

# AUTOMOTIVE & MOBILITY

Welcome to the 26th 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 fourth quarter of 2020, touches on significant acquisitions, notably in the trucking business, new antitrust guidance and regulatory rules, and recent trends in intellectual property. All issues of Morgan Lewis *AUTOMOTIVE & MOBILITY* are available at [www.morganlewis.com](http://www.morganlewis.com).

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**Regulatory:** ECJ to Rule on Admissibility of Defeat Devices; Development Plan 2021-2035 for Chinese NEV Sector Published

**Intellectual Property:** LIDAR a Hot Trend for SPACS; Unified Patent Court in Europe; Can AI Be an Inventor?; Several Automotive Players Have Reported Semiconductor Shortages

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## MERGERS & ACQUISITIONS

### **INEOS to Acquire Mercedes-Benz Manufacturing Site**

British company INEOS Automotive, a subsidiary of global petrochemicals manufacturer INEOS Group, has acquired the Hambach, France, manufacturing site of German carmaker Mercedes-Benz, on undisclosed terms. Next to INEOS Automotive's own 4x4 model, the Grenadier, the Hambach site will continue to produce an electric minicar for Mercedes-Benz's Smart brand.

### **L Catterton to Acquire Truck Hero**

An investment consortium led by private equity (PE) firm L Catterton acquired a controlling stake in Truck Hero, a US-based manufacturer of truck bed covers and other Jeep accessories, on undisclosed terms. Truck Hero is backed by PE firm CCMP Capital Advisors, which remains a major stakeholder.

### **Denso to Acquire Jeco**

Japanese auto-parts maker Denso Corporation announced its acquisition of all remaining shares in Jeco Co., Ltd., a manufacturer of clocks, air conditioner panels, and other sensors for automobiles, through a share swap. Denso, which currently holds 35.21% in Jeco, will acquire 450,115 treasury shares in the transaction.

### **DexKo to Acquire Nordelettronica**

US-based trailer running gear, chassis assemblies, and related components maker DexKo Global Inc., indirectly through its subsidiary AL-KO Vehicle Technology Group, acquired Nordelettronica S.r.l., an electronics equipment maker based in Italy, on undisclosed terms.

### **Sumitomo to Sell Stake in Mazda Mexico JV**

Japanese conglomerate Sumitomo Corp. announced that it has agreed to sell its 25% stake in the car manufacturing joint venture (JV) Mazda de Mexico Vehicle Operation to its JV partner, Japanese carmaker Mazda Motor Corporation. Financial terms were not disclosed.

### **SAIC Motor to Establish JV with Pudong Government and Alibaba**

Chinese carmaker SAIC Motor Corp., the government of Shanghai's Pudong New Area, and ecommerce company Alibaba have agreed to establish a CNY 10 billion (\$1.5 billion) JV named Zhiji Motor. The JV, in which SAIC will hold a majority stake, will be active in the development of all-electric vehicles.

### **Scania Acquires Nantong Gaokai**

Swedish truck maker Scania has agreed to acquire Nantong Gaokai, a truck maker based in China, from state-owned investment firm Jiangsu Gaokai Investment Development Group, on undisclosed terms. Through the acquisition, Scania also obtains a Chinese truck-manufacturing license.

### **Dana to Acquire Light-Vehicle Thermal Business of Modine**

Dana Inc., a power-conveyance and energy-management solutions provider based in the United States, agreed to acquire a part of the thermal-management business of US based Modine Manufacturing Company's automotive segment. The acquired business represents approximately 70% of Modine's automotive revenues and includes eight major facilities operating in China, Germany, Hungary, Italy, the Netherlands, and the United States. The purchase price amounts to \$1; Dana also assumes certain financial liabilities.

### **Adler Pelzer to Acquire Acoustics Division of STS Group**

Adler Pelzer Group, a German manufacturer of acoustic and thermal components and systems for the automotive sector, acquired the acoustics division of German automotive parts supplier STS Group AG on undisclosed terms. The acquired business includes five plants located in Brazil, Italy, and Poland.

### **Daimler Truck to Enter into Partnership with Luminar**

Daimler Truck AG, the commercial vehicle division of German carmaker Daimler, acquired a minority stake in Luminar Technologies, Inc., a US-based autonomous driving technology company and developer of LIDAR (light detection and ranging) hardware and software. The acquisition is part of a strategic partnership between the two companies that aims at enabling automated trucking on highways.

### **Isuzu to Acquire UD Trucks**

Japanese carmaker Isuzu Motors, Ltd., agreed to acquire UD Trucks, the Japanese truck business of Swedish carmaker Volvo AB, for JPY 243 billion (approximately \$2.3 billion). The deal is part of a strategic alliance between

Isuzu and Volvo with respect to commercial vehicles. According to the Alliance Framework Agreement signed by both companies, the alliance has a minimum duration of 20 years.

### **ElringKlinger to Establish JVs with Plastic Omnium and Airbus**

Auto parts manufacturers ElringKlinger AG (Germany) and Plastic Omnium S.A. (France) agreed to establish a 60-40 JV named EKPO Fuel Cell Technologies. The JV will be active in the development and mass production of fuel cell stacks for CO2 neutral mobility. In addition, ElringKlinger agreed to acquire a minority shareholding in a newly set-up JV with Dutch aerospace company Airbus within the area of fuel cell technology.

### **Hino Motors and BYD to Establish Electric Vehicle JV**

Chinese conglomerate BYD Company, Ltd., active in, among other things, the manufacture of batteries, and Japanese commercial vehicles maker Hino Motors, Ltd., agreed to establish a Chinese 50-50 JV for the development of commercial electric vehicles and components of electric vehicles. The JV is part of a strategic business alliance on which the two companies agreed earlier this year.

### **TRATON and Navistar Enter into Merger Agreement**

TRATON SE (TRATON), a German manufacturer of commercial vehicles, and Navistar International Corporation (Navistar), a leading US truck manufacturer, have entered into a definitive merger agreement. TRATON, which currently owns 16.7% of the outstanding shares of Navistar's common stock, will acquire all of Navistar's remaining shares at a price of \$44.50, resulting in a total purchase price of approximately \$3.7 billion.

### **Tesla to Acquire ATW Assembly & Test**

US electric vehicle manufacturer Tesla has acquired ATW Assembly & Test - Europe GmbH, a battery assembly line manufacturer located in Germany, from Canada-based ATS Automation Tooling Systems, on undisclosed terms.

### **Shyft to Acquire F3 MFG**

US-based specialty vehicles manufacturer The Shyft Group acquired F3 MFG Inc., an aluminum truck body and accessory manufacturer from the United States, on undisclosed terms. Shyft will integrate F3 and its DuraMag and Magnum products in Shyft's specialty vehicles business.

## **ANTITRUST**

### **EC Antitrust Guidance on Cooperation between Carmakers and Suppliers**

The European Commission (EC) has provided informal guidance to the European auto industry group ACEA on how its members can cooperate with suppliers struggling economically due to the effects of the COVID-19 pandemic without violating European antitrust rules. The EC provided the guidance upon a request from ACEA regarding possible cooperation between carmakers and suppliers, in particular with respect to the possible formation of "customer groups" to deal with distressed suppliers. According to publicly available information, the EC's guidance includes various recommendations and safeguards to limit antitrust risks, including measures to ensure voluntary participation for any company that wishes to participate in potential cooperation discussions, as well as measures to limit the exchanged information in this context.

### **PSA and Fiat Chrysler Merger Approved by EC Subject to Conditions**

The EC has cleared the proposed merger between carmakers Peugeot SA (PSA) and Fiat Chrysler N.V., subject to conditions. After its investigation, the EC raised concerns that the merger could harm competition in markets for light commercial vehicles in nine member states of the European Union.

In order to address these concerns, the parties offered a remedy package, which includes the commitment to extend a cooperation between PSA and Toyota Motor Europe under which PSA produces small light commercial vehicles for sale under the Toyota brand, mainly in the European Union. PSA and Fiat Chrysler committed to increasing the available production capacity for Toyota and reducing transfer prices for the vehicles and associated spare parts/accessories. Further, the remedy package includes a commitment to amend the "repair and maintenance" agreements for passenger cars and light commercial vehicles in force between PSA, Fiat Chrysler, and their repairer networks to facilitate access for competitors to the merged entity's repair and maintenance networks.

The proposed merger had been already cleared by the Brazilian, Mexican, and American competition authorities, among others.

## **REGULATORY**

### **ECJ to Rule on Admissibility of Defeat Devices Mobility**

The European Court of Justice (ECJ), in a judgment on December 17, 2020 (C-693/18), ruled that software used to control a car's exhaust gas recirculation (EGR) valve must be

considered a “defeat device,” which is illegal under European law. Regulation No. 715/2007 expressly prohibits the use of defeat devices, which reduce the effectiveness of emission control systems under normal conditions of vehicle use. In this instance, the French Tribunal de Grande Instance de Paris referred the case to the ECJ seeking clarification on the definition of “emission control system.”

The EGR system redirects part of the exhaust gas from combustion engines to the engine’s air supply to reduce the car’s NOx emissions when they are produced within the engine itself (upstream reduction). However, the ECJ found that it would be apparent from Regulation No. 715/2007 that the concept of “emission control system” includes not just technologies to reduce emissions after such have been produced (downstream reduction) but also upstream reduction technologies such as the EGR system.

Further, the ECJ ruled that installing a defeat device may only be justified if the device is used to protect the engine against sudden and exceptional damage, and that only those immediate risks of damage that give rise to a specific hazard when the vehicle is driven justify the use of a defeat device.

### **Development Plan 2021-2035 for Chinese NEV Sector Published**

The General Office of the State Council formally issued its Development Plan for New Energy Vehicle Industry (2021-2035). The Development Plan aims to ensure an orderly development of China’s new energy vehicle (NEV) sector, promotes the establishment of a unified national market, and boosts industry integration and market competitiveness. Starting in 2021, NEVs should account for no less than 80% of the new or replaced buses, taxis, and logistics-distribution vehicles in the public transportation sector in regions such as the national ecological civilization pilot zones, or other key regions with a need to decrease atmospheric pollution.

In this context, the Development Plan provides for several measures, including supporting:

1. the further development of key technologies including vehicle operating systems and batteries;
2. the expansion of infrastructures such as power charging networks, hydrogenation, and fast-charging expressways; and
3. international cooperation in the field of NEVs.

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## **INTELLECTUAL PROPERTY**

### **LIDAR a Hot Trend for SPACS**

Velodyne, which has over 30 patents on LIDAR by inventor David Hall, who was named an inventor of the year in 2018 for his work on LIDAR, became the first LIDAR company to go public via a special-purpose acquisition company

(SPAC). It began trading on October 1 under the symbol VLDR and has a market cap of about \$4 billion. LIDAR is one technology to detect objects while driving, critical to self-driving vehicle and safety systems. Underscoring the importance of this technology, more LIDAR companies have gone or are about to go public via SPAC merger, including Luminar, which went public via a \$3.4 billion SPAC merger (trading under symbol LAZR). Others reportedly joining the LIDAR SPAC merger trend include Aeva (\$2.1 billion), Innoviz (\$1.4 billion), and Ouster (\$1.9 billion).

### **Unified Patent Court in Europe**

Following the UK government’s decision to withdraw from the Unified Patent Court (UPC) project, many people thought that the project had been dealt a terminal blow. However, the Bundestag (the German federal parliament) passed the UPC Agreement in November 2020 by a two-thirds majority, followed by the Bundesrat passing a bill of ratification on December 18, 2020. This paves the way for ratification of the UPC Agreement in Germany, after which Germany will join 15 signatory states. The agreement requires the three largest patent holders (which includes Germany and France) to ratify it before it can come into force, which may happen after Germany ratifies the agreement in 2021.

### **Can AI Be an Inventor?**

Both the UK intellectual property office (UK IPO) and the European Patent Office (EPO) refused to accept patent application filings that identify as the inventor an artificial intelligence (AI) machine called DABUS. In a decision in September, a High Court judge upheld the UK IPO’s refusal because DABUS is not a person (natural or legal), and the 1977 Patents Act did not envisage an inventor being a nonperson. DABUS also cannot transfer rights to the invention to the entity applying for the patent. The US Patent and Trademark Office has similarly found patent inventorship is limited to natural persons. Recognizing the importance of these issues, the World Intellectual Property Office is running a series of “Conversations on IP and AI” to debate related policies and recently held a virtual conference on the subject on December 17 and 18, 2020.

### **Several Automotive Players Have Reported Semiconductor Shortages**

Several automotive original equipment manufacturers and suppliers have reported shortages of semiconductors that may impact production in late 2020 and into 2021. The trends toward infotainment systems, connected car features, and electrification in vehicles have resulted in automobiles using many more semiconductors than historical norms. That, coupled with the rapid recovery of automobile demand, the pandemic, and competition for semiconductors with other industries, has led to shortages.

# 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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