and should include market share data in each of the geographical regions specified on page 17 of the initial decision, as well as information directed to more clearly delineating the production and merchandising facilities and techniques which have been utilized by Clorox under the control of respondent.

Chairman Dixon and Commissioner Elman not participating.

Order Remanding Proceeding to Hearing Examiner

JUNE 15, 1961

Counsel supporting the complaint and respondent having filed cross-appeals from the initial decision in this matter; and

The Commission having determined that the record as presently constituted does not provide an adequate basis for informed determinations as to the actual or probable effects of respondent's acquisition of Clorox Chemical Co. on competition in the production and sale of household liquid bleach, and being of the opinion that the record should be supplemented in this respect to the end that all of the issues involved in the case may be finally and conclusively disposed of on their merits:

It is accordingly ordered, That the initial decision be, and it hereby is, vacated and set aside.

It is further ordered, That this proceeding be, and it hereby is, remanded to the hearing examiner for the reception of such further evidence concerning the competitive effects of the aforementioned acquisition as may be offered in conformity with the views expressed in the accompanying opinion of the Commission.

It is further ordered, That after the receipt of such additional evidence the hearing examiner make and file a new initial decision on the basis of the entire record herein.

By the Commission, Chairman Dixon and Commissioner Elman not participating.

Second Initial Decision by Everett F. Haycraft, Hearing Examiner

FEBRUARY 28, 1962

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PRELIMINARY STATEMENT

A. THE PLEADINGS AND PROCEEDINGS.

The Commission, on September 30, 1957, issued a complaint against The Procter & Gamble Company, an Ohio corporation, sometimes hereinafter referred to as P & G, with its principal office and place of business located in Cincinnati, Ohio, charging it with violation of Section 7 of the Clayton Act, as amended December 29, 1950, through the acquisition on August 1, 1957, of the assets, trademarks, business and goodwill of the Clorox Chemical Company, a Delaware corporation, sometimes hereinafter referred to as Clorox Chemical, with its principal office and place of business located in Oakland, California.

Specifically, the complaint alleges that the effect of the acquisition of the assets and business of Clorox Chemical, "may have the effect of substantially lessening competition or tending to create a monopoly in the production and sale of household liquid bleaches in the United States and in each of them."

More specifically it is alleged that the effect of the acquisition was the actual or potential lessening of competition and a tendency to create a monopoly in the following ways, among others:

1. In the production and sale of household liquid bleach.

2. The elimination of Clorox Chemical as an independent, competitive factor in the household liquid bleach industry.

3. Household liquid bleach producers may be unable to compete with the respondent due to one or more of the following:

a. Respondent's market position.

b. Respondent's financial and economic strength.

c. Respondent's advertising ability and experience.

d. Respondent's merchandising and promotional ability and experience.

e. Respondent's "full line" of cleansing and laundry products.

f. Respondent's ability to command consumer acceptance of its products and of valuable grocery store shelf space.

g. Respondent's ability to concentrate on one of its products, or on one selected section of the country, the full impact of its advertising, promotional, and merchandising experience and ability.

4. Enhancement of respondent's competitive position in the production and sale of household liquid bleach to the detriment of actual and potential competition.

5. The industry-wide concentration of the production and sale of household liquid bleach may be increased.

6. The respondent is given the facilities, the market position and the "dominant ability" to monopolize, or tend to monopolize, the household liquid bleach market.

In its answer, filed November 4, 1957, respondent denied all charges of illegality contained in the complaint.

The taking of evidence commenced in Cincinnati, Ohio, on December 16, 1957. Additional hearings were held in San Francisco, Los Angeles, Chicago, Philadelphia, New York, Boston, Buffalo, Detroit, and Washington, D.C., at which testimony was taken in support of the allegations of the complaint. Counsel in support of the complaint closed their case-in-chief on August 26, 1958.

Counsel for respondent presented evidence in opposition to the allegations of the complaint at hearings held in Washington, D.C., on November 17–26, 1958, and January 5–9, 1959.

Rebuttal testimony was received in Washington, D.C., commencing January 26, 1959. The hearings were concluded on February 12, 1959, when each party stipulated that its case was closed. Proposed findings were filed by the opposing parties in May 1959, and oral argument was held on June 16, 1959. Numerous briefs have been filed both before and after the oral argument, the last one having been filed in November 1959. The record consists of approximately 6,300 pages of transcript and several hundred exhibits, many of which consist of several pages.

Consideration having been given to the proposed findings and all the reliable, probative and substantial evidence in the record upon all material issues of fact, law or discretion, the examiner was of the opinion that the material allegations of the complaint had been proven by substantial and reliable evidence, and that the Commission should take remedial action in the premises. Appropriate findings as to the facts, conclusions and order of divestiture were issued by the examiner on June 17, 1960.

Thereafter, an appeal was taken to the Commission from the initial decision and oral argument was had before the Commission. On June 15, 1961, the Commission entered an order remanding the proceeding to the hearing examiner for the reception of such further evidence concerning the competitive effects of the aforementioned acquisition as may be offered in conformity with the views expressed in the accompanying opinion of the Commission. It was further ordered that after the receipt of such additional evidence, the hearing examiner should make and file a new initial decision on the basis of the entire record. The following statement was made in the order as the basis for the remand:

> The Commission having determined that the record as presently constituted does not provide an adequate basis for informed determinations as to the actual or probable effects of respondent's acquisition of Clorox Chemical Co. on competition in the production and sale of household liquid bleach, and being of the opinion that the record should be supplemented in this respect to the end that all of the issues involved in the case may be finally and conclusively disposed of on their merits:

In the course of the opinion, the following appears as further indication of the extent of the remand:

> The case will, therefore, be remanded to the hearing examiner for the reception of evidence relating to the competitive situation as it presently exists

in the liquid bleach industry. This evidence should relate to events occurring subsequent to November 1958, and should include market share data in each of the geographical regions specified on page 17 of the initial decision, as well as information directed to more clearly delineating the production and merchandising facilities and techniques which have been utilized by Clorox under the control of respondent.

Pursuant to the foregoing order of the Commission, hearings were held in Washington, D.C., on December 1, 1961, for the purpose of taking testimony and other evidence submitted by counsel in support of the complaint, and on December 12, 1961, at which testimony and other evidence was received in opposition to testimony presented by counsel in support of the complaint on December 1, 1961. At the December 12 hearing, both counsel rested and the hearing examiner closed the taking of testimony and allowed both counsel until January 15, 1962, within which to file proposed findings based on the testimony and evidence submitted at these hearings and both counsel were also allowed until February 1, 1962, within which to file reply, if desired.

B. STATEMENT OF THE ISSUES AND OPINION

Section 7 of the Clayton Act, as amended December 29, 1950, provides in part as follows:

> That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of any such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

The House Report accompanying the bill amending Section 7, as above, stated:

> Under (Section 7) a merger or acquisition will be unlawful if it may have the effect of either (a) substantially lessening competition, or (b) tending to create a monopoly. These two tests of illegality are intended to be similar to those which the courts have applied in interpreting the same language as used in other sections of the Clayton Act. Thus, it would be unnecessary for the Government to speculate as to what is in the "back of the minds" of those who promote a merger; or to prove that the acquiring firm had engaged in actions which are considered unethical or predatory; or to show that as a result of a merger the acquiring firm had already obtained such a degree of control that it possessed the power to destroy or exclude competitors or fix prices.[1]

[1] H.R. Report No. 1191 of 81st Congress, 1st Session, Page 8.

It will be noted from the foregoing that among the first things to be determined in this case, and the necessary issues, are:

1. The Statutory "Line of Commerce" involved in the transaction.

2. The Statutory "Section of the Country" involved in the transaction.

3. The effect on competition in such "Line of Commerce" and/or such "Section of the Country".

a. Does the acquisition tend to substantially lessen competition, or

b. Tend to create a monopoly in the line of commerce or section of the country where the respondent and the acquired corporation are engaged in business.

In the Senate report accompanying the amendment to Section 7 of the Clayton Act in 1950, the following language is found:

> What constitutes a section (of the country) will vary with the *nature of the product.* (Emphasis suppliesd.) Owing to the difference in size and character of markets, it would be meaningless, from an economic point of view, to attempt to apply for all products a uniform definition of section, whether such a definition was based on miles, population, income, or any other unit of measurement. A section which would be economically significant for a heavy, durable product, such as large machine tools, might well be meaningless for a light product such as milk, and
>
> * * * Hence, an acquisition is not to be interpreted merely in terms of either its effect on competition or its tendency to create a monopoly "*in the Nation as a whole.*" The act is to be violated if, as a result of the acquisition, there would be a substantial lessening of competition or a tendency to create a monopoly *in any section of the country.* (Emphasis supplied.)[2]

Another issue is whether or not the acquisition involved in this case, a so-called conglomerate merger, comes within the language of the statute, since there was no competition between P & G and Clorox Chemical prior to the acquisition. The House Report (*supra*) states as follows:

> Because Section 7, as passed in 1914, prohibited, among other things, acquisitions which substantially lessened competition between the acquiring and acquired firms, it has been thought by some that this legislation applies only to the so-called horizontal mergers. But in the proposed bill, as has been pointed out above, the test of the effect on competition between the acquiring and the acquired firm has been eliminated. One reason for this action was to make it clear that this bill is not intended to prohibit all acquisitions among competitors. *But there is a second reason, which is to make it clear that the bill applies to all types of mergers and acquisitions, vertical and conglomerate as well as horizontal,* which have the specified effects of substantially lessening competition * * * or tending to create a monopoly. (Emphasis supplied.)[3]

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[2] Senate Report 1775, 81st Congress, 2nd Session, Pages 5 and 6.

[3] Ibid, Page 11.

Consideration has been given to the proposed findings and all the reliable probative and substantial evidence in the record upon all material issues of fact, law or discretion, including the evidence received at hearings held pursuant to the Commission's order of June 15, 1961, remanding the proceeding to the Hearing Examiner for the taking of additional evidence. Each of those proposed findings which has been accepted, has been, in substance, incorporated into this initial decision. All proposed findings not so incorporated are hereby rejected.

The examiner is of the opinion that the material allegations of the complaint have been proven by substantial and reliable evidence and that the Commission should take remedial action in the premises. Appropriate Findings as to the Facts, Conclusions and Order of Divestiture are hereinafter set forth.

FINDINGS AS TO THE FACTS

I. DESCRIPTION OF THE RESPONDENT AND THE INDUSTRIES IN WHICH IT WAS ENGAGED IN 1957

Respondent P & G and various of its subsidiaries in 1957 were engaged principally in the manufacture and sale in interstate commerce of soaps, synthetic detergents and cleansers. It also manufactured and sold some food products, including meat food products, paper products, shampoos, dentifrices and home permanents. P & G was, and now is, the largest producer in the United States of soap and synthetic detergent products, and one of the major producers in its other principal product fields. The more important consumer household brands manufactured by P & G and its subsidiaries are sold to retail and wholesale grocery and drug outlets, department stores and variety stores. P & G was, and now is, one of the leading national advertisers in the United States and expends large sums of money in advertising and promoting many of its products in the household soap, detergent, food and toilet goods fields. P & G's overall expenditures for advertising in the United States of approximately thirty-five products manufactured by it and sold under its brand names were somewhat in excess of $79,000,000 for its fiscal year ended June 30, 1957. There is no evidence in the record relating to P & G advertising expenditures subsequent to that date.

As of June 30, 1957, P & G had total assets of $688,272,623 and total capital and retained earnings of $462,097,281. For the fiscal year 1957, consolidated net sales amounted to $1,156,389,726, and consolidated net earnings were $67,807,376.

As of June 30, 1961, P & G had total assets of $1,022,525,434 and total capital and retained earnings of $677,686,077. For the fiscal year 1961, consolidated net sales amounted to $1,541,904,779, and consolidated net earnings were $106,632,804.

Since 1946, P & G's net sales have increased approximately 400%, and total assets have increased more than 400%. A large percentage of this growth is attributable to the development of new products. For instance, it has developed and brought on the market a new detergent, a new deodorant toilet soap bar, two new brands of toothpaste, and an abrasive cleanser, all of which have proved very popular. P & G's president testified that approximately 70% of P & G's household product volume comes from products not in existence in 1946.

P & G has also grown by acquiring going businesses and, in so doing, entered new fields and diversified its operations. For instance, in August 1955 P & G acquired S. T. Young Foods, Incorporated, which manufactured peanut butter; in August 1956 P & G acquired the Duncan Hines prepared cake mixes from Nebraska Consolidated Mills, Incorporated, of Omaha; and in January 1957 it acquired Charmin Paper Mills, Incorporated, manufacturer of paper products.

The Duncan Hines and Charmin products were added to the P & G list of consumer brands during the fiscal year ended June 30, 1957. In P & G's annual report of 1957 the following statement appears:

> Procter & Gamble's technical knowledge and manufacturing experience fit very well into the development and production of these types of products. In addition, both prepared mixes and paper tissue products are low priced, rapid turnover, household items sold primarily through grocery, drug and department stores—the type of goods which the company is accustomed to market.

A further explanation is made of such acquisitions in the following language by the P & G Board Chairman:

> Since our recent purchase of the Duncan Hines Cake Mix business, and our interest in the paper products field, it would be natural for any shareholder to ask, "Why do we go into businesses like cake and other flour and shortening mixes, peanut butter and paper tissues?" Our answer would be simply that we feel *our experience and marketing skill* qualify us carefully to diversify our operations, and that by choosing subsidiaries well and applying Procter & Gamble's merchandising methods to related consumer products businesses, we add to the stability and profits of the business. (Emphasis supplied.)

The Executive Vice President of P & G at the time of the acquisition of Clorox Chemical, in a press release, stated:

> While this is a completely new business for us, taking us for the first time into the marketing of a household bleach and disinfectant, *we are thoroughly at home in the field of manufacturing and marketing low priced, rapid turn-over consumer products.* [Emphasis supplied.]

II. THE CLOROX CHEMICAL COMPANY

The Clorox Chemical Company was, prior to August 1, 1957, a Delaware Corporation, with its office and principal place of business in Oakland, California, and was engaged in the production and sale in the interstate commerce of 5¼% sodium hypochlorite liquid bleach and disinfectant under the trade name of "Clorox". At that time, and certainly since 1952, Clorox Chemical was the largest producer of household liquid bleach in the United States. It had thirteen plants for the manufacture and bottling of household liquid bleach, located at Atlanta, Georgia; Boston, Massachusetts; Camden, New Jersey; Charlotte, North Carolina; Chicago, Illinois; Cleveland, Ohio; Houston, Texas; Jersey City, New Jersey; Kansas City, Missouri; Los Angeles, California; Oakland, California; Seattle, Washington; and Tampa, Florida.

Net sales and net income of Clorox Chemical for the fiscal years ending June 30, 1952, through June 30, 1957, were as follows:

Net sales		Net income	
1952	$23,625,026	1952	$1,255,005
1953	27,714,435	1953	1,348,618
1954	30,284,650	1954	1,343,511
1955	33,874,181	1955	2,041,251
1956	36,409,197	1956	2,032,861
1957	39,999,114	1957	2,569,166

As of June 30, 1957, Clorox Chemical had total assets of $12,629,425 and an earned surplus of $7,127,015.

The foregoing net sales figures represent almost entirely sales of household liquid bleach which, with the exception of a small amount of industrial bleach, has always been Clorox Chemical's only product.

It will be seen from the foregoing table that the net sales of Clorox Chemical reflect a steady, continuous and substantial growth in each of the fiscal years from June 30, 1952, through June 30, 1957.

In each of the years during the period from August 1, 1952, through July 31, 1957, there was also a steady and continuous growth in Clorox Chemical's market share of all household liquid bleach sold in the United States through grocery stores. Such market shares were as follows:

Year ending July 31	Clorox brand share
	Percent
1953	45.3
1954	46.4
1955	47.1
1956	47.8
1957	48.4

Clorox Chemical sold its product through approximately 80 distributors, acting as principals, to the grocery trade—shipments being made direct to the retail customer as well as to the distributor, with the freight paid by Clorox Chemical.

Clorox Chemical's success in the household liquid bleach industry had been achieved through extensive national advertising which had made the name Clorox well-known and accepted in American households as a quality product at a reasonable price.

The record indicates that Clorox Chemical was generally considered the price leader in the household liquid bleach industry. While a few brands, such as Purex, Linco, Prescott, 101, Hilex, and Roman Cleanser, sold at substantially the same premium price as Clorox, most of the brands manufactured by regional manufacturers sold for less than Clorox. Most private label and local brands generally sold for even lower prices. There is evidence that in a few isolated regional situations, certain competitive bleaches have been sold at a higher price than Clorox.

Clorox Chemical spent approximately $1,750,000 for newspaper advertising, $560,000 for magazine advertising, $1,150,000 for television, $113,000 for radio, and $145,000 for billboard advertising during the fiscal year ended June 30, 1957. It began to use TV spot advertising in July 1956, which was intended to add "extra impact to the tremendous selling support provided by Clorox national advertising."

During the period 1952 through July 31, 1957, Clorox Chemical had utilized no so-called consumer promotional devices or methods, such as the distribution of price-off coupons, free samples, premiums, contests or tie-in sales, although many of its competitors had utilized some or all of these devices.

Clorox Chemical commenced to use what is known as special spring and fall housecleaning campaigns in 1956. These campaigns were directed primarily to the grocer and offered nothing special to the consumer. These campaigns lasted approximately six weeks, the spring campaign beginning in March, and the fall campaign in September. They were continued during 1957, the fall campaign being announced in a letter to the trade dated July 31, 1957, just prior to its acquisition by P & G.

III. THE ACQUISITION OF CLOROX CHEMICAL

Respondent considered entering the household liquid bleach market by purchasing the Clorox Chemical Company approximately two years prior to the date of acquisition. In a confidential study of that market, by employees of respondent P & G in October 1955, it was reported that liquid bleaches would continue to dominate the market volumewise since they were by far the most economical for the consumer to use. It was believed at that time that the household liquid bleach market would continue to grow for the following reasons:

a. 75% of the homes now use a bleach.

b. Younger women bleach more than do older women.

c. Automatic washing machine homes use more bleach than do conventional washing machine homes.

It was estimated in this report that the total household liquid bleach market in 1955 amounted to about 44,000,000 (3-gallon case) cases, and the market was divided as follows:

Clorox (National), 44%
Purex (Sectional), 16%
All others, 40%

This report, which was prepared by a man in the promotional department of respondent, recommended that the company should acquire the Clorox business rather than try to enter the market by introducing a new brand, or by trying to expand a sectional brand. This was because it was felt that the latter course would require "a very heavy investment" to achieve a major volume in the field. It was recommended that:

> taking over the Clorox business, however, could be a way of achieving a dominant position in the liquid bleach market quickly which would pay out reasonably well.

The report contained a history of the net sales and earnings of Clorox Chemical with the following comment:

> We understand that Clorox sells through a broker jobber setup, and that while they are No. 1 nationally, there are many important markets where their share of the bleach market is quite low. We feel that with our sales, distribution and manufacturing setup, we could effect a number of savings that could possibly increase the net profit of their business considerably—say to a net profit of $3,000,000 on net sales of $33,000,000.

In a later report by another member of the promotional department of respondent P & G, dated February 28, 1957, it was definitely recommended that P & G purchase the Clorox Chemical Company at a price of approximately $30,000,000 of P & G stock. Among the reasons for recommending the purchase were the following:

First, the total bleach market was then a "*large and expanding one.*" Liquid bleaches account for approximately 95% of the total volume, and it was believed that the bleach market would continue to grow for the same reasons assigned in the previous 1955 report hereinbefore mentioned.

Second, Clorox was the nation's dominant bleach brand, with a total market share, reported by Neilson, in excess of 42%, or approximately half of the total household liquid bleach market.

Third, it was unlikely that the growth of dry bleaches would cut into the liquid bleach volume for many years to come.

Other factors taken into consideration were as follows:

We are advised that Clorox spent $2,660,000 in the last half of 1956 for advertising, or at the rate of $5,320,000 a year. We believe that *P & G advertising philosophies and economies* applied to an advertising expenditure of this size can be expected to further advance the Clorox business. (Emphasis supplied.)

It is conceivable that the profitability of the Clorox business may be improved. Recognizing that Procter & Gamble overhead charges, if applied to the Clorox P & L statement, might appear to reduce the profitability or at least to off-set any economies under P & G operation, there remains such possibilities as a 5 cent to 10 cent increase in the price per case (using Clorox 12 quart case as a base), which could conceivably be accomplished without an increase in the retail price, thereby expanding profit.

We may be able to derive additional value from the Clorox name for other new and related products, which may not perhaps be measurable in exact dollars, but should nevertheless be considered a value returned on the investment.

Pursuant to an agreement dated May 28, 1957, between Clorox Chemical and P & G, Clorox Chemical agreed to exchange and transfer substantially all of its assets and business as a going concern to P & G on the terms, conditions and provisions set forth in said agreement, which provided, among other things, that the closing of such exchange and transfer, subject to prior approval by Clorox Chemical stockholders, would be August 1, 1957.

To implement the transaction, P & G caused a wholly owned subsidiary named The Clorox Company to be incorporated under the laws of the State of Ohio. On August 1, 1957, this subsidiary, pursuant to the plan of reorganization set forth in the said agreement, exchanged 639,578 shares of P & G's fully paid and non-assessable two-dollar par value common stock (about 3.1% of the issued and outstanding stock) for substantially all of the assets and business of Clorox Chemical as a going concern. Clorox Chemical was then dissolved and the P & G stock received by it was distributed among Clorox Chemical's stockholders. The market value of the P & G stock exchanged was approximately $30,000,000.

IV. HOUSEHOLD LIQUID BLEACH IS THE LINE OF COMMERCE IN THIS PROCEEDING

The product involved in this case is household liquid bleach, which quite uniformally consists of 5¼% sodium hypochlorite solution with 94¾% water. It is either manufactured from basic chemicals (chlorine and caustic soda) or it is converted by the producer from bleach concentrate by the addition of water.

Household liquid bleach is used by the housewife principally in the laundry as an adjunct to soaps and detergents to bleach cottons and fine fabrics. It is also used extensively as a germicide, to disinfect garbage cans, toilets, kitchen sinks, etc.

It is sold principally through grocery stores, in various sized glass containers, including pint, quart, half gallon and gallon bottles, packed in cases as follows: 24 pints, 12 quarts, 6 half gallons, and 4 gallons to a case, respectively.

It is contended by the respondent that the line of commerce involved in this proceeding should include dry bleach as well as liquid bleach, asserting that approximately 10% of the total household bleach market consists of dry bleach.

Dry bleach is not competitive with liquid bleach because, among other reasons, it has differing functional uses. Liquid bleaches are quicker and more thorough than dry bleaches, and they are considered more in the heavy duty category, while dry bleaches are in the light duty area. In addition, dry bleach is more expensive to use, is much less effective than liquid bleach for laundry purposes, and accounts for only about 5% of all laundry functions.

Clorox Chemical did not manufacture dry bleach, and the evidence indicates that dry bleach will not materially cut into the liquid bleach market in the forseeable future or ever replace liquid bleach in the home.

It is, therefore, found that the line of commerce in this case is household liquid bleach.

V. THE SECTIONS OF THE COUNTRY AND COMPETITORS IN EACH SECTION

A. *The Sections of the Country Involved Herein*

There is a national market for household liquid bleach in the sense that it is universally sold throughout the United States in grocery and drug stores. However, this national market is made up of a series of regional and local markets, the geographical confines of which cannot be fixed with any exactitude. There are in the household liquid bleach industry a substantial number of small producers which are located and sell in various local or regional areas. The weight of household liquid bleach, packed in cases of glass or plastic containers for shipment, results in high freight costs, and necessarily restricts the region served by any one production facility. In the main, each producer markets its products in the region in which it has manufacturing facilities, and which it considers can be economically served by such facilities. In consequence, different competitive factors and conditions are to be found to some degree in each regional market.

Clorox Chemical was the only household liquid bleach manufacturer which sold its product throughout the United States. Purex Ltd., the second largest household liquid bleach producer, marketed its brand in areas of the United States containing approximately 48% of the population at the time of the acquisition of Clorox Chemical by P & G. In October 1958, Purex acquired the plants of John Buhl Products Company, a subsidiary of Sterling Drug, Inc., manufacturing and selling a brand of household liquid bleach known as "Fleecy-White", and, as a result, Purex now markets household liquid bleach in areas of the United States containing approximately 64% of the population. With the possible exception of one or two other producers, all of the other members of the industry sold only in smaller regional or local areas.

In all but two of those regional areas, Clorox Chemical, prior to the acquisition by P & G, was a strong competitive factor. However, in two of the regional areas one of the competitive manufacturers occupied a market position comparable to that of Clorox Chemical in the sale of household liquid bleach.

B. *The Principal Competitors in each Section*

There is some conflicting testimony as to the actual number of household liquid bleach manufacturers in the United States. It was estimated by the president of respondent that there were between 100 and 200 such liquid bleach manufacturers. The president of Purex estimated there were approximately 40 to 50 such manufacturers who sell their products under their own label to grocery stores in competition with Clorox liquid bleach. The December 1955 edition of the Thomas Register of American Manufacturers contains the names of 20 companies known as liquid bleach manufacturers that were competitors of Clorox Chemical.

The following household liquid bleach manufacturers were the principal competitors of Clorox Chemical at the time of the acquisition:

1. *Purex Chemical Company*, hereinbefore mentioned, which had the largest distribution of household liquid bleach of any manufac-

turer except Clorox Chemical, sold its said product to customers in areas west of the Mississippi River and south of the Ohio River, plus portions of Wisconsin, Southern Illinois, and Southern Indiana. It did not sell in Pennsylvania, West Virginia, Virginia, the Carolinas, or Southern Florida. Since its acquisition in 1958 of the John Buhl Products Company, the manufacturer of "Fleecy-White" brand of household liquid bleach, it has added to its sales territory most of Virginia, West Virginia, Ohio, North Carolina, and parts of Michigan and Wisconsin.

2. *Roman Cleanser Company*, located in Detroit, Michigan, sold its household liquid bleach from its plants in Detroit; Griffin, Georgia; Tampa and Miami, Florida. Deliveries were made to customers located within a radius of about 150 miles of each plant. The territory generally covered by such sales are the States of Michigan, Ohio, part of Pennsylvania, parts of Indiana, Illinois, Georgia, Florida, and very little in Virginia and West Virginia.

3. *Linco Products Corporation*, sold its household liquid bleach principally to customers in and around the City of Chicago where its factory is located. Its sales territory also included the States of Illinois, Indiana, Michigan, Wisconsin, and parts of Iowa and Ohio.

4. *The Hood Chemical Company*, with its principal place of business in Ardmore, Pennsylvania, sold its household liquid bleach produced at its plants in South Plainfield, New Jersey; Charlotte, North Carolina; Jacksonville, Florida; and Lisbon, Ohio, to customers in the sales areas surrounding the Cities of Philadelphia and Pittsburgh, Pennsylvania, the States of Florida, North Carolina, and South Carolina.

5. *Rose-Lux Chemical Company*, sold its household liquid bleach under the trade name or brand "Rose-X", manufactured in its factory located in Brooklyn, New York, to customers in the metropolitan area of New York City, including two counties in New Jersey, and one county in Connecticut.

6. *The J. L. Prescott Company*, with its factory located in Passaic, New Jersey, sold its "Dazzle" brand of household liquid bleach to customers in the States of Massachusetts, Connecticut, Rhode Island, and portions of Maine, New Hampshire, New Jersey, New York, Pennsylvania, and Maryland.

7. *The Savol Bleach Company*, from its factory in East Hartford, Connecticut, sold its household liquid bleach to customers located within a radius of 35 miles around Hartford.

8. *The Gardiner Manufacturing Company* sold its household liquid bleach "101" brand from its plant located in Buffalo, New York, to customers in western New York and western Pennsylvania,

which included Erie and Bradford, Pennsylvania, Olean, Rochester, and Niagara Falls, New York, and points between those areas.

9. *The John Buhl Products Company*, hereinbefore mentioned, sold its "Fleecy-White" brand of household liquid bleach to customers in and around the City of Chicago, Illinois, where its factory was located, and in parts of Wisconsin, Michigan, Ohio, Iowa, Illinois, Indiana, West Virginia, Virginia, and North Carolina; and also in some portions of Kentucky, Tennessee, Alabama, Georgia, Texas and Louisiana.

10. *Jones Chemicals, Incorporated*, sold its household liquid bleach under the trade name "Sunny Sol" from its factory in Caledonia, New York, to chain stores and jobbers in Utica, Binghamton, Norwich, and Albany, New York, and under the same trademark, it sold in bulk to franchised distributors in Buffalo, Rochester, Syracuse, Elmira, New York, and in Erie, Pennsylvania, who in turn sold to retailers in those areas.

11. *Lady's Choice Foods*, a corporation with plants located in San Francisco and Los Angeles, California, manufactured and sold household liquid bleach under the trade names "Saniclor" and "Hypo" to customers throughout the State of California, and portions of Arizona and Nevada.

12. *The No-Worry Chemical Company* manufactured a household liquid bleach at its factory in Newark, New Jersey, and sold it to customers in Essex and Hudson Counties, New Jersey, under the trade name "No Worry Bleach".

13. *B. T. Babbit, Inc.*, whose principal household product is "Bab-O" also, since 1956 when it acquired Chemicals, Inc., manufactured household liquid bleach at its factory in Oakland, California, under the trade name "Vano", which it sold to customers in the immediate area around San Francisco and Oakland, California.

14. *The Hilex Liquid Bleach Company*, with its factory located in Minneapolis, Minnesota, sold household liquid bleach to customers in the States of Minnesota, North and South Dakota, and part of Colorado.

15. *The Texize Chemical Company* is listed in Dunn & Bradstreet as a manufacturer of household bleach having a financial strength of more than $1,000,000. It is located in Greenville, South Carolina, and apparently sold its products in that general area, although the record does not contain detailed information with respect to the business of this company. It is of sufficient importance, however, that the Nielsen Food Index includes it in household liquid bleach market studies that have been made.

In addition to the foregoing-named manufacturers, the record contains evidence of another local company in New England, the

780-018—69——95

Sunlight Chemical Corp., of East Providence, Rhode Island, engaged in the manufacture of a line of chemicals for household cleaning and laundry in the home, including a household liquid bleach.

From the foreoing facts, it is found that the sections of the country involved in this case are the United States as a whole, as well as those local and regional markets within the United States where Clorox is sold in substantial competition with one or more other household liquid bleach producers, and as recognized by the A. C. Nielsen Company Marketing Service to be as follows: New England, Metropolitan New York City, Middle Atlantic, East Central, Metropolitan Chicago, West Central, Southeast, Southwest, and Pacific.

VI. CLOROX'S SHARE OF THE HOUSEHOLD LIQUID BLEACH MARKET IN THE UNITED STATES AND IN CERTAIN SECTIONS OF THE COUNTRY AT THE TIME OF THE ACQUISITION AND AS OF JUNE-JULY 1961

The following Table I sets forth the market share of various brands of household liquid bleach, on a consumer dollar basis, for the United States as a whole, and for certain regions such as New England, Metropolitan New York, Middle Atlantic, etc., as reported by the A. C. Nielsen Company in its bi-monthly reports covering the two-month periods June–July 1957 and June–July 1961.

TABLE I.—*Market Shares, Bi-monthly Periods, June–July 1957 and June–July 1961 Percent of Total Sales, Liquid Bleach on Consumer Dollar Basis*

		Clorox	Purex	Fleecy White	Purex & Fleecy White[1]	Hilex	Linco	Roman Cleanser	Sani-Clor	Texize	All others[2]
Total, United States	1957	48.8	15.7	4.0	19.7	3.3	2.1	5.9	0.8	0.5	18.9
	1961	51.5	14.2	4.0	18.2	(2)	1.5	4.1	(2)	1.1	23.6
New England	1957	56.0	—	—	—	—	—	—	—	—	44.0
	1961	67.5	—	—	—	(2)	—	—	(2)	—	32.5
Metropolitan New York	1957	64.3	—	—	—	—	—	—	—	—	35.7
	1961	65.4	—	—	—	(2)	—	—	(2)	—	34.6
Middle Atlantic	1957	71.6	—	—	—	—	—	—	—	—	28.4
	1961	71.7	—	—	—	(2)	—	—	(2)	—	28.3
East Central	1957	42.4	5.0	5.2	10.2	0.9	0.7	27.2	—	—	18.6
	1961	46.5	4.8	7.0	11.8	(2)	0.8	21.4	(2)	0.5	19.0
Metropolitan Chicago	1957	28.6	0.1	18.9	19.0	0.1	50.3	—	—	—	2.0
	1961	32.4	—	20.5	20.5	(2)	35.9	—	(2)	—	11.2
West Central	1957	34.5	20.6	9.0	29.6	25.8	2.1	—	—	—	8.0
	1961	41.7	18.7	9.2	27.9	(2)	0.9	0.1	(2)	—	29.4
Southeast	1957	52.6	16.0	5.7	21.7	—	—	5.3	—	3.1	17.3
	1961	54.2	12.5	4.2	16.7	(2)	—	3.0	(2)	5.6	20.5
Southwest	1957	48.4	39.6	3.9	43.5	—	—	—	—	—	8.1
	1961	46.5	38.0	2.7	40.7	(2)	—	—	(2)	0.3	12.5
Pacific	1957	39.2	42.4	—	42.4	—	—	—	6.0	—	12.4
	1961	38.0	38.6	—	38.6	(2)	—	—	(2)	—	23.4

[1] Purex acquired Fleecy White in October 1958.
[2] Hilex and SaniClor included in "All Others" in 1961.
— Indicates no sales in the area.

Source: CX 325, p. 77; CX 721 Z-38-Z-44.

It will be noted from the foregoing table that the sales of Clorox, during the period June–July 1957 represented 48.8% of the total sales of household liquid bleach in the United States, and that such sales had increased to 51.5% during the period of June–July 1961. It will also be noted that Clorox's nearest competitor, Purex, which ranked second in sales nationally with a market share of approximately 15.7% in the June–July 1957 period, decreased to approximately 14.2% in the June–July 1961 period, and that although Purex acquired the fourth ranking competitor, "Fleecy-White" in October 1958, the combined sales of Purex and "Fleecy-White" in 1961, which amounted to approximately 18.2% of the national market, represented barely one-third of the amount of household liquid bleach sold by Clorox during that period. The third largest seller of household liquid bleach, Roman Cleanser, whose sales of this product in the 1957 period represented approximately 5.9% of the national market, had decreased to approximately 4.1% in the 1961 period; such sales amounting to less than one-tenth of Clorox's sales during this latter period. The fifth ranking brand in 1957, Hilex, with approximately 3.3% of the national market was not shown separately in the June–July 1961 Nielsen report, but was included in the "All Others" category, as was the Sani-Clor brand whose sales represented less than 1% of the national sales in 1957. Two other companies whose brands of liquid bleach are not named in the report but are included in the "All Others" category are the Hood Chemical Company and the J. L. Prescott Co. each of whose sales of household liquid bleach for the year 1957 exceeded the sales of the Linco brand but were less than those of Roman Cleanser.

It is noted that Clorox not only increased its market share of the total sales of household liquid bleach in the United States as a whole between the June–July 1957 and the June–July 1961 periods from 48.8% to 51.5% as indicated above, it also increased its market share even more substantially, at the expense of its competitors, in at least four of the nine sections of the country covered in the accompanying table; namely, New England, East Central, Metropolitan Chicago and West Central. In the New England region, Clorox's increase in its market share was particularly significant, having risen from 56% in the 1957 period to 67.5% in the 1961 period, an increase of 11.5 percentage points in the four year period since the acquisition of Clorox by P & G, while the market share of all other household liquid bleach producers in that area decreased from 44% to 32.5%. During this same period, Clorox's market share increased in the East Central region from 42.4% to 46.5%; in the Metropolitan Chicago area from 28.6% to 32.4%; and in the West Central region from 34.5% to 41.7%. Also during this same period, the market share of Purex and "Fleecy-White" combined was decreasing in four of the six regions in which they operated, namely: West Central, from 29.6% to 27.9%; Southeast, from 21.7% to 16.7%; Southwest, from 43.5% to 40.7%; and Pacific, 42.4% to 38.6%. The increase in market share of the combined Purex, "Fleecy-White" sales during this period in the other two regions was insignificant, amounting to only 1.6 percentage points in one region and 1.5 percentage points in the other, namely, East Central and Metropolitan Chicago, respectively. The market share of Roman Cleanser, the next largest competitor of Clorox was also decreasing during this same period from 5.9% to 4.1% in the United States as a whole, and from 27.2% to 21.4% in the East Central region, and from 5.3% to 3% in the Southeast. In the only other area in which Roman Cleanser was sold, the West Central region, it showed a market share of only 0.1% in the 1961 period where it apparently had no sales in the 1957 period.

The market share of Clorox in the United States as a whole and in the nine sections of the country reflected in Table I above is shown for the bi-monthly periods June–July 1957 and June–July 1961 on a Consumer Dollar Basis, and, as indicated in the preceding discussion, shows an increase of 2.7 percentage points. Respondent's Exhibit 135 shows that Clorox's average annual market share, on the same Consumer Dollar Basis increased 3.5 percentage points from August 1, 1957 to August 1, 1961 and Respondent's Exhibit 134 shows that Clorox's average annual market share, on a 32 oz. Equivalent Unit Basis, increased 3.3 percentage points during the same period of time. It will also be noted that, while Table I shows an increase in Clorox's market share in the New England region from the June–July 1957 period to the comparable 1961 period of 11.5 percentage points, Respondent's Exhibit 136 shows that Clorox's average annual market share in this region increased 15.5 percentage points from August 1, 1957 to August 1, 1961. Respondent's Exhibit 136 also shows somewhat greater increases in three of the other regional markets than the increases shown in those markets in Table I, and lesser increases in three of the remaining regional markets.

VII. Some Household Liquid Bleach Manufacturers Sold a Portion of Their Output to Grocery Chains for Resale Under Private Brand Labels

Respondent introduced into evidence a list of more than 200 private brand labels of household liquid bleaches being manufactured and sold.* It appears, however, that the household liquid bleach represented by these 200 odd private brand labels, was manufactured by only 54 manufacturers or suppliers. One label, that of Safeway Stores, represented a private brand manufactured by Safeway, and not by any other manufacturer. Of the 54 manufacturers, six have been mentioned hereinbefore as competitors of Clorox Chemical at the time of the acquisition.

The record indicates that certain of the testifying liquid bleach competitors of the respondent manufactured household liquid bleach for sale by others under private brand labels, in addition to manufacturing and selling bleach under their own brand names. Some of such competitors, and the number of private brand labels of household liquid bleach manufactured by them, for sale by others, were as follows: Purex—34; J. L. Prescott Company—41; and Hood—7. Other competitors, hereinbefore mentioned, which also manufacture private brand labels for sale by others are Lady's Choice Foods, Linco Products Corporation, and Roselux Chemical Company. The following named household liquid bleach producers apparently do not manufacture private brand labels: No-Worry Chemical Company; Sunlight Chemical Company; Savol Bleach Company; and Gardiner Manufacturing Company. The Jones Chemical Company began to sell household liquid bleach under a private brand label to a chain store in 1958.

The record does not contain any figures with respect to volume, but from the testimony of officials of these companies it appears that the Hood Chemical Company and the J. L. Prescott Company sold a substantial portion of their household liquid bleach to chain stores under private brand labels. The Linco Products Corporation sold about 12% of its volume to chain stores under private brand labels during the past few years, while the sales of household liquid bleach of other producers to the chain stores under private labels were *de minimis*. There is not sufficient evidence in the record to determine or find that the sale of private brand labels of household liquid bleach to grocery chain stores has increased since the year 1955.

Except for the Purex Company, the known manufacturers of private brand label liquid bleach for chain stores are not themselves important factors in the household liquid bleach industry, from the standpoint of their volume of sales. For instance, the combined total sales of such product by Hood Chemical and J. L. Prescott do not represent more than 5% of the industry. It also appears from the record that most of Hood Chemical Company sales of private

* Respondent's Exhibit 69 A–Z.

brand label liquid bleach to chain stores was in the metropolitan New York area; the Linco Product Corporation in the Chicago metropolitan area; and most of J. L. Prescott Company's sales under private brand labels were in and around Boston, Massachusetts, and in the New York City metropolitan area.

Furthermore, it will be noted that in the table appearing on page 1494 hereof, containing Neilsen data for the two-month period, June–July 1957, the respective percentages of sales by the different manufacturers do not include their sales of private label brands. However, such sales are included under the heading "All Others" which for those two months were less than 19% throughout the United States which, of course, would include, in addition to private label brands, all household liquid bleach sold throughout the country by all other manufacturers not listed in the table, including the J. L. Prescott Company and the Hood Chemical Company.

In view of the foregoing, it is found that the volume of sales of liquid bleach under private brand labels to grocery chains is not a substantial competitive factor in the household liquid bleach industry.

VIII. RESPONDENT'S MARKET POSITION IN THE SOAP, DETERGENT, AND ABRASIVE CLEANSER MARKETS

According to Nielsen Food Index reports, P & G is the leading producer in the United States of soap and synthetic detergents, and is one of the two leading producers of abrasive cleanser products. In 1957, P & G sales of packaged detergents in grocery stores was approximately 54.3% of total value on a consumer dollar basis, and 55% on a consumer unit basis, of the total national sales of such products. P & G consumer sales of toilet soaps in grocery stores in 1957 accounted for approximately 31.2% of total sales on a dollar basis and 37.3% on a unit basis of total national sales.

In the abrasive cleanser grocery store consumer sales market, sales of P & G's "Comet", on a dollar basis, represented approximately 36.5% of the national market in February and March 1958.

IX. P & G'S SELLING AND MERCHANDISING METHODS

A. *Method of Distribution*

P & G sells all its products, except Clorox, through a subsidiary, Procter and Gamble Distributing Company, which has its own salesmen who call on wholesale jobber and retail outlets in the grocery, drug, department, and variety store fields.

The P & G sales force is divided into sales departments or divisions, each division selling a line of closely related products. For instance, the Case Soaps Sales Department sells all P & G packaged household soaps, cleansers, and synthetic detergents. The Case Food Sales Department sells P & G household edible products, including the acquired Duncan Hines and Big Top products. The Toilet Goods Sales Department sells the toiletries products manufactured by the Company, which includes shampoos, home permanents, and dentifrices. There is also a division which handles paper products.

P & G has approximately 1800 salesmen selling its products, and all of P & G sales personnel, practices and policies are under one man, the P & G Vice President of Sales.

B. *Shelf Space in Grocery Stores*

The obtaining and retention of adequate shelf space in retail outlets, particularly in self-service grocery stores, is a fundamental objective of P & G salesmen. In January 1957 P & G inaugurated a "Chain Supermarket Retail Operation" devoted exclusively to shelf space. This program basically sought to realign soap, detergent and cleanser shelf space by grouping products into departments, and dividing said departments into proper classifications, alloting shelf space in ratio to sales movement.

There is an acute shortage of shelf space for all products, including respondent's, in the nation's grocery stores because of the greatly increased number and types of items carried by grocers in recent years. Adequate shelf space today is one of the things manufacturers compete for in grocery stores, especially in the larger supermarkets.

Each P & G salesmen, in addition to selling his line of P & G products, is responsible for obtaining advertising and other merchandising support from his customers, and for obtaining retail store shelf and display space for P & G products.

According to the President of respondent: "It's one of the salesman's normal duties to make sure to try to secure adequate shelf space for our brands."

Shelf space is generally allocated by grocers on the basis of the sales movement of a product, and the reputation and merchandising ability of the manufacturer of the product. As one liquid bleach manufacturer witness testified:

> Well, the allocation of shelf space in the grocery stores is controlled by competitive factors that were previously recited; the amount of advertising, the amount of promotion, whether or not the product is being couponed or sampled; what sort of consumer promotion might be offered, how much sales help is offered the store manager in re-allocating or re-arranging shelf space, all these things have a factor in determining which product gets the maximum shelf space.

Another chain store grocer witness testified that in allocating shelf space the store owner takes into consideration such factors as advertising, promotion, and the character of the firm that is promoting the product so as to know whether or not it can carry out its promises.

C. *Advertising Programs*

Sales movement of products, including respondents, in grocery stores is based primarily on the ability of the producer to advertise and promote its products. Grocers desire "pre-sold" products which they do not have to advertise or promote themselves. "P & G brands are pre-sold through extensive advertising."

A chain store grocer witness testified that consumer acceptance is obtained, "by consistent advertising, radio, television. You name it. They could have many other gimmicks that are paramount to the supermarket industry, not particularly as to bleach or soaps. There are just any number of items that would cause a product to move."

As hereinbefore indicated, P & G is one of the nation's largest advertisers, having spent at least $79,000,000 to advertise its products in the fiscal year ended June 30, 1957, and approximately $82,500,000 for that purpose during the calendar year 1957.

Its principal soap and detergent competitors, Colgate-Palmolive, and Lever Brothers, spent approximately $37,000,000, and $24,000,000, respectively, during 1957 on national advertising. Purex, the principal competitor of respondent in the household liquid bleach business, spent approximately $3,000,000 in national advertising during the same year.

P & G uses television spot announcements extensively in advertising its products. In 1957 it ranked first in the nation as to amounts expended in this manner, having spent approximately $25,000,000 compared to approximately $8,000,000 expended by each of its principal competitors, Colgate-Palmolive and Lever Brothers for this type of advertising.

P & G also uses television programs extensively in advertising its products. It also ranked first in the nation in 1957 on amounts expended in this medium, having expended approximately $47,000,000. Colgate-Palmolive, its nearest competitor, spent approximately $19,000,000, and Lever Brothers spent approximately $16,000,000 for this type of advertising during this period.

The above amounts expended by P & G on television advertising alone indicate the advertising strength of the respondent.

P & G also utilizes radio, newspapers, and magazines extensively in advertising its products, and ranks high in the nation in the last two of these advertising media. It spent substantially more money in advertising in magazines in 1957 than any other detergent producer, and ranked fourth in the nation in magazine advertising.

Discount rates are available to large advertisers which can reduce their advertising cost by as much as 30% (or permit them to purchase substantially more advertising for the same amount of money expended). To earn these discounts, large advertisers may, as P & G does, combine their advertising on a given medium of all their products. This makes the pro-rata cost per product far less than the amount required to be paid by the one-product company. Even a company with many products cannot earn discounts comparable to those of P & G if their combined amount of advertising is insufficient to qualify for a maximum discount.

D. *Sales Promotion Methods*

In fiscal 1957 respondent P & G charged to profit and loss for sales promotion more than $47,000,000, which was approximately 5% of the amount of its net domestic sales. In conjunction with its advertising, P & G has promoted its household products by offering to the consumer such promotions as:

1. "Two-for-one" price sales.
2. Special packs wherein a small size is given free or at a reduced price with the purchase of the attached larger size or the entire pack price is reduced.
3. Free samples mailed or delivered to the consumer's residence.
4. Price-reducing coupons mailed to or delivered to the consumer's home, alone or packaged with free samples.
5. Reduced consumer prices on quantity purchases.
6. Free or reduced price merchandise premiums attached to the P & G product or to be sent for by the consumer.
7. Contests with cash and merchandise prizes for the consumer.

8. Cross-couponing of P & G products and of P & G and other nationally known related products in that a price-reducing coupon for one product will be packaged in another P & G product.

9. Combining several of its products in a joint promotion, utilizing combinations of promotions hereinbefore mentioned.

10. Combinations of promotions hereinbefore mentioned for a single product.

E. *P & G's "Comet" Advertising and Sales Promotion Campaign*

An example of the effectiveness of P & G's advertising and sales promotion compaigns is found in the "very successful" introduction and customer acceptance of its household cleanser "Comet". In the spring of 1957 respondent P & G introduced nationally its "Comet" brand of abrasive cleanser containing a bleach, with a national advertising campaign, after test marketing in selected areas, utilizing radio, television, newspaper, and magazine advertising, coordinated with extensive consumer promotions. From sometime in 1956 through October 1957, over a period of not more than 22 months, P & G spent for the direct advertising and promotion of "Comet" approximately $7,200,000. Of this amount, approximately $4,400,000 was spent in the first ten months of 1957 alone on "Comet" advertising.

As a result of the foregoing campaign, "Comet", according to Neilsen Food Index, steadily and consistently increased its market share, until by the last bi-monthly period of record herein (February-March, 1958) it had attained 36.5% of the national market of all scouring cleansers sold in grocery stores, and was within .4% of tying "Ajax", the leader in this field, for the number one rank. This position was gained by P & G within a period of approximately 20 months, from August 1956 to March 1958.

X. CHANGES MADE BY P & G SUBSEQUENT TO THE ACQUISITION OF CLOROX CHEMICAL

A. *As to Management Personnel of Clorox*

At the time of the acquisition, respondent P & G took over active control of the Clorox Chemical Company and installed its own personnel in key and controlling policy making positions. For example, Mr. Fred Brown, a veteran of 45 years with P & G, formerly in charge of all P & G domestic manufacturing, became Executive

Vice President and General Manager of Clorox, reporting directly to Mr. Borgens, the President of both P & G and Clorox. Mr. Brown replaced the former President of Clorox Chemical, Mr. W. J. Roth, who was retained in a consulting capacity only.

P & G also transferred three other men of staff level at the time of acquisition to key positions with the Clorox Company. One, a marketing specialist with P & G who had been responsible for the promotion of several P & G brands, including "Tide", was made a marketing staff associate; another, a manufacturing specialist, became a manufacturing staff associate, reporting directly to Mr. Brown; and a third was placed in charge of Clorox's laboratory controls and the technical phases of its business. Also, in January 1958, a former P & G district manager of case soap sales was made Pacific Coast Division Sales Manager of the Clorox Company.

In view of P & G's wide and successful experience in marketing its products, its technical know-how, together with its financial resources, these changes in the management of Clorox will result in substantial advantages to P & G in the marketing of Clorox liquid bleach.

B. *As to Plant Operations*

P & G closed down the Kansas City, Missouri, Clorox Chemical Company plant shortly after the acquisition, and is producing Clorox in a building on its own Kansas City, Kansas, property, with P & G personnel. This action was taken in the interest of economy. Rather than to have two plants manufacturing in the same area, it was decided to combine that production in one plant.

The Boston plant of Clorox Chemical was also closed down because it was thought that the Eastern territory could be supplied more economically from the Jersey City, New Jersey, Clorox plant.

C. *As to Sales Promotion Campaigns*

Respondent P & G has added promotions to Clorox merchandising programs using price-off labels, free premiums, price-reducing coupons, and reduced-price premiums, coordinated with advertising in selling Clorox in selected areas and nationally.

Examples of such promotions include merchandise premiums and special Clorox labels, usually during spring and fall housecleaning drives. One such brochure urges merchant support and stresses the coordinated advertising support in the same manner as is done for other P & G products.

A premium offer of an ironing board cover was made in the southeastern United States in November 1957, in Erie, Pennsylvania, in January and February 1958, and in June 1958, in the southwestern Sales Division of P & G. A premium pack of a dishcloth attached to a bottle of Clorox was also used in Los Angeles in June 1958.

This change to consumer promotion was decided upon by The Clorox Company as early as October 7, 1957.

In the spring of 1958, in the so-called "Clorox Spring Housecleaning Bee", consumer promotions were featured, such as an ironing board cover for 50 cents and a Clorox label.

Also in June 1958, a 5-cent price-off labels on gallons were used in metropolitan Chicago, which includes northern Illinois and a part of Wisconsin. Other price-off labels were used in Detroit, Nashville, Chattanooga, and San Francisco between February and July 1958.

The evidence introduced at the hearings held on December 1st and 12th, 1961, pursuant to the order of the Commission entered on June 15, 1961, remanding this proceeding to the Hearing Examiner for the reception of further evidence, clearly shows that respondent substantially increased the promotional activity with respect to Clorox, its acquired liquid bleach product, during the period July 1958 through July 1961. Such evidence shows that respondent used a total of about seventy promotions during that 3-year period at a total cost of approximately $1,550,000 for the promotion of Clorox. This amount is in addition to the $400,000 which respondent had budgeted immediately after the acquisition for the fiscal year ended June 30, 1958, for promotional expenditures of this product.

Prior to the acquisition of Clorox Chemical by P & G, the former company had not used consumer promotions for a number of years.

The evidence further shows dramatically that the market impact of the P & G-Clorox promotions was immediate and indicates that they were responsible, at least in part, for reversing the trend of Clorox's diminishing market share growth under the ownership of Clorox Chemical Co.

The following table shows the market share of Clorox and the annual changes therein, of the total sales of household liquid bleach in the United States, moving through grocery stores, for each of the four years preceeding the acquisition and each of the four years following the acquisition on both a 32-ounce Equivalent Unit Basis and on a Consumer Dollar Basis, together with the total annual expenditures by P & G for the promotion of Clorox.

TABLE II.—*Clorox Market Share and Annual Changes, Household Liquid Bleach and Promotional Expenditures*

Year ended July 31	32 oz. equivalent unit basis		Consumer dollar basis		Promotional expenditures
	Clorox share	Change	Clorox share	Change	
PRIOR TO ACQUISITION					
1953	41.4		45.3		(1)
1954	43.0	+1.6	46.4	+1.1	(1)
1955	44.0	+1.0	47.1	+0.7	(1)
1956	44.8	+0.8	47.8	+0.7	(1)
1957	45.3	+0.5	48.4	+0.6	(1)
SUBSEQUENT TO ACQUISITION					
1958	45.8	+0.5	48.7	+0.3	[2] $400,000
1959	46.8	+1.0	50.1	+1.4	520,300
1960	48.8	+2.0	51.8	+1.7	648,800
1961	48.6	−0.2	51.9	+0.1	379,800

[1] No Consumer promotions by Clorox Chemical Co.
[2] Budgeted by P&G for Clorox promotions for fiscal year ended June 30, 1958.

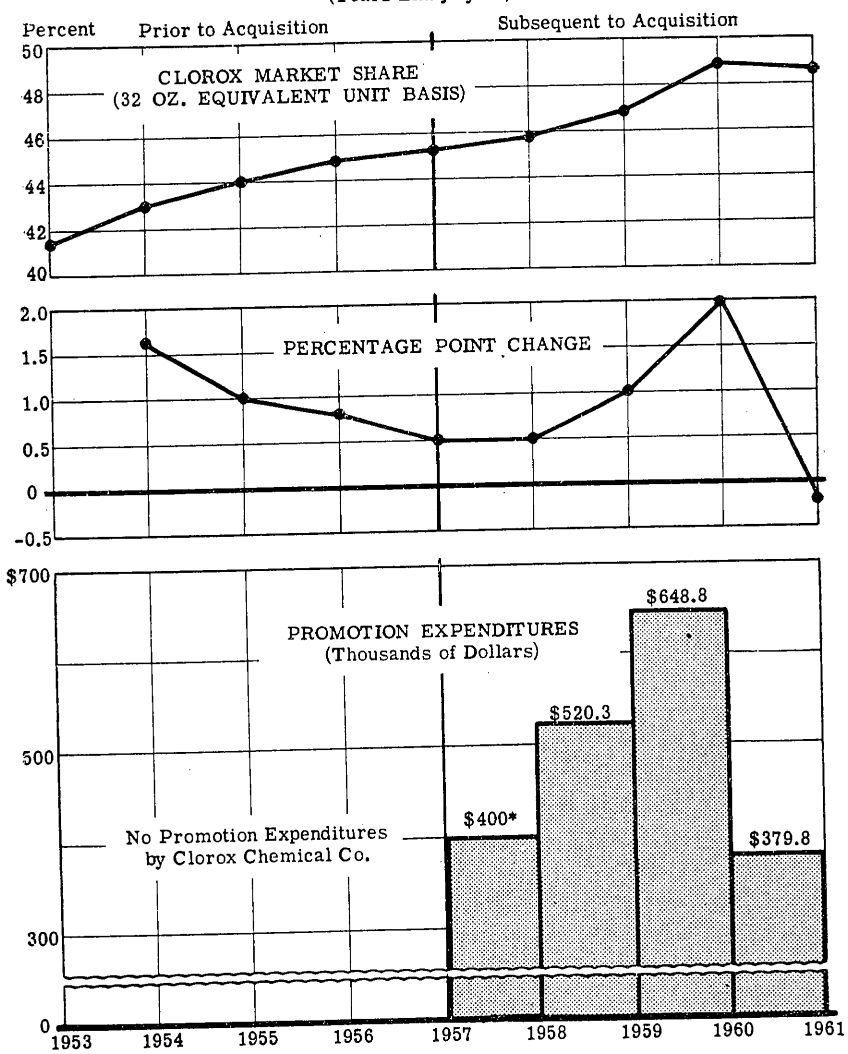
Source: RXs 134A, 135A and CX 718A-F.

It will be noted from the foregoing table that on both the 32 oz. Equivalent Unit Basis and the Consumer Dollar Basis, while Clorox's market share shows an increase every year from fiscal 1953 through fiscal 1961, the *trend* of the change in Clorox's market share shows a definite *declining trend* each year from fiscal 1953 to the date of acquisition, namely from +1.6 to +0.5 on the Unit Basis and from +1.1 to +0.6 on the Consumer Dollar Basis, during which time Clorox Chemical used no customer promotions and had no promotional expenditures. On the other hand, in fiscal 1958, the first year after the acquisition, when P & G budgeted $400,000 for promotional expenditures, the trend of the change in Clorox's market share leveled off and then in the following two years, fiscal 1959 and 1960, when Clorox's promotional expenditures increased to $520,300 and $648,800, respectively, the change in Clorox's market share shows a decided upward trend from +0.5 to +2.0 on the Unit Basis and from +0.3 to +1.7 on the Consumer Dollar Basis. In fiscal 1961, the change in Clorox's market share shows a definite reversal, although its actual market share shows only a slight decline of two-tenths of one percent on the Unit Basis and a slight increase of one-tenth of one percent on the Consumer Dollar Basis. In this connection, it is noted that P & G decreased its promotional expenditures materially in that fiscal year to $379,800 from $648,800 in fiscal 1960.

The following graph shows visually the correlation between Clorox's market share and the trend of the change therein from fiscal 1953 through fiscal 1961 on the one hand, and the amount allocated to promotional expenditures during that period of time.

A CORRELATION OF CLOROX MARKET SHARE AND ITS PERCENTAGE POINT CHANGE WITH EXPENDITURES FOR PROMOTIONS

(Years End July 31)



*Budgeted for fiscal year ended June 30, 1958.

SOURCE: CX 134A, 718A-F.

The respondent contends in its Proposed Findings filed May 8, 1959, (page 91), that in the case of established products, such as Clorox liquid bleach, promotions may result in temporary gains in market share which, following the promotion, recede to their former level. However, the evidence in this case does not support this contention, as discussed in the immediately preceding paragraphs and reflected in the graph correlating Clorox's market share and its percentage point changes with its expenditures for promotions, on page 1506 hereof. Another instance where evidence of probative value is available which relates the effect of a Clorox promotion, directly to market share, (Erie, Pa., area, CX 450) Clorox's market share increased from 49% of the market during the period October 14 to November 11, 1957, (the period immediately preceding Clorox's "Money Saving Clorox Special" promotion on November 25, 1957, and followed by other Clorox promotions in that area in January and February 1958) to 63% in the period December 12, 1957 to January 6, 1958.

Although Clorox's market share leveled off after these promotions to 52.9% of the Erie market during the period February 3–March 3, 1958, it retained a gain of almost 4 percentage points in market share in this area. During this same period, the market share of one of its principal, but smaller competitors, Gardiner Manufacturing Company, with its 101 Brand, was decreasing from 25.2% to 22.3% of the market, and "All Other" brands were decreasing from 18.9% to 17.7%.

Furthermore, if the respondent's contention is correct, that promotions result in only temporary gains in market shares and then recede to their former level, it is inconceivable that Clorox would earmark $400,000 of its first advertising budget after the acquisition and spend in excess of $1,500,000 in the three succeeding years for such "ineffective" promotions.

D. *As to Advertising*

1. *In Magazines*

The Clorox Company, under P & G control, made a number of changes in the magazine advertising as used by Clorox Chemical Company, not only in the kind of magazines used, but in the type of ads appearing therein. For example, in February 1958, Clorox began the use of *monthly full page black and white ads* in some magazines in which Clorox Chemical had run *smaller color ads every other month.* Several magazines that had been used for advertising by Clorox Chemical were dropped entirely and the advertising in others, such as certain farm magazines, was reduced. These latter changes would appear to be consistent with P & G's general policy, as testified to by its advertising manager, of advertising in magazines with national circulation.

2. *On Radio*

The Clorox Company, under control of respondent P & G, has doubled the amount of time purchased in television spot announcements of Clorox, compared to the record of Clorox Chemical, and placed less emphasis on radio in conformance with the P & G policy.

Also consistent with P & G policy, subsequent to the acquisition of Clorox Chemical Company, spot announcements on some independent, unaffiliated radio stations were terminated, and were switched to net-work stations which generally offered more listening audience. After the acquisition, 34 radio stations were dropped from Clorox advertising, of which 27 were independent stations, unaffiliated with a net-work. One new station was added.

3. *On Television*

Clorox has been advertised, since the acquisition, on spot television in new markets wherein the Clorox Chemical Company was not using spot television. Also television spot advertising has been increased in other markets, wherein the Clorox Chemical Company had done very little television spot advertising.

While Clorox dropped or decreased TV spot advertising in a few markets, that had been used by Clorox Chemical Company prior to the acquisition by P & G, it added or increased its TV spot advertising after the acquisition in a substantially larger number of markets, either not used at all, or used to a more limited degree by Clorox Chemical Company.

The monthly average number of seconds of TV spot advertising used by Clorox Chemical Company in TV markets decreased or dropped by Clorox after the acquisition were 5,956.7, while such average used by Clorox in such markets after the acquisition was 3,597.5, or a decrease of only 2,359.2 seconds. On the other hand, the monthly average number of seconds on TV spot advertising used by Clorox in new or increased TV markets after the acquisition was 96,660 seconds, as compared to a monthly average of

43,277.4 seconds used by Clorox Chemical Company in such territory prior to the acquisition, or an increase of 53,382.6 seconds.

Thus, the total monthly average number of seconds of TV spot advertising used by Clorox Chemical Company before the acquisition, in both decreased and increased TV markets, was 49,234, whereas such average used by Clorox after the acquisition in such markets was 100,257, or a net increase of 51,023 seconds. The following tables set forth in detail the monthly average, before and after the acquisition, in (1) New or Increased TV Markets, and (2) Decreased or Dropped TV Markets.

TABLE III.—*(CX-545) New or Increased TV Markets After the Acquisition (Monthly Average Number of Seconds)*

	Monthly average	
	Before	After
Abilene, Tex	0	1,005.0
Albuquerque, N. Mex	105.0	1,560.0
Amarillo, Tex	0	1,005.0
Ashville, N.C	110.0	1,552.5
Atlanta, Ga	783.3	952.5
Austin, Tex	0	1,012.5
Baltimore, Md	1,061.6	1,150.0
Beaumont, Tex	0	1,012.5
Birmingham, Ala	1,200.0	1,795.0
Boston, Mass	1,200.0	1,647.5
Buffalo, N.Y	1,041.7	1,560.0
Charleston, S.C	81.7	1,217.5
Charlotte, N.C	716.7	1,045.0
Chattanooga, Tenn	0	10.0
Chicago, Ill	1,991.7	2,942.5
Cincinnati, Ohio	670.0	907.5
Cleveland, Ohio	1,638.3	2,820.0
Columbia, S.C	375.0	1,022.5
Columbus, Ohio	718.3	1,207.5
Corpus Christi, Tex	0	1,012.5
Dallas, Tex	68.3	2,212.5
Davenport, Iowa	828.3	1,560.0
Denver, Colo	721.7	962.5
Des Moines, Iowa	785.0	952.5
Detroit, Mich	933.4	1,045.0
El Paso, Tex	185.0	2,175.0
Erie, Pa	0	1,695.0
Evansville, Ind	0	1,620.0
Fort Worth, Tex	0	435.0
Galveston, Tex	600.0	962.5
Greenville, N.C	70.0	947.5
Harlingen, Tex	0	345.0
Houston, Tex	868.3	1,122.5
Indianapolis, Ind	978.3	1,385.0
Jackson, Miss	845.0	1,297.5
Kansas City, Mo	1,700.0	2,112.5
Los Angeles, Calif	1,218.3	2,205.0
Louisville, Ky	876.7	1,890.0
Lubbock, Tex	1,375.0	2,602.5
Memphis, Tenn	831.7	952.5
Miami, Fla	506.7	987.5
Midland, Tex	0	577.5
Milwaukee, Wis	0	977.5
New Orleans, La	660.0	777.5
New York, N.Y	1,726.7	2,105.0
Norfolk, Va	371.7	432.5
Odessa, Tex	0	435.0
Oklahoma City, Okla	1,353.3	2,400.0
Peoria, Ill	800.0	952.5

TABLE III.—(*CX-545*) *New or Increased TV Markets After the Acquisition* (*Monthly Average Number of Seconds*)—Continued

	Monthly average	
	Before	After
Philadelphia, Pa	1,256.7	1,382.5
Phoenix, Ariz	73.3	1,040.0
Pittsburgh, Pa	908.3	955.0
Portland, Oreg	1,086.7	2,282.5
Raleigh, N.C	831.7	1,290.0
Roanoke, Va	71.7	1,040.0
Rochester, N.Y	868.3	2,075.0
St. Louis, Mo	793.3	1,042.5
San Angelo, Tex	0	1,005.0
San Antonio, Tex	91.7	1,825.0
San Francisco, Calif	1,756.6	2,027.5
Schenectady, N.Y	46.7	585.0
Scranton, Pa	68.3	1,040.0
Seattle, Wash	1,191.7	1,722.5
Shreveport, La	68.3	1,045.0
Syracuse, N.Y	1,633.3	1,897.5
Tampa, Fla	823.4	865.0
Temple, Tex	0	465.0
Tucson, Ariz	90.0	1,297.5
Tulsa, Okla	76.7	1,360.0
Waco, Tex	0	570.0
Washington, D.C	745.0	857.5
Wheeling, W. Va	0	1,005.0
Wichita, Kans	799.0	1,382.5
Wichita Falls, Tex	0	1,005.0
Youngstown, Ohio	0	1,005.0
Total	43,277.4	96,660.0
Increase		53,382.6
Decrease. (See Table IV)		2,359.2
Net Increase		51,023.4

Source: CX545 A, B, C, D.

TABLE IV.—(*CX-545*) *TV Markets Decreased or Dropped After the Acquisition* (*Monthly Average Number of Seconds*)

	Monthly average	
	Before	After
Bellingham, Wash	1,256.7	457.5
Huntington, W. Va	150.0	0
Jacksonville, Fla	1,050.0	1,040.0
Little Rock, Ark	305.0	0
Omaha, Nebr	431.7	320.0
Salt Lake City, Utah	1,000.0	827.5
Spokane, Wash	1,288.3	952.5
Tacoma, Wash	311.7	0
Wilmington, N.C	163.3	0
Total	5,956.7	3,597.5
Decrease		2,359.2
Monthly average number of seconds of TV spots in cities used by the Clorox Chemical Company and not used by the Clorox Company		930.0

Source: CX545 A, B, C, D.

The number of cities used by Clorox Chemical Company for TV spot advertisements before the acquisition was 65, while the number of cities used for such purpose by Clorox after the acquisition was 80, an increase of 15 cities.

The monthly average number of seconds of TV spot advertisements used by Clorox after the acquisition, in cities not used at all by Clorox Chemical Company, was 16,197.5 seconds, while such monthly average of TV spots in cities used by Clorox Chemical Company before the acquisition, and not used by Clorox after the acquisition, was only 930 seconds. (See Tables III and IV on the preceding pages.)

The number of TV stations used by Clorox for TV spot advertising for the first time after the acquisition was the same as the number of TV stations dropped by Clorox after the acquisition, namely, 28. However, the total number of seconds used by Clorox for such advertising on the 28 new stations for the 8-month period, following the acquisition, August 1, 1957, through March 31, 1958 (157,000), was substantially more than the total number of seconds (104,080) used by Clorox Chemical Company for such advertising during the longer 12-month period, July 22, 1956, through July 31, 1957, on the 28 TV stations dropped by Clorox after the acquisition. (See Tables V(a) and V(b) on the following pages.)

The Clorox Company used 129,580 seconds of TV spot advertising in 19 new cities during the 8-month period following the acquisition, August 1, 1957, through March 31, 1958, whereas Clorox Chemical Company used only 11,160 seconds of TV spot advertising during the 12-month period, July 22, 1956, through July 31, 1957, in 4 cities which were dropped by the Clorox Company after the acquisition. (See Tables VI(a) and VI(b) on the following pages.)

A further indication of a more aggressive sales policy pursued by Clorox after the acquisition of Clorox Chemical Company by P & G is evidenced by the fact that, while Clorox Chemical Company used only 592,020 seconds of TV spot advertising in the 12-month period prior to the acquisition, Clorox purchased a total of 803,060 seconds of TV spot advertising in the shorter 8-month period immediately following the acquisition. (Source CX 545, A, B, C, D.)

TABLE V(a).—*New Television Stations Used by the Clorox Company for Spot Advertising During the Period August 1, 1957–March 31, 1958*

Location	TV station used	Total number of seconds during period
Abilene, Tex	KRBC-TV	8,040
Amarillo, Tex	KFDA-TV	3,480
Amarillo, Tex	KGNC-TV	4,560
Austin, Tex	KTBC-TV	8,100
Beaumont, Tex	KFDM-TV	8,100
Chattanooga, Tenn	WRGP-TV	80
Corpus Christi, Tex	KRIS-TV	8,100
El Paso, Tex	KROO-TV	3,480
Erie, Pa	WICU-TV	13,560
Evansville, Ind	WFEI-TV	12,960
Fort Worth, Tex	WBAP-TV	3,480
Harlingen, Tex	KRGV-TV	2,760
Los Angeles, Calif	KRCT-TV	10,860
Los Angeles, Calif	KTTV-TV	480
Miami, Fla	WCKT-TV	2,640
Midland, Tex	KMID-TV	4,620
Milwaukee, Wis	WTMJ-TV	7,820
Odessa, Tex	KOSA-TV	3,480
Salt Lake City, Utah	KTVT-TV	2,420
San Angelo, Tex	KCTV-TV	8,040
Spokane, Wash	KHQ-TV	4,200
Temple, Tex	KCEN-TV	3,720
Waco, Tex	KWTX-TV	4,560
Wheeling, W. Va	KTRF-TV	8,040
Wichita, Kans	KAKE-TV	3,840
Wichita Falls, Tex	KFDX-TV	4,560
Wichita Falls, Tex	KSYD-TV	3,480
Youngstown, Ohio	WFMJ-TV	8,040
Total TV Spot Advertising on New Stations		157,500
Grand Total of Clorox Spot TV Advertising		803,060
Percent Accounted for by New Stations		19.6

Source: CX-545 A, B, C, D.

TABLE V(b).—*TV Stations Used by the Clorox Chemical Co. for Spot Advertising During the Period July 22, 1956–July 31, 1957, Dropped by the Clorox Co. August 1, 1957–March 31, 1958*

Location	TV station used	Total number of seconds during period
Atlanta, Ga	WSB-TV	3,060
Birmingham, Ala	WBRC-TV	13,400
Chicago, Ill	WBBM-TV	5,820
Cleveland, Ohio	WEWS-TV	1,200
Do	WJW-TV	5,740
Columbus, Ohio	WBNS-TV	1,780
Denver, Colo	KLZ-TV	3,140
Huntington, W. Va	WSAZ-TV	1,800
Jackson, Miss	WJTV-TV	1,200
Little Rock, Ark	KARK-TV	3,660
Louisville, Ky	WHAS-TV	300
New York, N.Y	WCBS-TV	1,080
Oklahoma City, Okla	KWTV-TV	1,440
Peoria, Ill	WTVH-TV	260
Philadelphia, Pa	WRCV-TV	6,260
Portland, Oreg	KOIN-TV	9,960
Raleigh, N.C	WTVD-TV	1,700
St. Louis, Mo	KWK-TV	2,020
San Francisco, Calif	KGO-TV	40
Do	KRON-TV	8,880
Seattle, Wash	KING-TV	1,560
Spokane, Wash	KXLY-TV	4,300
Syracuse, N.Y	WSRY-TV	7,480
Tacoma, Wash	KTNT-TV	3,740
Tampa, Fla	WTVT-TV	4,340
Washington, D.C	WTOP-TV	4,980
Wichita, Kans	KTVH-TV	2,980
Wilmington, N.C	WMFD-TV	1,960
(28 stations dropped)		
Total TV Spot Advertising on Stations Dropped		104,080
Grand Total of Clorox Chemical Co. Spot TV Advertising		592,020
Percent accounted for by stations dropped		17.6

Source: CX-545 A, B, C, D.

TABLE VI(a).—*New Cities in Which the Clorox Company Used Spot Television Advertising During the Period August 1, 1957–March 31, 1958*

Location	TV station used	Total number of seconds during period
Amarillo, Tex	KGNC	4,560
Amarillo, Tex	KFDA-TV	3,480
Abilene, Tex	KRBC-TV	8,040
Austin, Tex	KTBC-TV	8,100
Beaumont, Tex	KFDM-TV	8,100
Chattanooga, Tenn	WRGP-TV	80
Corpus Christi, Tex	KRIS-TV	8,100
Erie, Pa	WICU-TV	13,560
Evansville, Ind	WFEI-TV	12,960
Fort Worth, Tex	WBAP-TV	3,480
Harlingen, Tex	KRGV-TV	2,760
Midland, Tex	KMID-TV	4,620
Milwaukee, Wis	WTMJ-TV	7,820
Odessa, Tex	KOSA-TV	3,480
San Angelo, Tex	KCTV-TV	8,040
Temple, Tex	KCEN-TV	3,720
Waco, Tex	KWTX-TV	4,560
Wheeling, W. Va	WTRF-TV	8,040
Wichita Falls, Tex	KFDX-TV	4,560
Wichita Falls, Tex	KSYD-TV	3,480
Youngstown, Ohio	WFMJ-TV	8,040
Total TV Spot Advertising in New Cities		129,580
Grand Total of Clorox Spot TV Advertising		803,060
Percent Accounted for by New Cities		16.1

Source: CX 545 A, B, C, D.

TABLE VI(b).—*Cities in Which the Clorox Chemical Company Used Spot Television Advertising During July 20, 1956–July 31, 1957, and Were Dropped by the Clorox Co., August 1, 1957–March 31, 1958.*

Location	TV station used	Total number of seconds during period
Huntington, W. Va	WSAZ-TV	1,800
Little Rock, Ark	KARK-TV	3,660
Tacoma, Wash	KTNT-TV	3,740
Wilmington, N.C	WMFD-TV	1,960
Total TV spot advertising in cities dropped		11,160
Grand total of Clorox Chemical Co. spot TV advertising		592,020
Percent accounted for by cities dropped		1.9

Source: CX-545 A, B, C, D.

4. *Savings in Advertising Expenditures.*

Although the record indicates, as contended by respondent, that the per case rate expenditure for advertising and promotion budgeted by Clorox Chemical in the fiscal year ended June 30, 1957, and by the Clorox Company in the 12-month period ended June 30, 1958, were approximately the same, namely 16.4 cents per case, it appears that under P & G control an estimated savings accrued to Clorox in only a part of the latter period in its advertising expenditure as a result of the joint purchase by P & G and Clorox of advertising in the following media, and in at least the following amounts:

Television	$86,000.00
Radio	500.00
Magazines	50,000.00
Newspapers	2,000.00
Total savings	138,500.00

In addition, there is evidence which indicates that, if Clorox's advertising was fully coordinated with the advertising of P & G, even more substantial discount savings could be effected, which would enable Clorox to purchase considerably more advertising without increasing its per case rate budget for such purpose.

In an industry where all but a few of Clorox's competitors are small firms with limited financial resources, any such an amount of potential additional advertising cannot be considered insignificant.

That respondent P & G expected to accomplish such savings is indicated in a P & G confidential inter-office memorandum, dated February 28, 1957, recommending the purchase of Clorox Chemical by P & G, where the following statement is made:

> We are advised that Clorox spent $2,660,000 in the last half of 1956 for advertising, or at the rate of $5,320,000 a year. We believe that *P & G advertising philosophies and economies* applied to an advertising expenditure of this size can be expected to further advance the Clorox business. [Italic supplied.]

XI. EFFORTS OF CLOROX UNDER P & G OWNERSHIP AND CONTROL TO PREVENT A COMPETITOR FROM ENTERING OR EXPANDING IN THE LIQUID BLEACH MARKET

1. *In Erie County, Pennsylvania*

Prior to October 1957, as hereinbefore indicated, Clorox's market share of the household liquid bleach market in Erie, Pennsylvania was more than 50% of the total sales in that area, and the other principal brand of household liquid bleach sold in that market was the 101 Brand, manufactured by the Gardiner Manufacturing Company, which brand enjoyed approximately 30% of the market at that time. On or about October 14, 1957, the Purex Company began a market test in that area by offering a new energized household liquid bleach in a new improved type of container and handle, with a new label attached. A special advertising campaign was put on, and promotional allowances were made to the dealer to enable him to sell the product at a lower price to the public. Coupons were widely distributed in the Erie area, entitling the housewives to a reduction of from 10 cents to 25 cents on the purchase of new Purex depending upon the size of the container.

Clorox, under the control of respondent P & G, combined an advertising and promotion campaign to prevent the Purex entry into the Erie, Pennsylvania, market. The first step was an advertisement placed in an Erie, Pennsylvania, newspaper on November 25, 1957, described as "Money Saving Clorox Special", and showing Clorox cents-off labels of 7 cents off on gallons, 5 cents off on half-gallons, and 3 cents off on quarts, and emphasizing the fact that the offer was available only in Erie County. Another premium offer was made in January 1958. This was followed, in February 1958, with a "Big Bargain Offer in Erie County" of a regular $1 ironing board cover for 50 cents with each purchase of Clorox. A special newspaper advertisement, featuring the ironing board cover offer, was scheduled to run in the Erie Times-News on February 20 and 21, 1958, and distributors in Cleveland were furnished quantities of display material to be sent to and used by the dealers in the Erie County area. In addition to the ironing board cover promotion advertisement, to be run on February 20 and 21, a second advertisement appeared in the Erie Times-News on February 27 and 28, 1958, and the dealers were furnished copies of a full-page Clorox advertisement carrying its selling message in the February issues of Good Housekeeping, Better Homes and Gardens, Ladies' Home Journal, and Parent's magazines; also a stepped-up schedule of Clorox television advertising in Erie County supplied additional selling support during the month of February. In addition, reprints of the two Clorox newspaper ads and the magazine ads were sent in quantities to the distributors for mailing to the dealers, along with the bulletins in use at that time by the distributors.

Clorox continued to run these promotions in the Erie market until the end of March 1958. From October 1957, to March 31, 1958, Clorox spent more than $4,000 for TV spots, and $2,400 for newspaper advertisements in the Erie County promotion campaign, although TV spot had never before been used by the Clorox Company to advertise in that area.

As a result of this campaign conducted by Clorox under P & G control, Clorox was successful in nullifying Purex's test market attempt and in preventing Purex from becoming a substantial factor in the Erie County market. Although Purex was able to nearly equal Clorox in its share of the market of household liquid bleach in the Erie area in the period November 11 to December 9, 1957, Clorox was able to regain and even increase its market position in that area by the first of March 1958, at which time the Purex share had been reduced to approximately 7%.

As a final result, according to an official of the Purex Company, the market test that was run in Erie, Pennsylvania, was cancelled out because the Purex market share did not remain at a reasonably good level. He stated: "It is not possible to do the piece of research that we anticipated, and get meaningful results."

An indirect result of the failure to successfully test the market in Erie, Pennsylvania, according to this official of the Purex Company, was the purchase by Purex of the John Buhl Products Company brand of household liquid bleach, "Fleecy-White". When asked for the reasons for the purchase of the John Buhl Products Company, this Purex official stated:

> One was that Purex had been unsuccessful in expanding its market position geographically on Purex liquid bleach. The economics of the bleach business, and the strong competitive factors, as illustrated by our experience in Erie, Pennsylvania, made it impossible, in our judgment, for us to expand our market on liquid bleach. Fleecy-White represented a brand that sold in fair volume in a limited geographical area, and this area represented an expansion of our geographical area.

2. *In Evansville, Indiana*

The Purex Company also attempted a market test in Evansville, Indiana, at about the same time that it conducted the test in Erie, Pennsylvania. There was the difference that Purex had been selling its product in the Evansville market prior to October 1957, and no price-off coupons were used by it in the test. All that Purex did in the Evansville market, apparently, was to step up their advertising, featuring the newly designed bottle and label. However, Clorox countered by using price-off labels of 2 cents, 4 cents and 6 cents in the Evansville market during the time Purex was attempting to test the market in that area.

3. *In Other Markets*

At the times the Purex Company introduced its newly designed bottle and handle in other trade areas throughout the country, Clorox systematically countered with such "promotional devices" as price-off labels, coupons on the bottle, newspaper coupons, merchandising packs, and self-liquidating premiums, which were generally offered for periods of four or five weeks at a time. These promotions were put on in different local and regional areas throughout the country, the majority of which were utilized from May through August 1958, in the following recorded market areas: Atlanta, Georgia; Los Angeles and San Francisco, California; Chattanooga and Nashville, Tennessee; and the Pacific Northwest. In fact, Mr. Eric Bellingall, Vice President of the Advertising Agency handling the Clorox account testified that: "We drew up a list and had ready a group of these promotions and we got a list of dates when Purex was moving across with its (new) bottle."

When questioned about such promotions, Mr. Bellingall further testified as follows:

> Your Honor, you generally don't wait in most instances to let him get too much of an inroad. Now, we had this research of promotions that I had discussed and as Trimpe reported that the new bottle had shown up in this territory, and so forth, we would then move to counter with one of this pool of things.
>
> We have used as different devices, price off labels, the coupon on the bottle, the newspaper coupon, and so on, and in some territories, we did not meet it with a promotion, but tried to meet it with whatever increase there was in an advertising schedule.
>
> * * * Sometimes we won't wait for the full effect of the competitor's promotion to take place with the consumer, that is, if he moves with a promotion, we may elect to move simultaneously or as close to simultaneously as we can. In other instances, and this can depend on holidays and so forth, we wait until we get a better reaction from our distributors in the area, and then try to go in to prevent the second purchase. Am I clear there, where a promotion might do a sampling job for the competitor and we would move against the time that we would judge that the woman would be going back for a second bottle. We don't want her to be setting up a habit of purchasing the thing that she has been temporarily attracted to by a promotion, so there is a variety of timings in this activity.

XII. SUBSEQUENT TO THE ACQUISITION BY P & G ON AUGUST 1, 1957, CLOROX'S MARKET SHARE OF THE TOTAL HOUSEHOLD LIQUID BLEACH SALES (ON BOTH A QUART EQUIVALENT BASIS AND A CONSUMER DOLLAR BASIS) HAS INCREASED SUBSTANTIALLY

The following table of comparable bi-monthly periods, before and after P & G acquired Clorox, prepared from the Neilsen reports, shows that for the months of August-September 1956, Clorox's market share, on a 32 oz. equivalent basis, was 44.9% and that in August–September 1957 and in each similar bi-monthly period thereafter Clorox's market share increased, until in August–September 1960 it enjoyed a market share of 49.2%, an increase of 4.3 percentage points in the four years subsequent to the acquisition. Similarly, the table shows that from the October–November 1956 period Clorox's market share increased from 45.3% to 48.9% in the same months of 1960, an increase of 3.6 percentage points, and that from the December–January pre-acquisition period to the comparable 1960–1961 period, its market share increased by 3.7 percentage points, or from 45.4% to 49.1%. The table also shows that Clorox's market share reflects a similar increase from the amount shown in each of the other three bi-monthly periods prior to the acquisition to the amounts shown in each of the comparable bi-monthly periods in 1960–1961, for increases of 2.7, 3.1, and 2.3 percentage points respectively. Also reflected in the table is an average annual increase from 45.3% in the 1956–57 pre-acquisition period to 48.6% in the 1960–61 period, or an average annual increase of 3.3 percentage points.

TABLE VII.—*Comparable Bi-Monthly Periods Before and After P & G Acquired Clorox (on a 32 oz. Equivalent Basis)*

Clorox Market Share

	1956–57	1957–58	1958–59	1959–60	1960–61
Aug.-Sept.	44.9	45.5	46.5	47.9	49.2
Oct.-Nov.	45.3	45.2	45.8	48.9	48.9
Dec.-Jan.	45.4	45.5	47.0	48.6	49.1
Feb.-Mar.	45.7	45.7	47.0	48.6	48.4
Apr.-May	44.9	45.7	47.1	48.8	48.0
June-July	45.7	46.9	47.2	49.7	48.0
Average	45.3	45.8	46.8	48.8	48.6

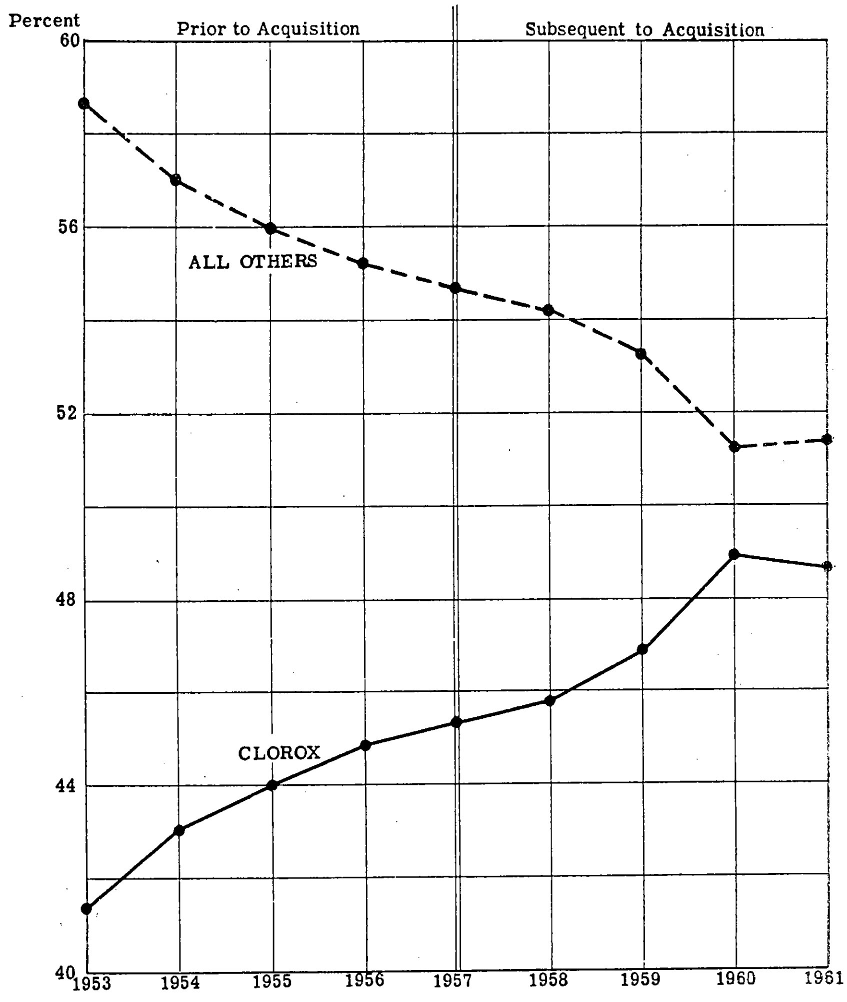
Source: RX 134-B.

The following graph clearly reflects the increase in Clorox's market share and the decrease in the market share of "All Others", before and after the acquisition, on a 32 oz. Equivalent Unit Basis. It will be noted that the *trend* of increase in Clorox's market share and the *trend* of decrease in the market share of "All Others" accelerates significantly subsequent to August 1, 1957, the date of acquisition.

The following table, also prepared from the Neilsen reports, makes the same comparisons on a consumer dollar basis and shows an even greater increase in Clorox's market share from the periods immediately preceding the acquisition to the comparable 1960–61 periods than is reflected in table VII prepared on a 32 oz. equivalent basis. For example, this table shows an increase from August–September 1956 to August–September 1960 in Clorox's market share from 48.0% to 52.4% or an increase of 4.4 percentage points; from October–November 1956 to October–November 1960, an increase of 3.4 percentage points, and similar increases in each of the other comparable periods shown in the table down to and including the

June–July 1961 period, which shows an increase of 2.7 percentage points over the June–July 1957 period. The table also shows an average annual increase from 48.4% in the 1956–57 pre-acquisition period to 51.9% in the 1960–61 period, or an average annual increase of 3.5 percentage points.

MARKET SHARE - CLOROX AND ALL OTHERS
32 OZ. EQUIVALENT UNIT BASIS
(Years End July 31)



SOURCE: RX 134A.

TABLE VIII.—*Comparable Bi-Monthly Periods Before and After P & G Acquired Clorox (on a Consumer Dollar Basis)*

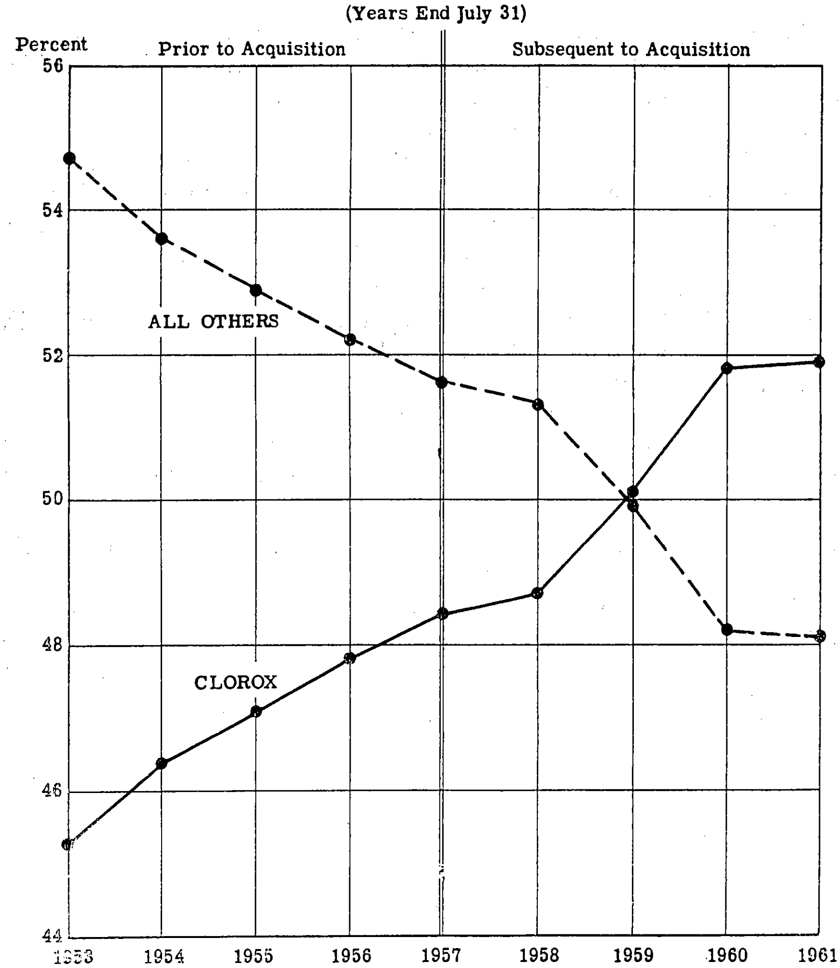
Clorox Market Share

	1956–57	1957–58	1958–59	1959–60	1960–61
Aug.-Sept.	48.0	48.4	49.6	50.9	52.4
Oct.-Nov.	48.6	48.2	49.3	51.9	52.0
Dec.-Jan.	48.4	48.6	50.3	51.7	52.3
Feb.-Mar.	48.8	48.6	50.3	51.7	51.7
Apr.-May	48.0	48.8	50.5	52.0	51.6
June-July	48.8	49.6	50.4	52.5	51.5
Average	48.4	48.7	50.1	51.8	51.9

Source: RX 135-B.

MARKET SHARE - CLOROX AND ALL OTHERS
DOLLAR BASIS AT COST PRICE TO CONSUMERS

(Years End July 31)



SOURCE: RX 135A.

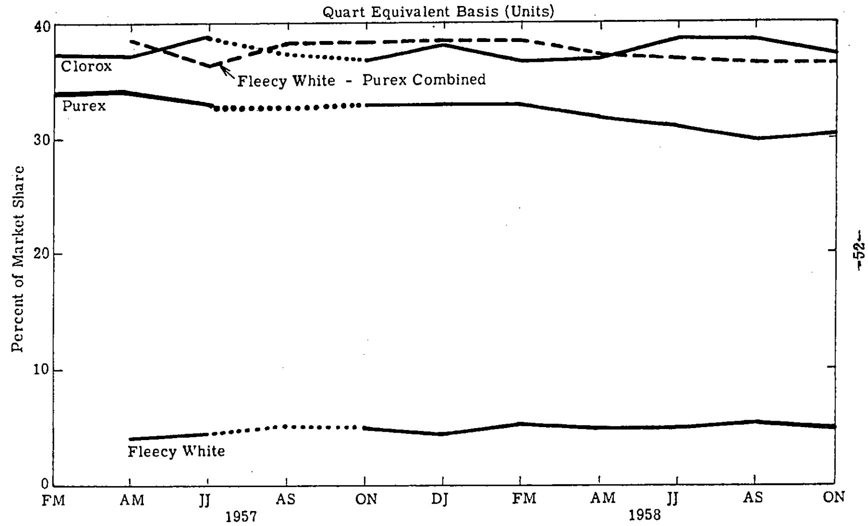
The preceding graph also clearly shows the increase in Clorox's market share and the decrease in the market share of "All Others", before and after the acquisition on a Consumer Dollar Basis. It will be noted that the *trend* of increase in Clorox's market share and the *trend* of decrease in the market share of "All Others", subsequent to the acquisition, accelerates at an even greater rate on the Consumer Dollar Basis than is reffected in the graph prepared on a 32 oz. Equivalent Basis.

XIII. CLOROX AND PUREX MARKET SHARES IN PACIFIC, SOUTHWEST AND WEST CENTRAL REGIONS COMBINED

At the original hearings, the respondent submitted a tabulation of household liquid bleach bi-monthly sales in the Neilsen Pacific, Southwest, and West Central Territories combined, for the period June–July 1957, through October–November 1957, on a unit basis. (RX 91) This tabulation shows that during this period Clorox's share of the market in those areas declined until Purex and Fleecy-White's combined share was larger than that of Clorox. However, the abnormality of that selected period is evident from the following chart, showing for the same territories the percent of market shares of Clorox, Purex and Fleecy-White on a bi-monthly basis, from February-March 1957, through October-November 1958, the latest available data then of record. The dotted line portion of this graph shows the period included in respondent's exhibit (RX 91) referred to above. It is evident from this graph that not only did Clorox catch up and pass Purex Fleecy-White combined by April 1958, but that the Purex share of the market declined below what it was prior to P & G's acquisition of Clorox in August 1957. (RX 91 and CX 668)

There were submitted by respondent at the remand hearing, tabulations showing the market share of Clorox on a 32 ounce equivalent unit basis in those same areas for the years 1953 to 1961 (RX 136). There was also submitted at this hearing by Commission's counsel an exhibit taken from Nielsen Food Index showing the shares of Clorox, Purex and others on a consumer dollar basis for this area. From an examination of these figures, it is apparent that the relative position of Clorox and Purex, as indicated in the following graph, has been substantially maintained during the subsequent period 1958 to 1961. The only change indicated is an increase of about one percentage point in the market share of Clorox. For that reason, no attempt is made to extend the graph to reflect the latter period.

A. C. NIELSEN CO.
PACIFIC, SOUTHWEST, WEST CENTRAL REGIONS COMBINED
MARKET SHARES
Quart Equivalent Basis (Units)



Note: Dotted lines refer to data from RX 91.
Source: Commission Exhibit 669.

XIV. THE EFFECT OF THE ACQUISITION OF CLOROX CHEMICAL BY THE RESPONDENT P & G MAY BE TO SUPPRESS THE COMPETITION OF NOT ONLY PUREX BUT OTHER SMALL COMPETITORS

A. *As to the Purex Company*

According to the testimony of the President of the Purex Company:

The acquisition of Clorox by Procter & Gamble, in our opinion, will have a serious effect upon Purex's business and Purex's ability to compete in the liquid bleach business, particularly if the same promotion devices which are normally used by Procter & Gamble are applied to the liquid bleach business.

B. *As to the Linco Products Corporation*

As hereinbefore indicated, this Company is respondent's principal local competitor in the Chicago, Illinois, territory. The President of that company testified with respect to the effect upon his business of the acquisition of Clorox Chemical by respondent P & G:

Well, I would say that this acquisition would create a situation where Linco Company will have a hard time to compete. When you stop to look at the resources that they have and the type of promotion that they put up when they buy or put out a new item, you can see that things are very serious. When they start a saturating campaign—that means radio, newspaper, TV, plus sampling, coupons, all that put together, including floor displays in the stores, which they would be able to get following all its advertising; and not only that, but they would be able to get probably more shelf space than competition, and all that together would eliminate the small manufacturer like us.

C. *As to the Rose-Lux Chemical Company*

An official of the Rose-Lux Chemical Company, manufacturer of "Rose-X Bleach" brand of household liquid bleach, when asked what effect the acquisition by P & G of Clorox Chemical will have upon his company, testified:

Well, it's bound to hurt our business and its bound to decrease our sales.

D. *As to the J. L. Prescott Company*

An official of the J. L. Prescott Company, manufacturer of the "Dazzle" brand of household liquid bleach, hereinbefore mentioned, when asked what effect, in his opinion, the acquisition of Clorox Chemical by P & G would have upon his business, testified:

Well, it is our feeling that if approximately the same promotions are continued that the Clorox Chemical Company used, and in addition to that, things such as coupons, so much off on the label, that type of promotion added to it would definitely be harmful to our business.

E. *As to the Sunlight Chemical Corporation*

The President of the Sunlight Chemical Corporation of Rumford, Rhode Island, when asked what some of the competitive factors are which determine whether or not his company sells household liquid bleach, testified:

I think our main competitor selling liquid bleach is the amount of money that our competitors have to spend for advertising. I do not think it is the product itself of our competitors that we fear as competition because all good brands of bleach are, chemically speaking, identical. They bear a different trade name. It is the ability of the larger companies to spend tremendous amounts of money in advertising that gets them the business instead of the smaller company like ourselves.

When asked specifically what effect the acquisition of Clorox Chemical by P & G would have on his business, he testified:

* * * I still think it would be more difficult for us to sell with a stronger competitor. It seems to me that is only logical. The stronger your competitor, the more resourceful, the more experienced, the more money he has, the more business he should get, and less we should get.

So I say almost unqualifiedly that we will suffer by this taking over of Clorox by Procter & Gamble.

F. *As to the Savol Company*

A partner of the Savol Chemical Company of Hartford, Connecticut, hereinbefore mentioned, when asked what effect the acquisition of Clorox Chemical by respondent P & G would have on his business, testified:

Frankly, we have learned to live with Clorox. As an individual I am a little bit apprehensive if Procter & Gamble goes on with the method of advertising, method of sampling, method of coupons, and the method of sales that they have used with Procter & Gamble products, both to the wholesaler and to the individual stores, of what they may do to the bleach business.

Again, I am speaking as an individual. We have a little business. We are trying to get along. We are not trying to coop in or take in the entire world. We are making a living. If and when the advertising, if Procter & Gamble would go out with advertising such as they have with other of their products, it would take very little to put us out of business because there isn't enough of a spread or a profit that we are making.

And that is the thing that troubles me a little bit, and I can't help but be a bit apprehensive of it.

G. *As to the Gardiner Manufacturing Company*

The President of the Gardiner Manufacturing Company of Buffalo, New York, hereinbefore mentioned, testified that he generally followed the Clorox price structure in selling to the trade, and when asked what effect the acquisition of Clorox Chemical by P & G would have upon his business, testified as follows:

Well, I am scared of it, definitely, because of their larger capacity, purchase, advertising matter—makes it that they can cover the trade at a much lower cost than I can. They have a much larger sales force, which is selling their other products, which can also promote the Clorox. The entire business really scares us because of the possibilities of what could happen.

H. *As to Jones Chemicals, Inc.*

The President of Jones Chemicals, Inc., of Caledonia, N.Y., hereinbefore mentioned, when asked what effect, if any, the acquisition of Clorox Chemical by P & G would have upon his business, testified:

If Clorox—runs along the way they have been running, in the experience that I have had with them for 27 years, then I feel that my company or any of our associates could meet them in the market place and operate satisfactory as we have in the past. If they become a more aggressive merchandiser, getting away from the newspaper technique of influencing sales through newspaper advertising and go to the more, you might say, dynamic form of merchandising such as only soap people know how to employ, then people like myself would be in trouble.

I. *As to B. T. Babbitt Company*

The B. T. Babbitt Company had long been a competitor of P & G in the detergent and cleanser field. As hereinbefore indicated, it acquired Chemicals, Inc., in August 1956, which manufactured a household liquid bleach which it sold under the brand name "Vano" in and around San Francisco, California. The Babbitt Company continued to manufacture and sell this product until about April 1958, when it decided to discontinue manufacturing its household liquid bleach.

The Chairman of the Board and Treasurer of this company testified that his firm had a policy since approximately 1953 not to compete unnecessarily with the "soapers", referring to soap manufacturers. When asked what effect, if any, the acquisition of Clorox Chemical by P & G would have on the Vano liquid bleach business, he testified:

> From this point on, it isn't going to have any effect, because several months ago we decided to discontinue manufacturing the product.

Since the witness was testifying in June 1958, it is apparent that the decision to discontinue the manufacture was shortly prior to that date, or about April 1958. He further testified that:

> We acquired the Vano Liquid Bleach in August of 1956 and have not promoted the product or advertised the product since the franchise of Clorox was so strong, so I feel that one of the contributing factors to our decision to discontinue the product was the acquisition of Clorox by Procter & Gamble, since it was obvious that we would not, under these conditions, entertain any thought of establishing a satisfactory franchise on Vano Liquid Bleach.

XV. THE ADDITION OF CLOROX TO THE P & G LINE OF SOAPS, DETERGENTS, AND CLEANSERS WILL ADD MERCHANDISING STRENGTH AND SUPPORT TO CLOROX WHICH WAS NOT AVAILABLE TO THE CLOROX CHEMICAL COMPANY

There is an abundance of evidence in this case that there is a definite relationship between soap products, detergents, household cleansers and household liquid bleach, such as Clorox. This is apparent from their very nature, the uses to which they are placed by the housewife, and the way in which they are placed, grouped and displayed on the shelves of the grocery stores, and the promotional effort that is put behind those items. As pointed out by an official of one of the Clorox competitors:

> The multi-product manufacturer can maintain stronger sales reports at the retail level. This is an aid in getting shelf space. The multi-product manufacturer normally has lower sales cost, so he has more promotion power; this is an aid in getting shelf space. The more products a manufacturer in our general commodity class sells to the grocery store at a profitable volume, of course, the more power he has to promote, and all these things are aids in getting shelf space.

Another competitor testified that household liquid bleach is very definitely adaptable to the promotional techniques used by soap companies. He pointed out that household liquid bleach is used by 95% of the housewives in the United States, and that when such an item is so universally used, it is very adaptable to merchandising techniques.

XVI. THE INDUSTRY-WIDE CONCENTRATION OF THE PRODUCTION AND SALE OF HOUSEHOLD LIQUID BLEACH MAY BE INCREASED

While the acquisition of Clorox Chemical by P & G in and of itself did not immediately result in increased industry-wide concentration in the production and sale of household liquid bleach, the record indicates that the results flowing from the acquisition already have resulted in some increased concentration and may well, in time, result in even more increased concentration in the production and sale of household liquid bleach.

For example, as a result of Purex's unfortunate experience at the hands of Clorox, when it attempted to test market its improved bleach and container in Erie, Pennsylvania, and Evansville, Indiana, Purex decided that its only opportunity to increase its sales and expand its territory was through acquisition, and it therefore acquired the Fleecy-White brand of household liquid bleach, thus increasing the concentration in that industry.

Another example is the decision of the B. T. Babbitt Company to discontinue the sale of its Vano brand of household liquid bleach, as a result of the acquisition of Clorox Chemical by P & G.

In addition, it would appear reasonable to expect P & G, with its financial resources available for the advertising and promotion of Clorox at any time and any place, and to the extent it may deem desirable, together with its admitted managerial, advertising and promotional expertise, to continue to increase the Clorox share of the market at the expense of its smaller and less resourceful competitors.

XVII. THE MARKET SHARE POSITION OF CLOROX LIQUID BLEACH BEFORE AND AFTER ACQUISITION

On page 12 of the respondent's "Proposed Findings of Fact and Conclusions, after Remand" the respondent states:

The Commission's Opinion plainly indicates the significance which it attaches to evidence respecting the *trend* of market shares. (Emphasis supplied.) At page 4 of its Opinion it properly notes that no conclusion can be reached with respect to the substantiality or materiality of any post-acquisition Clorox market share increase, which is claimed to be a result of the acquisition, without consideration of and comparison with the "*pre-acquisition growth trend of Clorox.*" (Emphasis supplied.)

The respondent also states on pages 12 and 13 of its "Proposed Findings":

> Nielsen data respecting market shares in the household liquid bleach industry are compiled and reported on both a 32-ounce equivalent unit basis and on a consumer dollar basis. The 32-ounce equivalent unit basis is preferable to the consumer dollar basis as a reflection of market conditions or market share data because it measures the actual volume of merchandising moving through grocery stores, and is not influenced by retail price changes, temporary or otherwise.
>
> [Comment: Statistical data used throughout these findings with respect to household liquid bleach moving through grocery stores in the United States are based upon the Nielsen Food Index Reports and exhibits prepared therefrom which were offered in evidence. The accuracy of Nielsen figures was stipulated by both parties at the instance of complainant in the initial hearings (Tr. 2066A–2066B) and reaffirmed by counsel for both parties during the hearings on remand (Tr. 6275).]

The hearing examiner accepts the above statements.

The respondent then includes tables on pages 14 and 15 of its "Proposed Findings" showing the annual changes in Clorox's market share of the total sales of household liquid bleach in the United States, moving through grocery stores, for each of the four years preceding and for each of the four years subsequent to the acquisition, on (1) a 32 oz. Equivalent Unit Basis and (2) a Consumer Dollar Basis, indicating the percentage point change in each year, before and after acquisition, in both tables.

The hearing examiner accepts the presentation in both tables to this extent.

The respondent then proceeds to show the "Total Change" and the "Average Annual Change" in the percentage point change, of Clorox's market share before and after the acquisition in both tables and contends (on page 16) that since there is only a small difference in the "Average Annual Change" in the four years subsequent to the acquisition, "there is no significant difference between the post and pre-acquisition growth trend of Clorox".

This contention the hearing examiner rejects for the reason that the use of the "Average Annual Change" rather than the *annual trend* in the change in Clorox market share conceals the actual pre-acquisition and post-acquisition *growth trend* of Clorox, the importance of which the Commission stressed in its Opinion of June 15, 1961.

It is believed that the *annual trend* in the change in the market share of Clorox before and after the acquisition is much more significant and a more reliable index than the *average annual change* in such market share, as used by the respondent in its "Proposed Findings of Fact". This is particularly true in the instant case since the record reveals that although Clorox's market share increased consistently both before and after the acquisition, it also clearly shows that the *rate of increase*, on both a consumer dollar basis and a 32 oz. equivalent basis, slowed perceptibly and constantly from August 1, 1953 to August 1, 1957, the date of acquisition, and that immediately following the acquisition the rate of increase reversed its downward trend and increased at an accelerated rate from August 1, 1957 to August 1, 1960. Also, as hereinbefore indicated, the annual trend in the change of Clorox's market share can be correlated with Clorox's expenditure for promotional activities during the four years subsequent to the acquisition. Also, as previously indicated, the decline in the trend in Clorox's market share from August 1, 1960 to August 1, 1961 is definitely traceable to the substantial decrease in Clorox's promotional expenditures during this same period of time.

CONCLUSIONS

The acquisition in this proceeding presents a novel question, one that has never been adjudicated by either the Federal Trade Commission or the courts in a formal proceeding. It is what might be called a conglomerate type of acquisition, or merger, in that the Clorox Chemical Company, the acquired corporation, was engaged in the sale and distribution of household liquid bleach, a product which respondent Procter & Gamble, the acquiring corporation, had never manufactured or sold. This product, however, is distributed to the public mainly through grocery stores and is used principally in the home as an adjunct to laundry soaps, detergents, and abrasive cleansers, and thus might be considered complementary to such products, which are the principal products manufactured and sold by respondent.

To determine whether this acquisition is in violation of Section 7 of the Clayton Act, as amended, attention must be given to that industry in which the acquired corporation was engaged, and an attempt made to evaluate the impact on competition in that industry growing out of the acquisition. In order to do that, it is necessary to take into consideration the size and experience of the acquiring corporation in the conduct of its business prior to the acquisition, the manufacture and sale of products sold by it over the past few years, and then to make an evaluation of what the normal result probably will be when a corporation such as Procter & Gamble, the acquiring corporation, enters into the other industry, and utilizes the same methods of operation that it utilized in its prior fields of endeavor.

Following this pattern, or approach to the problem in this case, we find that the respondent herein is, and has been for a number of years, a financially powerful and aggressive commercial organization which depends on advertising and sales promotion practices and methods described in the above findings, through which, and by which, it has succeeded in becoming the largest manufacturer and distributor of soaps and detergents in the United States, and a leading manufacturer of other household products such as abrasive cleansers. The respondent is recognized as one of the largest, if not the largest advertiser, in the United States. In addition to its national advertising campaigns, it has effectively engaged in aggressive competitive sales promotion programs, few of which had been used by the acquired corporation, Clorox Chemical, the leader in the household liquid bleach industry, prior to the acquisition, although some competitors of Clorox Chemical had used some of such programs.

From the foregoing Findings as to the Facts, therefore, it is concluded that as hereinbefore indicated, the line of commerce in this case is household liquid bleach; the sections of the country involved are the entire United States and the nine sections, or regions, described above. It is also concluded that one of the results of the acquisition of Clorox Chemical by the respondent, P & G, probably will be the substantial lessening of competition between the respondent-owned Clorox and the smaller manufacturers and distributors of household liquid bleach, in the United States, and the definite tendency to create a monopoly in the respondent P & G in the household bleach industry, based on one or more of the following factors:

A. The dominant market position in the household liquid bleach industry held by Clorox, which it, under control of the respondent, has been able to increase as a result of the acquisition and the various advertising campaigns, sales promotion programs and devices engaged in since the acquisition.

B. Respondent's financial and economic strength and advertising and promotional experience as compared with its competitors in the household liquid bleach industry.

C. Respondent's ability to command consumer acceptance of its products and to acquire and retain valuable shelf space in independent and chain grocery stores as a result of its advertising and promotional experience and financial resources.

D. The competitive position or share of market enjoyed by Clorox, under respondent's control, in the production and sale of household liquid bleach has been enhanced to the detriment of actual and potential competition, and as hereinbefore shown, the decline in the pre-acquisition *growth trend* of Clorox has been reversed and its post-acquisition *growth trend* has responded directly to the substantial promotional expenditures made by Clorox under P & G ownership. It can fairly be anticipated that, if Clorox, a wholly owned subsidiary of respondent P & G, continues its present methods of promotion and advertising, its dominant competitive position will be further enhanced.

E. The increasing tendency of concentration of competitors in the household liquid bleach industry.

F. The ability of Clorox, through its aggressive P & G inspired advertising and sales promotion methods and devices, to prevent the entry of additional competitors into the household liquid bleach industry, and to prevent the competitors it already has from expanding by normal methods of competition.

G. Furthermore, according to the testimony of officials of competing manufacturers and distributors of household liquid bleach, there is an apparently well-founded fear on their part that the aggressive advertising and sales promotion methods of respondent P & G used by Clorox in the household liquid bleach industry will result in serious injury to their business. The evidence introduced at the recent hearings showing a decline in the market share of some of Clorox's smaller competitors, since the acquisition, indicates that such fear expressed by at least some of these competitors was, in fact, well-founded. As hereinbefore mentioned, the record indicates that it was not the policy of the Clorox Chemical Company, the acquired corporation, to meet the sales promotions or test marketing of its smaller competitors with aggressive counter-promotions and retaliatory tactics. It had attained its leading position in the household liquid bleach industry mainly by national advertising. However, the evidence indicates that it has been the policy of Clorox, since its acquisition by P & G, to meet, and meet vigorously, the promotions and test marketing of its competitors. As hereinbefore related, these retaliatory tactics have been used especially against Purex and Roman Cleanser, the second and third largest household liquid bleach manufacturers in the industry.

To summarize the basis for the foregoing conclusions, the deciding factor is the ability of Procter & Gamble's conglomerate organization to shift financial resources and competitive strength through a broad front of different products and markets and its ability to strategically alter the selected point of greatest impact as time, place and market conditions require. It is not necessary that the conglomerate enjoy a predominate position in any industry or market, although in this particular case Procter & Gamble does enjoy such a position in the soap and detergent industry. The test of conglomerate power is whether a corporation is able to concentrate its competitive efforts at one point by shifting its financial resources and competitive strength from one industry or market to another. Procter & Gamble possesses this power and ability.

In view of the facts set forth in the aforesaid Findings, and Conclusions, and in the light of the avowed purpose of the amendment to Section 7 to protect small units in an industry, it is concluded that the effect of the acquisition of the Clorox Chemical Company by respondent the Procter & Gamble Company may be to substantially lessen competition and to tend to create a monopoly in the production and sale of household liquid bleaches in the United States in violation of Section 7 of the Clayton Act, as amended December 29, 1950, and an order of divestiture should be entered to restore, insofar as possible, the competitive situation in the household liquid bleach industry existing prior to the acquisition.

The foregoing legal conclusion is supported by the House Committee Report:[4]

> If for example, one or a number of raw material producers purchases firms in a fabricating field (i.e. a "forward vertical" acquisition), and if as a result thereof competition in that fabricating field is substantially lessened in any section of the country, the law would be violated, even though there did not exist any competition between the acquiring (raw material) and the acquired fabricating firms.
>
> *The same principles would, of course, apply to backward vertical and conglomerate acquisitions and mergers.*
>
> *The enactment of the bill will limit further growth of monopoly and thereby aid in preserving small business as an important competitive factor in the American economy.* (Emphasis supplied.)

In the House of Representatives, Representative Boggs of Louisiana in discussing the bill to amend Section 7 of the Clayton Act, made the following statement with respect to the purpose and effect of the bill:

> A third avenue of expansion—and this is one of the most detrimental movements to a free enterprise economy—is the conglomerate acquisition. This is the type which carries the activities of giant corporations into all sorts of fields, often completely unrelated to their normal operations. In times such as these, when big corporations have such huge quantities of funds, they are constantly looking around for new kinds of businesses to enter. By this

[4] H.R. Rep. 1191, 81st Cong., 1st Sess., p. 11 (1949).

process they build up huge business enterprises which enable them to play one type of business against another in order to drive out competition.[5]

The U.S. Supreme Court, in the Dupont case, also supports this legal conclusion in the following language:[6]

The first paragraph of Section 7, written in the disjunctive, plainly is framed to reach not only the corporate acquisition of stock of a competing corporation where the effect may be substantially to lessen competition between them, *but also corporate acquisitions of stock of corporations, competitor or not, where the effect may be either* (1) to restrain commerce in any section or community, or (2) tend to create a monopoly of any line of commerce * * *. (Emphasis supplied.)

We hold that *any acquisition* by one corporation of all or any part of the stock of another corporation, *competitor or not,* is within the reach of the Section whenever the reasonable likelihood appears that the acquisition will result in a restraint of commerce or in the creation of a monopoly of any line of commerce * * *. (Emphasis supplied.)

In accordance with the foregoing Findings and Conclusions, the following order is entered.

ORDER OF DIVESTITURE

It is ordered, That respondent The Procter & Gamble Company, a corporation, and its subsidiaries, officers, directors, agents, representatives and employees, shall cease and desist from violating Section 7 of the Clayton Act, as hereinbefore set forth in the Findings hereof, and shall divest itself of all assets, properties, rights or privileges, tangible or intangible, including but not limited to, all plants, equipment, trade names, trademarks and goodwill acquired by said respondent as a result of the acquisition of the assets of the Clorox Chemical Company, together with the plant, machinery, buildings, improvements, equipment and other property of whatever description which has been added to them in such a manner as to restore it as a going concern in the manufacture and sale of household liquid bleach in which the said Clorox Chemical Company was engaged, in substantially the same productive capacity as was possessed by the said Clorox Chemical Company at, and immediately prior to, the time of the said acquisition by respondent The Procter & Gamble Company.

It is further ordered, That by such divestiture none of the stocks, assets, rights, or privileges, tangible or intangible, acquired or added by respondent, shall be sold or transferred, directly or indirectly, to anyone who is at the time of divestiture, or for two years before said date was, a stockholder, officer, director, employee, or agent of,

[5] 95 Cong. Rec. 11496 (1949).
[6] 353 U.S. 586, pages 590–91–92.

or otherwise directly or indirectly connected with, or under the control, direction, or influence of respondent or any of respondent's subsidiary or affiliated corporations.

Opinion of the Commission

NOVEMBER 26, 1963

By Elman, *Commissioner:*

The Commission's complaint, issued on September 30, 1957, charged that respondent's acquisition on August 1, 1957, of all the assets of Clorox Chemical Company violated Section 7 of the Clayton Act, as amended (15 U.S.C. § 18). After extended hearings, the hearing examiner rendered an initial decision in which he found the acquisition unlawful and ordered divestiture. On appeal, the Commission, concluding "that the record as presently constituted does not provide an adequate basis for informed determinations as to the actual or probable effects of respondent's acquisition * * * on competition", and hence that the record "should be supplemented in this respect to the end that all of the issues involved in the case may be finally and conclusively disposed of on their merits", ordered on June 15, 1961, that the initial decision be vacated, that the case be remanded to the hearing examiner for the reception of additional evidence, and "that after receipt of such additional evidence the hearing examiner make and file a new initial decision on the basis of the entire record herein."

On remand, additional evidence was introduced, and the hearing examiner rendered a second initial decision in which he again found the acquisition unlawful and ordered divestiture. In the course of oral argument on July 11, 1962, before the Commission on appeal from this decision, a question was raised whether the Commission was free to decide the case on the basis of the entire record, or whether it must assume that the record on the first appeal did not support a finding of illegality and confine its attention to the additional evidence introduced on remand. The Commission, believing that the public interest required that the case be decided on the entire record, directed reargument of all contested issues of fact and law (order of November 30, 1962). Reargument was held on January 30, 1963. The case is now ready for final decision on the entire record.

I. "Law of the Case"

We meet at the threshold the contention that notwithstanding the Commission's order of reargument, in which its intention to consider the issues of this case on the entire record was clearly an-