

In the Matter of

MAHLE GMBH,
a corporation,

MAHLE, INC.,
a corporation,

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

METAL LEVE, INC.,
a corporation.

Docket No. C-3746

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 1 Mahle Drive, Morristown, Tennessee 37815-0798. Mahle, Inc. has had annual U.S. sales of approximately \$135 million.

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 Brasílio Luz 535, São Paulo SP 04746-901, Brazil. Metal Leve, S.A. has had annual worldwide sales of approximately \$315 million.

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 \$60 million.

7. Metal Leve, S.A., which operates in the United States through Metal Leve, Inc.,

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 manufacturers’ 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.

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

By the Commission.

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Benjamin I. Berman
Acting Secretary

Issued: June 4, 1997