

AUTOMOTIVE & MOBILITY

Welcome to the 28th 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 second quarter of 2021, touches on significant acquisitions and investments in the autonomous and connected vehicles space, antitrust developments in Asia and Australia, and notable intellectual property disputes. All issues of Morgan Lewis *AUTOMOTIVE & MOBILITY* are available at 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.

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Antitrust: SAMR Lifted Conditions Imposed on Automotive JV and Its Shareholders; Australia Amends Competition and Consumer Act Regarding Information Sharing for Vehicle Repair; EU Commission Publishes Evaluation Results on the Motor Vehicle Block Exemption Regulation

Regulatory: Biden-Harris Administration Announced Its American Jobs Plan with Emphasis on Electric Vehicles

Intellectual Property: Sirius XM Radio Signals Alleged to Disrupt Porsche Infotainment System in Class Action Lawsuit; Nokia and Daimler Settle Their SEP Patent Dispute

MERGERS & ACQUISITIONS

Gienanth Group to Acquire Trompeter Guss Chemnit

Gienanth Group, a Germany-based solution provider in iron casting, including for the automotive industry, has acquired Trompeter Guss Chemnitz GmbH & Co. KG, a producer of modular cast iron products. The transaction value was undisclosed.

Apollo Global Management to Acquire Majority Stake in ABC Technologies Holding

Funds managed by affiliates of private equity firm Apollo Global Management have agreed to 51% of the equity in ABC Technologies Holdings Inc. (ABC Technology) from private equity firm Cerberus. ABC Technology, which is based in Canada, is active in plastics processing technologies, systems, and components for the automotive industry.

Group of Investors Consortium to Acquire Stake in Polestar Performance

SK Siltron Co., Ltd., together with Chongqing Chengxing Equity Investment Fund Partnership LP, Zibo Financial Holdings Co., Ltd., Zibo Hightech Industrial Investment, and a range of other investors have acquired an undisclosed stake in Polestar Performance AB for approximately \$550 million. The company is active in the production of electric vehicles.

Hennessy Capital Investment Corp. V to Acquire Self-Driving Truck Technology Company Plus

Hennessy Capital Investment Corp. V, a publicly traded special-purpose acquisition company, and self-driving truck technology company Plus have entered into a business combination agreement. At closing of the transaction, Plus will be a publicly traded company.

Ideanomics to Acquire US Hybrid Corporation

Jiangsu Dewei Advanced Materials Co., Ltd has agreed to divest US Hybrid Corporation to Ideanomics, Inc. for a consideration of \$50 million. US Hybrid Corporation is active in the design and manufacture of integrated power conversion components for electric and hybrid vehicles, as well as renewable energy generation and storage.

Dometic Group AB to Acquire Front Runner Vehicle Outfitters Pty Ltd

Dometic Group AB, a provider of mobile living solutions, has agreed to acquire Front Runner Vehicle Outfitters Pty Ltd, a South Africa-based manufacturer of products for the vehicle-based outdoor market, for a consideration of \$160 million. Front Runner's production includes roof racks, rooftop tents, storage products, and load bars.

Toyota to Acquire Lyft's Autonomous Driving Business

Japanese OEM Toyota Motor Corporation, through its subsidiary Woven Planet Holdings, Inc., has agreed to acquire Lyft Inc.'s autonomous driving business Level 5 for a consideration of approximately \$550 million. The transaction nonexclusive commercial agreements relating to the safety and commercialization of self-driving vehicles are to be developed by Woven Planet.

Dubai to Cooperate with Cruise

The city of Dubai and Cruise, the driverless car company, have entered into an agreement pursuant to which Dubai will acquire up to 4,000 driverless Cruise taxis with a view to entering them into service as of 2023.

Continental and Horizon Established a Joint Venture for Intelligent Driving

Continental AG (Continental) announced that it signed a memorandum of cooperation with Beijing Horizon Robotics Technology Development Co., Ltd. (Horizon) to establish a joint venture (JV) of intelligent driving company. The JV will focus on development of driver assistance systems and autonomous driving software and hardware system solutions for domestic and global vehicle manufacturers customers. Founded in 2015, Horizon is specialized in providing embedded artificial intelligence solutions.

Mitsubishi Motors Exited from Southeast Motor

Southeast (Fujian) Automobile Industry Co., Ltd. (Southeast Motors) had a shareholder change. Its former 25% shareholder, Japan Mitsubishi Motors Co., Ltd. (Mitsubishi Motors), transferred all its shares in Southeast Motors to Fuzhou Transportation Construction Investment Group Co., Ltd. (Fuzhou Transportation). Upon closing of the transfer, Fuzhou Automobile Group, Warwick Co., Ltd. (British Virgin Islands), and Fuzhou Transportation hold 50%, 25%, and

25% of Southeast Motors' shares, respectively. Southeast Motors is a Chinese automobile manufacturer based in Fuzhou, Fujian. It engages in the design, development, production, and sale of passenger cars and minibuses sold under the Southeast marque.

Contemporary Amperex Technology Co., Limited Invested in Aiways

Contemporary Amperex Technology Co., Limited (CATL) made an investment in Aiways Automobile Co., Ltd. (Aiways Automobile) through CATL's wholly owned subsidiary, Ningbo Meishan Bonded Port Area Winning Investment Co., Ltd. (CATL Sub). After the investment, CATL Sub owns 0.35506% of the shares of Aiways Automobile. According to news reports, Aiways Automobile will cooperate with CATL to develop power batteries. Founded in 2017, Aiways Automobile is an international new energy smart car company and a smart travel service company with deep involvement of users. CATL is a Chinese battery manufacturer and technology company founded in 2011, specializing in the manufacture of lithium-ion batteries for electric vehicles and energy storage systems and battery management systems.

WeRide Completed New Round of Financing and Valued at \$3.3 Billion

Chinese autonomous driving startup Guangzhou WeRide Technology Limited Company (WeRide) announced the completion of its new round of financing of \$310 million. WeRide's post-investment valuation reached \$3.3 billion. The investors in this round include IDG Capital, Hechuang Investment, Cornerstone Capital, Cypress Star, Cloud Nine Capital, K3 Ventures, etc. Some existing investors also participated in this round of financing, including CMC Capital, Qiming Venture Capital, and Lingfeng Capital. WeRide was founded in 2017 and is headquartered in Guangzhou. It is a startup company and has both the Remote Test License for Intelligent and Connected Vehicles and the US autonomous vehicle testing license.

ANTITRUST

SAMR Lifted Conditions Imposed on Automotive JV and Its Shareholders

SAMR announced to lift the conditions and obligations imposed on an automotive JV and its shareholders imposed by the Chinese competition authority in 2014. The JV is active in the development and manufacture of Ni-MH power battery modules for vehicles and providing after-sales service and related consultation services.

The parties filed an application to lift the conditions in September 2019. Factors considered by the SAMR in the

review include, without limitation, (1) the slow development of the hybrid car industry, (2) the decrease in the use of Ni-MH batteries due to development of lithium batteries, and (3) the reduced chance of the JV's shareholders to restrict or eliminate competition due to above-market changes and a decrease in their respective market shares.

Australia Amends Competition and Consumer Act Regarding Information Sharing for Vehicle Repair

The Australian parliament passed an amendment to its Competition and Consumer Act relating to a motor vehicle service and repair information scheme. The updated law makes motor vehicle service and repair information available to independent motor vehicle repairers against consideration at a fair market price. The scheme pursues the objective to promote competition between car manufacturers and their affiliated repair shops and independent vehicle repair companies. The Australian Competition and Consumer Commission will oversee the new scheme. Infringements of the scheme are subject to fines. The new scheme took effect as of July 1.

EU Commission Publishes Evaluation Results on the Motor Vehicle Block Exemption Regulation

The EU Commission published its evaluation report and staff working document that concerns the evaluation of the Motor Vehicle Block Exemption Regulation (MVBBER). The evaluation concludes that

the MVBBER is an appropriate tool for automotive companies to determine whether their agreements comply with EU competition law. Any revised MVBBER will need to take into account the effect of data on competition in the automotive industry, particularly with respect to the motor vehicle repair markets, where independent repairers allegedly face challenges in competing with authorized dealers. The current MVBBER is set to expire on May 31, 2023. The Commission is thus now entering the stage of policymaking, ultimately deciding whether there is a need for renewal, revision, or revocation of the existing MVBBER.

REGULATORY

Biden-Harris Administration Announced Its American Jobs Plan with Emphasis on Electric Vehicle

The Biden-Harris administration announced its American Jobs Plan (the Plan), a legislative framework laying out an ambitious \$2 trillion investment in physical and human infrastructure. The bulk of the proposed spending is directed to rebuild US infrastructure in the form of physical improvements on roads, bridges, airports, and ports, with additional investment and tax credits to support clean energy generation and storage, electric vehicles, and energy efficiency.

While not yet final, the Plan proposes significant support for the development and deployment of electric vehicles (EVs). In furtherance of President Biden's previously stated intention to support the development of EVs and clean transportation, the Plan marshals the spending and procurement power of the federal government in order to facilitate and spur continued development of both EVs and the infrastructure necessary for EV charging.

First, the Plan proposes a \$174 billion investment to spur the development of EVs and charging infrastructure. Through that investment, the Plan would establish grant and incentive programs for both governments and municipalities and the private sector to develop a network of 500,000 charging stations. By comparison, approximately 42,000 EV charging stations are presently installed in the United States. In addition, the Plan proposes that 50,000 diesel transit vehicles and 20% of existing school buses nationwide would be replaced with EVs or electrified through a program administered by the Environmental Protection Agency, as supported by the Department of Energy.

Second, the Plan draws on the federal government's procurement ability and proposes to electrify the federal fleet of vehicles, including US Postal Service vehicles. The Plan specifically proposes a \$46 billion investment in federal procurement authority, which would be used for that purpose as well as for ports, pumps, clean materials, and critical technologies like advanced nuclear reactors and fuel.

Third, the Plan proposes the continuation of certain tax incentives and also new point-of-sale rebates for purchasers of EVs made in America. Currently, federal law provides for a \$7,500 tax credit to purchasers of EVs unless or until the EV company has sold more than 200,000 EVs; at that point, no federal tax credit is available to purchasers of EVs manufactured by that company. Multiple manufacturers in the United States have surpassed that number already, which renders purchasers of those EVs ineligible for existing tax incentives.

The Plan is still in the proposal phase at this time.

INTELLECTUAL PROPERTY

Sirius XM Radio Signals Alleged to Disrupt Porsche Infotainment System in Class Action Lawsuit

In a sign of issues to come involving connected cars, the Computer Fraud and Abuse Act (CFAA) has been used as the basis for a class action lawsuit against Porsche, brought by Porsche owners. *Bowen v. Porsche Cars N.A., Inc.* (N.D. Ga). The lawsuit alleges that a signal in a Sirius XM Radio broadcast facilitated by Porsche during a promotional campaign caused the Porsche Communications Management (PCM) unit in Porsche automobiles to "continuously reboot," which prevented the owners from "using the PCM...drained their car batteries, destroyed their PCM hard drives, and caused countless other inconveniences." The CFAA creates criminal and civil liability for accessing a computer without authorization, or exceeding authorized access and obtaining data, causing damage to the computer, or transmitting code that causes damage to a computer. It provides a powerful remedy in cases where it is applicable, although it can be difficult to establish its applicability.

Nokia and Daimler Settle Their SEP Patent Dispute

On June 1, 2021, Daimler and Nokia announced settlement of their widely reported, standard essential patent (SEP) dispute. The dispute was fought in court cases in Germany and before the European Commission and has potentially wide-ranging implications for the enforcement of SEP portfolios held by wireless carriers against connected car OEMs and their suppliers. Other industries, including internet of things (IOT) players, are also potentially impacted. While the terms of the settlement are confidential, and others in the automotive industry continue to battle Nokia, the settlement suggests that licensing SEPs on Fair, Reasonable and Non-Discriminatory (FRAND) terms in the automotive industry may be feasible, without protracted litigation. Volkswagen and Huawei are reported to also have struck a licensing deal to enable the use of Huawei 4G SEPs. The deal reportedly involves an unnamed supplier.

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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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