

AUTOMOTIVE & MOBILITY

Welcome to the 25th edition of our newsletter on developments in the automotive industry published by Morgan Lewis’s automotive & mobility team with contributions from lawyers in our offices around the globe. We counsel our automotive clients on a broad range of industry-specific issues, including matters relating to mergers and acquisitions, antitrust, litigation, regulatory concerns, intellectual property, and labor and employment.

This issue of *Morgan Lewis AUTOMOTIVE & MOBILITY*, which covers the third quarter of 2020, touches on significant acquisitions including new investments in electric vehicles, antitrust developments and energy related regulatory measures, and notable IP advancements in the automotive industry. All issues of Morgan Lewis *AUTOMOTIVE & MOBILITY* are available at www.morganlewis.com.

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For further information, or if you would like to discuss the implications of these legal developments, please do not hesitate to get in touch with your usual contact at Morgan Lewis.

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Regulatory: European Commission Published Data-Protection Recommendations for Driverless Mobility; Implementing Rules on Administrative Measures for the Recycling of Scrapped Motor Vehicles Entered into Effect; Revised Administrative Provisions on Market Access for NEV Manufacturers Entered into Effect; California Orders Phase-Out of Gas Cars and Expedited Regulation of Oil Extraction

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MERGERS & ACQUISITIONS

WM Motor Raised RMB 10 Billion in Series D Financing

The Chinese electric car startup WM Motor Technology Group Company Limited (WM Motor) announced that it raised RMB 10 billion (approximately USD 1,472,862,000) in its round D financing. SAIC Motor's investment platform and the Shanghai Municipal Asset Monitoring and Management Commission led the investment. Further investors include Baidu, SIG, Yangtze River Industrial Fund, Suzhou Kunshan Industrial Fund, State Development & Investment Corp., Guangzhou Finance Holdings, Sino IC Leasing, Tsinghua Unigroup, Hongta Group, and AGILE.

Dentsu and Toyota Motor to Form Marketing JV

Japan-based advertising company Dentsu Group Inc. and Japanese carmaker Toyota Motor Corporation agreed to establish a joint venture (JV) (34-66) focusing on Toyota's marketing and business development. The JV is set to start its operations in January 2021.

Highly to Acquire 60% in Marelli's Compressor and HVAC Business

China-based Highly International (Hong Kong) Limited, a manufacturer of compressors and related refrigeration equipment, agreed to acquire a 60% stake in Marelli (Hong Kong) Holdings, a provider of automobile compressors and heating, ventilation, and air conditioning systems, from Japanese automotive supplier Marelli Corporation K.K. for EUR 171.3 million.

Magna to Acquire Honglzhixin

Canadian-Austrian automotive supplier Magna International has signed an agreement to buy a majority ownership in Honglzhixin (HLZX), a Chinese automotive seat supplier. Since 2015, the companies have operated a 50-50 seating manufacturing JV in which Magna will also now acquire a majority stake.

PSA and Total/Saft to Form JV

French automaker PSA Group and French battery producer Saft S.A., a subsidiary of French energy company Total SE, have established a European JV for the development of lithium-ion technologies and the production of batteries for electric vehicles. The JV will be named ACC Automotive Cells Company.

CalixKlippan to Acquire Carbox

Swedish auto parts supplier CalixKlippan AB has acquired Carbox GmbH & Co. KG, a German manufacturer of trunk and footwell shells and other interior parts, through its subsidiary Autoform i Malung. Financial terms have not been disclosed.

Continental and Aft Automotive to Form JV

German automotive suppliers Continental AG and Aft Automotive GmbH agreed on the formation of a 50-50 JV for the manufacturing of high-performance plastics couplings for hybrid and electric vehicles. The JV is expected to start its operations in 2021 or 2022.

Fawer Automotive Parts to Acquire ABC Umformtechnik

Fawer Automotive Parts Limited, a Chinese manufacturer of automotive spare parts, agreed to acquire ABC Umformtechnik GmbH & Co. KG, a German supplier of formed parts and components, from Altenloh, Brinck & Co. GmbH & Co. KG for EUR 12.68 million.

ZF Friedrichshafen to Acquire Veoneer's Brake Control Business

German-based automotive supplier and developer of driveline and chassis technology ZF Friedrichshafen AG has acquired the US brake control business of Swedish automotive technology provider Veoneer, Inc. on undisclosed financial terms.

MiddleGround Capital to Acquire Dura Automotive Systems

US private equity firm MiddleGround Capital agreed to acquire a majority stake in US-based Dura Automotive Systems from global investment management firm Bardin Hill Investment Partners based in New York on undisclosed financial terms. Dura is active in the development and manufacturing of mechatronic systems and lightweight solutions.

BAIC BluePark to Raise RMB 5.5 Billion for Electric Vehicle Projects

Chinese vehicle maker BAIC BluePark New Energy Technology Co. Ltd. announced a nonpublic stock offering plan, pursuant to which it intends to raise RMB 5.5 billion (approximately USD 787,841,450) through a private issuance

ANTITRUST

Chinese SAMR Formally Released Antitrust Guidelines for Automobile Sector

The Chinese State Administration for Market Regulation (SAMR) published the “2019 Compilation of Antitrust Regulations and Guidance,” which include the Antitrust Guidelines for the Automobile Sector (Auto Guidelines) addressing antitrust issues that regularly arise in the automobile sector. *Inter alia*, the Auto Guidelines include specific guidance for the definition of the relevant geographical market in relation to the automobile sector. Further, the Auto Guidelines address types of vertical restraints and provide for potential exemptions in this regard. In addition, the Auto Guidelines address market dominance issues in the auto aftermarket and provide examples of typical administrative monopolistic behaviors, including, particularly, behaviors affecting free circulation of automobiles.

German Sector Inquiry on Publicly Accessible Electric Vehicle Charging Infrastructure

The German Federal Cartel Office (FCO) has initiated a sector inquiry on the provision and marketing of publicly accessible charging infrastructure for electric vehicles. The German federal government plans to establish a nationwide charging infrastructure in Germany by 2030. Against this background, the FCO's sector inquiry aims at identifying potential competition problems. According to the FCO, nondiscriminatory access to potential locations for charging stations as well as the specific terms and conditions applying at the charging stations are of key importance. In the course of its sector inquiry, the FCO intends to consult with and interview the main market participants.

EC Fined Car Parts Suppliers in Cartel Settlement

The European Commission (EC) has fined two German car equipment suppliers a total of EUR 18 million for taking part in two cartels concerning supplies of closure systems for cars in the European Economic Area. A third car equipment supplier based in Canada was not fined as it disclosed both cartels to the EC through a leniency application. According to the EC, the three car equipment suppliers coordinated their pricing behavior and exchanged commercially sensitive information to preserve each supplier's existing business and to avoid a deterioration of the prevailing pricing levels. All three companies acknowledged their involvement in the cartels and agreed to settle the case.

of stocks for the development of electric vehicles under its ARCFOX brand, the development of a battery-swapping business system, and 5G network construction projects. The stock offering plan is directed to a maximum of 35 specific investors, including BAIC Group and its affiliated parties BAIC (Guangzhou) Automotive Co. Ltd. and Bohai Automotive Systems Co. Ltd.

Sodecia to Acquire BCT

Portuguese automotive supplier Sodecia Group acquired the assets and business activities of B&B Holding GmbH & Co. KG and BRAUN CarTec GmbH (together BCT), a tool-machine and fixture-construction specialist for the automotive industry located in Germany on undisclosed financial terms.

Fair Group and Hyundai Motors to Form Assembly Plant JV

Bangladesh-based Fair Group and South Korean carmaker Hyundai Motors agreed on the formation of a JV for the operation of an automobile assembly plant to be built in Bangladesh. With Hyundai's assistance, Fair Group plans to build passenger cars for the Bangladesh market.

Geely to Become the Controlling Shareholder of Hualing Xingma

Chinese automaker Geely agreed to purchase 15.24% of the shares in Chinese commercial vehicle maker Hualing Xingma Automobile (Group) Co. Ltd. (Hualing Xingma) from the controlling shareholder Anhui Xingma Automobile (Group) Co. Ltd. (Anhui Xingma) and its wholly owned subsidiary, Ma'anshan Huashen Building Materials Industrial Co. Ltd. (Huashen) for RMB 435,259,851.70 (approximately USD 62,179,978.81). Upon completion of the transfer procedures, Geely will become the controlling shareholder of Hualing Xingma.

Faurecia to Acquire IRYStec Software

French automotive supplier and provider of automotive technology solutions Faurecia S.A. has announced the acquisition of Canadian start-up company IRYStec Software on undisclosed terms. IRYStec Software is active in the development of intelligent display solutions for the automotive sector.

Fengmei Singapore to Acquire Schlemmer GmbH Assets

Ningbo Fengmei Industrial Co., Ltd., a Chinese manufacturer of automotive electronics, agreed to acquire the shares held by the insolvent German Schlemmer GmbH in the companies' JV Ningbo Schlemmer Automotive Parts Co. Ltd. (including shares of the JV's Asian subsidiaries) for EUR 56.136 million. Ningbo Schlemmer Automotive Parts is active in the production of harness, battery-protection, and air and fluid systems.

REGULATORY

European Commission Published Data-Protection Recommendations for Driverless Mobility

The European Commission (EC) issued its report, “New recommendations for a safe and ethical transition towards driverless mobility.” One of the main issues discussed in this report are the EU General Data Protection Regulation (GDPR) considerations. The EC states, in particular, that an “informed” consent of autonomous vehicle users/passengers (Art. 7 GDPR) may not always be sufficient to ensure GDPR compliance. Best practice standards must also address ethical data-sharing, transparency and business practices (e.g., with insurers, advertisers or employers), and further give guidance on legally and ethically acceptable inferential analytics. If the technologies pose a privacy risk for the individuals, they must also provide solutions to the collection, assessment and sharing of personal and nonpersonal (anonymized) data and third-party personal data (e.g., pedestrians and passengers). With respect to transparency, manufacturers and service providers must communicate privacy risks effectively and inform individuals on their rights accordingly (e.g., opt-out, deletion of personal data, data-access rights, recourse mechanisms, alternate routes, and point destinations).

Implementing Rules on Administrative Measures for the Recycling of Scrapped Motor Vehicles Entered into Effect

The Chinese Ministry of Commerce’s Implementing Rules on Administrative Measures for the Recycling of Scrapped Motor Vehicles (Implementing Rules) were entered into effect on September 1, 2020. The Implementing Rules supplement the Administrative Measures for the Recycling of Scrapped Motor Vehicles regulating the recycling and disassembly of scrapped motor vehicles and the related administration of scrapped motor vehicle recycling.

Revised Administrative Provisions on Market Access for NEV Manufacturers Entered into Effect

The Chinese Ministry of Industry and Information Technology’s (MIIT’s) revisions of the 2017 Provisions on the Access Administration of New Energy Vehicles Manufacturers and Products (Access Provisions) were entered into effect on September 1, 2020. The revisions include the removal of the design and development-capability requirement for market access. Further, the MIIT extends the period in Article 23 of the Access Provisions: any new energy vehicle (NEV) manufacturer that has ceased the production of NEV products for at least 24 months (instead of 12 months previously) will be listed by the MIIT in a special announcement resulting in a special review procedure if such NEV manufacturer intends to resume its NEV production.

California Orders Phase-Out of Gas Cars and Expedited Regulation of Oil Extraction

By executive order, California committed to ending the sale of fossil fuel-powered passenger and off-road vehicles by 2035, and medium- and heavy-duty vehicles by 2045. Further, the executive order aims at the expedited regulation and closure of oil extraction and production facilities. In this regard, the executive order directs state agencies such as the California Air Resources Board, the California Energy Commission and the California Environmental Protection Agency to take concrete measures. Among others, such measures include the development of regulations to increase the volume of zero-emission vehicles, the accelerated deployment of affordable fueling and charging options for zero-emission vehicles, and the development of strategies, recommendations, and actions to manage and expedite the responsible closure and remediation of former oil extraction sites, and to repurpose and transition existing oil-production facilities.

INTELLECTUAL PROPERTY

Owners of Cellular SEPs Used in Connected Cars Score Victories Europe

Nokia and Unwired Planet, both owners of allegedly standard essential patent (SEP) portfolios relevant for the implementation of cellular standards (e.g., in connected cars or mobile phones), including 4G/LTE, won cases in Germany and in the United Kingdom, respectively.

In Germany, the Mannheim Regional Court (MRC) decided a patent infringement case brought by Nokia against German carmaker Daimler. The MRC found the Nokia patent EP 2 981 103 to be essential to the LTE standard used in Daimler cars. Thus, the MRC found that Daimler had infringed the Nokia patent and issued an injunction against Daimler’s use of the patent, which is subject to Nokia’s security payment of approximately EUR 7 billion (USD 8.2 billion) pending the outcome of an appeal to the Higher Regional Court in Karlsruhe, Germany. The MRC also declined to act on the recommendation by the FCO to stay the patent infringement case and refer certain questions to the Court of Justice of the European Union relating to a cellular SEP owner’s obligations under antitrust law to license in the automotive supply chain.

On the heels of the MRC decision, the Supreme Court of the United Kingdom (UKSC) decided an appeal in litigation between alleged cellular SEP owner Unwired Planet and alleged mobile phone implementer Huawei. The case involved the first full appellate determination of the terms of a cellular fair, reasonable and nondiscriminatory

(FRAND) portfolio license with global scope. In its judgment, the UKSC *inter alia* confirmed that UK courts may set the terms for global FRAND licenses to portfolios of declared cellular SEPs.

Jaguar Land Rover Loses Trademark Rights to Shape of Defender in London Court

Jaguar Land Rover Limited (JLR) has lost a legal battle in the UK High Court to register trademark rights in the shape of its legacy Defender vehicle. The UK Intellectual Property Office previously had refused to register trademark rights in the shape of the majority of goods and services applied for on the basis of a lack of distinctiveness. The high Court upheld this decision. This is a victory for Ineos, which had opposed JLR's applications ahead of its own launch of a SUV, said to be inspired by the Defender. Registering the shape of a product is possible in many countries, but it can be an uphill battle to prove distinctiveness of the shape in the eyes of the consumer to relevant intellectual property authorities.

ARM Releases New Automotive IP Designs

ARM announced new IP designs for automotive applications including autonomous and safe driving applications. The IP includes CPU and image processing designs. Chip makers Intel and Nvidia, as well as industrial suppliers, will be able to license the designs to make the technology available to the automotive industry.

Morgan Lewis

OUR AUTOMOTIVE & MOBILITY TEAM

Morgan Lewis's automotive & mobility team partners with global automotive industry companies in complex transactions and matters, building and protecting their IP portfolios, as well as crafting and implementing customized business, finance, and tax strategies that are effective for many years.

Taking a holistic view of the auto industry—the advent of unprecedented government involvement, a shifting competitive landscape, the race for new technology and talent, and greater consumer and regulatory demands involving safety and the environment—we assist in developing precise legal strategies aimed at advancing our clients' specific business objectives.

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