

AUTOMOTIVE & MOBILITY

Welcome to the 24th 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 second quarter of 2020, touches on significant acquisitions and investments, new and revised antitrust conditions and regulatory measures, as well as the impact of the coronavirus (COVID-19) in the automotive industry. All issues of Morgan Lewis AUTOMOTIVE & MOBILITY are available at www.morganlewis.com.

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Regulatory: European Commission to Publish White Paper on Foreign Subsidies; China to Extend the NEV Vehicle Purchase Tax Exemption for One Year; China to Extend the Subsidy Period for NEVs Due to COVID-19

Intellectual Property: China Led in International Patent Filings in 2019; Fiat Chrysler Enforces Jeep Vehicles' Trade Dress Against Roxor; Patent Litigation in the United States is on the Rise in 2020

MERGERS & ACQUISITIONS

Renault to Sell Stake in Joint Venture with Dongfeng

French carmaker Renault S.A. announced that it has reached an agreement to sell its stake in the 50-50 joint venture (JV) Dongfeng Renault Automotive Company (DRAC) to its JV partner Dongfeng Motor Group, a car and vehicle manufacturer headquartered in China. DRAC, which includes a production plant in Wuhan, China, was formed in 2013 to supply Renault-branded cars to the Chinese market. After the transaction, DRAC will stop selling Renault-branded cars in China.

Electric Car Startup NIO Secures USD 1 Billion Investment

NYSE-listed Chinese electric vehicle startup NIO Inc. announced that several investors have agreed to invest approximately USD 1 billion into NIO China. The investor group is led by Chinese state-owned enterprises including Hefei City Construction and Investment Holding Group, CMG-SDIC Capital, and Anhui Provincial Emerging Industry Investment Co. In return for the investment, NIO will move its headquarters from Shanghai to Hefei and locate all of its Chinese operations, including R&D, sales, service, and supply chain, in the Hefei Economic and Technological Development Area.

Liberty Global to Build Electric Car-Charging Network in the United Kingdom

US cable company Liberty Global and UK private equity firm Zouk Capital announced the formation of a JV to build a charging network for electric vehicles in the United Kingdom that uses the underground duct network of Liberty Global's media business. The JV, called "Liberty Charge," is backed by the UK government whose Charging Infrastructure Investment Fund (CIIF) to catalyze the rollout of electric vehicle-charging infrastructure throughout the United Kingdom is managed by Zouk Capital.

Aequita to Acquire Willi Elbe

Willi Elbe Group, a German automotive Tier-1 supplier of steering and driveline technology, has been acquired by international private equity firm Aequita for an undisclosed

amount. Willi Elbe operates production and R&D sites in Germany, Switzerland, Norway, Bulgaria, China, and Mexico.

Weber Automotive to Be Reacquired by Weber Family

German auto parts manufacturer Weber Automotive GmbH, which is currently in administration, has been reacquired by the Weber family from French private equity investor Ardian for an undisclosed amount. Ardian held 75% of the company's shares while the Weber family already held the remaining 25%.

Cooper Standard to Divest European and Indian Operations to Mutares

Cooper Standard Holdings Inc., a US-based supplier of sealing, fuel and brake, and fluid transfer systems for the transportation industry, announced that it agreed to divest its European and Indian rubber fluid transfer and specialty sealing business to German investor Mutares SE & Co. KGaA for an undisclosed amount. The business includes approximately 2,500 employees and manufacturing facilities in Poland, Italy, and Spain, as well as Standard Cooper's operations in India, excluding the company's corporate IT development office in Chennai.

Bridgestone to Acquire REIFF

Japanese tire and rubber manufacturer Bridgestone K.K. has agreed to acquire German tire trade group REIFF Reifen und Autotechnik GmbH from UK-based Fintyre for an undisclosed amount. The transaction includes the REIFF, Netto, and ABS brands; the company's German retail network; and a tire retreading plant. REIFF had filed for insolvency earlier in 2020.

Callista to Acquire ETM

Private equity firm Callista has acquired Engineering Technologies Marketing (ETM) from international automotive supplier BOS Group. ETM is a manufacturer of plastic and elastomer components and systems for automotive applications based in Germany. Terms of the transaction are undisclosed.

SAIC Motor, Hyundai Motor to Invest in ampUp

ampUp, a developer of electric vehicle-charging software based in the United States, announced that several investors including automakers Hyundai Motor Company (Korea) and SAIC Motor Corporation (China) have invested in the company to develop electric vehicle and charging technologies. The amount of the investment is undisclosed.

Volvo and Daimler Truck to Form JV

Daimler Truck AG, the commercial vehicle-manufacturing division of German carmaker Daimler AG, and Swedish carmaker Volvo Group announced their agreement to establish a new JV to develop, produce, and commercialize fuel-cell systems mainly for heavy-duty vehicle application. According to the preliminary, nonbinding agreement, Daimler Truck will transfer all of its current fuel-cell activities to the JV, while Volvo will acquire 50% of the JV's shares for approximately EUR 600 million.

Belron to Acquire ATU

Belron, part of the Belgian D'Ieteren Group and active in the auto glass industry, inter alia, through its subsidiaries Autoglass (UK), Carglass (EU), and Safelite Corp. (USA), agreed to acquire the auto glass business of German vehicle parts retailer A.T.U. Auto-Teile-Unger Handels GmbH & Co. KG (ATU) for an undisclosed amount. ATU operates about 600 locations in Austria and Germany. It is majority owned by French car repair provider and car parts retailer Mobivia with French tire manufacturer Michelin holding the remaining shares of around 20%.

VW to Invest EUR 2 Billion in Electromobility in China

German automaker Volkswagen agreed to acquire, through its subsidiary Volkswagen (China) Investment Co., Ltd. (VW China), 26.47% of the shares in Gotion High-tech Co., Ltd., a Chinese lithium battery manufacturer for new energy vehicles. The transaction comprises the transfer of 5% of the company's shares from Gotion's current major shareholder Zhuhai Guoxuan Trading Co., Ltd. as well as a private placement made by Gotion equivalent to 30% of its total share capital prior to the placement. Overall Volkswagen pays a consideration of about EUR 1 billion. Upon completion of the transaction, Volkswagen will be the biggest shareholder in the company. In addition, Volkswagen announced that it will invest approximately EUR 1 billion to increase its share in JAC Volkswagen Automotive Co., Ltd. from 50% to 75%. JAC Volkswagen is a China-based JV with Chinese JAC Automobile Group focusing on new energy vehicles.

Evergrande Health to Acquire Full Ownership of NEVS

Hong Kong-based investment company Evergrande Health Industry Group Ltd., which, among other things, is active in the manufacture of new energy vehicles, announced that its wholly owned subsidiary Mini Minor Limited agreed to purchase the remaining 17.6% of shares in Swedish electric car manufacturer National Electric Vehicle Sweden AB (NEVS) from National Modern Energy Holdings Ltd. for a total consideration of USD 379,500,000. Upon completion of the transaction, Mini Minor will become the single owner of NEVS.

ANTITRUST

German VDA to Develop Framework Conditions as Response to COVID-19

The German Association of the Automotive Industry (VDA) has presented proposed measures to overcome the challenges caused by the COVID-19 pandemic in the automotive industry to the German Federal Cartel Office (FCO), including framework conditions for restarting automotive production and a model for restructuring suppliers. The FCO reviewed the measures and concluded to refrain from examination under competition law in more detail. In particular, the measures focus on the exchange of information at OEM and Tier 1 level with a view to resuming production, as well as on the exchange of information between the various players within the supply chain in order to restructure. The VDA plans to publish information on the reopening times of automotive manufacturers and suppliers and best practice guidelines explaining ways to avoid a misallocation of resources at a time when capacities are scarce.

The SAMR Lifted Restrictive Conditions on the Establishment of Corun PEVE

The Chinese State Administration for Market Regulation (SAMR) decided to lift restrictive conditions under which the establishment of the nickel-metal hydride battery production JV of Japanese Toyota Group and Chinese battery manufacturers Primearth EV Energy and Hunan Corun (Corun Peve Automotive Battery Co., Ltd.) was approved in 2014. The SAMR lifted the restrictions after assessing the competitive environment in the relevant markets following a respective application of Corun Peve Automotive. The conditions, inter alia, included to widely promote products to third parties on FRAND terms.

REGULATORY

European Commission to Publish White Paper on Foreign Subsidies

The European Commission (EC) has published a White Paper on foreign subsidies proposing the introduction of a regulatory framework to supervise foreign subsidies inside the European Union. The proposal includes three so-called "Modules" to address potential distortive effects on competition in the European Union caused by foreign subsidies.

Under Module 1, a supervisory authority (i.e., national authorities or the EC) could act upon any indication that a company in the European Union benefits from a foreign subsidy and, if such is likely to have a distortive impact, impose remedial measures including, among others,

structural and behavioral remedies or redress payments. Module 2 proposes the obligation for foreign investors backed by foreign subsidies to notify certain acquisitions of EU companies to the EC in order to assess whether the acquisition is on market terms. Such acquisitions shall not close until the EC issues a respective clearance decision. Module 3 proposes the possibility to exclude foreign subsidy-backed bidders from EU public procurement procedures.

Currently, the EC seeks input from stakeholders on the options set out in the White Paper through a public consultation based on which it plans to submit a legislative initiative to the European Parliament and EU Council in 2021. The public consultation will be open until September 23, 2020.

China to Extend the NEV Vehicle Purchase Tax Exemption for One Year

The Chinese Ministry of Finance (MOF), the State Administration of Taxation (SAT), and the Ministry of Industry and Information Technology (MIIT) jointly released the *Announcement about Exempting Vehicle Purchase Tax for New-Energy Vehicles* (Announcement), which will be effective from January 1, 2021 to December 31, 2022. According to the Announcement, new energy vehicles (NEVs) that are exempted from vehicle purchase tax in 2021 and 2022 include pure electric vehicles, plug-in hybrid vehicles, and fuel-cell vehicles. Further, the Announcement provides that the NEV exemption from purchase tax will be subject to the administration of the *Catalogue of New Energy Vehicle Models Exempted from Vehicle Purchase Tax* (Catalogue). All NEVs listed in the Catalogue are exempt from vehicle purchase tax from the date of issuance of the Catalogue. The Catalogue will be updated by SAT and MIIT from time to time.

China to Extend the Subsidy Period for NEVs Due to COVID-19

The MOF, MIIT, the Ministry of Science and Technology, and the National Development and Reform Commission jointly released the *Notice on Improving the Policies on Government Subsidies for Promotion and Application of New Energy Vehicles* (Notice). According to the Notice, the current policies regarding government subsidies for the promotion and application of NEVs will be extended until the end of 2022 due to the impact of COVID-19 on the NEV market. According to the plans initially released in 2015, authorities were set to eliminate NEV subsidies at the end of 2020. However, China will cut the subsidies by 10% this year, a further 20% in 2021, and 30% in 2022. In addition, the subsidy scheme shall only apply to passenger cars with a purchase price below RMB 300,000 (approximately USD 42,373).

INTELLECTUAL PROPERTY

China Led in International Patent Filings in 2019

According to the World Intellectual Property Organization, 58,990 international patent applications were filed by Chinese entities, besting the United States for the first time, which collectively filed 57,580 applications. The United States had held the top spot since 1978, when the Patent Cooperation Treaty process to facilitate international patent filings was launched. More than half of all international filings now come from Asia, with Japan holding the third spot, followed by Germany and South Korea.

Fiat Chrysler Enforces Jeep Vehicles' Trade Dress Against Roxor

In June, the US International Trade Commission (Commission) found in favor of Fiat Chrysler in a cease-and-desist decision against Indian conglomerate Mahindra to stop imports of its Roxor vehicle and parts, which Fiat Chrysler claims are copies of the boxy Jeep CJ-7 and Wrangler vehicles. The Commission did not find trademark infringement, but found that the trade dress (the vehicles' shape and appearance) was infringed. Mahindra has the option to challenge the findings in appeal proceedings. Trade dress is being asserted more often recently to protect the appearance of distinctive vehicles from competition.

Patent Litigation in the United States is on the Rise in 2020

Law.com reports that patent cases in the United States for the first six months of 2020 are up 16% from the prior six-month period, with the upturn being concentrated in the second quarter. The most popular districts are the District of Delaware and the Western District of Texas. The increased case load is attributed to increases in litigation between competitors and increases in litigation brought by nonpracticing entities. The automotive industry is among the industries affected by the increasing number of patent cases.

COVID-19 RESOURCES

For our clients, we have formed a multidisciplinary **Coronavirus COVID-19 Task Force** to help guide you through the broad scope of legal issues brought on by this public health challenge. Find resources on how to cope with the post-pandemic reality on our **NOW. NORMAL. NEXT. page** and our **COVID-19 page** to help keep you on top of developments as they unfold. If you would like to receive a digest of all new updates to the page, please **subscribe** now to receive our COVID-19 alerts, and download our biweekly **COVID-19 Legal Issue Compendium**.

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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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