

According to the proposed complaint, Triad and CCI are the dominant providers of MIS systems integrated with an electronic catalog, together controlling approximately 70% of the market. The merger of CCI and Triad would increase the Herfindahl-Hirschman Index ("HHI") over 1200 points to over 3900. Aside from CCI and Triad, all other firms selling an MIS integrated with an electronic catalog rely upon Triad or Profit-Pro for their electronic catalog. The complaint alleges that these fringe firms do not constrain pricing nor in any other way substantially impact competition for the development and sale of MIS systems integrated with an electronic catalog.

The complaint further alleges that de novo entry or fringe expansion into the relevant markets which would be sufficient to deter or defeat reductions in competition resulting from the CCI acquisition of Triad would not be timely or likely. According to the proposed complaint, developing an electronic catalog would require an expenditure of substantial sunk costs and would be time-consuming. Electronic catalog data must be entered manually into a database because the electronic parts data is received in a different format from each of hundreds of automotive parts manufacturers. Entry with a catalog covering only a fraction of available automotive parts would not be acceptable to most warehouse distributors and jobbers.

The proposed complaint alleges, finally, that the acquisition by CCI of Triad may substantially lessen competition by, among other things, eliminating substantial, direct head-to-head competition between CCI and Triad, likely resulting in increased prices and reduced services for electronic catalogs and MIS systems integrated with an electronic catalog.

The Proposed Consent Agreement

The proposed Order accepted for public comment contains provisions that would require CCI to divest CCI's electronic catalog to MacDonald. The proposed Order would specifically require CCI to divest, absolutely and in good faith, through a perpetual, royalty-free, transferable, assignable, and exclusive license with the right to use for any purpose, combine with other information, reproduce, modify, market and sublicense, CCI's PartFinder® electronic catalog database, CCI's J-CON® application program interface, CCI software utilized to retrieve vehicle data from the CCI Database, and support software and documentation.

MacDonald is a California-based privately-held company which on

February 13, entered into a confidential license agreement with CCI fulfilling the requirements of the proposed Order. MacDonald currently sells MIS systems to the automotive aftermarket and has previously offered customers the option of utilizing the Triad catalog with its MIS system.

The purpose of the divestiture of the CCI electronic catalog is to ensure the continued use of that catalog in competition with the merged CCI/Triad, to ensure MacDonald operates as an independent competitor in the development and sale of electronic catalogs and MIS systems integrated with an electronic catalog, and to remedy the lessening of competition as alleged in the Commission's complaint.

The proposed order would require CCI to offer updates to MacDonald for the electronic catalog for a period of two years. The proposed order would also require that CCI provide to MacDonald technical assistance for electronic catalog maintenance for a period of one year. The purpose of these provisions is to ensure that MacDonald becomes a viable competitor to CCI, thereby fostering a competitive environment for the sale of MIS systems integrated with an electronic catalog.

In the event that CCI fails to divest the CCI Products to MacDonald because MacDonald, unilaterally and through no fault of CCI, breaches the License Agreement, CCI is required under the proposed Order to divest to another acquirer that is approved beforehand by the Commission, within sixty (60) days after the date on which the Order is made final. If CCI fails to divest, the proposed Order provides for the appointment of a trustee, to accomplish the required divestiture.

Pending the required divestiture, CCI is required, under the proposed Order, to maintain the viability and marketability of the CCI electronic catalog, by among other things, updating the CCI database on a regular schedule. In order to assist the acquirer, the proposed Order prohibits CCI from preventing employees from working for the acquirer, and from entering into long-term contracts with firms in the business of distributing hardware and/or software systems to warehouses, jobber/retail stores and/or service dealers in the automotive aftermarket, that might interfere with the acquirer's ability to obtain customers

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.

Donald S. Clark,
Secretary.

[FR Doc. 97-5707 Filed 3-6-97; 8:45 am]

BILLING CODE 6750-01-M

[File No. 961-0085]

Mahle GmbH; Mahle, Inc.; Metal Leve S.A.; Metal Leve, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, Mahle, Inc., the Morristown, Tennessee-based subsidiary of a German company, and Metal Leve, Inc., the Ann Arbor, Michigan-based subsidiary of a Brazilian firm, to divest Metal Leve's United States piston business. The complaint accompanying the consent agreement alleges that, by acquiring Metal Leve, Mahle would become a monopolist in the research, development, manufacture, and sale of (1) articulated pistons in the United States, and (2) large bore two-piece pistons worldwide. Pursuant to a separate federal court stipulation, Mahle and Metal Leve will pay in excess of \$5 million for failing to give antitrust enforcers advance notice of Mahle's acquisition of a controlling interest in Metal Leve.

DATES: Comments must be received on or before May 6, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:

William J. Baer, Federal Trade Commission, H-374, 6th St. and Pa. Ave., NW., Washington, DC 20580, (202) 326-2932.

George S. Cary, Federal Trade Commission, H-374, 6th St. and Pa. Ave., NW., Washington, DC 20580, (202) 326-3741.

Howard Morse, Federal Trade Commission, S-3627, 6th St. and Pa. Ave., NW., Washington, DC 20580, (202) 326-2949.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR

2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for February 27, 1997), on the World Wide Web, at "<http://www.ftc.gov/os/actions/htm>." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, Sixth Street and Pennsylvania Avenue, N.W., Washington, DC 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

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, 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 CFR 1.98, 61 FR 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 two-piece pistons worldwide. The proposed complaint alleges a market of articulated pistons up to 150 millimeter 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 two-piece pistons of more than 150 millimeters 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 two-piece 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 two-piece large bore pistons is also highly concentrated. There are only four producers of two-piece 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 two-piece 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 two-piece 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 two-piece 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.

Donald S. Clark,
Secretary.

[FR Doc. 97-5708 Filed 3-6-97; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Meeting of the National Bioethics Advisory Commission (NBAC), Genetics Subcommittee

Correction notice for previously published notice (Published on February 26, 1997, Page 8743, 2nd Column). The date is corrected to read: Date: Wednesday, March 5, 1997, 7:00 a.m. to 1:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta Hyatt-Knorr, National Bioethics Advisory Commission, MSC-7508, 6100 Executive Boulevard, Suite 3C01, Rockville, Maryland 20892-7508, telephone 301-402-4242, fax number 301-480-6900.

Dated: February 26, 1997.
Henrietta Hyatt-Knorr,
Acting Deputy Director, National Bioethics Advisory Commission.

[FR Doc. 97-5690 Filed 3-4-97; 2:25 pm]

BILLING CODE 4160-17-M

Meeting of the National Bioethics Advisory Commission (NBAC)

SUMMARY: Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the National Bioethics Advisory Commission. The Commission members will address the bioethical issues arising from the research on human biology and behavior, and in the applications of that research including clinical. They will also begin a review of the legal and ethical issues associated with the recent report of a technique of cloning sheep. The public is invited to speak on any of these issues and opportunities for statements will be provided.

DATES: Thursday, March 13, 1997, 8 a.m. to 4:30 p.m., and Friday, March 14, 1997, 8 a.m. to 4:30 p.m.

LOCATION: The Commission will meet at the Watergate Hotel, Continental Chesapeake Extender Room, 2650 Virginia Avenue, NW, Washington, DC.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) by Executive Order 12975 on October 3, 1995. The charter of the Commission was signed on July 26, 1996. The first meeting took place on October 4, 1996. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council and other entities on bioethical issues arising from the research on human biology and behavior, and in the applications of that research. On

February 24, 1997, the President instructed the Commission to undertake a review of the legal and ethical issues associated with the recent report of a technique for cloning sheep. This scientific discovery raises a host of important issues including serious ethical questions, in particular the possible use of this technique to clone human embryos, as well as the promise of benefits in a number of areas.

Tentative Agenda

The Commission will 1) receive reports from its subcommittees, 2) discuss and plan the Commission's 90-day report to the President on issues of cloning, and 3) listen to presentations from the public.

Public Participation

The meeting is open to the public with attendance limited by the availability of space. Members of the public who wish to present oral statements should contact the Acting Deputy Executive Director of the NBAC by telephone, fax machine, or mail as shown below as soon as possible, prior to the meeting. The Chair of the NBAC will reserve time for presentations by persons requesting an opportunity to speak. The order of speakers will be assigned either on a first come, first serve basis or along other considerations. Individuals unable to make oral presentations are encouraged to mail or fax their comments to the NBAC at least two business days prior to the meeting for distribution to the subcommittee members and inclusion in the record. We urge anyone planning to speak to call the NBAC office two or three days before the meeting to obtain information on the final logistical arrangements.

Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta D. Hyatt-Knorr, National Bioethics Advisory Commission, MSC-7508, 6100 Executive Boulevard, Suite 3C01, Rockville, Maryland 20892-7508, telephone 301-402-4242, fax number 301-480-6900.

Dated: February 25, 1997.

Henrietta Hyatt-Knorr,

Acting Deputy Executive Director, National Bioethics Advisory Commission.

[FR Doc. 97-5691 Filed 3-6-97; 8:45 am]

BILLING CODE 4160-17-P