

AUTOMOTIVE & MOBILITY

Welcome to the 35th edition of our newsletter on developments in the automotive industry published by Morgan Lewis's automotive and 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 first quarter of 2023, touches on significant acquisitions, regulatory and antitrust developments across the globe, and notable intellectual property matters 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.

Regulatory: Mercedes Benz to Launch Level Three Automated Driving System in the United States; EU Commission to Propose Stricter CO2 Emission Targets for New Heavy-Duty Vehicles; CJEU Allows Damages Claims for Unlawful Defeat Devices; China Enacts Measures for the Management of Data Security in the Industrial and Information Technology Fields; Wuxi Regulations on the Promotion of the Development of the Internet of Vehicles

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MERGERS & ACQUISITIONS

Wolfspeed to Partner with ZF in Silicon Carbide Technology Joint Venture

US-based silicon carbide technology company Wolfspeed, Inc. and German automotive supplier ZF Friedrichshafen (ZF Group) have agreed to create a joint innovation lab for research in silicon carbide systems. The joint venture (JV) includes significant investments from ZF to support the planned construction of a silicon carbide semiconductor device factory in Germany as part of the Important Project of Common European Interest (IPCEI) for Microelectronics and Communication Technologies.

Samvardhana to Acquire SAS Autosystemtechnik GmbH

India-based auto-components company Samvardhana Motherson Automotive Systems Group BV agreed to acquire German SAS Autosystemtechnik GmbH, a provider of assembly and logistics services for the automotive industry, from Faurecia, a company of the FORVIA Group, for EUR 540 million.

Vitesco Sells Brazil Subsidiary to ABG Brasil

Brasilian ABG Brasil Group acquired Vitesco Tecnologia Brasil, the Brazilian subsidiary of Germany-headquartered automotive supplier Vitesco Technologies. Following the acquisition, the target will be renamed NEO TBS.

Shyft Group Acquires XL Fleet

American designer and manufacturer of specialty vehicles and upfits The Shyft Group, Inc. acquired the domestic commercial vehicle electrification company XL Fleet. Financial terms were not disclosed.

Autoneum Acquires Borgers Automotive Business Unit

Autoneum, the Switzerland-based provider of acoustic and thermal management solutions for automobiles, acquired the automotive business of Borgers SE & Co. KGaA, the Germany-based supplier of textile acoustics protection and insulation solutions, from insolvency for EUR 117 million.

Apollo to Acquire Weltmeister

Hong Kong-based manufacturer of luxury electric sports cars Apollo Future Mobility Group (Apollo) acquired the Chinese electric vehicle (EV) maker WM Motor Global Investment Limited (Weltmeister) for USD 2.023 billion. Weltmeister's parent company, WM Motor Holdings Limited, is a shareholder of Apollo.

Gogoro and Belrise to Form Battery Swapping JV

Gogoro Inc., a Taiwanese developer of battery-swapping solutions and manufacturer of electric scooters, and Belrise Industries Ltd., an Indian automotive supplier, have agreed to form a 50:50 joint venture to build battery-swapping infrastructure in the Indian state of Maharashtra. Together with the Maharashtra government, the JV will invest approximately USD 2.5 billion.

Iveco Defence Vehicles Acquires Majority Stake in MIRA UGV

Iveco Defence Vehicles, a subsidiary of the Netherlands-based commercial vehicle company Iveco Group N.V., agreed to acquire a majority stake in MIRA UGV, the unmanned ground vehicle (UGV) division of HORIBA MIRA Ltd., an England-based provider of automotive engineering, research, and test services.

Omega Seiki Mobility and iM3NY to Form Battery Cell JV

India-based EV manufacturer Omega Seiki Mobility and American lithium-ion battery manufacturer Imperium 3 New York Inc. (iM3NY), a subsidiary of Australian battery technology company Magnis Energy Technologies Ltd, have agreed to form a battery cell-technology joint venture in India.

BYD to Acquire Yi'an Property Insurance

Chinese EV manufacturer BYD acquired the domestic insurance firm Yi'an Property Insurance Co., Ltd., one of four professional internet insurance companies approved by the China Banking and Insurance Regulatory Commission, from insolvency for CNY 3.6 billion. BYD aims to launch an insurance business targeting EVs.

INOAC Acquires Remaining Shares in ABC INOAC Exterior Systems

INOAC USA, Inc., a car parts supplier and subsidiary of the Japan-based INOAC Corporation, acquired the remaining 50% stake in the former joint venture ABC INOAC Exterior Systems from Canadian automotive components supplier ABC Technologies. The target will be renamed INOAC Exterior Systems.

Changzhou Langbo Sealing Technologies Majority Stake Sold

A 54% stake in Changzhou Langbo Sealing Technologies Co., Ltd., a Chinese manufacturer of automotive rubber seal products, has been sold by former controlling shareholder Qi Jianguo for CNY 1.554 billion to four investment firms, each of which acquired a minority stake of between 8% and 26%.

EFC International Acquires Inventory Sales

EFC International, a US-based provider of engineered fasteners and components for automotive and industrial applications, acquired US fastener and component distributor Inventory Sales Co.

TE Connectivity Sells Automotive Wireless Business to USI and Ample Trading

Chinese electronic product supplier Universal Scientific Industrial (USI) and Seychelles-based investment firm Ample Trading acquired the automotive wireless business of Switzerland-based electronics manufacturer TE Connectivity Ltd. for USD 48 million. For the acquisition, USI subsidiary Huanhong Electronics Union and Ample Trading agreed to form a 75.1:24.9 joint venture special-purpose vehicle with a registered capital of USD 53 million.

Dongan Power to Acquire 60% Equity of Beijing Zhiyue

Chinese Harbin Dongan Automobile Power Co., Ltd. acquired 60% of China-based Foton Motor's equity in Beijing Zhiyue Engine Company Co., Ltd. for CNY 342 million. Prior to the transaction, Beijing Zhiyue was 100% owned by Foton Motor.

ANTITRUST

Swedish Truck Manufacturer Fined for Market Sharing in Romania

A Swedish truck manufacturer was fined in Romania for market sharing with truck dealers in order to limit the resale of trucks from a French manufacturer. By admitting to the accusations, the truck manufacturer benefitted from a fine reduction. The total fine amounts to approximately USD 2.8 million.

German OEM's Forced Response to Information Request Over Antitrust Probe Was Unlawful

The UK Competition Appeal Tribunal (CAT) found that the UK Competition and Markets Authority (CMA) unlawfully forced a German company to respond to an information request. The court ruled that the CMA had exceeded its power and confirmed the OEM's argument that the CMA does not have the legal power to compel foreign companies to produce documents held outside the UK's jurisdiction. Prior to the hearing in court, CAT suspended the daily fines, which had been imposed on the OEM by the CMA.

Automobile JV Blocked in Brazil

The Brazilian tribunal of the Administrative Council for Economic Defense (CADE) decided to block a proposed JV between several German carmakers, along with a number of major auto parts firms. The parties to the JV planned to create a platform based in Germany, allowing applicants to exchange information about products and processes related to the auto industry that can be freely accessed by outside parties. CADE initially approved the joint venture subject to strict behavioral remedies, mostly concerning the exchange of sensitive information between competitors. Subsequently, the parties to the joint venture withdrew their notification, but CADE still blocked the deal.

Spanish Competition Authority to Open Market Study into Electric Vehicle Charging Infrastructure

The Spanish National Markets and Competition Commission (CNMC) opened a sector inquiry in order to investigate how to promote the development of the EV charging infrastructure through competition tools. The CNMC perceives the deployment of a network of quality charging points essential to facilitate the transition to EVs. In a preliminary analysis, the CNMC found elements that could hinder the sector's efficient and competitive development.

Truck Cartel Claimants Might Face Their Own Court Costs

The Court of Justice of the European Union (CJEU) found that cartel victims seeking compensation might bear their own costs in a legal proceeding if their claim is only partly upheld. The CJEU set limits to efforts by claimants to be granted extra legal or procedural protections because of the imbalances between them and cartelists, who hold most of the information used to quantify harm. The court held that “EU law does not preclude a rule of national civil procedure under which, in the event that the claim is upheld in part, costs are to be borne by each party, who each bear half of the common costs, except in cases of wrongful conduct.”

UK Government’s Business Department Consults on UK Automotive Industry Antitrust Exemptions

The UK is finalizing the Motor Vehicle Block Exemption Order. The new piece of legislation became necessary after the UK left the European Union as it would no longer fall under the EU’s Motor Vehicle Block Exemption Regulation (MVBBER). Until May 31, 2023, a retained version of MVBBER remains effective. The new order will exempt certain agreements in the motor vehicle aftermarket from the prohibition in Chapter I of the Competition Act 1998, which prohibits agreements between firms that prevent, restrict, or distort competition.

REGULATORY

Mercedes Benz to Launch Level Three Automated Driving System in the United States

The State of Nevada confirmed that Mercedes Benz’s conditionally automated driving system “Drive Pilot” complies with state regulation. The system can now be launched officially, making Mercedes Benz the first automotive company to certify a Level Three system in the United States. The system allows drivers to hand over the dynamic driving task to the vehicle under certain conditions. Drive Pilot is able to control speed and distance and guides the vehicle within its lane by taking into account the route profile, events occurring on the route, and traffic signs. The system also reacts to unexpected traffic situations and handles them independently, e.g., by evasive maneuvers within the lane or by braking.

EU Commission to Propose Stricter CO2 Emission Targets for New Heavy-Duty Vehicles

The EU Commission proposed the introduction of new CO2 emission targets for new heavy-duty vehicles (HDVs) from 2030 onward in order to reduce emissions by 45% by 2030. According to the Commission, HDVs such as trucks, city buses, and long-distance buses are responsible for over 6% of total EU emissions and more than 25% of emissions from road transport. Further, the Commission proposed making all new city buses zero-emissions as of 2030. In line with the objectives of the European Green Deal and REPowerEU, the Commission further expects a positive impact on energy transition by lowering the demand for imported fossil fuels.

CJEU Allows Damages Claims for Unlawful Defeat Devices

The Court of Justice of the European Union (CJEU) ruled that a carmaker must pay compensation to car buyers if the purchased car was fitted with an unlawful “defeat” device that caused damage to the buyer, even if the damage was caused only negligently. Defeat devices reduce the rate of exhaust gas recirculation below a certain outside temperature threshold, increasing toxic nitrogen oxide emissions. The CJEU held in an earlier ruling that such devices are illegal if they regularly lead to increased emissions. Such compensatory claims have so far been rejected by German courts for the reason that the uncertainty regarding the legality of such defeat devices meant that the manufacturer’s intent regarding their unlawfulness could not be proven.

China Enacts Measures for the Management of Data Security in the Industrial and Information Technology Fields

The “Measures for the Management of Data Security in the Industrial and Information Technology Fields (for Trial Implementation)” came into effect on January 1, 2023. The measures put forward safety management and protection requirements for the handling of industrial, radio, and telecommunications data. Industrial data refers to data generated and collected in various industries and fields in the process of research and development, design, production and manufacturing, operation management, operation and maintenance, platform operation, etc., including data related to intelligent vehicles.

Wuxi Regulations on the Promotion of the Development of the Internet of Vehicles

On March 1, 2023, the “Wuxi Regulations on the Promotion of the Development of the Internet of Vehicles” were officially implemented. The regulations are the first local regulations in China to promote the development of an Internet of Vehicles (IoV) in order to facilitate autonomous driving.

The regulations broaden the scope of road construction projects to include vehicle road coordination infrastructure and propose a unified municipal data-management service platform architecture for the IoV. They aim to support the application of the IoV in the fields of intelligent transportation, urban management, and industry services. The regulations explicitly support the commercial operation of autonomous driving and encourage and support fully autonomous driving.

INTELLECTUAL PROPERTY

Report on Innovation and Patenting in Hydrogen Technologies

In January, the International Energy Agency and the European Patent Office released a report, “Hydrogen Patents for a Clean Energy Future.” The report analyzes global trends in innovation and patenting along hydrogen value chains. Some of the key findings are as follows: Global patenting in hydrogen is led by Europe and Japan. The United States lost ground in the period 2011–2020. The new hydrogen patenting heavyweights are companies from the automotive and chemicals sectors that focus on electrolysis and fuel-cell technologies. Patenting activities for hydrogen use in the automotive sector continue to expand at much higher rates than for other end-use applications, despite some recent progress toward the use of hydrogen for steel production. Patenting underpins fundraising by start-ups developing hydrogen businesses, with more than 80% of later-stage investment in hydrogen start-ups going to companies that had already filed a patent application, indicating the importance of patenting for young firms in this area.

Trade Secret Loss from Failure to Respond to Discovery Orders

An auto parts wholesaler, Quality Collision Parts Inc., accused of stealing a competitor’s customer list in March lost a default judgment. The court found that Quality ignored repeated court orders to hand over sales data during discovery and, as a result, demonstrated bad faith. The default judgment in this case is a stark illustration that while discovery requires give and take, violating court orders comes with harsh penalties.

US Customs and Border Protection Confiscates Approximately \$200,000 in Fake Auto Parts

More than 175 counterfeit auto parts imported from China were reportedly seized by US Customs and Border Protection in Philadelphia. The items included air bag covers, aluminum hoods, front fenders and bumpers, and badges bearing trademarked logos. Charges have not yet been filed and the investigation reportedly continues. The incident is a reminder that counterfeit products in the automotive sector are proliferating and pose safety and quality risks.

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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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