

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MAHLE GMBH,

MAHLE, INC.,

MABEG, E.V.,

METAL LEVE, S.A., and

METAL LEVE, INC.,

Defendants.

STIPULATION

Whereas, Plaintiff United States of America ("United States") intends to commence an action alleging that Defendant Mahle GmbH, which operates in the territory of the United States of America through its subsidiary Defendant Mahle, Inc., acquired more than 50 percent of the voting securities of Defendant Metal Leve, S.A., which operates in the territory of the United States of America through its subsidiary Defendant Metal Leve, Inc., in violation of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act"), 15 U.S.C. § 18a, which imposes certain notification and waiting requirements on both the purchasing company and the target company in such an acquisition, that Defendant MABEG, V. is the ultimate parent entity of Mahle GmbH and Mahle, Inc., and that Defendants have been continuously in violation of the HSR Act since the acquisition;

Whereas, the HSR Act provides that civil penalties may be recovered in a civil action brought by the United States against persons that fail to comply with its provisions; and

Whereas, Defendants have entered into an Agreement Containing Consent Order with the Federal Trade Commission, which provides that Defendants shall divest certain assets and businesses to resolve charges to be brought by the Federal Trade Commission that the acquisition may substantially lessen competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and Section 7 of the Clayton Act, 15 U.S.C. § 18;

Now, therefore, it is hereby stipulated and agreed by and between the undersigned parties, by their respective counsel, that:

1. The parties consent that, upon the motion of the United States and without further notice to any party or other proceedings, and provided that the United States has not withdrawn its consent, which it may do at any time before the entry of Final Judgment, a Final Judgment may be filed and entered by the Court to order, adjudge, and decree,

a. that the Court has jurisdiction of the subject matter herein and of Plaintiff and Defendants and that the Complaint states a claim upon which relief can be granted against Defendants under Section 7A of the Clayton Act, 15 U.S.C. § 18a.

b. that, pursuant to Section 7A(g)(1) of the Clayton 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, 18 U.S.C. § 2461), and Federal Trade Commission Rule 1.98, 16 C.F.R. § 1.98, 61 Fed. Reg. 54549 (Oct. 21, 1996), judgment be entered

i. that Mahle GmbH, Mahle, Inc., and MABEG e.V. be ordered jointly and severally to pay to the United States a civil penalty in the amount of \$10,000 a day from June 26, 1996, through November 19, 1996 plus \$11,000 a day from November 20, 1996, through the date of the filing by Defendants of an application to divest with the Federal Trade Commission pursuant to the Agreement Containing Consent Order In the Matter of Mahle GmbH (Federal Trade Commission File No. 961-0085) and pursuant to Federal Trade Commission Rule 2.41(f), 16 F.R. § 2.41(f), which application to divest is subsequently approved by the Federal Trade Commission and pursuant to which application to divest the divestiture proposed in the application is accomplished as approved by the Federal Trade Commission,

ii. that Metal Leve, S.A. and MetalLeve, Inc. be ordered jointly and severally to pay to the United States a civil penalty in the amount of \$10,000 a day from June 26, 1996, through November 19, 1996 plus \$11,000 a day from November 20, 1996, through the date of the filing by Defendants of an application to divest with the Federal Trade Commission pursuant to the Agreement Containing Consent Order In the Matter of Mahle GmbH (Federal Trade Commission File No. 961085) and pursuant to Federal Trade Commission Rule 2.41(f), 16 F.R. § 2.41(f), which application to divest is subsequently approved by the Federal Trade Commission and pursuant to which application to divest the divestiture proposed in the application is accomplished as approved by the Federal Trade Commission,

iii. that if an application to divest is filed with the Federal Trade Commission but the divestiture proposed in the application is not accomplished, either because the

Federal Trade Commission does not approve the application or for any other reason, then civil penalties that the Defendants are ordered to pay shall continue to accrue as though the application had never been made through the date of the filing of an application to divest, which is subsequently approved by the Federal Trade Commission and pursuant to which the divestiture proposed in the application is accomplished as approved by the Federal Trade Commission, and

iv. that if the divestiture required by the Agreement Containing Consent Order is not completed within the time frame required therein, and if divestiture is thereafter accomplished by a trustee pursuant to the Agreement Containing Consent Order, then civil penalties that Defendant are ordered to pay shall continue to accrue through the date on which the divestiture is completed,

c. that the civil penalties shall be due and payable within the later of 30 days from the date of the divestiture or 30 days from the date of entry of final judgment, by wire transfer of funds to the United States Treasury through the Treasury Financial Communications System or by cashier's check payable to the Treasurer of the United States and delivered to Chief, FOIA Unit, Antitrust Division, Department of Justice, Liberty Place, 325 7th Street, N.W., Suite 200, Washington, D.C., 20530,

d. that in the event of a default in payment, interest at the rate of eighteen (18) percent per annum shall accrue thereon from the date of default to the date of payment,

e. that each party shall bear its own costs of the action, and

f. that entry of final judgment is in the public interest;

2. In the event the United States does not commence an action alleging a violation of 15 U.S.C. § 18a or withdraws its consent, or in event that Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding;

3. This Stipulation and the Final Judgment contemplated hereby are for settlement purposes only and do not constitute an admission by Defendants in this or any other proceeding that they have violated the HSR Act or any other provision of law; and

4. The entry of Final Judgment in accordance with this Stipulation settles, discharges, and releases any and all claims of the United States for civil penalties against Defendants pursuant to Section 7A(g)(1) of the HSR Act, 15U.S.C. § 18a(g)(1), for failure to comply with any provision of the HSR Act in connection with the acquisition by Mahle GmbH, and its ultimate parent entity MABEG, e.V., which operate in the territory of the United States of America through their subsidiary Mahle, Inc., of more than 50 percent of the voting securities of MetaLeve, S.A., which operates in the territory of the United States of America through its subsidiary MetaLeve, Inc.

5. Defendants waive any objection to venue or jurisdiction for purposes of this Stipulation or the Final Judgment contemplated hereby and authorize Michael S. John, Esq., Arnold & Porter, 555 Twelfth Street N.W., Washington, D.C. 20004-1202, or any replacement he designates by notice in writing to counsel for Plaintiff, to accept service of process in this matter on behalf of Defendants.

6. The Federal Trade Commission and the Department of Justice may make this Stipulation, and information with respect thereto, public at any time.

Dated:

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