

AUTOMOTIVE

Q4 / 2016

This is the tenth issue of our newsletter on developments in the automotive industry published by Morgan Lewis's automotive team, adding contributions from around the globe by leveraging the experience of the lawyers in our 29 offices. We counsel our automotive clients on a broad range of industry-specific issues, including matters relating to mergers and acquisitions (M&A), antitrust, litigation, regulatory concerns, intellectual property, and labor and employment.

This issue of *Morgan Lewis AUTOMOTIVE*, which covers the fourth quarter of 2016, touches on issues relating to the connected car, autonomous vehicles, and other developments in the global automotive markets. All issues of *Morgan Lewis AUTOMOTIVE* are available at www.morganlewis.com.

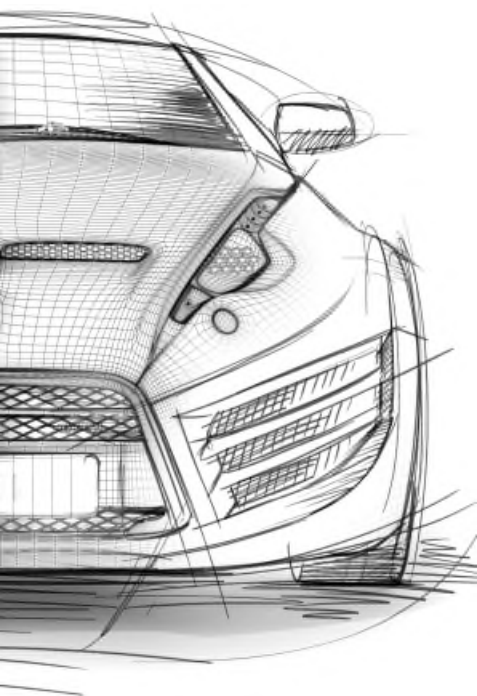
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Antitrust: US Department of Justice wraps up its auto-parts investigation; the European Commission investigates Brexit-related promises made by the British government to Nissan; China threatens to impose a fine on an undisclosed US OEM for monopolistic behavior; South Korea fines Japanese automotive suppliers for price fixing; and a European General Motors car distributor is fined for resale price maintenance.

Regulatory: United States publishes a policy on best practices for cybersecurity for cars; Russia obliges automakers receiving subsidies to open service centers in Crimea; automakers may miss European CO2 targets; three OEMs may face sales bans in Korea; Germany investigates VW chairman for criminal market manipulation; and defeat devices continue to remain in the spotlight.

Intellectual Property: Tessera announced a new open-source development platform for image processing; Ford boosts its patent production; cyber theft of IP continues to be an area of concern for automotive companies; and federal marshals seize knock-off parts at SEMA show.



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MERGERS & ACQUISITIONS

Nissan largest shareholder of Mitsubishi Motors

Nissan completed its acquisition of a 34% equity stake in Mitsubishi Motors and became its largest shareholder (see also Morgan Lewis Automotive Q2/2016, page 2). Mitsubishi will also become part of the global Alliance with Nissan and Renault. It is expected that the Alliance of Nissan, Renault, and Mitsubishi will sell about 10 million cars in fiscal year 2017.

Samsung to acquire Harman

Samsung Electronics, the Korean electronics supplier, is said to invest USD 8 billion for the acquisition of US auto-parts supplier Harman International Industries. Harman is a global leader in connected car technology and is known for its multimedia, navigation, and visual display systems as well as its key relationships with OEMs like BMW and Daimler. According to Samsung, Harman complements Samsung in terms of technologies, products, and solutions and its acquisition constitutes a crucial part of Samsung's automotive strategy. The transaction constitutes the largest foreign corporate take-over by a Korean company.

VW, Daimler, BMW, and Ford to set up charging network

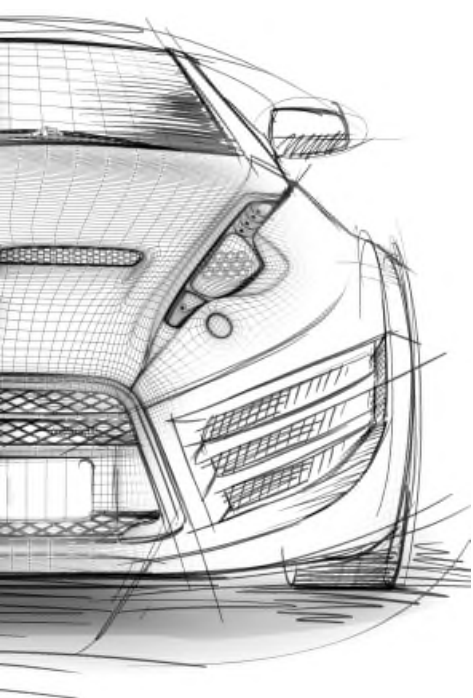
VW, Daimler, BMW, and Ford will jointly set up a charging network for electric cars to boost sales of these vehicles and to help avoid missing a CO2 target that may make them subject to substantive fines. The OEM stated that they plan building 400 charging stations in 2017 with the aim to have thousands of stations available to drivers of electric cars across Europe by the end of 2020. Sales of electric cars are considered to be a crucial element to allow OEMs to meet CO2 emissions targets set by the EU. According to press reports, the OEMs are expected to invest close to EUR 1 billion and will require users of the stations to pay for the recharge in order to recoup their investment.

Infineon buys Dutch laser manufacturer Innoluce

German semiconductor maker Infineon has acquired Dutch company Innoluce, a manufacturer of miniature "lidar" lasers used to detect other vehicles. Innoluce has previously been a part of Dutch Philips group. Infineon is said to be the second-largest supplier of semiconductors for the automotive industry. According to press reports, the acquisition is part of Infineon's strategy to become a key player in all three sensor technologies used in autonomous driving. Already offering radar and camera equipment, it will gain Innoluce's expertise in lidar, a detection system similar to radar but based on laser lights. Lidar is said to cover a range of up to 200 meters, thereby providing a key component in the development of autonomous vehicles.

Toyota and Suzuki form technology alliance

Toyota and Suzuki, Japan's largest and fourth-largest carmakers, announced that they will establish a technology alliance to develop next-generation technologies. The alliance will not involve capital ties between the companies.



MERGERS & ACQUISITIONS

Knorr-Bremse wins take-over battle for Haldex

German company Knorr-Bremse, a leading manufacturer of braking technologies for trucks and rail vehicles, won a fierce take-over battle with ZF Friedrichshafen, the German manufacturer of transmission, steering, and other equipment for the automotive industry, for Swedish company Haldex, a manufacturer of transmission brake systems for trucks. Haldex's board initially recommended ZF's offer, even though it was lower than Knorr-Bremse's, citing concerns that the transaction could face antitrust issues in light of Knorr-Bremse's position in brake systems for trucks. Knorr-Bremse was, however, able to persuade Haldex's shareholders and was able to acquire 86.1% of Haldex's shares on the basis of a take-over offer now extended until February 28, 2017. The transaction is said to be subject to merger control clearance in the United States and—following a request pursuant to Article 4(5) ECMR—the EU Commission.

American Axle to acquire Metaldyne Performance

American Axle & Manufacturing and Metaldyne Performance Group reached a merger agreement under which American Axle will acquire Metaldyne Performance. According to company statements, American Axle will pay USD 1.6 billion in cash and stock and will assume USD 1.7 billion in net debt. The new company will offer a broad range of powertrain, drivetrain, and driveline products and is expected to have USD 7 billion in annual sales.

Tesla acquires German Grohmann Engineering

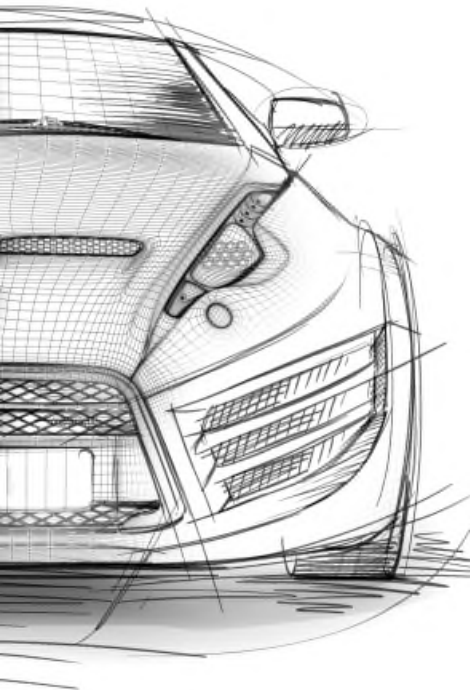
Tesla acquires Grohmann Engineering, a German producer of manufacturing solutions for the automotive industry. Grohmann is said to have supplied Tesla with solutions in the past and is considered to be a crucial part of Tesla's plan to boost its production capacities. According to press reports, Grohmann achieved about EUR 120 million with about 700 employees in its last business year.

Takata seeks restructuring

Troubled Japanese manufacturer Takata, whose airbag failures recently claimed the eleventh confirmed casualty in the United States, is seeking an out-of-court restructuring agreement with automakers to avoid a possible bankruptcy. Under the agreement, Honda, Toyota, Volkswagen, and nine other OEMs will assume the costs of replacing potentially defective airbags in their cars.

Nissan sells minority stake in Calsonic Kansei to KKR

Nissan broke its long-standing and close ties with Calsonic Kansei, a leading Japanese automotive supplier, by selling its 41% share to private equity firm KKR. KKR is said to have invested about 20 times the earning forecasts of Calsonic, which still sells about 85% of its products to Nissan. According to press reports, the traditional *keiretsu* bonds between Japanese OEMs and their suppliers have come under pressure in light of dramatic changes in automotive industry technology.



ANTITRUST

DOJ wraps up auto-parts investigation

Renata Hesse, acting assistant attorney general for antitrust of the US Department of Justice, stated in a speech that her agency is in the process of wrapping up its long-running probe of antitrust violations in the auto-parts industry. In this context, Japan's Usui Kokusai Sangyo Kaisha Ltd. agreed to pay a USD 7.2 million criminal fine and plead guilty to fixing prices, allocating customers and rigging bids for automotive steel tubes, which are used in both automobile bodies and engines. The plea agreement is still subject to court approval.

EU Commission to investigate Brexit subsidies promised to Nissan

According to press reports, the British government made promises to Nissan regarding its investments in the United Kingdom to keep the Japanese carmaker's plants after Britain leaves the EU. In response, the EU Commission opened an investigation as to whether these promises constitute illegal state aid under EU rules. *The Financial Times'* request to get access to the British government's promises under the United Kingdom's freedom of information act has been deferred by the United Kingdom's Department of Business, Energy and Industrial Strategy. *The Financial Times* speculates that the United Kingdom's promises included tax breaks and general assurances of support.

China threatens to impose fine on undisclosed US automaker

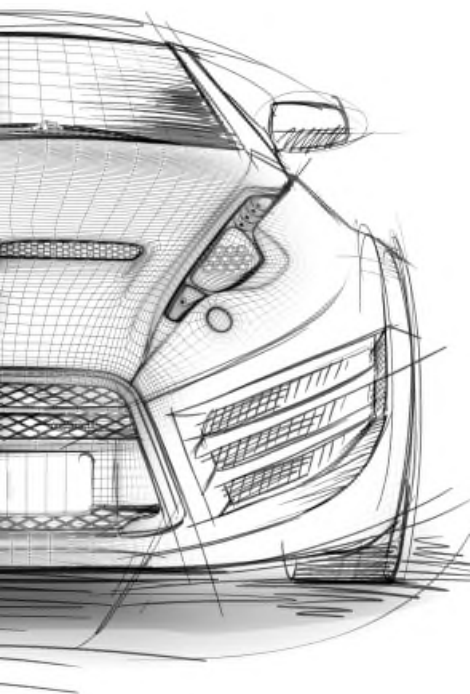
According to press reports, Zhang Handong, of China's National Development and Reform Commission's (NDRC's) price supervision bureau, threatens to impose a fine on an undisclosed US carmaker for instructing its distributors to fix prices. While some analysts wonder whether the NDRC's statement is a response to US President-elect Donald Trump's recent telephone call with the president of Taiwan, the NDRC rejected this allegation and emphasized that both Chinese and foreign businesses are being held accountable for anticompetitive behavior.

South Korea fines Japanese auto part suppliers for price-fixing

The Korea Fair Trade Commission fined Japan's Mitsubishi Heavy Industries and Denso approximately USD 9.7 million for conspiring to fix the prices of air conditioner compressors for cars in relation to a global supply contract with General Motors in Korea. According to press reports, the scroll compressors were installed in GM's Spark and Aveo vehicles.

GM car distributor fined for fixing resale prices

The Danish Competition Authority imposed a fine of EUR 8.25 million on General Motor's Danish car distributor, Opel Danmark, for instructing resellers to sell used, lease, rental, and showroom cars at set prices. Opel Danmark got a significant reduction of the fine because it turned itself in.



REGULATORY

US publishes best practices paper on cybersecurity for cars

The US Department of Transportation's National Highway Traffic Safety Administration (NHTSA) published a paper on "Cybersecurity Best Practices for Modern Vehicles." Citing the need for the automotive industry to make vehicle cybersecurity an organizational priority, NHTSA stressed its authority to check whether OEMs ensure whether cars are free of unreasonable risks due to potential cybersecurity vulnerabilities. The paper recommends a comprehensive and systematic approach to developing layered cybersecurity protections, the use of the IT security suite of industry standards applied, *inter alia*, in the financial, energy, and communication sectors. The paper also highlights the need to share relevant information on cybersecurity among market participants.

Russia to oblige automakers to open service centers in Crimea

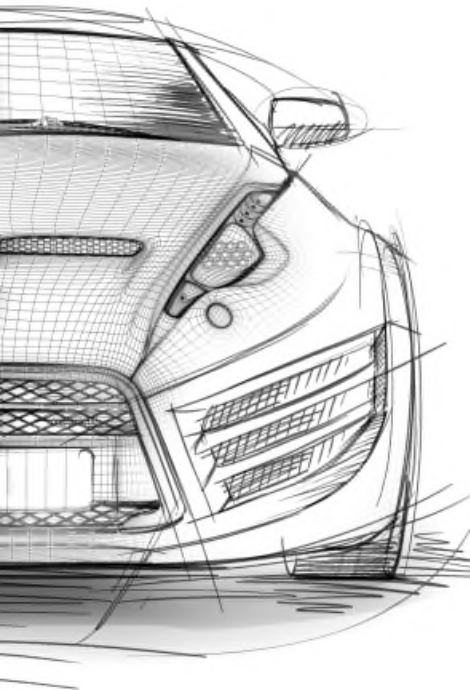
According to news reports, the Russian Ministry of Industry and Trade of the Russian Federation plans to require automakers to open official service centers in all regions of the country if they obtain state subsidies. This shall also apply to Crimea, where foreign companies work today under subdealer schemes because of the sanctions imposed, *inter alia*, by the EU. As a result of these sanctions and the subdealer schemes, Crimean customers currently face higher prices. Automakers that may be affected by the new policy include Renault, Toyota, and Ford.

Automakers to miss European CO2 targets?

According to an analysis published by *The Financial Times*, eight of the twelve largest carmakers will likely miss carbon dioxide emission targets set by the EU in 2012, which may make them subject to billions of Euros in fines. It is speculated that only Peugeot Citroën, Toyota, Renault-Nissan, and Volvo are on track to meet the applicable CO2 targets.

Three OEMs face sales ban in Korea

According to press reports, the Korean ministry for the environment imposed fines on Korean subsidiaries of Nissan, BMW, and Porsche for submitting incorrect environmental certification documents. In addition to the fines, the three OEMs face the possibility that certification of the cars for which the incorrect documents were submitted will be revoked and a corresponding sales ban for the affected cars will be enforced. The affected models are said to include the Infinity Q50 sedan, the Qashqai SUV from Nissan, the X5M from BMW, and the Macan S diesel from Porsche. The responsible authority had conducted extensive emissions and noise-level tests of 300 imported models of 15 foreign OEMs. The ministry's investigation is seen as an effort to increase scrutiny of car emissions after Volkswagen admitted that some of its cars contained so-called defeat devices.



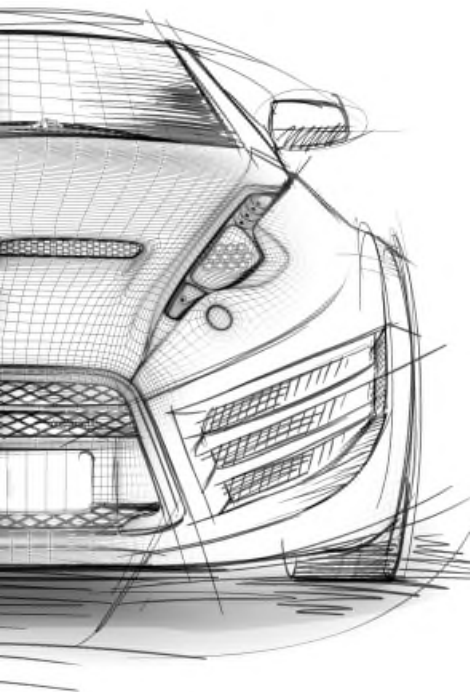
REGULATORY

Germany investigates VW chairman for market manipulation

A criminal market manipulation probe launched in June by public prosecutors in Braunschweig because of the Volkswagen (VW) defeat device scandal has been extended to Hans Dieter Pötsch, chairman of VW's supervisory board. A number of shareholder suits have been filed against VW in Germany alleging losses due to the company's failure to timely and correctly inform them about the use of defeat devices. Mr. Pötsch was VW's CFO at the time.

Roundup: Defeat devices continue to remain in spotlight

- VW reached an agreement with US environmental regulators to resolve civil claims related to 3.0l TDI V6 diesel engine vehicles in the United States. Under the proposed consent decree with the Department of Justice, the Environmental Protection Agency, the State of California's Air Resources Board (CARB), and the California Attorney General, VW will recall 75% of the affected vehicles to bring them into compliance with applicable emission standards. The remaining cars will be bought back by VW. VW will also contribute an amount of USD 224 million to an environmental remediation trust and USD 25 million to CARB to support the use of zero-emission vehicles in California. The proposed Consent Decree is still subject to judicial approval.
- VW also agreed to pay C\$2.1 billion to buy back or fix more than 100,000 cars that do not comply with Canadian environmental rules because of defeat devices in certain VW group cars. The agreed settlement concerns 105,000 vehicles with 2.0-litre engines. Customers will also receive between C\$5,100 and C\$8,000 as compensation. VW will also buy back, or recall and fix, the affected cars and will pay a civil fine of C\$15 million. The settlement agreement is also still subject to judicial approval.
- A draft report by a European Parliament Committee to investigate the Commission's and the EU Member States Authorities' roles and performance in checking the compliance of OEMs with applicable emission standards accused both the Commission and the Member States Authorities of "maladministration."
- The Commission is set to start legal action against various EU Member States (including Germany and the United Kingdom) for failing to detect the noncompliance of various OEMs with applicable emission standards.
- The French Competition Authority DGCCRF that was commissioned to investigate the emissions of various Renault diesel cars handed over its results to the public prosecutor's office in Nanterre. Various organizations alleged that Renault diesel cars exceeded the applicable NOx limits by up to 25 times. Renault has always taken the position that the motor management software of its cars does not contain a defeat device.
- A plaintiffs' firm sued VW subsidiary AUDI alleging that the motor management software of some of its gas and diesel cars includes a defeat device that artificially lowers CO2 emissions when tested.



INTELLECTUAL PROPERTY

New open-source platforms for vehicle development

Open-source platforms for automotive development are on the rise. Tessera Holding Corporation (Tessera) announced in December an image processing platform named IPU 2.0 that leverages open software and a processor family from Verisilicon to enable automotive imaging and processing applications, among other things. The imaging and processing demands of autonomous vehicles and robotic applications are growing markets that require computer vision integration with computational and deep neural network features. Another platform, TABBY EVO, is provided by Open Source Vehicles (OSV) of Hong Kong. TABBY is a hardware open-source platform for electric vehicles that can be purchased, customized, and improved by electric vehicle startups. Several cars have already been built with the platform and Renault recently announced a development car based on OSV.

Ford boosts patent production

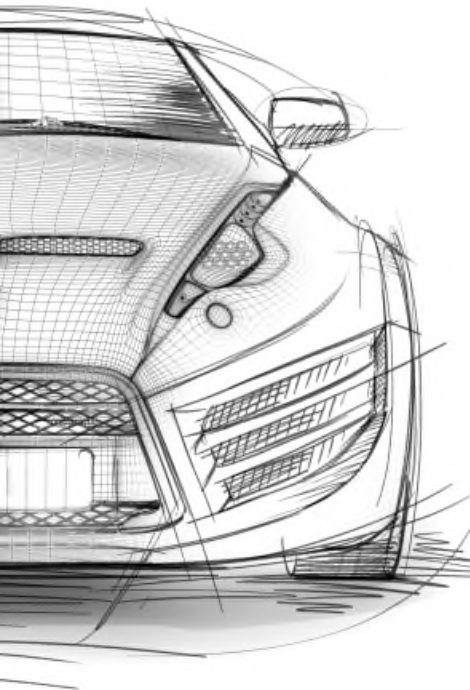
The Washington Post reported that Ford Motor Company has boosted its patent program with a mixture of incentives to inventors and companywide innovation challenges. The company has gone to the top spot for the first time among automakers in 2016 in terms of the number of patents granted. By contrast, a few years ago other automakers were doubling Ford's rate of patent production. More than 4,000 first-time inventors have submitted ideas to Ford since January 2015.

Cyber theft of IP

According to a Deloitte Poll released in September, sectors expecting higher-than-average insider IP theft attempts over the next year include automotive (32.2 percent), oil and gas (27.2 percent), and real estate services (26.2 percent). Cyber-attacks can severely disrupt businesses and the loss of an IP asset can be both crippling and hard to quantify. Preparing to identify and pursue cyber adversaries and establishing a defensible chain of data custody to counter future cyber threats are areas of focus in 2017.

Feds seize knock-off parts booths at SEMA show

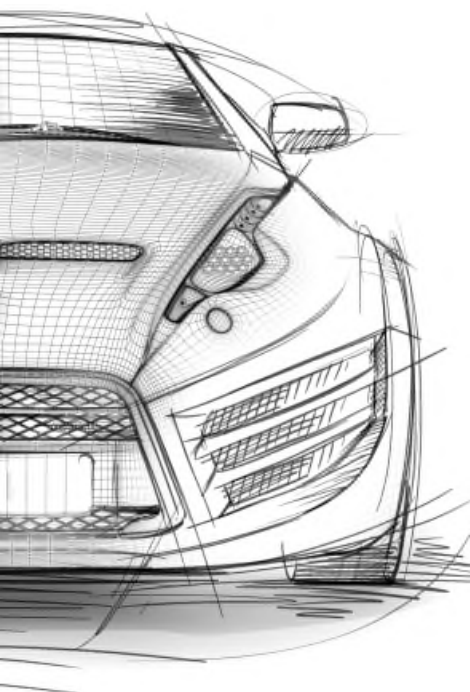
In November, federal marshals were reported to have raided the booths of two Chinese companies at the annual Specialty Equipment Market Association (SEMA) convention in Las Vegas, seizing parts, displays, and communications equipment after allegations of copyright infringement were made. Aftermarket Jeep parts maker, OMIX-ADA of Suwanee, Ga., brought an emergency suit in US District Court in Nevada to obtain a preliminary injunction and the seizure order. Counterfeiting and infringement has been viewed as a serious, and in some cases widespread, problem in the automotive aftermarket parts industry.



MORGAN LEWIS'S AUTOMOTIVE TEAM

Morgan Lewis's automotive 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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