

Final Order

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*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.

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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.

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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 earlier 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-

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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 compete 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

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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, Garelo 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

718-19, 733; "Units lose their identity during rebuilding operation," Woodruff 801; DeBlase 848-50; Vander Veen 906; McGuire 1295; Keesee 1383; Weiss 4842-43; Krider 5607-08, 5613).

26. The completed unit is then tested, packaged and sold to distributors, jobbers and dealers for use in the aftermarket (Gelberg 649; Feldman 719; Shelly 772; Woodruff 791, "in my terms a rebuilder is a production rebuilder who sells wholesale only," 801, 826; DeBlase 835; Vander Veen 894; McGuire 1289; Butchkes 2288; Peatross 2873; Ledbetter 3407-08).

27. Rebuilders in general purchase their new parts in bulk rather than in individual packages and generally maintain inventories (Erwin 540; Feldman 719; DeBlase 856; Vander Veen 902; Flynn 945; Kamber 1018; Stevens 3102, 3123; Burgess 3540; Fischer 4236).

28. Their principal sources of supply are rebuilder suppliers (hereinafter discussed) and only in case of emergency or unavailability of an item do they purchase from warehouse distributors or jobbers (Smith 590, 634, 638; Gelberg 653; 655, 689; Feldman 715; Shelly 750; Woodruff 797-99; DeBlase 839, Ace and IPM supplied him in 1964 with 75 percent of his new parts, at 840; Vander Veen 896-97, 899, 900, 902; McGuire 1289-90, 1299, 1302, 2453; Butchkes 2299, 2301, 2326; Peatross 2869, 2875; Ledbetter 3458, 3442, 3905-06, 3923; see also Finding 97).

29. Most rebuilders do not rebuild or repair any heavy-duty units (Smith 589; Gelberg 653; Shelly 752-53; Vander Veen 905; Garello 2175; Mills 2767).

30. Those rebuilders who work on heavy-duty units generally do so on a custom or repair basis (Vander Veen 906; McGuire 1294-95; Garello 2175; A. Johnson 2520-22; Ledbetter 3401; Mills 2767).

31. Such repair of heavy-duty units generally accounts for less than 5 percent of such rebuilders' business and is done primarily as a convenience for these rebuilders' customers (Smith 630; Vander Veen 905; McGuire 1294-95; Butchkes 2290, 2333; A. Johnson 2509; DeBlase 2903; Ledbetter 3400-01, 3858-59).

32. Rebuilders generally issue catalogues and price lists and sell their units for an established price plus a core exchange, through salesmen who call on their customers (McGuire 1295, 2449; DeBlase 2948-49; Ledbetter 3410-12).

33. Rebuilders mark their units as "rebuilt" (DeBlase 852; Vander Veen 901; Ledbetter 3858; RX 56 a-c (16 CFR 62)).

## 2. *Repair Shop*

34. A rebuilder differs from a repair shop, sometimes referred to as a "custom rebuilder" in the trade, in the following ways, among others:

(a) Repair shops seldom own the units on which the work is performed and in most circumstances the units are owned by and returned to the customer (Gelberg 648; Garelo 2183; Bensen 2198, 2285; Butchkes 2310; McGuire 2449-50; A. Johnson 2522; Crisman 2562; Tarras 2593; Sechrist 2635, 2640-41; Mills 2744, 2746, 2769; Peatross 2873; Ledbetter 3399).

(b) Repair shops work on one unit at a time and the parts are not commingled with those of another unit (Smith 631; Gelberg 648; Feldman 718; Shelly 753; Woodruff 826; DeBlase 850, 852; Keesee 1383-84; Garelo 2183, 2187; Bensen 2221; Rowe 2345; A. Johnson 2509; Crisman 2560; Mills 2744, 2746; Ledbetter 3399; Wolf 3664).

(c) Repair shops reassemble a unit from that unit's parts or from parts substituted for defective or worn items (Gelberg 648; Feldman 718; Shelly 753; McGuire 1295; Mills 2744).

(d) Repair shops do not resell the units in most instances, but charge the customer—generally the vehicle owner—on a parts and labor basis and return the unit to the customer or install it on the customer's vehicle (Feldman 719; Shelly 753; Woodruff 801; McGuire 1295; Keesee 1388; Butchkes 2310; Rowe 2348, 2377; A. Johnson 2513, 2522-23; Crisman 2562, 2575, 2578; Tarras 2606-08; Sechrist 2622; Mills 2744, 2746, 2760).

(e) Repair shops purchase primarily their new parts requirements from wholesalers (Shelly 754; Garelo 2171; Rowe 2352; Crisman 2551; Tarras 2599-2600; Sechrist 2628; Mills 2749-51, 2764).

35. The distinction between rebuilders and repair shops is recognized by a trade association, Automotive Parts Rebuilding Association (APRA), which allows only rebuilders, their suppliers and other manufacturers that can offer technical assistance to become members (RX 55 e; Shelly 756; Woodruff 792-93; Winters 1186; Young 2979).

36. The distinction between rebuilders and repair shops was recognized by the Federal Trade Commission in promulgating a trade regulation rule concerning the labeling of units produced by rebuilders but not those repaired by repair shops. In compliance with this rule, units rebuilt and sold by rebuilders have

been labeled "rebuilt," whereas the units worked on by mechanics in repair shops (or by custom rebuilders) have not been so labeled (CX 246, RX 56 a-c (16 CFR 62(b)(1)); Shelly 758; Woodruff 828; Vander Veen 901; Bensen 2198; A. Johnson 2533-34; Crisman 2570; Tarras 2597-2605; Sechrist 2635; Mills 2747; Young 2978; Ledbetter 3858).

37. Part 62 of the Federal Trade Commission's Trade Regulation Rule (RX 56 a-c; 16 CFR 62) must be read in its entirety in order to properly interpret the rule. Indeed, repair shops perform some of the functions delineated in the rule in order to repair a unit but are eliminated from the rule at the very outset. In order to qualify under the rule, the person, firm, corporation or organization must be engaged in the *sale* of the product (16 CFR 62.1(b), Bensen 2211). Repair shops are not engaged in selling a rebuilt unit but invoice on a parts and labor basis (Finding 34(d)).

38. Treasury regulations promulgated under 26 U.S.C.A. Section 4061(b) (1954) distinguish between rebuilt and repaired or reconditioned units. Treas. Reg. Section 48.4061(b)-3 provides with regard to rebuilt, reconditioned or repaired parts (units) or accessories:

(a) Rebuilt parts or accessories. Rebuilding of automobile parts or accessories, *as distinguished from reconditioning or repairing, constitutes manufacturing*, and the builder of such parts or accessories is liable for the tax imposed by Section 4061(b) with respect to his sales of such rebuilt parts or accessories. Reboring or other machining, rewinding and comparable major operations constitute rebuilding. \* \* \* (emphasis added)

(b) Reconditioned parts or accessories. The mere disassembling, cleaning and reassembling (with any necessary replacement of worn parts) of automobile parts or accessories \* \* \* are regarded as reconditioning operations rather than the manufacturing or production of rebuilt parts or accessories. The sale of reconditioned parts or accessories is not subject to tax. \* \* \*

In 1964, Congress recognized this distinction by amending the excise tax law to exempt rebuilt units (CX 292; Woodruff 793; Weiss 4842-43; 26 U.S.C.A. Sections 4061(b), 4063(c); Treas. Reg. Section 48.4061(b)-(c)).

39. Some state tax regulations make a distinction between repairing and the sale of rebuilt units. When a unit is repaired, sales tax is charged only on the parts, whereas the entire price

of the unit is subject to taxation on rebuilt units (A. Johnson 2523-24; Mills 2760).

40. Under the foregoing criteria, the examiner finds that respondent's witnesses John Garello 2158-2189, Gem Truck Electric; Roy Bensen 2192-2227, Schelen Electric; Michael Rowe 2342-2378, Apex Auto Parts & Electric Co.; Donald M. Crisman 2537-2590, Auto Truck Electric; Harold Tarras 2591-2612, Terrace Auto Supply; E. Paul Sechrist 2614-2644, D.C. Ignition Headquarters; and Don Mills 2739-2774, Herb's Truck Electric, are repair shops or custom "rebuilders."

41. Respondent called several warehouse distributors or jobbers for original equipment manufacturers (Tarras 2594; Roberts 4383-84, 4448; Morrison 5153, 5154, 5161) who operated service or custom repair facilities in conjunction with their distribution of parts (Tarras 2593, 2608, "worked on customers' cars," 2598, has "drive-in" service; Roberts 4433, does "tune-up" work, 4435, 4398-99, has "drive-in" service, five days, 4436, does "bench work," customer brings in unit and returns unit to customer, 4447, does warranty work in "drive-in" facility, 4455, does general repair work; Morrison 5179-80, had "drive-in" service, in most instances customers owned the units, doesn't sell to warehouse distributors, 5192-93, jobber with service facility, ads in yellow pages state "units repaired and exchanged," 5194, does warranty work), performed work on one unit at a time on custom repair basis (Tarras 2596, 2606), charged for time and materials or flat rate (Tarras 2597, 2608; Roberts 4431; Morrison 5195), used high percentage of OEM parts (Tarras 2600-01), units not stamped "rebuilt" (Tarras 2606, 2607, puts word "repaired" on invoice; Roberts 4431, 4447; Morrison 5180, "we label them"). Upon the basis of the foregoing testimony, the examiner finds that respondent's witnesses Tarras, Roberts and Morrison operate service facilities and do custom repair work and are not rebuilders.

42. Respondent called several fleet operators who maintained their own service and overhaul facilities (Nelson 2406-2427, Consolidated Freightways Corp.; Rosendhal 2460-2505, Chicago Transit Authority; Meell 2671-2738, Greyhound Corp.; Miller 2776-2818, Ryder Truck Rental). Such facilities perform a wide range of repair and maintenance services on the vehicles of their fleets (Rosendhal 2461-62, 2479-81; Nelson 2409, 2418-19; Meell 2676; Miller 2779). These facilities, in general, work on one unit at a time; and the parts are not commingled with those

of another unit (Rosendhal 2464, 2470, 2496; Nelson 2411; Miller 2782). Fleets do not *resell* the units repaired in their maintenance facilities but utilize them on their own vehicles (Kessesee 1338-39; Nelson 2419, 2422; Rosendhal 2481; Meell 2689-90, 2717, sells a few rebuilt units to companies that have bought used Greyhound buses, as a convenience, but sells to no others; Miller 2803). Fleets do not mark the units repaired in their maintenance shops as "rebuilt" (Nelson 2411, 2424; Rosendhal 2499; Meell 2716). Fleets purchase almost all of the parts they use in repairing automotive electrical units from wholesalers handling OEM brands or vehicle dealers (Nelson 2417-18; Rosendhal 2473-74; Meell 2696, 2699-2700, 2719; Miller 2790, 2793, 2795, 2803-04). Fleets do not purchase from re-builder suppliers who offer almost none of the items required by such fleets (CX 36 c; Erwin 575; Nelson 2417-18, 2427; Rosendhal 2474-75, 2482-84; Meell 2726; Miller 2791, 2803-04; DeBlase 2914; Fischer 4065, 4245-46). Fleet maintenance shops do not purchase used cores or parts for use in their repairing operations (Rosendhal 2492-93; Meell 2706-07). Accordingly, the examiner finds that fleet maintenance facilities are not rebuilders, but repair shops.

### 3. *Automotive Electrical Units*

43. An automotive electrical unit (hereinafter referred to as "units") is any item sold separately by a rebuilder for use on self-propelled land vehicles (CX 36 c; Erwin 573; Smith 608; Winters 1183; Butchkes 2286, 2290, 2309-10). The Federal Trade Commission, in the Trade Practice Rule for the "Rebuilt, Reconditioned and Other Used Automotive Parts Industry," defined "automotive" parts as including any item designed for "an automobile, truck, motorcycle, tractor or similar self-propelled vehicle" (RX 56 a). Units include generators, alternators, starters, armatures, starter drives, solenoids, voltage regulators, stators, and rotors (Erwin 573; Smith 602-03, 608; Gelberg 647; Feldman 709-10; Shelly 773, 775-76; Woodruff 790-91, 806; DeBlase 833-34, 840; Vander Veen 892-93, 913, 920-21; Eurich 1413; Butchkes 2286; Ledbetter 3398, 3862).

### 4. *Parts For Automotive Electrical Units*

44. A part consists of any item purchased by a rebuilder for incorporation in units which he rebuilds (Smith 583, 608; Shelly 760-61, 766, 773; Woodruff 806; Vander Veen 913, 920-21; Winters 1183).

### 5. Cores

45. A core is an inoperative unit used by a rebuilder as his prime source of used parts. Used parts are not readily usable in the rebuilding process at the time of their receipt by rebuilders. Before used parts can be reused by rebuilders, the cores must be disassembled and the parts therefrom sorted, cleaned, inspected and tested. Only a percentage of the used parts meet satisfactory standards to be commingled with similar parts for subsequent use in the rebuilding process. The unusable parts and cores are discarded or sold as scrap (CX 37 f; Erwin 542; Smith 581, 623; Feldman 716; Shelly 755; Woodruff 796, 799, 802, 815-16; DeBlase 843; Vander Veen 900, 919-20; Butchkes 2291; Ledbetter 3427, 3436). Cores constitute the most fundamental source of supply for rebuilders. Rebuilders could not continue profitably in business without the availability of used cores (Smith 623-24; Feldman 733, 740; Woodruff 816; Vander Veen 920). Rebuilders obtain approximately 85 percent of their cores from their customers in exchange for rebuilt units (Smith 602; DeBlase 843, 873; Vander Veen 920; Kamber 1043; Ledbetter 3427). The remaining 15 percent of cores are obtained by rebuilders from junk dealers, firms which specialize in the sale of used units and occasionally used parts (Smith 620; Shelly 780; Kamber 1043; McGuire 1293-94; Fallen 1460; Ledbetter 3428).

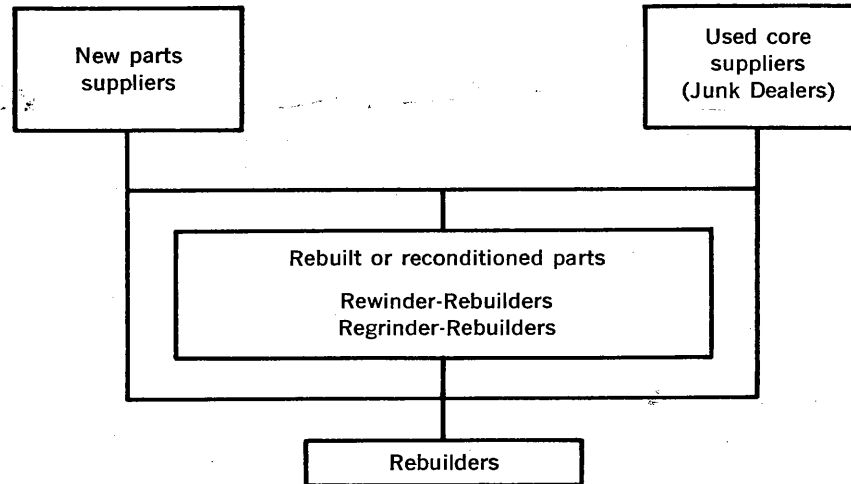
### B. Supply of Items to Rebuilders

46. The firms supplying rebuilders are divided into three groups: suppliers of new parts, suppliers of used cores and suppliers of rebuilt parts. There is no dispute that new and used parts are physically interchangeable with one another; however, as hereinafter found, each of the three groups has significant distinct and different price and marketing characteristics which place them in separate competitive categories (see Findings 48 to 58).

47. The following chart shows the relationship of these principal sources of supply to rebuilders:

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48. In 1964, rebuilders purchased complete used cores from junk dealers. In that year, rebuilders were generally unable to purchase used parts (Erwin 540, 542-44; Smith 619; Gelberg 692-94; Shelly 768, 780; Woodruff 804; McGuire 1293-94; Fallen 1460; Wolf 3693-94).

49. Junk dealers sell on a local or regional basis, whereas rebuilder suppliers of new parts generally compete on a nationwide basis (RX 80 c; Erwin 531, 542; Smith 619; Gelberg 665; Feldman 722, 732; Woodruff 815; Flynn 935; Green 987; Kamber 1016; Gordon 1156; Winters 1184; McCullough 1243; Fallen 1452; Goldblatt 3350; Fischer 3974).

50. Such used parts as were available in 1964 were sold by junk dealers (Gelberg 692-95; McGuire 1290, 1293-94; Wolf 3640-41, 3645-46).

51. The suppliers of new parts and the suppliers of used parts compete in separate and distinct markets (Smith 599-601, 639-40; Fischer 4244). The suppliers of new parts either did not sell used parts and cores or had *de minimis* sales (CX 274 a, Hubert Products sold both new and used items, with used accounting for no more than 2 percent; Erwin 565-66; Smith 592, 620; Gelberg 659; Green 999-1000; Winters 1218; McCullough 1248). Conversely, with very few exceptions, the suppliers of used parts did not supply new parts (Erwin 544; Gelberg 661; Feldman 716; DeBlase 845; Vander Veen 926; Winters 1218; Wolf 3640-41, 3646; Ledbetter 3879).

52. The price of a new and a used item for the same application differs so substantially as to exclude competition between the two items (DeBlase 880; Kamber 1057; Broadwell 1087-88; McCullough 1248; Fischer 4244). In general, the price of the used item is between 50 percent and 75 percent less expensive than the price of the same new item (Shelly 767-68, 779, 782-84; DeBlase 2952; Goldblatt 3351, 3364; Wolf 3699; Fischer 4061-62). Rebuilders purchased used items whenever such items were available in preference to new items (Shelly 783-84; Woodruff 796, 818, 823, 850; Vander Veen 896, Broadwell 1087; Winters 1225-26; Goldblatt 3361; Ledbetter 3436-37). Rebuilders will continue to purchase such used items even though the price of the same item may vary considerably from time to time (Shelly 779-84).

53. Junk dealers neither employ salesmen nor provide catalogs or price sheets to rebuilders (Smith 605-06, 637; Feldman 720; Vander Veen 926; Wolf 3653-54, 3671).

54. Core prices in the short run may vary considerably based upon availability. New parts are not subject to such short term price fluctuations (Smith 602; Shelly 772). The price trend of new and used parts over the long term differs remarkably. A given used item inevitably decreases in price as time passes. In contrast, the new item which fits a similar application shows a steady price increase over time (Smith 601-02; Feldman 726; Shelly 772; Woodruff 805; DeBlase 858-59; Vander Veen 904; Broadwell 1088, 1091 a; Winters 1197, 1222-24; Wolf 3676-77, 3682-83; Fischer 4061-62).

55. Cores and used parts are not available for many late model applications for which rebuilders need parts (CX 37 f; Erwin 544-45; Smith 597-98; Gelberg 693-94; Feldman 717, 722; DeBlase 845-46; Winters 1226).

56. Rebuilders regularly use only new parts for several items which they replace during the rebuilding process (Erwin 540, 544; Smith 592, 636; Feldman 717; Shelly 780; Woodruff 799, 802-03; Winters 1223, 1225-26; Ledbetter 3437; see also Finding 23).

57. The price of a new and a rebuilt or reconditioned item for the same application differs so substantially as to exclude competition between the two items. In general rebuilt items sell for 25 percent to 50 percent less than a comparable new item (Smith 636; Gelberg 668; Feldman 737, 741-42, 744; Shelly 759, 777-79;

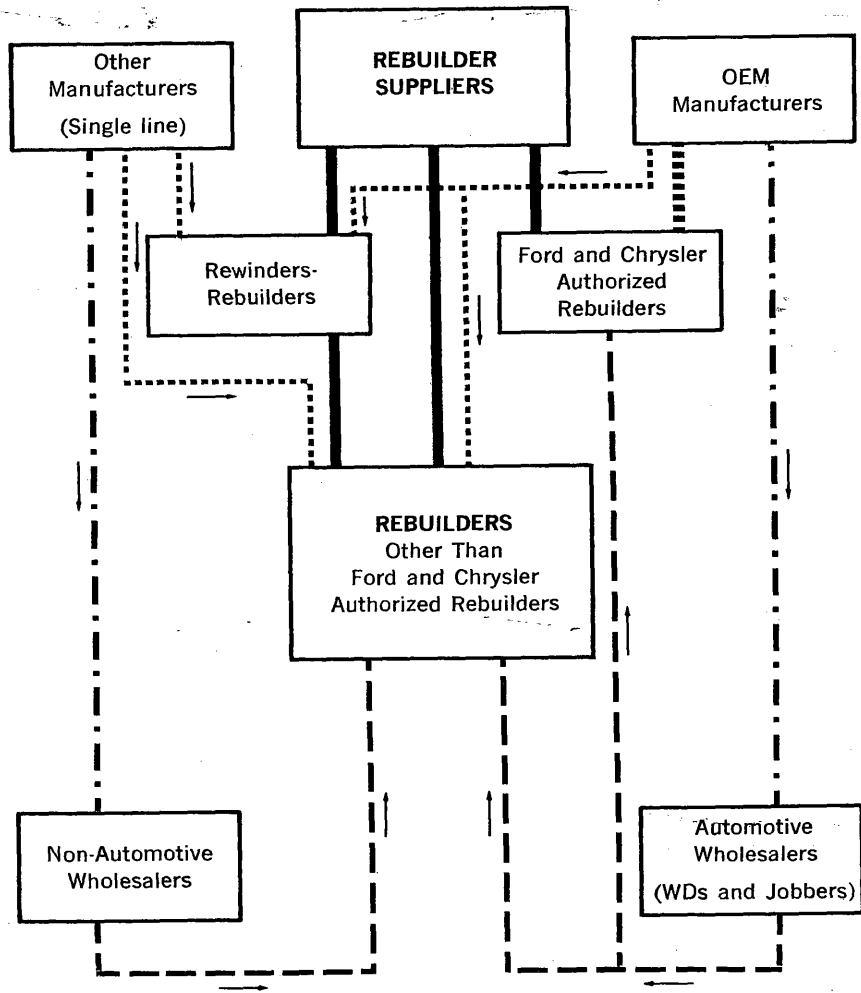
Woodruff 816; DeBlase 846-48; Vander Veen 925-26; Flynn 979; Kamber 1023; Winters 1183; Butchkes 2294, 2297-98; Ledbetter 3425-26; Levine 5028). Rebuilders purchased rebuilt items whenever such were available in preference to new items (Smith 612-13; Shelly 778; Woodruff 829; DeBlase 847-48; Vander Veen 896; Butchkes 2297-98; McGuire 2443; Ledbetter 3425).

58. Rebuilt and reconditioned items supplied to other rebuilders should also be excluded from any consideration of the supply of various parts, materials and equipment to rebuilders, because each supplier of a rebuilt item to another rebuilder is also a purchaser of new or used parts, materials and equipment. If the sales of rebuilt items were included in determining the total supply of parts, materials and equipment to rebuilders, one would be counting the value of the supply twice—once for the new and used parts consumed by the first rebuilder and again when the rebuilder resells the item to another rebuilder (Woodruff 808-09; Kamber 1016-17; Winters 1183; Butchkes 2294). Accordingly, the examiner finds that used core suppliers (junk dealers) and the suppliers of rebuilt or reconditioned parts (re-winders of armatures, rotors and stators and regrinders of bearings) should not be included in the relevant product market (suppliers of new parts to rebuilders).

#### *C. Rebuilder Suppliers*

59. The 1964 sources of new items for rebuilders are illustrated by the following chart:

1964 SOURCES OF NEW ITEMS FOR REBUILDERS



- KEY:
- Rebuilder supply market.
  - Rebuilder supply market—sales by Ford and Chrysler to their authorized rebuilders.
  - Primary channels of distribution.
  - ..... Occasional insubstantial sales to a few of the largest rebuilders.
  - Emergency and convenient insubstantial sales.

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60. The 1964 sales of new parts, materials and equipment to domestic rebuilders by rebuilder suppliers selling *primarily* to rebuilders were:

Company	Sales (\$000)	Market Share (%)	Source
IPM	11,353	57.4	CX 26B, CX 45, Mansfield 2116-18
Ace	2,200	11.1	Weiss 4797, 4804-05, 4835 <sup>1</sup>
Valley Forge	1,856	9.4	Fischer 3976
Vulcan Motor Products	750-1,000	5.0	Green 987
VMC & Rebuilders Supply Co.	1,000	5.0	McCullough 1243
Carwin Sales	511	2.6	Winters 1179, 1182-83 <sup>2</sup>
Butts Electric Supply Co.	438	2.2	Flynn 935
American Starter Drive Service	425	2.1	Kamber 1018
Ennis Automotive, Inc.	167	.8	Fallen 1452, 1458
Preferred Electric & Wire Corporation	100-150	.8	CX 273A
Lincoln Bearing Co.	138-165	.8	Levine 5050-51, 5055
Starter Service Company, Inc.	128	.6	CX 272A <sup>3</sup>
Los Angeles Commutator	122	.6	RX 80
Precision Field Coil Co.	95	.5	Erwin 530, 536
Jamison Parts	less than 70	.4	Broadwell 1096
Hubert Products	55	.3	CX 274A
Rich Engineering Co.	46	.2	CX 271A
<b>TOTAL</b>	<b>19,781</b>	<b>100.0</b>	

<sup>1</sup> See also Broadwell 1075; and Gordon 1154.

<sup>2</sup> Includes \$341,250 in sales of solenoids which may not have been utilized as parts by rebuilders.

<sup>3</sup> Sales made through Automatics, Inc. and include transfers to Starter Service Co., Inc.

61. In 1964, each of the above rebuilder suppliers had salesmen or sales representatives which called on rebuilders (Erwin 532; Smith 605; Feldman 719-20; Shelly 752; Flynn 935-36, 942; Green 989; Gordon 1156; Fallen 1455; A. Johnson 2533; Fischer 4069; Weiss 4834). Rebuilder suppliers engage in research and development of new methods and products for the rebuilder (CX 50 s; CX 96 a; CX 119, page DGP 88; CX 274 b15; Winters 1190).

62. In 1964, these rebuilder suppliers sold new parts, materials and equipment directly to rebuilders at the same price level. In that year, the three major rebuilder suppliers, after IPM, Ace Electric Company (hereinafter "Ace"), Valley Forge and Vulcan Motor Products (hereinafter "Vulcan"), equalized freight charges in order to have similar prices and compete with the dominant rebuilder supplier, IPM (Erwin 533-34; Gelberg 653-54, 657-58; Woodruff 802; Vander Veen 902; Green 996; Broadwell 1110-11; Fallen 1453-54; Butchkes 2326; Fischer 4103).

63. The smaller and medium size rebuilder suppliers base their prices on the prices charged by the four major rebuilder suppliers (Erwin 533-34; Fallen 1454).

64. Rebuilder suppliers sell their new parts in bulk (CX 54; CX 55; CX 138; Erwin 541; Vander Veen 902; Flynn 945; Fischer 4068).

65. Rebuilder suppliers have specialized catalogues and price sheets for rebuilders listing the items which they have available for sale (CX 51 z13; CX 53; CXs 67-78; CX 98 a-c; CX 139; CX 140; CX 273; CX 274 b15; RX 29 a-c; RX 80 a-d; Smith 637; Gelberg 657; Flynn 947, 965; Green 989).

66. In 1964, rebuilder suppliers only offered parts for automotive electrical units. In order to rebuild nonelectrical units such as water pumps, a rebuilder would have had to purchase from suppliers other than rebuilder suppliers (Smith 597; Gelberg 652; Feldman 720; Vander Veen 907).

#### 1. *The Four Major Suppliers*

67. Prior to the acquisition of IPM by Avnet, the top four rebuilder suppliers accounted for \$16,409,000 in sales or 82.9 percent of 1964 total sales by suppliers selling primarily to rebuilders (Vander Veen 902; Gordon 1160-61; Findings 60, 73).

68. The uncontradicted testimony of almost every rebuilder witness, as well as other witnesses, was that in 1964 and for a number of years prior thereto, four firms, *viz*, IPM, Ace, Valley Forge and Vulcan, were the major suppliers of new parts, materials and equipment to rebuilders. It is undisputed that of these four, IPM was the largest rebuilder supplier (Erwin 531-32, 534, 553; Smith 582, 586, 605, 608-09; Gelberg 653, 689; Feldman 711-13; Shelly 750; Woodruff 795, 796-97; DeBlase 838-39, 841; Vander Veen 896-97, 902; Flynn 936, 943-44; Green 987,

989-90; Broadwell 1084, 1092; Gordon 1160; Winters 1184; McCullough 1245-47, 1250, 1258; Fallen 1452-54, 1465; Brock 1525; Butchkes 2299, 2322-23; A. H. Johnson 2529-31; Ledbetter 3905-06; see also CX 36 c; CX 37 d; CX 44 a-b).

69. In 1964, the four major suppliers furnished rebuilders with between 64 percent and 97 percent of their new parts requirements (Shelly 750-51; Woodruff 797; DeBlase 837, 839, 841; Vander Veen 896-97, 902; Gordon 1160-61; McGuire 1289-1300; Butchkes 2321-23; A. Johnson 2533).

70. In 1964, rebuilders purchased between 34 percent and 80 percent of their total requirements of new parts, materials and equipment from the four major suppliers (Smith 582-84, 610-12; McGuire 1289-1300; Butchkes 2331).

71. In 1964, each of these four major suppliers supplied a wide range of parts to rebuilders and were the only suppliers of such a wide range of parts to rebuilders (Erwin 553; Gelberg 657; Feldman 726; Woodruff 797, 802; DeBlase 840-41; Flynn 943-44; Green 987-88, 990; Gordon 1156; McGuire 1290, 1292-93; Fallen 1453-54). Numerous witnesses testified that IPM had the widest range of parts available to rebuilders. One witness testified:

Yes. I think probably after looking at the availability of parts then it became very evident to me that if I really wanted something and didn't want to hunt for it I could find it at IPM. IPM's salesmen were convenient to the telephone, they were prompt on delivery, their stores were great, their supplies were adequate, and it simply was for the same reason that you might go to a supermarket instead of to the corner grocery store. (Smith 586; see also Erwin 553; Flynn 943; Broadwell 1084; Gordon 1160; Mansfield 1908-13; Butchkes 2321-23; Ledbetter 3905).

72. In 1964, Ace furnished rebuilders with "Interchange Lists" showing how part numbers of its major competitors, IPM and Valley Forge, interchanged with those of Ace (CX 51 c-z12; Gordon 1162).

73. In 1964, most of the domestic sales by three of these four major suppliers were made to rebuilders with one-quarter to one-third of Vulcan's sales being made to rebuilders (CX 23 c; CX 45; CX 46 a; Green 986-87; Broadwell 1078-79; Gordon 1157). A very minor percentage of these companies' domestic sales went to nonrebuilder customers. Although IPM sold some nonrebuilders, no reliable figures for these sales were submitted (Mansfield 1937-47, 1981, 1983-87, 1998, 2038, 2141-51, 2252-69; cf. CX 290).

74. In 1964, these four major suppliers were the only sources, other than wholesalers, from which a nonfactory authorized rebuilder could obtain a substantial number of necessary new parts including categories such as end frames, drive end housings and other iron castings and kits (CX 20; CX 21; CX 37 a-c; Erwin 540; Smith 591; Feldman 716; Shelly 758; Gordon 1157-58; Winters 1190, 1194; McGuire 1294).

75. Without these four major suppliers, particularly IPM and Valley Forge, rebuilders could not remain in business at a profit (CX 36 b; Smith 598; Gelberg 660; Feldman 721-22; Woodruff 797-98, 801; DeBlase 859).

### 2. *The Other Non-OEM Suppliers*

76. The 13 other non-OEM rebuilder suppliers suffered many competitive disadvantages in competing with the four major broad-line suppliers:

(a) Salesmen are difficult for these other suppliers to obtain (Erwin 532-33, 556).

(b) It is more difficult for rebuilders to achieve the lowest freight charges and reduce other costs when dealing with several nonmajor rebuilder suppliers instead of one full-line major supplier (Erwin 556-57; Feldman 723; Green 991; Broadwell 1110; Gordon 1159-60; McCullough 1275, Fallen 1454; DeBlase 2929-30).

(c) These other non-OEM rebuilder suppliers cannot offer package deals or discounts, whereas the four major suppliers can (Flynn 938-39; Fallen 1454; Winters 1187).

(d) Collections from rebuilders are more difficult for the non-major suppliers (Winters 1185).

(e) It is more convenient for a rebuilder, especially a medium or small size rebuilder, to place one order for all his needs with one of the four major suppliers (Erwin 556; Smith 586, 609; Gelberg 657; Feldman 721-22; Shelly 752; Woodruff 797-98, 801-02; Vander Veen 902; Flynn 938; Green 991; Kamber 1027; Broadwell 1102; Gordon 1159; Winters 1192; McCullough 1252; Fallen 1454).

### 3. *OEM Suppliers*

77. In 1964, OEM manufacturers had total sales of new parts to rebuilders of \$664,000 of which \$610,000 was to their authorized rebuilders (see Findings 78-91).

78. In 1964, Ford Motor Company did not engage in rebuilding units (Closser 1424). In that year, Ford Motor Company had sales to rebuilders of \$500,000 (Closser 1427).

79. All of these Ford Motor Company sales were to 24 authorized Ford rebuilders (CX 286 o; CX 37 e; Closser 1425; Wolski 5141). The authorized Ford rebuilders were under contract with Ford Motor Company which permitted them to use the Ford trade name (CX 2; Closser 1425-26; Ensor 5206-07). Under these contracts, Ford Motor Company had the power to determine the source from which its authorized rebuilders could obtain their parts (CX 2; Erwin 547; Kamber 1019; Ensor 5213-17). In 1964, all of the units rebuilt under the Ford name were sold to Ford Motor Company dealers (Closser 1424-25). In that year, Ford Motor Company had a policy against selling parts directly to nonauthorized rebuilders (CX 286 o, p, u, v; DeBlase 842; Closser 1425; Butchkes 2302, 2327; Ledbetter 3455-56; Wolski 5140-43).

80. Chrysler Corporation did not rebuild any units in 1964 (Eurich 1412). In that year, it only made sales of parts to five rebuilders, all under contract with Chrysler Corporation to supply its dealers and wholesalers with rebuilt units under the MoPar trademark, a trademark owned by Chrysler Corporation (CX 1; Eurich 1413-14, 1416). In 1964, Chrysler Corporation's sales of electrical parts to these five rebuilders were considerably less than \$60,000 (Eurich 1415). Chrysler Corporation had a policy against selling directly to nonauthorized rebuilders in 1964 (DeBlase 842; Eurich 1416; Butchkes 2302, 2327).

81. General Motors Corporation (hereinafter "GM") made direct sales to only one rebuilder in 1964. The amount of such sales was \$50,000, most of which consisted of parts used to rebuild starter drives sold to GM (Kulesa 1338-39). In 1964, GM had a policy against selling directly to rebuilders (DeBlase 842; Keesee 1359; Butchkes 2302-03, 2327).

82. GM, through its Delco-Remy Division (hereinafter "D-R"), was engaged in the rebuilding of units. Most of the items used by D-R in its rebuilding operations were manufactured by D-R. The remainder of the parts used by D-R was procured from the stock of parts used by D-R to produce new units. No separate accounting was made for parts procured for use in D-R's rebuilding operation, either for parts which D-R manufactured or those which it procured (Kulesa 1333, 1335-36, 1339).

83. Robert Bosch GMBH supplies and has supplied new, original equipment electrical units for Volkswagen, Mercedes-Benz, Volvo, Porsche, Saab, Ford Pinto, Lincoln Capri and Opel (Stevens 3099, 3143). In 1964, its subsidiary, Robert Bosch Corporation of the United States, made direct sales amounting to less than \$5,000 to only one rebuilder, Arrow Armature, who utilized such parts in rebuilding Robert Bosch units (Stevens 3101, 3121-22).

84. Robert Bosch Corporation of the United States does not consider IPM to be a competitor (Stevens 3138).

85. In 1964, Robert Bosch Corporation of the United States rebuilt some units (Stevens 3125, 3144). All of the parts used in its rebuilding operations were new parts imported directly from Robert Bosch GMBH's foreign plants (Stevens 3128-29).

86. Joseph Lucas, Ltd. supplies and has supplied new, original equipment electrical units for vehicles produced by British Leyland Motors, such as Triumph, MG and Jaguar (Burgess 3527). In 1964, its subsidiary, Lucas Electrical Services, Inc., made an insignificant amount of sales directly to rebuilders in the United States (Burgess 3535-36, 3538, 3557). The parts sold by Joseph Lucas, North American and its predecessor, were primarily used in rebuilding units originally produced by Joseph Lucas, Ltd. (Burgess 3555).

87. The Prestolite Company (hereinafter "Prestolite"), a division of Eltra Corporation, made insubstantial direct sales to rebuilders in 1964. Prestolite's direct sales to rebuilders were \$7,193 in 1964 (Bauerschmidt 4343). In that year, Prestolite made sales in excess of \$5 to only three rebuilders (Bauerschmidt 4342, 4376).

88. In 1964, the Bendix Corporation had direct sales to rebuilders of starter drive parts of \$41,748 (R. Johnson 3063). All of these sales were made to two customers (R. Johnson 3066).

89. The Leece-Neville Division, VLN Corporation and Motorola Automotive Products, a division of Motorola, Inc., made no direct sales to rebuilders in 1964 (Hill 3176, 3190; Noonan 3831, 3833).

90. OEM suppliers are properly excluded from the rebuilders supply industry by subparagraph 1(c)(2) of the complaint since in 1964 the big three, GM, Ford and Chrysler, without exception refused to sell parts directly to independent rebuilders and the sales by other OEMs were insignificant.

91. Since 1964 there has been no change in policy by the big three OEM suppliers regarding direct sales to independent rebuilders. Only insignificant changes have occurred in the pattern of direct selling by some of the other OEM suppliers (Stevens (Bosch) 3101—1970 direct sales to rebuilders were \$46,000 and for the first five months of 1971 were \$36,000, 40 percent of which was for complete units, not parts, 3123—Bosch required a minimum bulk quantity, 3140—the volume of most rebuilders was not sufficient to buy from Bosch; Noonan (Motorola) 3833—insignificant competition in 1969 with IPM, 3840—sold only one rebuilder (Arrow) parts in 1970; Bauerschmidt (Prestolite) 4344—in 1969 sold only three rebuilders: Accurate \$132; National Lease \$7,489; Arrow \$5,851, 4376—sales of \$308,766 to Flint Armature were for marine application only; Johnson (Bendix) 3083—Bendix doesn't sell small rebuilders or small quantities, 3087—only the ten largest rebuilders in 1970 were qualified to buy from Bendix, 3089—several of these ten were authorized rebuilders for Bendix).

*D. Other Manufacturers (Occasional or Single Line Suppliers of New Parts, Materials and Equipment)*

92. In 1964, rebuilders made occasional purchases from other manufacturers whose primary business is nonautomotive. Such other manufacturers generally confine their sales to a few large rebuilders and one product line (RX 83 *in camera*; Kirkwood 3489; Perkins 3613, 3632; Atwater 4278; Kling 4544; Fleming 4600; Ainsworth 4726-27, 4730-31; Ingald 5286-87, 5291, 5323). Such sales to rebuilders generally were an insignificant percentage of the total overall sales of such other manufacturers (Bashe 3369, 3380; Kirkwood 3476, 3489; Perkins 3623-24; Atwater 4296; Ainsworth 4744; Ingald 5273). Individually and in combination, the sales of such other manufacturers to rebuilders were not substantial (Gelberg 698-99; Green 1000-01; Broadwell 1126; Bashe 3380; Kirkwood 3489; Perkins 3608, 3623-24; Atwater 4278; Kling 4562; Fleming 4600; Ainsworth 4731; Boydston 4758, 4786-87; Ingald 5273). Such other manufacturers, in the view of Harris Fischer, vice-president of Avnet and president of the Valley Forge Division, “\* \* \* would continue to exist but it is reasonable to conclude that they could not progress to a point of being real competition” (CX 44 a).

93. All of the witnesses in the category of other manufacturers were called by respondent. The following chart indicates their composition.

Company	Type of Business	Amount of Sales To Rebuilders In 1964	Percentage of Sales to Rebuilders to Total Sales
Belden Corporation	Wire Manufacturer	Sales to rebuilders \$389,938; some resold (Atwater 4273, 4282).	Less than 1% (Tr. 4296)
Phelps Dodge Magnet Wire Co.	Wire Manufacturer	\$414,400 (Ainsworth 4730-31). Policy to only sell accounts directly with \$50,000 or more of purchases per year (Tr. 4738). Only sells to five rebuilders (Tr. 4730-31).	1% (Tr. 4744)
Essex International	Wire Manufacturer	No figures (Simon 5489).	1% (Tr. 5524) Classifies sales to rebuilders as practically nothing (Tr. 5525)
Electrical Specialty Co.	Wire Distributor	Sold two rebuilders, estimated amount \$6,000 (Boydston 4758, 4762, 4782-88, 4787).	Estimate 1% at best (Tr. 4786)
Torrington Co.	Bearing Manufacturer	RX 79 in camera	2/10 of 1% (Tr. 3608, 3623-24, 3634)
American Koyo Corp.	Bearing Manufacturer	No figures (Fleming 4588-89). Sales to three rebuilders \$19,951 (Tr. 4600). Rebuilder customers resell (Fleming 4579, 4582, 4587, 4600), largest rebuilder customer resells (Tr. 4614-15).	No basis for computation
SKF Industries	Bearing Manufacturer	\$37,631 (Ingald 5287, 5291; see also CX 289).	3/100 of 1% (Tr. 5277)
Nubro Corporation	Regrinder	\$8,935 (Brock 1506-07).	100% of sales of new parts and equipment (Tr. 1507). (Principal business regrinding bearings)

