafter have an additional 25 days within which to file reply briefs or on or before January 3, 1972; and that the hearing examiner thereafter will have 60 days within which to file his initial decision, or until March 3, 1972.

Proposed findings of fact and briefs in support thereof were filed by the parties on December 8, 1971, and reply briefs were filed on January 3, 1972.

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
RRB—Respondent'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 Avnet, Inc. (hereinafter referred to as "Avnet"), is a corporation organized and existing since 1955 under the laws of the State of New York, with principal executive offices located at 767 Fifth Avenue, New York, New York (Amended Complaint, ¶2 (hereinafter referred to as Complaint); Answer ¶2).

2. Avnet, together with its subsidiaries and divisions, is a diversified manufacturer, processor and marketer of numerous items consisting principally of electronic, automotive and con-

sumer products. For fiscal 1965, Avnet's net sales were approximately $57.5 million, with net earnings of approximately $3.3 million. For fiscal 1967, primarily due to a program of expansion through merger and acquisition, Avnet had increased its net sales to approximately $146 million, with a net income of $9.3 million and assets totaling $99 million (Complaint, ¶¶3, 4; Answer ¶¶3, 4; CX 10 a, CX 12 a).

3. As the result of a program of expansion through merger and acquisition, Avnet has significantly increased its corporate growth in recent years. Between the years 1960 and 1968, Avnet acquired more than 20 companies including a number of profitable concerns engaged in manufacturing and marketing automotive parts and machinery, including components for alternators, generators, starters and ignition systems primarily for the replacement parts market. In 1966, Avnet established an Automotive Process and Equipment Division, comprised principally of concerns acquired by it and engaged in the manufacture or distribution of automotive replacement parts. For the year ending June 30, 1967, Avnet's Automotive Process and Equipment Division accounted for $31.6 million of the company's aggregate net sales (Complaint, ¶4; Answer, ¶4).

4. On July 31, 1964, Avnet acquired substantially all the assets of Valley Forge Products, Inc. (hereinafter referred to as "Valley Forge"), for $2,415,000. Prior to its acquisition by Avnet, Valley Forge was a corporation organized and existing under the laws of the State of New York, with its executive office and principal place of business located at 370 19th Street, Brooklyn, New York (Complaint ¶6; Answer, ¶6; CX 9 c).

5. At the time of its acquisition by Avnet, and for many years prior thereto, Valley Forge was engaged in the manufacture and supply of replacement ignition parts for motor vehicles and of various component parts and materials used by rebuilders of automotive electrical units (Complaint, ¶7; Answer, ¶7). From the time of its acquisition until July 1966, the business acquired from Valley Forge (the Valley Forge Division) was conducted in the Automotive Division of Avnet, and from July 1966 to July 1968 was conducted in the Automotive Process and Equipment Division of Avnet. From July 1968 to July 1970, the Valley Forge Division was part of the Electrical and Automotive Division of Avnet and from July 1970 to July 1971, it was part of the Wire and Cable Division of Avnet (RX 128 a–b).

6. For calendar year 1964, Valley Forge and the Valley Forge Division had sales of $5.034 million and total domestic sales of $2.040 million (Fischer 3975–76). In 1964, Valley Forge and the Valley Forge Division had total sales to automotive electrical unit rebuilders of $2.5 million, and total domestic sales to such customers of $1.856 million (CX 22 a–b, CX 23 b, Fischer 3975–76).

7. In 1964, Valley Forge and the Valley Forge Division sold several thousand different new items for use in rebuilding generators, starters, starter drives, armatures, alternators, solenoids and voltage regulators to domestic automotive electrical unit rebuilders (hereinafter "rebuilders") (CX 9 c, CX 15 b, CX 18 a, CX 20, CX 23 b, CX 29 b, CX 50 a–c, CX 105–CX 113). For each of the years prior to its acquisition by Avnet, Valley Forge offered an increasing number of new items for sale to rebuilders (CX 24 b, CX 38 a, Fischer 3965).

8. From 1961 through 1964, the sales to rebuilders by Valley Forge and the Valley Forge Division increased substantially (CX 24 b, CX 38 a, Fischer 4245).

9. At all times relevant herein, Avnet sold and shipped its products, particularly the products of its Valley Forge Division, in interstate commerce and engaged in "commerce" within the meaning of the Clayton Act (Complaint, ¶¶5, 9; Answer, ¶¶5, 9).

B. *The Acquired Company*

10. Prior to its acquisition by Avnet on January 31, 1965, Guarantee Generator & Armature Co., d/b/a International Products & Manufacturing Co. (IPM), was a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business located at 850 Ogden Avenue, Chicago, Illinois (Complaint, ¶10; Answer, ¶10).

11. At the time of its acquisition by Avnet, and for many years prior thereto, IPM was and continues to be, engaged in the manufacture and supply of a line of new component parts, supplies, equipment and tools used by rebuilders (Complaint, ¶11, Answer, ¶11). During the year prior to acquisition, IPM had sales and assets of $12 million and $5 million respectively (Complaint, ¶12; Answer, ¶12).

12. In 1964, IPM offered and continues to offer rebuilders the most extensive line of new parts, materials and equipment. In 1964, IPM sold over 10,000 different part numbers of new items to rebuilders making it "The Rebuilding Industry's complete

source of supply" (CX 50 d–s, CX 52 a, CX 96 c, CX 115–CX 265, Erwin 552, DeBlase 840, Flynn 937; see also Finding 71).

13. IPM had domestic sales of $11,353,000 to rebuilders in 1964 (CX 26 b, CX 45, Mansfield 2116–18).

14. In 1964 and for many years prior thereto, IPM was by far the largest supplier and had the most complete line of new parts, equipment and materials to rebuilders (CX 44 a, CX 47 b, CX 50 d, Smith 605, Shelly 750, Vander Veen 896, Flynn 943–44, Gordon 1160, Brock 1525, Garello 2185–86; see also Findings 60 and 68).

15. From the time of its acquisition until July 1966, the acquired business of IPM was conducted in the Automotive Division of Avnet; and from July 1966 to July 1968, it was conducted in the Automotive Process and Equipment Division of Avnet; and from July 1970 to July 1971, it was conducted in the Automotive Manufacturing Division of Avnet (RX 128 a–b).

16. At all times relevant herein, IPM sold and shipped its products in interstate commerce and engaged in "commerce" within the meaning of the Clayton Act (Complaint, ¶13; Answer ¶13).

C. *The Acquisition*

17. Negotiations between IPM and Avnet were initiated in the fall of 1964 when Mr. Mansfield, the president of IPM, met in Chicago with Mr. Morton Weiner, Avnet's senior vice-president. Mr. Mansfield was originally contacted by Harris Fischer, then president of the Valley Forge Division of Avnet, at Mr. Weiner's request (Mansfield 1875–76, Fischer 4151–52). Several further meetings were held, a letter of intent was signed and the acquisition was announced to the press on April 2, 1965 (CX 16). Pursuant to the agreement, Avnet acquired substantially all of the assets and business of IPM for $7,537,533, effective January 31, 1965 (Complaint, ¶17; Answer, ¶17).

II. NATURE OF THE TRADE AND COMMERCE

The Line of Commerce

A. *Definitions*

1. *Rebuilder*

18. There is a sharp disagreement between the parties over the meaning of the term "rebuilder" as used in Paragraph 1(b) of the complaint defining a rebuilder as "synonymous with 'remanufacturer' and only applies to those engaged in rebuilding

automotive electrical units." Respondent seeks to base the definition of a rebuilder on a broad and general examination of the physical operations performed: basically consisting of the disassembling of a unit, cleaning, testing, replacement or reconditioning of defective or worn parts, reassembling and testing without regard to any other factors (RPF 24–27).

19. Complaint counsel base their definition of who is a rebuilder on a variety of other processing and marketing factors hereinafter set forth, all of which are equally important (CPF 20–26).

20. Rebuilders operate on a production line or modified production line basis depending on their size, with each employee performing an assigned task or tasks (Erwin 531; Smith 594–95; Woodruff 826; DeBlase 848; Vander Veen 901; Butchkes 2288–89; Young 2979; Fallen 3022; Ledbetter 3399; Hicks 4627, "Our categorization of a rebuilder, from a marketing standpoint, is a production rebuilder. * * * This rebuilder rebuilt from stock and sold from stock. He didn't ordinarily do custom rebuilding;" Wolf 3664; Krider 5607–08; RX 55 e).

21. Rebuilders take a quantity varying from 5 to 500 identical inoperative units known as cores which they own and have received in exchange from their customers or purchased from used core dealers (junk dealers) (Smith 597; Gelberg 661; Feldman 714,719, 732–33; Shelly 772; Woodruff 801, 815; DeBlase 844, 873; Vander Veen 901, 919–20; McGuire 1295; Ledbetter 3427–28).

22. These cores are then disassembled, the component parts lose their identity, the component parts are separated by various categories, cleaned, tested and placed in separate bins or barrels (Gelberg 648–49; DeBlase 848–49; Keesee 1383; Weiss 4842).

23. Additional used or new parts are then purchased to fill in where parts salvaged from cores are either worn or defective or just not in sufficient supply. Some items such as brushes and bushings are never reused but are always replaced with new (Smith 636; Feldman 717; Shelly 771; DeBlase 850; Ledbetter 3437).

24. Production rebuilders generally follow a uniform procedure on which parts are replaced if worn or defective (DeBlase 850–51; Woodruff 821; Krider 5614–15).

25. The new and used component parts are commingled and are then drawn on a random basis from the bins or barrels and reassembled on a production line basis (Erwin 531; Feldman