

AUTOMOTIVE & MOBILITY

Welcome to the 31st 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 first quarter of 2022, touches on significant joint ventures and acquisitions, notable antitrust penalties, new regulatory developments, and key intellectual property (IP) 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.

Antitrust: European General Court Dismissed Scania Appeal; Danish Antitrust Fine for Resale Price Maintenance and Online Sales Bans; Proposed Extension of the Motor Vehicle Block Exemption Regulation

Regulatory: European Commission Published Its Proposal for a European Chips Act; Environmental Protection Agency Reinstates California Emissions Waiver; New German Telecoms/ Media Data Protection Act

Intellectual Property: Another SEP Owner Brings Patent Case Against Automotive OEMs; Right of Repair Evolves in the Automotive Industry; Bluetooth Trademark Battle Affects OEMs

MERGERS & ACQUISITIONS

Odin Automotive to Acquire StreetScooter GmbH

Odin Automotive S.à.r.l., a Luxembourg-based financial holding, agreed to acquire StreetScooter GmbH, an electric-power delivery vehicle manufacturer, from Deutsche Post DHL Group. StreetScooter previously manufactured almost exclusively for Deutsche Post. This acquisition made StreetScooter the largest producer of electric light commercial vehicles in Germany with one of the largest fleets of electric light commercial vehicles globally. Financial details were not disclosed.

Edison Motors Acquires SsangYong Motor

South Korea's bankruptcy court approved the signing of a contract by Edison Motors Co., a consortium led by a South Korean electric carmaker, to acquire 60 million new shares of the debt-ridden SsangYong Motor Co. (Ssangyong), at a price of 304.8 billion won (about \$255 million), which is 5,000 won per piece. The takeover deal will be finalized after payment of an acquisition fee and approval from more than two-thirds of Ssangyong's creditors. Upon closing, the consortium will have a 95% stake in Ssangyong. Korea Corporate Government Improvement Fund will have 34% to 49% of the new shares. Edison Motors and its subsidiary EdisonEV Co. will acquire the rest. SsangYong will transform into an all-electric brand in future.

ABC Technologies Holdings to Acquire dlhBOWLES

US-based ABC Technologies Holdings Inc, an automotive system and components manufacturer, agreed to acquire dlhBOWLES from MPE Partners for \$255 million. dlhBOWLES designs, develops, and manufactures components for automotive fluid management and other automotive system components.

Kia Restructured Joint Venture in China with Dongfeng Motor and Yueda

Wuhan-based Dongfeng Motor officially withdraw from a three-party joint venture (JV) named Dongfeng Yueda Kia Motor Co., Ltd., which was formed in 2002 by Dongfeng Motor, Jiangsu Yueda Investment, and Seoul-based Kia, part of the Hyundai Motor Group. Kia owns 50% equity interest in the JV and the remaining two shareholders each owns 25% in the JV. Jiangsu Yueda Motor Group Co., Ltd., acquired from Dongfeng Motor the 25% equity interest in the JV. After Dongfeng Motor's withdrawal from the JV, Kia owns 50% and Yueda owns 50% of the JV. In February 2022, Kia and Jiangsu Yueda Group announced that they plan to invest \$900 million to expand the JV in Yancheng, Jiangsu Province, China. This investment aims to overhaul and expand capacity at their loss-making joint venture after a founding partner pulled out at the end of last year. The JV will be active in introducing electric vehicles (EVs), promoting various businesses in China, and cooperating with Chinese dealer partners. Kia plans to launch six EV models by 2027 in China via the JV.

Škoda Auto to Partner with Etnetera Group

Czech Republic-based car manufacturer Škoda Auto a.s., a Volkswagen AG affiliate, announced formation of a JV together with Etnetera Group a.s., a Czech IT holding company. The JV will boost Skoda's digitalization strategy by delivering new software for electromobility. Financial details were not disclosed.

Eaton to Acquire Royal Power Solutions

Ireland-based Eaton Corporation acquired US-based Royal Power Solutions for \$600 million. Royal Power Solutions is a manufacturer of high-precision electrical connectivity components used in electric vehicle, energy management, industrial and mobility markets. Eaton Corporation is an Irish power management company.

Ford and ADT to Establish JV

US automaker Ford Motor Company and US electronic security services provider ADT Inc. agreed to establish a JV called Canopy. Both companies committed to invest \$100 million until 2025. The JV will focus on multi-sensor car security systems. It is expected that its products will be launched in Q1 2023.

Stellantis to Acquire Additional Stake in GAC-Stellantis JV

Netherlands-based automotive manufacturer Stellantis N.V. announced to increase its stake in GAC-Stellantis JV from 50% to 75% in order to implement Stellantis's plan to set a new basis for its business in China. The JV was formed together with Guangzhou Automobile Group Co. Ltd. (GAC) in 2010. Financial details were not disclosed.

Mercedes-Benz to Partner with ProLogium

German car maker Mercedes-Benz AG entered into a cooperation with ProLogium Technology Co., Ltd., a Taiwan-based lithium battery cell maker. Mercedes-Benz committed to invest a high double-digit million Euro amount. The cooperation aims on developing next generation battery cells.

Solera Holdings to Acquire Spireon

US-based Solera Holdings Inc., a provider of integrated vehicle lifecycle and fleet management Software-as-a-Service, data, and services backed by Vista Equity Partners, acquired US-based Spireon, Inc. for an undisclosed amount. Spireon is a supplier of GPS vehicle tracking solutions, allowing its customers to protect and manage their vehicles.

BMW to Increase Shareholding in BMW Brilliance Automotive JV

German vehicle maker BMW AG announced to increase its stake to 75% in the China-based BMW Brilliance Automotive joint venture. The JV was formed together with the Brilliance China Automotive Holdings Ltd., a Chinese automaker. BMW is said to pay \$4.2 billion to increase its stake. Previously, both companies held a 50% stake in the JV.

BorgWarner to Acquire Santroll Automotive Components

US automotive supplier BorgWarner acquired Santroll Automotive Components, a carve-out of China-based Santroll's eMotor business. BorgWarner will pay \$220 million under the signed equity transfer agreement.

Cummins to Acquire Meritor

US-based companies Cummins Inc. and Meritor, Inc. announced the acquisition of Meritor by Cummins for \$3.7 billion. Meritor is a provider of drivetrain, mobility, braking, aftermarket, and electric powertrain solutions. Cummins manufactures diesel, natural gas, electric and hybrid powertrains, and powertrain-related components.

Apollo to Acquire Tenneco

US automotive components manufacturer Tenneco Inc. announced it is to be acquired by subsidiaries of Apollo Global Management LLC. Tenneco is a designer, manufacturer, and marketer of automotive products for original equipment and aftermarket customers. The transaction value amounts to \$7.1 billion including debt.

Mergon to Acquire Weltonhurst

Ireland-based Mergon International, a plastic manufacturer backed by Elysian Capital, acquired UK-based Weltonhurst Limited for an undisclosed amount. Weltonhurst is a producer of plastic components. Mergon supplies its products to various companies in the automotive sector.

Zhongsheng Group Acquires 100% Equity of Zungfu Motors

On 13 March 2022, Zhongsheng Group Holdings Limited (ZS Group), a top national car dealer in China, announced that it completed acquisition of 100% equity of Zungfu Motors (China) Co., Ltd., the largest dealer group of Mercedes-Benz in southern China, for \$1.314 billion, to be paid partly in cash and partly by the issuance of new ZS Group shares.

Zung Fu China is Jardine Matheson's Mercedes-Benz auto dealership business operating on the Chinese mainland. ZS Group is a leading automobile distribution group in China. Jardine Matheson was the second-largest shareholder of ZS Group. As a result of the transaction, Jardine Matheson's shareholding in ZS Group has increased to 20.94%, strengthening its position as a key strategic partner and the second-largest shareholder after the founders of the company.

Henniges Automotive Holdings, Guizhou Guihang Automotive Components to Establish JV

US-based automotive supplier Henniges Automotive, Inc. (Henniges) and China-based Guizhou Guihang Automotive Components Co., Ltd. (Guizhou) announced the formation of a JV, with Henniges holding a majority stake. The JV will bundle Henniges's and Guizhou's respective sealing systems solutions.

SK On, Koç Holding and Ford to Partner in Turkey

South Korean battery maker SK On Co. Ltd., Turkish Koç Holding AS and US-based Ford Motor Company (Ford) agreed to create a JV for EV battery production in Turkey. A new battery plant will be located near Ankara, Turkey. The Turkish JV follows a battery venture established by SK Innovation, SK On's parent company, and Ford in the United States last year.

Hayashi Telemu to Acquire Additional 28%-Stake in Adler Pelzer

Japanese automotive parts manufacturer and distributor Hayashi Telemu Co. Ltd acquired an additional stake of 28% in Adler Group, the parent of Adler Pelzer Group. Adler Pelzer is a Germany-based supplier of acoustic and thermal components for the automotive sector. Hayashi Telemu and Adler Pelzer are linked via a technical alliance since 2017, formed a JV in 2018 and have had additional financial interrelationships since 2021. Financial details were not disclosed.

Renault and Geely to Partner in Asia

Chinese carmaker Geely and French carmaker Renault have decided to jointly build cars in South Korea. Geely will supply manufacturing systems to Renault the latter. They plan to produce electric and combustion cars. While this is a next step in Geely's expansion, Renault is beginning to carve out a market in Asia.

Sony and Honda to Plan an Electric Car Manufacturing JV

Japanese carmaker Honda and Japanese electronics manufacturer Sony have decided to jointly produce battery-powered electric cars. Honda will manufacture the EVs while Sony develops the mobile data technology within the cars. A new company is expected to be set up this year with sales to start in 2025.

ANTITRUST

European General Court Dismissed Scania Appeal

The General Court (GC) dismissed Scania's appeal in opposition to the European (EU) Commission's decision, regarding a truck cartel, to uphold the fine of approximately €880 million imposed by the Commission in 2017 on Scania. The GC rejected Scania's arguments regarding violations by the Commission of the presumption of innocence and the company's right of defense. Scania, unlike the other truck manufacturers involved in the cartel, did not settle the case.

Danish Antitrust Fine for Resale Price Maintenance and Online Sales Bans

A Norwegian manufacturer of car seats and children's accessories admitted an infringement of the Danish Competition Act and thus agreed to pay a fine of DKK 8 million (€1.2 million). The Norwegian company entered into agreements with a number of its retailers to maintain the recommended retail price, preventing them from giving discounts. Also, the company restricted online sales of certain products from several of the dealers' online shops. The fact that the company cooperated with the authorities in the course of the investigation of the case has been taken into account as a mitigating circumstance for the amount of the fine.

Proposed Extension of the Motor Vehicle Block Exemption Regulation

The EU Commission published its plans on extending the antitrust rules for vehicle distribution and repair by five years from 2023 to 2028. The Commission intends to revise the Motor Vehicle Block Exemption Regulation with regard to in-vehicle data and will start consulting the industry in spring 2022.

REGULATORY

European Commission Published Its Proposal for a European Chips Act

The EU Commission published a draft act for establishing a framework of measures for strengthening Europe's semiconductor ecosystem. Therewith, the EU Commission pursues five goals: (i) strengthen research into smaller and faster chips, (ii) expansion of innovation capability in design

and manufacturing, (iii) increase the production capacity up to 20% of the global market (from 10% today), (iv) build up skills and new talents, and (v) develop an understanding of the global semiconductor supply chain. The proposed program is expected to result in additional public and private investments of more than ₹15 bn. With the program, the Commission aims to tackle the world shortage of semiconductors that has existed since 2020. This shortage resulted, according to the Commission, in decreased car production of up to one-third in some EU Member States.

Environmental Protection Agency Reinstates California Emissions Waiver

The US Environmental Protection Agency announced that it is reversing a Trump administration decision to revoke California's authority to set tailpipe emission standards more stringent than those established by the Agency. This action restores California's role in setting more stringent emission and fuel efficiency standards that, in practice, tend to drive the US market as a whole.

With the Waiver reinstated, California is expected to push forward its ambitious goals in cutting greenhouse gas emissions from vehicular sources, which constitute a substantial portion of total US emissions. The move will allow the state to set aggressive emissions and efficiency standards, as well as implement policies outlined in a September 2020 California executive order directing state agencies to include enhanced zero-emission vehicle standards for the next round of tailpipe emission standards—2026 to 2035—and to possibly require that 100% of new passenger car and truck sales be zero-emission vehicles by 2035. Further, California's Advanced Clean Trucks rule, which would require a select number of new medium and heavy-duty trucks to be zero-emissions vehicles by 2025, may also gain traction on a national level.

New German Telecoms/ Media Data Protection Act

The automotive industry needs to consider that the German Federal Act on the Regulation of Data Protection and Privacy in Telecommunications and Telemedia of 23 June 2021 (TTDSG) entered into force on December 1, 2021. The TTDSG regulates the protection of confidentiality and privacy when using telecommunications and telemedia services, such as websites, messengers, or smart home devices. It also changes the legal framework for the use of cookies and

comparable technologies, based on the Directive on Privacy and Electronic Communications (Directive 2002/58/EC) (the ePrivacy Directive) into national law.

The TTDSG applies to telemedia providers on top of the General Data Protection Regulation (GDPR): Telemedia providers must take technical and organizational measures to ensure that telemedia users can stop using the service at any time and use telemedia in a way that protects them from third parties' knowledge (§ 19(1)e TTDSG). Providers must also enable the anonymous use of telemedia and enable users' payments to be anonymous or under a pseudonym, insofar as this is technically possible and reasonable (§ 19(2) TTDSG).

Another obligation is that they must take the necessary technical and organizational measures to prevent erroneous transmissions and the unauthorized disclosure of message content (§ 6(2) TTDSG). The information and consent of users via cookie banners must comply with the GDPR (§ 25(1) TTDSG) and the specific provisions of the TTDSG even if no personal data are collected. For instance, it is not sufficient to generally state in a cookie policy that information will be shared with third parties (partners) and that these partners may combine the information with other data. If user tracking by third-party services is used on the website, these services create user profiles, and the data is used for marketing purposes, then this must be disclosed and user tracking must be consented to by users.

The determination as to when a company doing business in the automotive space falls under the TTDSG can be tricky. "Telemedia" are all electronic information and communication services, with (a) the exception of telecommunications services pursuant to Section 3(24) of the German Telecommunications Act, which consist entirely of the transmission of signals via telecommunications networks; or (b) the exception of broadcasting. The definition of telemedia therefore includes various services in the automotive sphere with image, text or sound content such as social networks, blogs, online stores, Internet banking, e-newspapers, game apps, Internet search engines, streaming and sharing platforms, as well as traffic and weather services. A telemedia provider falling under the TTDSG can enable access to the telemedia in various ways. In addition to the actual provision for the mentioned contents to a vehicle, any participation in the provision or "mediation" of access is also covered by the definition. In particular, it is sufficient for falling under the definition that a company merely makes third-party telemedia

available. Given that the new TTDSG contains stiff penalties, a careful review of the services and the application of this new German law is advisable. Section 29(1) TTDSG assigns the supervision and enforcement of the TTDSG to the BfDI (the Federal Data Protection Office). The BfDI is thus designated as an independent data protection supervisory authority for these companies, to enforce the TTDSG and the GDPR.

INTELLECTUAL PROPERTY

Another SEP Owner Brings Patent Case Against Automotive OEMs

Neo Wireless has recently brought patent infringement actions against seven leading automakers in five US district courts. These cases follow others filed in January against three technology companies, and center on Neo Wireless's assertion that it holds patents essential to 4G and 5G cellular telecommunications standards.

Their focus is on wireless remote start, remote lock and unlock and similar features activated wirelessly that are alleged to infringe the patents. Bringing patent suits by Standard Essential Patent (SEP) holders against automotive industry players seeking a royalty for wireless technology used in vehicles is a trend that is expected to continue. Earlier SEP cases have been brought by Avanci and Nokia in the automotive sector.

Right of Repair Evolves in the Automotive Industry

The Digital Millennium Copyright Act (DMCA) criminalizes circumvention of technical measures that effectively control access to a copyrighted work, such as proprietary software. However, the Copyright Office issues industry-wide exemptions, which are reviewed every three years. Effective at the end of 2021, DMCA Exemption 13 allows circumvention of protective measures in motorized land vehicles, marine vessels, and agricultural vehicles when necessary for the diagnosis, repair, or lawful modification of a vehicle or vessel function.

The exemption, however, prohibits circumvention of computer programs accessed through a separate subscription service. The exemption will be reviewed again in 2024. This builds on right of repair exemptions previously obtained by the automotive supplier and service industry in 2015 and 2018.

Bluetooth Trademark Battle Affects OEMs

A case being litigated may set a precedent for whether a vehicle with incorporated Bluetooth certified components needs to be separately certified. The US Court of Appeals for the Ninth Circuit decided that Fiat Chrysler Automobiles may continue to challenge a trademark case brought against it by a Bluetooth standards organization. At issue is whether a separate fee in hiring Bluetooth Special Interest Group, which certifies products incorporating Bluetooth, is required for a car to be advertised as having trademarked Bluetooth components in it, when the Bluetooth components themselves already have been certified, in view of "the first sale doctrine." The case has been remanded to the lower court for further proceedings.

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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