

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

In the Matter of

MAHLE GMBH,  
a corporation,

MAHLE, INC.,  
a corporation,

METAL LEVE, S.A.,  
a corporation, and

METAL LEVE, INC.,  
a corporation.

File No. 961-0085

**AGREEMENT CONTAINING CONSENT ORDER**

The Federal Trade Commission ("Commission"), having initiated an investigation of the acquisition by Mahle GmbH, the parent corporation of Mahle, Inc., of more than ~~50~~ percent of the voting securities of Metal Leve, S.A., the parent corporation of Metal Leve, Inc., and it now appearing that Mahle GmbH, Mahle, Inc., Metal Leve, S.A., and Metal Leve, Inc., hereinafter sometimes referred to as the "proposed respondents," are willing to enter into an agreement containing an Order requiring the proposed respondents to divest certain assets and to cease and desist from making certain acquisitions, as well as providing for other relief:

**IT IS HEREBY AGREED** by and between the proposed respondents, by their duly authorized officers and attorney, and counsel for the Commission that:

1. Proposed respondent Mahle GmbH is a corporation organized, existing and doing business under and by virtue of the laws of Germany, with its office and principal place of business located at Pragstrasse 26-46, D-70376 Stuttgart, Germany.
2. Proposed respondent Mahle, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 1 Mahle Drive, Morristown, Tennessee 37815-7998.
3. Proposed respondent Metal Leve, S.A. is a corporation organized, existing and doing business under and by virtue of the laws of Brazil, with its office and principal place of business

located at Rua Brasilio Luz 535, Sao Paulo, SP 04746-901, Brazil.

4. Proposed respondent Metal Leve, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of Michigan, with its office and principal place of business located at 560 Avis Drive, Ann Arbor, Michigan 48108.

5. The proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

6. The proposed respondents waive:

- a. any further procedural steps;
- b. the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;
- c. all rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and
- d. any claim under the Equal Access to Justice Act.

7. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information with respect thereto will be publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

8. Within ten (10) days after the date this agreement is signed by the proposed respondents, and every thirty (30) days thereafter until the proposed respondents make their first verified written reports pursuant to Paragraph IV of the proposed Order, when and if entered, the proposed respondents shall submit to the Commission initial reports pursuant to Commission Rule 2.33, 16 C.F.R. § 2.33, setting forth in detail the manner and form in which the proposed respondents are complying with the Agreement to Hold Separate signed by the proposed respondents and accepted by the Commission on August 30, 1996, and in the manner described in Paragraph V of the attached proposed Order, setting forth in detail the manner and form in which the proposed respondents are attempting to satisfy the divestiture requirements described in Paragraph II of the attached proposed Order.

9. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondents that the law has been violated as alleged in the draft of complaint

here attached or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

10. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission may, without further notice to the proposed respondents, (1) issue its complaint, corresponding in form and substance with the attached draft of complaint, and its decision containing the following Order to divest and to cease and desist in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect, and may be altered, modified or set aside in the same manner and within the same time as, provided by statute for other orders. The Order shall become final upon service. Delivery by U.S. Postal Service of the complaint and decision containing the agreed-to Order to counsel for the proposed respondents or any other person residing in the United States that the proposed respondents designate by notice in writing to the Secretary, Federal Trade Commission, shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or this agreement may be used to vary or contradict the terms of the Order.

11. Proposed respondents have read the proposed complaint and Order contemplated hereby. Proposed respondents understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

## **ORDER**

### **I**

**IT IS ORDERED** that, as used in this Order, the following definitions shall apply:

A. "Commission" means the Federal Trade Commission.

B. "Respondents" means Mahle GmbH, Mahle, Inc., Metal Leve, S.A., and Metal Leve, Inc., their directors, officers, employees, agents and representatives, predecessors, successors and assigns; their subsidiaries, divisions, and groups and affiliates controlled by Mahle GmbH, Mahle, Inc., Metal Leve, S.A., and Metal Leve, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Mahle GmbH means Mahle GmbH, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Mahle GmbH, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

D. "Mahle, Inc." means Mahle, Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Mahle, Inc., and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

E. "Metal Leve, S.A." means Metal Leve, S.A., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Metal Leve, S.A., and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

F. "Metal Leve, Inc." means Metal Leve, Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Metal Leve, Inc., and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

G. "Articulated Piston" means any twøpiece piston consisting of a separate crown and skirt, as well as each individual piece of an Articulated Piston, including, but not limited to, forgings, castings, and finished pistons.

H. "Other Diesel Piston" means any type of diesel piston, other than an Articulated Piston, including, but not limited to, forgings, castings and finished pistons.

I. "Other Piston" means any Other Diesel Piston or other type of piston, other than an Articulated Piston, including, but not limited to, castings and finished pistons.

J. "Metal Leve, Inc. Business" means:

1. all assets, properties, business and goodwill, tangible and intangible, of Metal Leve, Inc., including, but not limited to:

a. the manufacturing facilities located at Orangeburg and Sumter, South Carolina,

b. the research and development facility and corporate offices located at Ann Arbor, Michigan; and

2. all assets, properties, business and goodwill, tangible and intangible, of Metal Leve, S.A. worldwide relating to: (i) the research, development, manufacture, or sale of Articulated Pistons or Other Pistons manufactured in the United States, (ii) the research, development, manufacture, or sale of Articulated Pistons anywhere in the world, and (iii) research, development, manufacture or sale of Other Diesel Pistons sold in the United States; including, without limitation, the following:

a. all machinery, fixtures, equipment, tools and other tangible personal property, but excluding machinery, fixtures, and equipment located outside the United States related to the manufacture of Other Diesel Pistons sold in the United States;

b. all rights, titles and interests in and to owned or leased real property together with appurtenances, licenses and permits, but excluding real property located outside the United States related to the manufacture of Other Diesel Pistons sold in the United States or to the manufacture of Articulated Pistons sold in Brazil;

c. all inventory;

d. all customer lists, distribution agreements, vendor lists, catalogs, sales promotion literature, and advertising materials;

e. all research materials, technical information, inventions, trade secrets, intellectual property, patents, technology, knowhow (including, but not limited to, manufacturing know-how), specifications, designs, drawings, processes, quality control data, and formulas, as well as licenses thereto, relating to the manufacture or sale of Articulated Pistons;

f. all Metal Leve, S.A. research and development projects for Metal Leve, Inc., including, but not limited to, all research materials, technical information, inventions, trade secrets, intellectual property, patents, technology, knowhow (including, but not limited to, manufacturing know-how), specifications, designs, drawings, processes, quality control data, and formulas, as well as licenses thereto, relating to all such research and development projects, including, but not limited to, the following: (i) lightweight articulated ppt, (ii) oxidation resistant steels, (iii) on aluminide, (iv) steel material evolution, (v) thermal barrier steel crown coatings, open versus closed articulated gallery, (vi) analytical software development, (vii) rapid solidification aluminum alloy, and (viii) bowl rim life prediction.

g. rights that are equal to the rights held by Metal Leve, S.A. to all research materials, technical information, inventions, trade secrets, intellectual property, patents, technology, knowhow (including, but not limited to manufacturing know-how), specifications, designs, drawings, processes, quality control data, and formulas, as well as licenses thereto, relating to the manufacture or sale of Other Diesel Pistons

sold in the United States or Other Pistons manufactured in the United States;

h. all rights, titles and interests in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

i. all rights under warranties and guarantees, express or implied;

j. all books, records, and files; and

k. all items of prepaid expense.

Provided, that this definition of the Metal Leve, Inc. Business does not include research and development conducted after the divestiture required by this Order.

K. "Metal Leve, S.A. Piston Business" means all assets, properties, business and goodwill, tangible and intangible, relating to the manufacture or sale of Articulated Pistons and Other Pistons by Metal Leve, S.A. or Metal Leve, Inc. anywhere in the world, including, without limitation, the following:

1. the Metal Leve, Inc. Business, plus all Metal Leve S.A. assets anywhere in the world relating to research, development, manufacture or sale of Articulated Pistons or Other Pistons, including, but not limited to:

a. the manufacturing facilities located at Santo Amaro and Limeira in Brazil,

b. the research and development facility located at Santo Amaro in Brazil;

2. all trademarks;

3. all machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property;

4. inventory and storage capacity;

5. all customer lists, distribution agreements, vendor lists, catalogs, sales promotion literature, and advertising materials;

6. exclusive rights to all research materials, technical information, inventions, trade secrets, intellectual property, patents, technology, know-how (including, but not limited to manufacturing know-how), specifications, designs, drawings, processes, quality control

data, and formulas relating to the manufacture of Articulated Pistons or Other Pistons by Metal Leve;

7. all rights, titles and interests in and to owned or leased real property, together with appurtenances, licenses and permits;

8. all rights, titles and interests in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

9. all rights under warranties and guarantees, express or implied;

10. all books, records, and files; and

11. all items of prepaid expense.

## II

### **IT IS FURTHER ORDERED** that:

A. Respondents shall divest, absolutely and in good faith, no later than ten (10) days after the date on which this Order becomes final, the Metal Leve, Inc. Business as a fully viable and competitive ongoing business. Provided, however, that Metal Leve S.A. may retain a non-exclusive licence from the acquirer of the Metal Leve, Inc. Business to intellectual property for the sole purpose of producing for Volvo Brazil service part number P-2067 in Brazil, and may retain the right to supply Volvo Brazil service part number P-2067 in Brazil.

B. Respondents shall divest the Metal Leve, Inc. Business only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Metal Leve, Inc. Business is to ensure the continuation of the Metal Leve, Inc. Business as an ongoing, viable, and competitive operation engaged in the same business of researching, developing, manufacturing, and selling Articulated Pistons and Other Pistons, in which the Metal Leve, Inc. Business is engaged at the time of the proposed divestiture, and to remedy the lessening of competition resulting from the acquisition as alleged in the Commission complaint.

C. A condition of approval by the Commission of the divestiture shall be the submission by the acquirer to the Commission of an acceptable five-year business plan for the Metal Leve, Inc. Business demonstrating that the acquirer will establish the Metal Leve, Inc. Business as a viable and competitive business free of all continuing relationships with Respondents in the research, development, manufacture or sale of Articulated Pistons and Other Pistons, except as set forth in paragraph II.D., below.

D. On reasonable notice to Metal Leve, S.A. from an approved acquirer, Metal Leve, S.A. shall provide technical assistance and know-how to the acquirer with respect to the Metal Leve, Inc. Business. Such technical assistance shall include, without limitation, consultation with knowledgeable employees of Metal Leve, S.A. and training at the manufacturing facilities of Metal Leve, S.A. Metal Leve, S.A. may charge the reasonable costs incurred in providing such technical assistance, including reimbursement (commensurate with the salary and benefits of Metal Leve, S.A. personnel involved) for the time plus expenses of Metal Leve, S.A. personnel providing the technical assistance. Metal Leve, S.A. shall continue to provide such technical assistance until the acquirer of the Metal Leve, Inc. Business is satisfied that it is capable of producing, and of developing for production, commercially saleable Articulated Pistons and Other Pistons utilizing the assets of the Metal Leve, Inc. Business; provided, however, Metal Leve, S.A. shall not be required to continue providing such technical assistance and training for more than two (2) years after the date on which the divestiture required by this Order is made.

E. Pending divestiture of the Metal Leve, Inc. Business, Respondents shall take such actions as are reasonably necessary to maintain the viability, competitiveness, and marketability of the Metal Leve, Inc. Business and the Metal Leve, S.A. Piston Business and to prevent the destruction, removal, wasting, deterioration, or impairment of the Metal Leve, Inc. Business and the Metal Leve, S.A. Piston Business.

F. Respondents shall comply with all terms of the Agreement to Hold Separately signed by the Respondents and accepted by the Commission on August 30, 1996, which is attached to this Order and made a part hereof, and which shall continue in effect until such time as Respondents have accomplished the divestiture required by this Order.

### III

#### **IT IS FURTHER ORDERED** that:

A. If Respondents have not divested, absolutely and in good faith and with the Commission's prior approval, the Metal Leve, Inc. Business within ten (10) days of the date this Order becomes final, then the Commission may appoint a trustee to divest the Metal Leve, Inc. Business. The trustee shall have all rights and powers necessary to permit the trustee to effect the divestiture of the Metal Leve, Inc. Business and to add to the Metal Leve, Inc. Business all or any part of the Metal Leve, S.A. Piston Business in order to assure the viability, competitiveness, and marketability of the Metal Leve, Inc. Business so as to expeditiously accomplish the remedial purposes of this Order. In the event the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief (including, but not limited to, a court-appointed trustee) pursuant to the Federal Trade Commission Act or any other statute, for any failure by any of the Respondents to



comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A. of this Order, Respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed trustee, Respondents shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Metal Leve, Inc. Business and shall have the power to add to the Metal Leve, Inc. Business all or any part of the Metal Leve, S.A. Piston Business in order to accomplish the divestiture required by this Order.

3. Within ten (10) days after appointment of the trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission (and, in the case of a court-appointed trustee, of the court), transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture of the Metal Leve, Inc. Business, to add to the Metal Leve, Inc. Business all or any part of the Metal Leve, S.A. Piston Business, and to divest such additional ancillary assets of Metal Leve S.A. and effect such additional arrangements, in order to assure the viability, competitiveness, and marketability of the Metal Leve, Inc. Business so as to expeditiously accomplish the remedial purposes of this Order.

4. The trustee shall have twelve (12) months to accomplish the divestiture required by this Order, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission (or, in the case of a court-appointed trustee, by the court); provided, however, the Commission may extend this period for no more than two (2) additional terms of six (6) months each.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the Metal Leve, Inc. Business or the Metal Leve, S.A. Piston Business, or to any other relevant information, as the trustee may request. Respondents shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by the respondent shall extend the time for divestiture under this Paragraph III in an amount equal to the delay, as determined by the Commission (or, in the case of a court-appointed trustee,

by the court).

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner, and to the acquirer or acquirers, as set out in Paragraph II of this Order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission approves more than one such acquiring entity, then the trustee shall divest to the acquiring entity or entities selected by Respondents from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission (and, in the case of a court-appointed trustee, by the court), of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Respondents and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement (based on sales price) contingent on the trustee's accomplishing the divestiture required by this Order.

8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, recklessness, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A. of this Order.

10. The Commission (or, in the case of a court-appointed trustee, the court) may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain the Metal Leve, Inc. Business or the Metal Leve, S.A. Piston Business.

12. The trustee shall report in writing to Respondents and the Commission every thirty (30) days concerning the trustee's efforts to accomplish the divestiture.

#### IV

**IT IS FURTHER ORDERED** that, for a period of ten (10) years from the date this Order becomes final, Respondents shall not, without prior notification to the Commission, directly or indirectly:

A. Acquire any stock, share capital, equity, or other interest in any concern corporate or non-corporate, engaged in the sale of Articulated Pistons or Other Pistons in the United States within the year preceding such acquisition; provided, however, an acquisition of securities will be exempt from the requirements of this paragraph if, after such acquisition of securities, Respondents will hold cumulatively no more than two (2) percent of the outstanding shares of any class of securities of such person; or

B. Enter into any agreement or other arrangement to transfer direct or indirect ownership, management, or control of any assets used for or previously used for (and still suitable for use for) the manufacture or sale of Articulated Pistons or Other Pistons in the United States; provided, however, prior notice shall not be necessary for: the acquisition of assets in the ordinary course of business or the acquisition of assets valued at less than \$100,000 from the same person within any twelve (12) month period; or for transfers to or from manufacturers of diesel engines.

The prior notifications required by this paragraph shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 6 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that: no filing fee will be required for any such notification; notification shall be filed with the Secretary of the Commission and a copy shall be delivered to the Bureau of Competition; notification need not be made to the United States Department of Justice; and notification is required only of Respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least thirty (30) days prior to the consummation of any such transaction (hereinafter referred to as the initial phase of the waiting period). If, within the initial phase of the waiting period, the Commission or its staff makes a written request for additional information and documentary material, Respondents shall not consummate the transaction until at least twenty (20) days after complying with such request for additional information and documentary material. Early termination of the waiting periods in this paragraph may, where appropriate, be granted by letter from the Bureau of Competition. Notwithstanding, prior notification shall not be required by this paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15U.S.C. § 18a, and prior notification shall not be required by this paragraph for acquisitions by Respondents Mahle GmbH or Mahle, Inc. of Metal Leve, S.A. stock or assets.

## V

**IT IS FURTHER ORDERED** that within thirty (30) days after the date this Order becomes final, and every thirty (30) days thereafter until Respondents have fully complied with the provisions of Paragraphs II and III of this Order, Respondents shall submit to the Commission verified written reports setting forth in detail the manner and form in which Respondents intend to comply, are complying, and have complied with Paragraphs II and III of this Order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and III of the Order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties that have contacted Respondents or that have been contacted by Respondents. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

## VI

**IT IS FURTHER ORDERED** that one (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may require, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they have complied and are complying with Paragraph IV of this Order.

## VII

**IT IS FURTHER ORDERED** that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondents, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in Mahle GmbH, Mahle, Inc., Metal Leve, S.A., or Metal Leve, Inc. that may affect compliance obligations arising out of the Order.

## VIII

**IT IS FURTHER ORDERED** that, for the purpose of determining or securing compliance with this Order, and Respondents shall permit any duly authorized representatives of the Commission:

- A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondents relating to any matters contained in this Order; and

B. Upon five (5) days notice to Respondents, and without restraint or interference, to interview officers, employees, or agents of Respondents.

Signed this \_\_\_\_ day of January, 1997.

FEDERAL TRADE COMMISSION

By:

\_\_\_\_\_  
Morris A. Bloom  
Attorney  
Bureau of Competition

By:

\_\_\_\_\_  
Robert N. Cook  
Attorney  
Bureau of Competition

Approved:

\_\_\_\_\_  
M. Howard Morse  
Assistant Director  
Bureau of Competition

\_\_\_\_\_  
George S. Cary  
Deputy Director  
Bureau of Competition

\_\_\_\_\_  
William J. Baer  
Director  
Bureau of Competition

MAHLE GMBH, A CORPORATION

By:

\_\_\_\_\_  
Heinz Junker  
Managing Director

MAHLE, INC., A CORPORATION

By:

\_\_\_\_\_  
Hans Jehle  
President

METAL LEVE, S.A., A CORPORATION

By:

\_\_\_\_\_  
Peter Grunow  
President and Chief Executive Officer

METAL LEVE, INC., A CORPORATION

By:

\_\_\_\_\_  
Duraïd Mahrus  
President

\_\_\_\_\_  
Michael N. Sohn  
Counsel for Mahle GmbH, Mahle, Inc., and  
Metal Leve, S.A.  
Arnold & Porter  
555 Twelfth Street, N.W.  
Washington, D.C. 20004-1202

\_\_\_\_\_  
Jay A. Herbst, Esq.  
Counsel for Metal Leve, Inc.  
Driggers, Schultz, Herbst & Patterson  
2600 W. Big Beaver, Suite 550  
Troy, MI 48084

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

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MAHLE, INC.,  
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METAL LEVE, S.A.,  
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METAL LEVE, INC.,  
a corporation.

Docket No.

**COMPLAINT**

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Mahle GmbH, the parent company of Mahle, Inc., has acquired more than 50 percent of the voting securities of Metal Leve, S.A., the parent company of Metal Leve, Inc., in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

**I. THE RESPONDENTS**

Mahle GmbH and Mahle, Inc.

1. Respondent Mahle GmbH is a corporation organized, existing and doing business under and by virtue of the laws of Germany, with its office and principal place of business located at Pragstrasse 26-46, D-70376 Stuttgart, Germany. Mahle GmbH has had annual worldwide sales of approximately \$1.7 billion.

2. Respondent Mahle, Inc., a majority-owned subsidiary of Mahle GmbH, is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at Mahle Drive, Morristown, Tennessee

37815-0798. Mahle, Inc. has had annual U.S. sales of approximately \$1~~85~~ billion.

3. Mahle GmbH, which operates in the United States through Mahle, Inc., manufactures and sells pistons for internal combustion engines and is a leading producer of articulated pistons and large bore two-piece pistons. Mahle, Inc. produces pistons in the United States at plants located in Tennessee.

4. At all times relevant herein, Mahle GmbH and Mahle, Inc. (collectively, "Mahle") have been, and are now, corporations as "corporation" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44; and at all times relevant herein, Mahle GmbH and Mahle, Inc. have been, and are now, engaged in commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

Metal Leve, S.A. and Metal Leve, Inc.

5. Respondent Metal Leve, S.A. is a corporation organized, existing and doing business under and by virtue of the laws of Brazil, with its office and principal place of business located at Rua Brasilio Luz 535, Sao Paulo SP 04746-901, Brazil. Metal Leve, S.A. has had annual worldwide sales of approximately \$31~~5~~ billion.

6. Respondent Metal Leve, Inc., a wholly-owned subsidiary of Metal Leve, S.A., is a corporation organized, existing and doing business under and by virtue of the laws of Michigan, with its office and principal place of business located at 560 Avis Drive, Ann Arbor, Michigan 48108. Metal Leve, Inc. has had annual U.S. sales of more than \$6~~0~~ billion.

7. Metal Leve, S.A., which operates in the United States through Metal Leve, Inc., manufactures and sells pistons, pins, bearings, bushings, and thrust washers for internal combustion engines and is a leading producer of articulated pistons and large bore two-piece pistons. Metal Leve, Inc. produces pistons in the United States at two plants in South Carolina, and conducts research and development at a facility in Michigan.

8. At all times relevant herein, Metal Leve, S.A. and Metal Leve, Inc. (collectively, "Metal Leve") have been, and are now, corporations as "corporation" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44; and at all times relevant herein, Mahle GmbH and Mahle, Inc. have been, and are now, engaged in commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.



## II. THE ACQUISITION

9. On or about June 26, 1996, Mahle GmbH acquired more than 50 percent of the voting securities of Metal Leve, S.A. (the "Acquisition"), for approximately \$40 million.

## III. THE RELEVANT MARKETS

10. Research, development, design, production and sale of articulated pistons constitute one relevant line of commerce within which to analyze the effect of the Acquisition on competition. A piston is an engine component that fits snugly into the hollow of an engine cylinder and moves back and forth under pressure generated by combustion within the cylinder. In a reciprocating engine, pistons are connected to piston rods which turn the crankshaft to generate the power that makes the engine turn. Each engine cylinder contains a separate piston. Articulated pistons are two-piece pistons with a crown made of steel and a skirt made of aluminum, in which the crown and skirt are able to articulate; that is, to move independently of each other. The crown and skirt are joined together by means of a piston pin. Articulated pistons of up to 150 millimeter in diameter are used in engine applications, such as Class 8 diesel truck engines, which require pistons that can withstand high temperatures and pressures to maintain engine performance while meeting increasingly stringent government emissions requirements. There are no economic substitutes for these articulated pistons.

11. Research, development, design, production and sale of large bore two-piece pistons constitute another relevant line of commerce within which to analyze the effect of the Acquisition on competition. Large bore two-piece pistons are pistons with a crown made of steel and a skirt made of aluminum in bore sizes ranging from 150 to 300 millimeters and higher. The crown and skirt of a large bore two-piece piston may be separate pieces joined together by the piston pin, as in an articulated piston, or may be permanently joined together, as in a composite piston. Large bore two-piece pistons are used in high output diesel and natural gas engines, such as new generation locomotive engines and stationary power generators as well as engines for various marine and industrial applications. There are no economic substitutes for large bore two-piece pistons.

12. The United States is one relevant geographic area within which to analyze the likely effect of the Acquisition on competition in articulated pistons. Several factors limit the competitive significance of foreign-made articulated pistons in the United States. Articulated pistons are designed specifically for the U.S. market to meet technical requirements largely attributable to pollution control regulations. In addition, relatively high manufacturing costs in Europe make articulated pistons manufactured overseas uncompetitive in the United States. Moreover, engine manufacturer's use of just-in-time inventory management practices creates a preference for articulated piston suppliers located in the United States. As a result, articulated pistons consumed in the United States are manufactured in the United States, with the exception of a small quantity of specialized articulated pistons manufactured by Mahle outside the United States.

13. The relevant geographic area within which to analyze the likely effect of the Acquisition on competition in the large bore two-piece pistons may be worldwide. There are significant imports of large bore two-piece pistons into the United States from Europe. Factors that limit the competitive significance of imported articulated pistons in the United States do not have a significant impact on large bore two-piece pistons imports, in part because large bore two-piece pistons are used in engines that are produced in smaller quantities.

#### **IV. CONCENTRATION**

14. Prior to the acquisition, Mahle had more than a 50 percent share and Metal Leve had nearly a 45 percent share of United States sales of articulated pistons, producing a combined market share of more than 95 percent. The United States articulated piston market is highly concentrated as measured by the Herfindahl-Hirschman Index (HHI). The Acquisition increased the HHI by more than 4,500 points to nearly 9,500 points. The only other firm currently selling articulated pistons in the market is a weak competitor that has been losing business to Mahle and Metal Leve.

15. The market for two-piece large bore pistons is also highly concentrated. There are currently only four producers of two-piece large bore pistons in the world. Mahle and one other firm dominate the worldwide large bore two-piece piston market, while Metal Leve has made sales and is aggressively bidding in the market.

#### **V. ENTRY CONDITIONS**

16. Entry into the articulated piston or large bore two-piece piston markets would not be timely, likely, or sufficient to deter or offset the adverse effects of the Acquisition on competition, because an entrant would have to develop manufacturing expertise, satisfy time-consuming customer qualification procedures, and acquire manufacturing equipment at a significant sunk cost. Engine manufacturers tend to be risk averse in choosing piston suppliers, because the cost of a piston tends to be small relative to the costs associated with poor piston performance or piston failure.

#### **VI. EFFECT OF THE PROPOSED MERGER ON COMPETITION**

17. The Acquisition will substantially lessen competition or tend to create a monopoly in the United States articulated piston market, because, among other things:

- a. it increases concentration substantially in a highly concentrated market;
- b. it eliminates actual, direct, substantial, and potentially increased competition between Mahle and Metal Leve;

- c. it creates a monopoly or near monopoly;
- d. it eliminates competition between the two closest substitutes among differentiated products in the articulated piston market;
- e. it facilitates the unilateral exercise of market power by the merged firm;
- f. it will likely result in increased prices for articulated pistons; and
- g. it will likely result in reduced innovation as a result of delayed or reduced product development.

18. The Acquisition will substantially lessen competition or tend to create a monopoly in the United States large bore twopiece piston market, because, among other things:

- a. it increases concentration substantially in a highly concentrated market;
- b. it eliminates actual, direct, substantial, and potentially increased competition between Mahle and Metal Leve;
- c. it eliminates a maverick competitor which has introduced increased competition in the market;
- d. it facilitates coordinated interaction among sellers of large bore twopiece pistons in the United States;
- e. it will likely result in increased prices for large bore twopiece pistons and
- f. it may allow the merged firm to reduce innovation by delaying or reducing product development.

## **VII. VIOLATIONS CHARGED**

19. The Acquisition by Mahle GmbH of more than 50 percent of the voting securities of Metal Leve, S.A., described in paragraph 9, violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this \_\_\_\_\_ day of \_\_\_\_\_, 1997, issues its complaint against said respondents.

By the Commission.

Seal

Donald S. Clark  
Secretary

## **ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT**

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Order ("Agreement") from Mahle GmbH, Mahle, Inc., Metal Leve, S.A., and Metal Leve, Inc. ("Proposed Respondents").

The proposed Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the Agreement and the comments received and will decide whether it should withdraw from the Agreement or make final the Agreement's proposed Order.

Mahle GmbH, a German piston manufacturer, operates in the United States through its wholly-owned subsidiary Mahle, Inc., while Metal Leve, S.A., a competing Brazilian piston manufacturer, operates in the United States through its wholly-owned subsidiary Metal Leve, Inc. On June 26, 1996, Mahle GmbH acquired a controlling interest in Metal Leve, S.A. for approximately \$40 million without first filing notification and report forms with the Federal Trade Commission or the Department of Justice Antitrust Division as required by the Hart-Scott-Rodino Act, Section 7A of the Clayton Act, 15 U.S.C. § 18a. The Commission has approved a Stipulation providing for civil penalties under the Hart-Scott-Rodino Act for Mahle and Metal Leve's failure to file the required notifications, and has accepted, subject to final approval, the Agreement Containing Consent Order resolving administrative charges that the acquisition may substantially lessen competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

The Stipulation provides for maximum civil penalties from both Mahle and Metal Leve from the date of the acquisition until Proposed Respondents file an application for divestiture as required by the proposed Order, which application is subsequently approved by the Commission and which divestiture is thereafter accomplished. Mahle and Metal Leve will each pay civil penalties of \$10,000 per day from June 26, 1996, through November 20, 1996, and \$11,000 per day thereafter, pursuant to the Debt Collection Improvement Act of 1996, Pub. L. 104-134 § 31001(s) and FTC Rule 1.98, 16 C.F.R. § 1.98, 61 Fed. Reg. 54549 (Oct. 21, 1996). The Stipulation, along with a complaint alleging a cause of action under Section 7A(g)(1) of Clayton Act, 15 U.S.C. § 18A (g)(1), will be filed, with the concurrence of the Department of Justice Antitrust Division, by Commission attorneys acting as special attorneys to the Attorney General, on behalf of the United States.

The proposed administrative complaint alleges that the acquisition may substantially lessen competition in the research, development, manufacture, and sale of articulated pistons in the United States and large bore twøpiece pistons worldwide. The proposed complaint alleges a market of articulated pistons up to 150millimeter in diameter used in diesel engine applications, such as Class 8 truck engines for buses and big highway rigs, which require pistons that can withstand high temperatures and pressures to maintain engine performance while meeting increasingly stringent government emissions requirements. The proposed complaint also alleges a market of large bore twøpiece pistons of more than 150millimeters in diameter that are used in high output diesel and natural gas engines, such as locomotive engines and stationary power generators as well as engines for various marine and industrial applications. The proposed complaint alleges that the relevant geographic market for evaluating the acquisition's effect on

articulated pistons is the United States, while the relevant geographic market for evaluating the acquisition's effect on large bore twopiece pistons is worldwide.

The proposed complaint alleges that, prior to the acquisition, Mahle had more than a 50 percent share and Metal Leve had nearly a 45 percent share of the articulated piston market, producing a combined market share of more than 95 percent. The only other firm in the market is a weak competitor that has been losing business to Mahle and Metal Leve. Thus, the Mahle/Metal Leve acquisition results in a monopoly or near monopoly in the articulated pistons market.

The proposed complaint alleges that the market for twopiece large bore pistons is also highly concentrated. There are only four producers of twopiece large bore pistons in the world. The proposed complaint alleges that Mahle and one other firm dominate the market, while Metal Leve has gained sales and is aggressively bidding.

The proposed complaint alleges that entry into the relevant piston markets would not be timely, likely, or sufficient to deter or offset the adverse effects of Mahle's acquisition of Metal Leve on competition, because an entrant would have to develop manufacturing expertise, satisfy time-consuming customer qualification requirements, and acquire manufacturing equipment at a significant sunk cost. Entry would likely take three to five years or more.

The proposed complaint alleges that Mahle's acquisition of Metal Leve substantially lessened competition in both the articulated and large bore twopiece piston markets, by among other things, eliminating Metal Leve as an independent competitor that has been a substantial, direct, head-to-head competitor with Mahle and a maverick in the relevant markets. In the articulated piston market, the acquisition has created a monopoly or near monopoly. The

proposed complaint alleges that the Mahle/Metal Leve acquisition substantially lessened competition in the large bore twopiece piston market, by giving control of Metal Leve, an aggressive and innovative competitor, to Mahle, one of only two firms that together have dominated the market for large bore twopiece pistons.

The proposed Order would remedy the alleged violation by restoring the competition lost as a result of Mahle's acquisition. The proposed Order would require divestiture of Metal Leve's U.S. piston business, which is defined to include, among other things, assets used by Metal Leve for the manufacture and sale of pistons in the United States, including plants in Orangeburg and Sumter, South Carolina, and a research and development center in Ann Arbor, Michigan, as well as technology outside the United States which supports that business. Metal Leve and Mahle will cease to have any rights to what was formerly the Metal Leve articulated piston technology once the divestiture required by the proposed Order has been accomplished.

The proposed Order requires that the divestiture be completed within ten days of the Order becoming final. Thus, the Proposed Respondents must file an acceptable application for divestiture well before the proposed Order is made final, so that the application can be placed on the public record for thirty days, the Commission can determine whether to approve it, and Respondents can complete the required divestiture within the time period set forth in the proposed Order.

If the required divestiture is not accomplished within ten days of the Order being made final, then a trustee may be appointed to divest the business. The trustee may add some or all of the Metal Leve, S.A. piston business to accomplish the divestiture. This crown jewel provision ensures that the required divestiture will be accomplished in a timely manner.



A Hold Separate Agreement accepted by the Commission on August 30, 1996 will continue in effect until the divestiture required by the proposed Order is accomplished. The Hold Separate requires Metal Leve to be operated independently of Mahle on a worldwide basis and requires Metal Leve, Inc. to be maintained as a viable competitor in the business in which it was engaged prior to Mahle's acquisition of Metal Leve.

Finally, the proposed Order prohibits Mahle or Metal Leve from acquiring any interest in any other company engaged in the manufacture or sale of articulated pistons in the United States, without prior notice to the Commission, for a period of ten (10) years.

The purpose of this analysis is to facilitate public comment on the proposed Order. This analysis is not intended to constitute an official interpretation of the Agreement or the proposed Order or in any way to modify the terms of the Agreement or the proposed Order.