

# AUTOMOTIVE & MOBILITY

Welcome to the 37th 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 third quarter of 2023, touches on numerous joint ventures and acquisitions, recent antitrust litigation, notable regulatory developments, and significant intellectual property (IP) matters in the automotive industry. All issues of Morgan Lewis *AUTOMOTIVE & MOBILITY* are available at [www.morganlewis.com](http://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.

# MERGERS & ACQUISITIONS

## **VW to Acquire 4.99% Stake in XPeng**

As part of a new strategic partnership, German car maker Volkswagen acquired a 4.99% stake in Chinese smart electric vehicle (EV) manufacturer XPeng for approximately USD 700 million. Additionally, XPeng and Volkswagen will jointly develop two B-class battery EVs for the Chinese market under the VW brand.

## **BorgWarner Spins Off Fuel Systems and Aftermarket Segments into PHINIA**

American automotive supplier BorgWarner Inc. announced the completion of the spinoff of its fuel systems and aftermarket segments into the US-based publicly traded company PHINIA Inc.

## **Samvardhana Motherson to Acquire Dr. Schneider Group from Insolvency**

Indian automotive supplier Samvardhana Motherson International Ltd. acquired Germany-based car parts supplier Dr. Schneider Group from insolvency for about EUR 118.3 million. The transaction includes subsidiaries of Dr. Schneider Group in Germany, China, Poland, Spain, and the United States.

## **Foxconn Acquires 50% Stake in ZF Chassis Modules**

Taiwanese electronics manufacturer Hon Hai Technology Group (Foxconn) acquired a 50% stake in ZF Chassis Modules GmbH, a subsidiary of German automotive supplier ZF Friedrichshafen AG (ZF Group), as part of a strategic partnership between the companies. Foxconn and ZF Group have valued ZF Chassis Modules at about EUR 1 billion.

## **Seven Car Manufacturers to Form EV Charging JV**

Car manufacturers BMW Group, General Motors, Honda, Hyundai, Kia, Mercedes-Benz Group, and Stellantis agreed to establish a joint venture (JV) to create an EV charging network across North America, consisting of at least 30,000 chargers that are accessible to battery-powered EVs from any manufacturer using the CCS or NACS charging standards. The first stations are scheduled to open in summer 2024 in the United States.

## **Toyota and Pony.ai to Form Robotaxi JV**

US-headquartered autonomous driving company Pony.ai and Japanese car maker Toyota, via its China-based subsidiaries Toyota Motor (China) Investment Co., Ltd. and GAC Toyota Motor Co., Ltd., agreed to form a JV to commercialize fully driverless robotaxis. The parties will jointly invest more than RMB 1 billion.

## **ElectraMeccanica and Tevva to Merge**

Canadian EV maker ElectraMeccanica Vehicles Corp. and British manufacturer of electric medium- and heavy-duty commercial vehicles Tevva Motors Limited agreed to merge. ElectraMeccanica shareholders will own 23.5% and Tevva shareholders will own 76.5% of Tevva Inc., a newly created Canada-based holding company. The combined company will manufacture electric commercial vehicles in the United Kingdom and the United States.

## **Aequita to Buy TMD Friction from Nisshinbo**

German private equity firm Aequita SE & Co KGaA acquired TMD Friction Group SA, a manufacturer of brake friction materials based in Luxembourg, from Japanese diversified industrial company Nisshinbo Holdings Inc.

## **ABC Technologies to Acquire Plastikon Automotive**

ABC Technologies, a Canadian supplier of plastic components and systems to the automotive industry, acquired the automotive business of American plastic manufacturer Plastikon for USD 130 million.

## **XPeng to Buy Xiaoju Smart Auto from DiDi**

Chinese EV maker XPeng Inc. acquired Xiaoju Smart Auto Co Limited, the smart auto development business of domestic vehicle-for-hire company DiDi Global Inc., for up to approximately HKD 5.835 billion. Additionally, XPeng and DiDi entered into a strategic cooperation agreement.

## **JOST to Acquire Crenlo do Brasil**

JOST Werke SE (JOST), a Germany-based supplier of safety-critical systems for the commercial vehicle industry, acquired Crenlo do Brasil, the Brazilian division of US-based Crenlo Engineered Cabs, a manufacturer of operating cabs for off-highway vehicles and farm machines.

## **Accelera, Daimler Truck, and PACCAR to Establish Battery JV**

Accelera by Cummins, Daimler Trucks & Buses US Holding LLC, and PACCAR Inc., a US-based multinational commercial truck company, agreed to form a JV to manufacture battery cells for electric commercial vehicles and industrial applications in the United States. The three companies will each hold a 30% stake in the jointly controlled company and plan to invest a total of USD 2-3 billion in a 21 GWh factory. Chinese lithium iron phosphate (LFP) battery cell manufacturer EVE Energy will hold a 10% stake in the JV as the technology partner and contribute its battery cell design and manufacturing know-how.

### **Modine to Sell Germany Businesses**

US-based Modine Manufacturing Company sold three Modine businesses based in Germany to Regent LP, an American private equity firm. The businesses sold are active in the area of exhaust gas recirculation coolers, radiators, and charge air cooler modules for automotive internal combustion engine applications in Europe.

### **Hörmann to Sell Its Automotive Business to ncdh Group**

German Hörmann Group sold Hörmann Automotive Wackersdorf GmbH to Swiss family-owned ncdh Group AG. The target is active in the assembly of modules and systems for the automotive industry and the assembly of charging stations.

### **BYD to Purchase Jabil's Mobile Electronics Manufacturing Business**

Chinese automaker BYD agreed to acquire the Chinese mobile electronics manufacturing business of Jabil Inc. for approximately RMB 15.8 billion. BYD expects to expand its component production and research and development capabilities, thereby strengthening its EV production.

## **ANTITRUST**

### **Truck Manufacturers to Settle Cartel Damages Suits**

Following an EU Commission decision that several truck manufacturers colluded over prices for medium-sized and heavy trucks, a German truck manufacturer settled cartel damages lawsuits before the UK specialized competition court against, inter alia, an international car rental company.

Also, a Swedish truck manufacturer and a French truck manufacturer reached settlement agreements in similar procedures before the UK specialized competition court with a multinational waste management company and others.

## **REGULATORY**

### **EU to Conduct Anti-Subsidy Investigation into Chinese EVs**

The European Commission announced an anti-subsidy probe into EVs coming from China. The investigation is conducted "ex officio" and thus is not subject to a complaint from third parties. However, prior to the announcement, the French government had called for the European Commission to initiate such proceedings.

The commission is required to impose any provisional countervailing duties within nine months and any definitive duties within 13 months of the start of the investigation.

### **New EU Battery Regulation to Introduce "EV Batteries" Category**

The new Regulation (EU) 2023/1542 concerning batteries and waste batteries entered into force on August 17, 2023 and will take direct effect in all member states as of February 18, 2024. The regulation will fully replace the previous Battery Directive 2006/66/EC by August 18, 2025 and aim to cover the entire life cycle of a battery.

The new regulation introduces the categories "electric vehicle batteries" (EV batteries) and "light means of transport batteries" (LMT batteries), used to power e-bikes and e-scooters, to the previously existing three types of batteries (portable, automotive, and industrial batteries). The category of automotive batteries has been renamed to "starting, lighting and ignition batteries" (SLI batteries) to avoid confusion with EV batteries.

Once in force, the regulation requires batteries to have a declaration of conformity and a Conformance Européenne (CE) marking. Additionally, EV, rechargeable industrial, and LMT batteries will need to have a label showing their carbon footprint.

The regulation applies to manufacturers, importers, distributors, so-called fulfilment service providers, and others, and it stipulates distinctive obligations for each category of batteries.

Beginning in August 2025, all companies with a turnover of EUR 40 million or more that place batteries on the EU market or put them into service will be required to introduce due diligence policies to ensure the responsible sourcing of materials and to address social and environmental risks. In addition, the regulation introduces gradually increasing minimum percentages for the use of recycled materials in the manufacture of EV and certain SLI batteries, alongside gradually increasing battery collection targets and targets for the recovery of certain materials from waste batteries such as lithium, cobalt, copper, lead, and nickel.

As of 2027, EV, LMT, and industrial batteries with a capacity of more than 2 kWh must have a "digital battery passport" accessible through a QR code on the battery containing information on the battery model and on the individual battery, such as its manufacturer, date of manufacture, type of battery, charging capacity, service life, material composition, and information relevant for repairing or recycling.

## **New Draft EU Rules for E-fuels and Biofuels**

Following the European Union's 2035 vehicle emissions ban, the EU Commission's draft rules for fuels for cars and vans with combustion engines after 2035 state that fuels must achieve at least 100 percent CO<sub>2</sub> savings in order to qualify as carbon neutral. This means that biofuels as stipulated under the Renewable Energy Directive (EU) 2018/2001 would de facto be banned from 2035.

## **German Government Presents Its Key Points on a New Mobility Data Act - Access to Mobility Data and Data Protection**

The Federal Ministry of Digital Affairs and Transport (BMDV) has presented its key points for the planned Mobility Data Act (BMDV Paper). The act aims to target traffic data and its use in line with national and EU legislation and is scheduled to become effective in 2024, although there is no clear timetable yet for its adoption.

The BMDV Paper is the first draft of a new law requiring carriers and mobility providers to provide and exchange static and dynamic real-time data (for alternative route calculation and navigation) on "fair terms and conditions."

The new Mobility Data Act will be a national legislative tool for the implementation of existing and future national and EU legal provisions. The definition of "mobility data" is based on existing European legal requirements and includes "travel and transport infrastructure data" such as information on the road network and the traffic situation, public transport timetables, and reports on delays to these, as well as data on charging points for electric cars and filling stations.

Key applicable EU laws for mobility data sets call for "National Access Points" for the mobility data in each member state, which Germany has already established through the (practically limited) "Mobilithek" online platform. The aim of the new law is to create a better common mobility data infrastructure within Germany that integrates existing structures and increases data quality through improved data exchanges.

### **The Mobility Data Act will:**

- Standardize existing conditions for provisioning the mobility data and its use,
- Contain specifications for standards such as data quality,
- Set a uniform date for the entry into force of data provision obligations,
- Set up a federal authority to coordinate data use and provision and to take technical and operational action for this purpose, and
- Provide for the possibility of sanctioning noncompliance by this authority.

The BMDV Paper provides for measures for improving and safeguarding the quality of mobility data. Even if the planned Mobility Data Act does not provide for specific provisions on data privacy, location data and data from vehicle license plates, for example, may be processed under it. Critics in Germany are concerned that these data sets could then be used to create movement profiles of individuals ("profiling"). It is still open how all personal identifiable information can be removed from the data sets by means of an anonymization process. In addition, compliance with the principle of data minimization and security measures in order to prevent unauthorized access, loss, or misuse of personal data must also be ensured. Mobility data is also an essential prerequisite for automated and autonomous driving and the associated networking of the infrastructure (and its digitalization).

## **Guidelines for the Construction of the National Internet of Vehicles Industry Standard System (Intelligent Connected Vehicles) (2023 Edition)**

The Chinese Ministry of Industry and Information Technology and the National Standards Commission jointly issued the Guidelines for the Construction of the National Internet of Vehicles Industry Standard System (Intelligent Connected Vehicles) (2023 Edition) (2023 Guidelines).

The 2023 guidelines revise the superseded 2018 version with regard to intelligent connected vehicles and establish implementation effectiveness evaluation and dynamic improvement mechanisms to meet the full scenario application requirements of combined driving assistance, autonomous driving, and connected functions.

The 2023 guidelines cover the development characteristics of deep integration and cross-domain collaboration of intelligent connected vehicle technology. In response to the general specifications, the 2023 guidelines govern core technologies, key product applications, and a standard system for intelligent connected vehicles, including the foundation, technology, production, and test standards of intelligent connected vehicles. The 2023 guidelines will be implemented in a two-phase procedure. By 2025, addressees are required to set up systems that support assisted and autonomous driving functions. By 2030, safety assurance systems for autonomous driving must be installed.

# INTELLECTUAL PROPERTY

## **Q2 Patent Filings Show EV Battery Innovation on Top**

Just Auto reported that patent publications in Q2 2023 reveal that battery patent publications were up 36 percent. This was strongly ahead of the next two automotive sectors: electrification technologies and autonomous driving. LG and CATL led the filings in batteries, which are becoming increasingly important not only for vehicles but also in large-scale energy storage and distribution projects.

## **Avanci Vehicle 4G and 5G Patent Pools Count Participation from Leading IP Licensors**

Avanci has announced that its 5G patent pool for connected vehicles includes patents from the majority of top global holders of patents on 5G wireless standards. The licensor participants in the 5G pool include Qualcomm, Ericsson, Nokia, Huawei and InterDigital. This makes licensing connected vehicle patents significantly easier for market participants. The patents made available through the pool are indicated to be standard-essential patents, which means that the patents are technically or commercially necessary to implement certain 5G wireless industry standards. At \$29 per vehicle as reported, which is slightly more than the rate for Avanci's 4G patent pool, the 5G patent pool is expected to eventually be widely licensed by leading automotive players, as is the case currently with the 4G pool.

# 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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