

Morgan Lewis

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# automotive news

Current Developments in the Automotive Industry



## Morgan Lewis' Automotive News

This is the first issue of "Automotive News", a regular update on current developments in the automotive industry, with a particular focus on Germany, published by Morgan Lewis' automotive practice for clients and interested persons. This issue covers the third quarter of 2014.

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## M&A Developments

### Acquisition by ZF Friedrichshafen of TRW Automotive/Bosch to acquire the other 50 % stake in ZF Lenksysteme GmbH from ZF Friedrichshafen

ZF Friedrichshafen AG ("ZF") and TRW Automotive Holdings Corp. ("TRW") agreed on a transaction pursuant to which ZF will acquire TRW by means of a takeover offer. Assuming that the parties will be able to obtain the necessary merger control approvals, ZF will become the second largest supplier in the automotive industry with a combined turnover of more than EUR 36 billion. To address potential antitrust concerns, ZF sold its 50 % stake in ZF Lenksysteme, a joint venture with Robert Bosch GmbH ("Bosch"), to Bosch. This transaction is also subject to approval by the responsible competition authorities.

### China's Avicem Electromechanical Systems acquires German Koki Technik Transmission Systems

Koki Technik Transmission Systems GmbH ("Koki") has announced its sale to Avicem Electromechanical Systems ("Avicem"), a government-owned Chinese automotive supplier. Avicem is a subsidiary of the Aviation Industry Corporation of China, a conglomerate offering electromechanical systems to the aviation and automotive industry with about

70.000 employees. Koki produces components for gear boxes at five production facilities in Germany, China and India. Following the Lingyun/Kiekert transaction in 2012, the Avicem/Koki transaction is another example of a Chinese company investing in a German automotive supplier.

### Renault and Fiat enter into a cooperation agreement

Renault Group ("Renault") and Fiat Group Automobiles S.p.A ("Fiat") have announced that they entered into a cooperation agreement regarding the production of a light commercial vehicle based on a Renault platform which Renault will supply to Fiat. In the past, PSA Peugeot Citroën Group had supplied Fiat with light commercial vehicles. The new vehicle is to be built in Renault's Sandouville plant in the second quarter of 2016.

### KSPG starts joint venture with Huayu

KSPG AG ("KSPG"), a corporation in which the Rheinmetall group conducts its automotive activities, has announced the establishment of a joint venture with Huayu Automotive Systems ("Huayu"). Huayu is part of Shanghai Automotive Industry Corporation ("SAIC"). Through this joint venture, KSPG expects better access to the Chinese market because of SAIC's joint ventures with Volkswagen AG ("Shanghai Volkswagen") and General Motors Inc. ("Shanghai GM"). The new joint venture is to produce aluminum cast components for cars.

### Japan's Panasonic reported to acquire a stake in Spain's Ficosa

According to news reports, Panasonic Corporation ("Panasonic") is to acquire a stake of approximately 50 % in the Spanish car parts manufacturer Ficosa International ("Ficosa"). Panasonic's Automotive and Industrial Systems Company currently manufactures batteries, infotainment systems and optical connectors, while Ficosa offers rear-view as well as advanced driver assistance systems. Commentators speculate that the joint development of self-driving car technology is the business rationale for the transaction. The traditional division between electronics and car parts appears to be further blurred by this transaction.

## Antitrust Developments

### Federal Cartel Office clears acquisition of Veyance Technologies by Continental AG despite reduction of market participants from 4 to 3

Following a second phase investigation, the German Federal Cartel Office (Bundeskartellamt, "FCO") has cleared the acquisition of Veyance Technologies ("Veyance") by Continental AG ("Continental"). According to the FCO, the transaction affects the EEA-wide market for air

springs for heavy-duty vehicles as well as the markets for automotive hoses and drive belts as well as for industrial drive belts and conveyor belts where both parties have overlapping activities.

Despite Continental's high market share in air springs and a reduction of market participants from four to three, the FCO decided not to block the transaction because Veyance plays only a minor role in this area, found it difficult to win new customers, and was not one of Continental's close competitors.

Furthermore, the FCO concluded that the transaction did not endanger effective competition in the other areas where the parties' activities overlap.

#### Chinese pressure on car manufacturers and auto part makers

According to news reports, Chinese authorities are investigating a number of foreign car manufacturers for allegedly limiting competition in the distribution of automotive spare parts. The authorities allege that these car manufacturers asked their suppliers to sell spare parts only to their own distribution channels. The investigation appears to be a response to complaints in the Chinese media about excessive prices for spare parts. According to reports, China's National Development and Reform Commission ("NDRC") is set to impose fines on Mercedes-Benz, Chrysler and Audi (including their Chinese partner joint venture partners) in this context. The NDRC already fined four BMW group dealerships for price manipulation. In addition, the NDRC imposed fines in the total amount of EUR 151 million on twelve Japanese auto parts makers for price collusion regarding ball bearings and other auto parts.

Commentators speculate about a possible protectionist agenda behind the NDRC's investigations and decisions as Chinese authorities have investigated a number of global brands such as Apple, Google, Walmart, KFC, Starbucks and McDonalds for a variety of alleged violation of consumer and food safety laws recently.

According to German auto part supplier Elring-Klinger, Chinese authorities have also asked a number of auto part manufacturers to team-up with Chinese partners to promote further growth in China in a similar way in which they made international car manufacturers work in China in joint ventures with Chinese partners.

#### Indian Competition Authorities imposed fines on car manufacturers

The Indian Competition Authorities imposed fines in the total amount of EUR 320 Million on 14 different car manufacturers for refusing to supply spare parts to independent car repair shops. The fine was set at two percent of the car manufacturers' annual average turnover of the last three

years in India. The Indian car manufacturers Tata Motors and Maruti Suzuki received the highest fines. The highest fine on a German car manufacturer was imposed on Mercedes-Benz (EUR 28 million).

#### Swiss Competition Authority investigates car-leasing companies

The Swiss Competition Authority (Wettbewerbskommission; "SCA") opened a cartel investigation into leasing companies owned by European car manufacturers. The SCA suspects that these companies violated Swiss competition law by sharing information about car-leasing rates, interest rates for the financing of cars as well as other relevant terms and conditions.

#### FCO rejects complaint filed against A.T.U.'s pricing policy

The FCO rejected a complaint filed by the North-Rhine Westphalian Division of the German Federation for Motor Trades and Repairs (NRW Zentralverband des Deutschen Kraftfahrzeuggewerbes, "NRW ZDK") against the pricing policy of A.T.U. group, a chain of shops offering independent car repair services and spare parts. In its complaint of March 2014 NRW ZDK alleged that A.T.U. group offers services below cost and therefore engages in illegal dumping. According to the FCO, the German Act against Restraints of Competition ("GWB") only prohibits the sale of products and services purchased from third parties and not services offered by own employees. The FCO also held that A.T.U. does not enjoy a dominant position in the market for the repair of cars and is thus not subject to the prohibition of anti-competitive aggressive pricing strategies applicable to dominant companies.

#### FCO investigates cartel in the market for automotive heat shields

According to news reports, the FCO opened an investigation against a number of manufacturers of automotive heat shields. This is the FCO's second recent investigation in the automotive industry following the opening of another investigation against a manufacturer of trunk linings in September 2013.

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