

AUTOMOTIVE & MOBILITY

Welcome to the 36th 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 2023, touches on significant joint ventures and acquisitions, notable antitrust and regulatory developments, and key intellectual property matters in the automotive industry. All issues of Morgan Lewis *AUTOMOTIVE & MOBILITY* are available at www.morganlewis.com.

IN THIS ISSUE

Mergers & Acquisitions: LG Energy Solutions and Hyundai to Form Battery JV; Toyota Sells Russian Assets to NAMI; Volkswagen Sells Russian Assets to Art-Finance; Michelin Sells Russian Assets to Power International Tires; Continental Sells Russian Assets to S8 Capital; Punch Group to Acquire Vitesco Technologies Italy; Punch Group to Acquire ZF Bouthéon; Cummins to Acquire Two Manufacturing Plants from Faurecia; Enginius to Acquire Operative Assets of Clean Logistics; Toyota's Hino Motors and Daimler Truck's Mitsubishi Fuso to Merge; Geely to Increase Shareholding in Aston Martin; Star Semiconductor to Partner with Deep Blue Automotive

Antitrust: EU's Rollout of EV Charging Under Watch for Competition Concerns; Truck Maker Settles Truck-Cartel Damages Suit in UK; Spanish Court Compels Truck Cartelists to Compensate Victims; CMA to Publish Guidance on Post-Brexit Motor Vehicle Block Exemption Order; Application of Motor Vehicle Block Exemption Regulation Prolonged

Q2 | 2023

TABLE OF CONTENTS

| | |
|-----------------------------|---|
| Mergers & Acquisitions..... | 2 |
| Antitrust | 3 |
| Regulatory..... | 4 |
| Intellectual Property..... | 5 |

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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.

Regulatory: EU to Issue New CO2 Rules for New Cars; EU Euro 7 Emission Rules Have Impact on UK; European Parliament to Clear AI Act for Trialogue; Final Proposal for EU In-Vehicle Data Regulation to Be Expected by Fall; Chinese Ministry of Industry and Information Technology to Publish Draft of Vehicle Security Standards; Hangzhou Municipal Government to Issue Rules for Intelligent Connected Vehicles; Beijing to Issue Rules for Autonomous Vehicle Testing

Intellectual Property: Prolific Patent Filers on EVs and Autonomous Vehicles Subject to Large Patent Maintenance Costs; Large Jury Verdict against Ford Motors Thrown Out

MERGERS & ACQUISITIONS

LG Energy Solutions and Hyundai to Form Battery JV

South Korean supplier of batteries LG Energy Solution and car maker Hyundai Motor Group announced their intention to form a 50:50 joint venture in the United States via their US-based subsidiaries LG Energy Solutions Michigan and HMG Global for the manufacture of batteries for electric vehicles in North America.

Toyota Sells Russian Assets to NAMI

Japanese car maker Toyota sold its Russian assets, including a car manufacturing plant in St. Petersburg, to the Russian state-owned Central Scientific Research Automobile and Automotive Engines Institute (NAMI), without retaining a buy-back option.

Volkswagen Sells Russian Assets to Art-Finance

German car manufacturer Volkswagen AG sold its shares in Volkswagen Group Rus LLC, including its domestic subsidiaries and its manufacturing plant in Kaluga, Russia to Russian investor Art-Finance LLC with the support of domestic car dealer Avilon. Volkswagen does not retain a buy-back option.

Michelin Sells Russian Assets to Power International Tires

France-based tire manufacturer Michelin sold its subsidiary Michelin Russia Tyre Manufacturing Company and Camso CIS to Russian tire distributor Power International Tires.

Continental Sells Russian Assets to S8 Capital

Germany-based car parts supplier Continental AG sold its stake in Russia-based tire distributor Continental Tires RUS and its tire manufacturing plant in Kaluga, Russia to Russian holding company S8 Capital.

Punch Group to Acquire Vitesco Technologies Italy

Belgium-based provider of driveline and powertrain solutions Punch Group acquired Vitesco Technologies Italy S.R.L., a subsidiary of Germany-based car parts supplier Vitesco Technologies Group AG.

Punch Group to Acquire ZF Bouthéon

Belgium-based provider of driveline and powertrain solutions Punch Group acquired ZF Bouthéon, a manufacturer of gearboxes for trucks and buses, from German automotive supplier ZF Friedrichshafen AG.

Cummins to Acquire Two Manufacturing Plants from Faurecia

American engine manufacturer Cummins has acquired two manufacturing plants in Columbus, Indiana (USA) and Roermond, the Netherlands as well as their associated activities from France-based automotive supplier Faurecia, part of Forvia Group, for EUR 142m. The manufacturing plants were part of Faurecia's commercial-vehicle exhaust aftertreatment business.

Enginius to Acquire Operative Assets of Clean Logistics

German developer of hydrogen-based commercial trucks ENGINIUS GmbH acquired the operative assets of Clean Logistics SE, an insolvent German manufacturer and retrofitter of hydrogen-based zero-emissions trucks and buses. ENGINIUS is a subsidiary of FAUN Umwelttechnik GmbH & Co. KG, which is part of German automotive supplier and tool manufacturer Kirchoff Group.

Toyota's Hino Motors and Daimler Truck's Mitsubishi Fuso to Merge

Toyota subsidiary Hino Motors and Daimler Truck's Mitsubishi Fuso Truck and Bus announced plans to merge their operations. Daimler and Toyota will invest equally in the new merged entity for the development of hydrogen and "connected/autonomous & automated/shared/electric" technologies.

Geely to Increase Shareholding in Aston Martin

Chinese Zhejiang Geely Holding Group Co., Ltd. announced a new cooperation agreement with Aston Martin Lagonda. According to the agreement, Geely will invest roughly GBP 234m and increase its share in Aston Martin to about 17%, becoming the third-largest shareholder of Aston Martin. Geely will have the right to appoint a non-executive director to the board of Aston Martin and will have an observer seat on the board of directors.

Star Semiconductor to Partner with Deep Blue Automotive

Chinese Star Semiconductor Co., Ltd. announced the establishment of a joint venture with China-based Deep Blue Automotive Technology Co., Ltd. The parties will collaborate to develop vehicle-grade power semiconductor modules for the commercial application of next-generation power semiconductors in the field of electric vehicles (EVs).

ANTITRUST

EU's Rollout of EV Charging Under Watch for Competition Concerns

The European Commission (the Commission) announced that the rollout of charging infrastructure for electric vehicles in Europe is being monitored by antitrust enforcers to avoid bottlenecks. The Commission strives to identify potential competition concerns at the early stages. The Commission acknowledges that EV-charging networks will become vital components of European infrastructure. For a better understanding, the Commission is working on a market study of the market for EV charging in four EU member states. This decision is in line with the emerging interest of European competition law enforcement in charging infrastructure. In April 2023, the Italian Competition Authority opened an inquiry into an Italian EV-charging station supplier over allegations that it was favoring its own charging stations. In May 2023, the French competition regulator queried the main players in the domestic EV-charging sector. The French authority plans to issue an opinion on the market after collecting input from various stakeholders such as charging operators (public and private charging stations), mobility operators, interoperability platforms, local and regional authorities, consumer groups, professional groups or organizations, motorway (sub) concessionary companies and concessionnaires of non-concessioned road networks, representatives of co-owners and co-ownership managers. Simultaneously, the "Competition Analysis of the Electric Vehicle Recharging Market Across the EU27 + the UK," a report commissioned by the EU-Commission, found that the EV-charging sector is developing well. The report mentions the possibility of emerging antitrust concerns but currently sees no major evidence of such.

Truck Maker Settles Truck-Cartel Damages Suit in UK

An Italian truck manufacturer reached settlement agreements with two of its customers in UK truck-cartel damages lawsuits. The damages proceedings follow the European Commission decision finding that truck manufacturers colluded between 1997 and 2011 regarding the sale of medium-sized and heavy trucks. The terms of the settlement were not disclosed.

Spanish Court Compels Truck Cartelists to Compensate Victims

The Spanish Supreme Court ruled that five truck manufacturers that formed a cartel must compensate their customers that were subject to their cartelized practices with 5% of the respective vehicles' purchase price. Thereby the court held that the lack of an expert report by the claimant proving the amount of harm suffered is not the result of its inactivity. Accordingly, it is not detrimental to a claimant's case if expert reports used as evidence do not prove a specific amount of damages suffered.

CMA to Publish Guidance on Post-Brexit Motor Vehicle Block Exemption Order

The CMA issued the Motor Vehicle Block Exemption Order (MVBE) on the application of the UK Competition Act to motor vehicle aftermarket agreements and the assessment of possible vertical restraints resulting thereof. The MVBE became effective as of June 1, 2023. The MVBE will replace the EU Motor Vehicle Block Exemption Regulation, which continued to apply post-Brexit in the United Kingdom until May 31, 2023.

Application of Motor Vehicle Block Exemption Regulation Prolonged

The European Commission has prolonged the Motor Vehicle Block Exemption Regulation (MVBER) by five years after it found that the competitive environment in the motor vehicle markets had not significantly changed since the Commission last evaluated these markets in 2010. Also, the Commission issued an updated version of the supplementary guidelines to MVBER with regard to vehicle data. The existing principles for the provision of the technical information, tools and training necessary for repair and maintenance services were extended to explicitly cover vehicle-generated data, as data generated by vehicle sensors may be an essential input for the provision of repair and maintenance services. The guidelines stress that vehicle suppliers must apply the principle of proportionality when considering whether to withhold inputs such as vehicle-generated data on the basis of potential cybersecurity concerns. Further, the guidelines warn that Article 102 of the Treaty on the Functioning of the European Union may also be applicable in cases where a supplier unilaterally withholds essential inputs such as vehicle-generated data. MVBER will now be applicable until May 31, 2028.

REGULATORY

EU to Issue New CO2 Rules for New Cars

The EU issues the new Regulation (EU) 2023/851 amending its predecessor with regard to strengthening the CO2 emissions performance standards for new passenger cars and new light commercial vehicles. This regulation aims to accelerate the transition by requiring average emissions of new cars to be reduced by 50-55% in the period 2030-2034 and by 100% by 2035.

EU Euro 7 Emission Rules Have Impact on UK

The UK European Scrutiny Committee in the House of Commons warns that the UK automotive industry might have to adapt to new EU emissions rules. The committee emphasizes that these new rules have an impact on UK carmakers even after Brexit, as EU emissions limits are often internationally widely adopted. The UK industry would be forced to introduce the same standards, as the British automotive sector is inherently integrated with the EU market.

European Parliament to Clear AI Act for Trialogue

The European Parliament passed the current draft artificial intelligence regulation (AI Act) which includes stricter requirements than the initial draft. The draft version of the European Commission and the European Parliament together with the common position of the European Council are now subject to negotiations in the trialogue procedure. The AI Act is expected to have a significant impact on developers and providers of AI-based software, including in the automotive sector, as AI systems are able to process vehicle and customer data for autonomous-driving applications and vehicle data in general.

Final Proposal for EU In-Vehicle Data Regulation to Be Expected by Fall

EU Commission officials confirmed that the final proposal of the EU in-vehicle data regulation will be published in fall of 2023. The regulation is aiming to secure data access for repairers and other aftermarket services providers from gatekeeper car makers.

Chinese Ministry of Industry and Information Technology to Publish Draft of Vehicle Security Standards

The Chinese Ministry of Industry and Information Technology issued a draft of the Technical Requirements for Vehicle Information Security Standards in order to seek opinions from stakeholders. The draft proposes the establishment of a vehicle information security management system throughout the lifecycle of a vehicle, including the development, production, and postproduction stages. The system will include necessary processes to ensure full consideration of security risks, to include processes for managing information security and compliance within companies active in the automotive sector, identifying, evaluating, classifying, and handling vehicle information security risks, monitoring, responding, and reporting of cyber-attacks targeting vehicles, and managing the data exchange between enterprises, contract suppliers, service providers, and sub-organizations of car manufacturers.

Hangzhou Municipal Government to Issue Rules for Intelligent Connected Vehicles

The Hangzhou Municipal People's Government released the Management Measures for the Testing and Application of Intelligent Connected Vehicles (the Hangzhou Measures). The Chinese local government thereby amends its initial 2018 intelligent connected vehicles implementation rules. The Hangzhou Measures focus on supporting the testing and application of intelligent connected vehicles in areas such as logistics distribution, short-distance connections, intelligent public transportation, environmental protection operations, and maintenance operations, gradually promoting the admission and road traffic of mass-produced intelligent connected vehicles and cultivating new business forms in the field of intelligent transportation.

Beijing to Issue Rules for Autonomous Vehicle Testing

The Beijing High-Level Autonomous Driving Demonstration Zone Work Office officially released the Beijing Intelligent Connected Vehicle Policy Pilot Zone Data Security Management Measures (Trial) (the Beijing Measures). These are China's first rules to govern autonomous-driving demonstration areas and data security management. The rules set out that enterprises bear the main responsibility for data security under the government guidance. The Beijing Measures aim to clarify data security management for developers of autonomous driving systems and enhance compliance regarding the handling of data.

INTELLECTUAL PROPERTY

Prolific Patent Filers on EVs and Autonomous Vehicles Subject to Large Patent Maintenance Costs

UnitedLex has reported that an analysis of patents in the electric vehicle and autonomous vehicle spaces reveals that 100,000+ issued patents in these areas will generate an annual cost of patent maintenance of more than \$100 million for each of the next five years. By strategically letting some of the less valuable among these patents lapse, automobile manufacturers and OEMs can save 20-30% of these costs. Today, the highest patent lapse rates in the automotive space are in the engine and emissions area, signaling the declining prominence of the internal combustion engine. By contrast, battery and charging and advanced driver-assistance systems (ADAS) have among the lowest lapse rates.

Large Jury Verdict against Ford Motors Thrown Out

After Versata Software, Inc. won a \$104 million jury verdict against Ford Motors for an alleged breach of a license and misappropriation of trade secrets, a federal judge in Detroit has thrown out the verdict. The decision is based on a failure of evidence to support the damages figures for both breach of contract and trade secret misappropriation. Accordingly, the verdict was found too speculative. In its place, US District Judge Matthew Leitman awarded Versata \$3 for breach of contract. The 51-page decision provides a roadmap on the types of evidence that should be introduced to support such claims.

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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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