

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA
c/o Department of Justice
Antitrust Division
Washington, D.C. 20530,

Plaintiff.

v.

MAHLE GMBH
Pragstrasse 26-46, D-70376
Stuttgart, Germany,

MAHLE, INC.
1 Mahle Drive
Morristown, Tennessee 37815-0798,

MABEG, E.V.
Pragstrasse 26-46, D-70376
Stuttgart, Germany,

METAL LEVE, S.A.
Rua Brasilio Luz 535
Sao Paulo, SP 04746-901, Brazil, and

METAL LEVE, INC.
560 Avis Drive
Ann Arbor, Michigan 48108,

Defendants.

Civ. 1:97CV01404

Filed: June 19, 1997

**COMPLAINT FOR CIVIL PENALTIES FOR VIOLATION OF PREACQUISITION
REPORTING REQUIREMENTS OF THE HART-SCOTT-RODINO ACT**

The United States of America, Plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States and at the request of the Federal Trade Commission, brings this civil action to obtain monetary relief in the form of civil penalties against the Defendants named herein for violations of the requirements of the Hart-Scott-Rodino Antitrust

Improvements Act of 1976, 15 U.S.C. § 18a, (“HSR Act” or “Act”) and rules promulgated thereunder, 16 C.F.R. Part 800 (“HSR Rules”), both by failing to make the mandatory preacquisition notifications to the Federal Trade Commission and the Department of Justice, as required by the HSR Act, and by failing to observe the mandatory preacquisition waiting periods established by the HSR Act. Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. This Complaint is filed and these proceedings are instituted under Section 7A of the Clayton Act, 15 U.S.C. § 18a, also known as Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (“HSR Act” or “Act”), to recover civil penalties for violations of the HSR Act.

2. This Court has jurisdiction over the Defendants and over the subject matter of this action pursuant to Section 7A(g) of the Clayton Act, 15 U.S.C. § 18a(g), and pursuant to 28 U.S.C. §§ 1331, 1337, 1345 and 1355.

3. Venue is properly based in this District by virtue of the Defendants’ consent in the Stipulation to the maintenance of this action and entry of the Final Judgment in this District.

DEFENDANTS MAHLE GMBH, MAHLE, INC. AND MABEG, E.V. (Collectively “Mahle ”)

4. Mahle GmbH is made a defendant herein. Defendant Mahle GmbH is a corporation organized under the laws of Germany, with its principal office and place of business at Pragstrasse 26-46, D-70376 Stuttgart, Germany.

5. Defendant Mahle GmbH directly or indirectly is engaged in the manufacture and sale of heavy duty pistons to diesel engine manufacturers. Defendant Mahle GmbH is engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 7A(a)(1) of the HSR Act, 15 U.S.C. § 18a(a)(1). During 1995, Defendant Mahle GmbH had annual net sales of approximately \$1.7 billion.

6. Mahle, Inc. is made a defendant herein. Defendant Mahle, Inc., a majority-owned subsidiary of Defendant Mahle GmbH, is a corporation organized under the laws of Delaware, with its principal office and place of business at 1 Mahle Drive, Morristown, Tennessee 37815-0798.

7. Defendant Mahle, Inc. directly or indirectly is engaged in the manufacture and sale of heavy duty pistons to diesel engine manufacturers. Defendant Mahle, Inc. is engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 7A(a)(1) of the HSR Act, 15 U.S.C. § 18a(a)(1). During 1995, Defendant Mahle, Inc. had annual net sales of approximately \$105 million in the United States.

8. MABEG, e.V. is made a defendant herein. Defendant MABEG, e.V. is a nonprofit corporation organized under the laws of Germany, with its principal office and place of business at Pragstrasse 26-46, D-70376 Stuttgart, Germany.

9. Defendant MABEG, e.V. owns the voting securities of Defendant Mahle GmbH and is the "ultimate parent entity" of Defendants Mahle GmbH and Mahle, Inc., as that term is defined in 16 C.F.R. § 801.1(a)(3).

DEFENDANTS METAL LEVE, S.A. AND METAL LEVE, INC.
(Collectively "Metal Leve")

10. Metal Leve, S.A. is made a defendant herein. Defendant Metal Leve, S.A. is a corporation organized under the laws of Brazil, with its principal office and place of business at Rua Brasilio Luz 535, Sao Paolo SP 04746-901, Brazil.

11. Defendant Metal Leve, S.A. directly or indirectly is engaged in the manufacture and sale of heavy duty pistons to diesel engine manufacturers. Defendant Metal Leve, S.A. is engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 7A(a)(1) of the HSR Act, 15 U.S.C. § 18a(a)(1).

12. At all times relevant to this complaint, Defendant Metal Leve, S.A., or entities under its control, controlled Defendant Metal Leve, Inc., within the meaning of 16 C.F.R. § 801.1(b), and Defendant Metal Leve, S.A. was the "ultimate parent entity" of Defendant Metal Leve, Inc., as that term is defined in 16 C.F.R. § 801.1(a)(3). During 1995, Defendant Metal Leve, S.A. had annual net sales of approximately \$315 million.

13. Metal Leve, Inc. is made a defendant herein. Defendant Metal Leve, Inc., a wholly owned subsidiary of Defendant Metal Leve, S.A., is a corporation organized under the laws of Michigan, with its principal office and place of business at 560 Avis Drive, Ann Arbor, Michigan 48108.

14. At all times relevant to this Complaint, Defendant Metal Leve, Inc. directly or indirectly was engaged in the manufacture and sale of heavy duty pistons to diesel engine manufacturers. At all times relevant to this complaint, Defendant Metal Leve, Inc. was engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton

Act, 15 U.S.C. § 12, and Section 7A(a)(1) of the HSR Act, 15 U.S.C. § 18a(a)(1). During 1995, Defendant Metal Leve, Inc. had annual net sales of more than \$60 million in the United States.

15. At all times relevant to this Complaint, Metal Leve, S.A. and Metal Leve, Inc. had assets of \$15 million or more located within the United States.

16. At all times relevant to this Complaint, Mahle and Metal Leve had aggregate annual sales in or into the United States of \$110 million or more.

THE ACQUISITION

17. On or about June 26, 1996, Defendant Mahle GmbH acquired approximately 50.1 percent of the voting securities of Defendant Metal Leve, S.A. (the "Acquisition") for approximately \$40 million, without having first filed preacquisition Notification and Report Forms with the Federal Trade Commission or the Department of Justice.

18. At the time of the Acquisition, Defendants were aware of their obligation to make preacquisition filings under the HSR Act. Mahle and Metal Leve had each consulted with U.S. counsel or U.S. investment bankers and were apprised of the requirement under the HSR Act that they each file Notification and Report Forms with U.S. antitrust authorities.

19. During negotiations leading to the Acquisition, Mahle and Metal Leve considered antitrust to be a major obstacle to a successful acquisition and considered it highly probable that a request for additional information and documentary material would issue pursuant to the HSR Act, 15 U.S.C. § 18a(e), if HSR filings were made.

20. Earlier, during discussions of a possible joint venture with Metal Leve, S.A., Defendant Mahle GmbH considered ignoring the HSR reporting requirements and discussed the

HSR reporting obligation as a tradeoff between the costs of compliance with the Act and the potential risks of noncompliance with the Act.

21. During the course of discussions with Mahle GmbH about the Acquisition in June 1996, Defendant Metal Leve, S.A. similarly considered ignoring HSR reporting requirements and evaluated the HSR reporting obligation as a tradeoff between the costs of compliance with the Act and the potential risks of noncompliance with the Act.

22. Defendants did not submit Notification and Report Forms pursuant to the HSR Act to the Federal Trade Commission and the Department of Justice to report the Acquisition until July 22, 1996, nearly a month after the Acquisition was consummated.

23. The Federal Trade Commission issued Requests for Additional Information and Documentary Material ("Second Requests") to Mahle and Metal Leve, with respect to the Acquisition, pursuant to the HSR Act, on August 21, 1996.

24. On January 31, 1997, Defendants signed an Agreement Containing Consent Order to divest the Metal Leve's U.S. piston and worldwide articulated piston businesses (the "Metal Leve, Inc. Business") to resolve antitrust concerns and restore competition that was lost as a result of the Acquisition. On February 26, 1997, the Federal Trade Commission issued for public comment a proposed administrative Complaint and the Agreement Containing Consent Order In the Matter of Mahle GmbH (FTC Docket No. C-3746). On June 4, 1997, the Federal Trade Commission made final the administrative Complaint and Order and approved Defendants' March 20, 1997 application for approval of divestiture. On June 17, 1997, Defendants divested the Metal Leve, Inc. Business pursuant to the Order of the Federal Trade Commission.

THE HART-SCOTT-RODINO ACT AND RULES

25. The Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a, requires certain acquiring persons and certain persons whose voting securities or assets are acquired (1) to file preacquisition notifications with the Federal Trade Commission and the Department of Justice and (2) to observe a waiting period, before consummating certain acquisitions of voting securities or assets. 15 U.S.C. § 18a(a)-(b). The mandatory preacquisition notification and waiting period are intended to give the federal antitrust agencies prior notice of, and information about, proposed transactions. The mandatory waiting period is also intended to provide the antitrust agencies with an opportunity to investigate proposed transactions and to determine whether to seek an injunction against the consummation of a transaction on the grounds that it would violate the antitrust laws if consummated.

26. The notification and waiting period requirements of the HSR Act apply to direct or indirect acquisitions when the HSR Act's size-of-person, size-of-transaction, and commerce tests are met and no exemption applies. The size-of-transaction test is met if an acquiring person would, as a result of the acquisition, hold an aggregate total amount of the voting securities and assets of an acquired person in excess of \$15 million, 15 U.S.C. § 18a(a)(3).

27. An acquisition by a foreign person of voting securities of a foreign issuer is exempt from the HSR Act if the acquisition would not confer control of either an issuer with U.S. assets having a book value of \$15 million or more or a U.S. issuer with annual net sales or total assets of \$25 million or more. 16 C.F.R. § 802.51(b). In addition, an acquisition by a foreign person is exempt if the acquired person is also a foreign person and the acquiring and acquired persons have neither aggregate annual sales in of into the United States or at least \$110 million or

aggregate total assets located in the United States of at least \$110 million. 16 C.F.R.

§ 802.51(d).

28. Where an acquisition is subject to the HSR Act, the ultimate parent entity of the acquiring person and the ultimate parent entity of the acquired person are obligated by the HSR Act and regulations promulgated thereunder to file preacquisition Notification and Report Forms with the Federal Trade Commission and the Department of Justice and to observe a preacquisition waiting period before consummating the acquisition. 15 U.S.C.

§ 18a(a)-(b),(d)-(e); 16 C.F.R. § 803.2.

29. In order to give the Federal Trade Commission and the Department of Justice an opportunity to investigate and challenge potentially anticompetitive acquisitions before consummation, the HSR Act provides that the Federal Trade Commission or the Department of Justice may, prior to the expiration of the preacquisition waiting period, require the submission of additional information and documentary material relevant to the proposed acquisition.

15 U.S.C. § 18a(e)(1). In such cases, the preacquisition waiting period is automatically extended until 20 days after the date on which the response to the request for additional information and documentary material is provided. 15 U.S.C. § 18a(e)(2); 16 C.F.R. § 803.20(c).

30. Any person who fails to comply with any provision of the HSR Act is liable to the United States for a civil penalty for each day during which that person is in violation. The maximum amount of civil penalty is \$10,000 per day through November 19, 1996, pursuant to Section 7A(g)(1) of the HSR Act, 15 U.S.C. § 18a(g)(1), and \$11,000 per day thereafter, pursuant to the Debt Collection Improvement Act of 1996, Pub. L. 104-134 § 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461), and

Federal Trade Commission Rule 1.98, 16 C.F.R. § 1.98, 61 Fed. Reg. 54549 (Oct. 21, 1996).

VIOLATION ALLEGED

31. As a result of the Acquisition of voting securities described in paragraph 17, Defendants Mahle GmbH, Mahle, Inc. and MABEG, e.V. directly or indirectly held an aggregate total amount of voting securities of Metal Leve, S.A., the parent corporation of Metal Leve, Inc., in excess of \$15 million. The Acquisition is not covered by any of the exemptions in the HSR Act or the HSR Rules. See 15 U.S.C. § 18a(c); 16 C.F.R. §§ 802.1-802.71. In particular, the exemptions pertaining to acquisitions by foreign persons, described in paragraph 27, did not apply.

32. The Acquisition described in paragraph 17 was subject to the mandatory notification and waiting requirements of the HSR Act, 15 U.S.C. § 18a, and the regulations promulgated thereunder, 16 C.F.R. Part 800.

33. None of the Defendants complied with the mandatory notification and waiting requirements of the HSR Act, described in paragraphs 25 through 30, prior to the time of the Acquisition described in paragraph 17.

34. Defendants were in continuous violation of the HSR Act from June 26, 1996 through at least March 20, 1997.

PRAYER

WHEREFORE, Plaintiff prays:

1. That the Court adjudge and decree that the June 26, 1996 acquisition by Defendant Mahle GmbH of approximately 50.1 percent of the voting securities of Defendant Metal Leve,

S.A. was in violation of the HSR Act, 15 U.S.C. § 18a; that Defendants Mahle GmbH, Mahle, Inc., MABEG, e.V., Metal Leve, S.A., and Metal Leve, Inc. were in violation of the HSR Act each day from June 26, 1996 through at least March 20, 1997.


2. That the Court order Defendants Mahle GmbH, Mahle, Inc., and MABEG, e.V., and Defendants Metal Leve, S.A. and Metal Leve, Inc. to pay to the United States an appropriate civil penalty as provided by the HSR Act, 15 U.S.C. § 18a(g)(1), the Debt Collection Improvement Act of 1996, Pub. L. 104-134 § 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461), and Federal Trade Commission Rule 1.98, 16 C.F.R. § 1.98, 61 Fed. Reg. 54549 (Oct. 21, 1996).

3. That the Court order such other and further relief as the Court may deem just and proper.


4. That the Court award the Plaintiff its costs of this suit.

Dated: June 19, 1997.


FOR THE PLAINTIFF UNITED STATES
OF AMERICA:

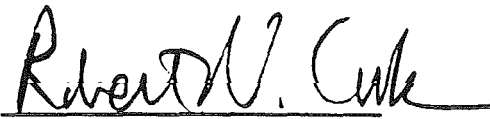

Joel I. Klein
Acting Assistant Attorney General

Department of Justice
Antitrust Division
Washington, D.C. 20530


M. Howard Morse
D.C. Bar No. 384793


Morris A. Bloom


Kenneth M. Davidson
D.C. Bar No. 970772


Robert N. Cook
D.C. Bar No. 426058

Special Attorneys to the
U.S. Attorney General
Federal Trade Commission
Washington, D.C. 20580
(202) 326-2949

Eric Holder
D.C. Bar No. 303115
United States Attorney