

AUTOMOTIVE

Welcome to the 15th edition of our newsletter on developments in the automotive industry published by Morgan Lewis's automotive 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*, which covers the first quarter of 2018, touches on matters relating to self-driving cars, proposed regulations for diesel engine vehicles, and other developments in the global automotive markets. Find back issues of *Morgan Lewis AUTOMOTIVE* at www.morganlewis.com.

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Regulatory: Beijing regulates road testing for self-driving vehicles; VW reaches settlement with diesel owners in Canada; Polish motorway operator challenges order of EU Commission to repay public funding; German court allows cities to ban diesel-operated cars; China issues 'Key Tasks for Standardization of Intelligent-Connected Vehicles'; Shanghai issues regulations on self-driving car road testing; China unveils policy for new energy vehicle battery recycling; UK kicks off regulatory review to pave way for self-driving cars. The agreements are mainly with Chinese carmakers such as Geely, Changan, and BYD, but also include foreign carmakers such as Kia and the Renault-Nissan Alliance, which includes Mitsubishi.

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MERGERS & ACQUISITIONS

VW cooperates with Aurora to push its self-driving cars

Volkswagen announced a strategic cooperation with US startup Aurora. Aurora was founded by Chis Urmson, Google's long-time automotive expert, and Sterling Anderson, a former manager of Tesla. The cooperation aims to establish a fleet of self-driving electric vehicles to be used in cities.

Ford acquires two tech companies

Ford signed an agreement to acquire Autonomic, a US-based technology company specializing in scale, architecture, and leverage solutions for the transportation industry, and TransLoc, a provider of software platforms to transit agencies, cities, and universities to create more efficient public transit.

China's Didi Chuxing to cooperate with 12 car groups

Chinese ride-hailing group Didi Chuxing signed a partnership agreement with 12 car companies to help them market auto-sharing services and electric vehicles. The agreements are mainly with Chinese carmakers such as Geely, Changan, and BYD, but also include foreign carmakers such as Kia and the Renault-Nissan Alliance, which includes Mitsubishi.

Daimler acquires 25% stake in Car2Go from Europcar

Daimler acquired 25% of the shares in the short-term rental service Car2Go for EUR 70 million (\$85 million) from Europcar. The acquisition is part of Daimler's plans with BMW to merge both automakers' car-sharing services, Car2Go and DriveNow.

Toyota and its parts suppliers co-fund software company

Toyota and two of its main parts suppliers, Aisin Seiki Co. and Denso Corp., announced a venture to produce the software required to operate self-driving cars. The founders have invested \$2.8 million to launch the new company, Toyota Research Institute—Advanced Development, of which Toyota holds 90% of the shares and Aisin Seiki and Denso each hold 5%.

Denso acquires stake in chipmaker Renesas

Japanese supplier Denso bought an additional 4.5% of the shares in chipmaker Renesas Electronics from Innovation Network of Japan, a state-backed fund who owned 50.1% in the chipmaker prior to the transaction, for approximately USD 800 million. Denso is an affiliate and supplier of Toyota and has increasingly invested in self-driving and other new technologies including connected cars.

Daimler acquires French alternative to Uber

German OEM Daimler acquired a majority stake in Chauffeur Privé, a French car-booking startup. Daimler bought more

than 50% of Chauffeur Privé and plans to acquire all of its shares by 2019.

Schaltbau sells Pintsch Bubenzer to Dellner Group and AOC

Traffic engineering company Schaltbau is selling its subsidiary Pintsch Bubenzer to the Swedish Dellner Group and investment company Active Ownership Capital. Like Dellner Brakes, Pintsch Bubenzer manufactures braking systems for industrial and marine use.

Magna invests in Lyft, joins latest automotive driving alliance

Canadian automotive supplier Magna is investing \$200 million in Lyft and is joining an automotive driving alliance that includes General Motors, Ford, and Alphabet, Google's and Waymo's parent company.

Geely acquires stake in Daimler AG for \$9 billion

Chinese automotive company Geely purchased 9.69% of Daimler, valued at approximately \$9 billion, making Geely the largest shareholder of Daimler. In 2010, Geely acquired the Volvo Car Group from US OEM Ford.

Didi Chuxing acquires Brazilian ride-hailing app 99 for \$1 billion

Chinese ride-hailing app Didi Chuxing agreed to acquire control of Brazil's 99, potentially creating a rival to Uber in Latin America's largest economy. The companies did not disclose the stake acquired or its value, but a report by Brazilian newspaper Valor Econômico said the deal valued 99 at \$1 billion. According to the newspaper, investors bought out by Didi include Riverwood Capital, Monashees, Qualcomm Ventures, Tiger Global Management, and Softbank Group.

BMW and Great Wall Motor sign letter of intent

BMW and China's Great Wall Motor Co. Ltd. signed a letter of intent to establish the joint venture to produce electric Mini vehicles in China. BMW and Great Wall will further discuss details of the joint venture and their cooperation model, such as the place of production and the investment scale.

ANTITRUST

Romanian Competition Council imposes fine on Rombat

The Romanian Competition Council imposed a total fine of EUR 731,492 (\$871,998) on Rombat, a motor-vehicle battery maker, and 11 of its distributors for resale price maintenance between 2008 and 2013. All companies cooperated in the investigation and benefited from a 30% fine reduction.

EU Commission fines maritime car carriers, car parts suppliers

In three separate cartel settlements, the European Commission imposed total fines of EUR 546 million (\$672 million) on maritime car carriers, suppliers of spark plugs, and suppliers of braking systems. The EU Commission held that

- Chilean maritime carrier CSAV; the Japanese carriers “K” Line, MOL, and NYK; and Norwegian/Swedish carrier WWL-EUKOR participated in a cartel concerning intercontinental maritime transport of vehicles and imposed a total fine of EUR 395 million (\$486.5 million).
- Bosch, Denso, and NGK participated in a cartel concerning supplies of spark plugs to car manufacturers in the European Economic Area imposing a total fine of EUR 76 million (\$93.6 million) on Bosch and NGK. Denso, as the leniency applicant, received immunity.
- Additionally, the European Commission imposed fines on two cartels regarding braking systems on Bosch (electronic and hydraulic braking systems) and Continental (hydraulic braking system), imposing total fines of EUR 75 million (\$92 million). Continental received immunity with respect to the electronic braking systems cartel while TRW received immunity with respect to hydraulic braking systems.

Philippines clears acquisition deal between Joyson and Takata

The Philippine Competition Commission (PCC) approved Ningbo Joyson Electronic Corp.’s acquisition of substantial assets in Takata Corp. Ningbo Joyson Electronics is a manufacturer of automotive electronics and functional modules for global distribution, with a focus on China. Under the deal, Takata’s assets falling within the proposed transaction will be fully owned by Ningbo Joyson Electronics. The PCC decided there were no product overlaps between the parties in the domestic market (Philippines) and that the deal did not result in substantial lessening of competition in the relevant market.

Knorr-Bremse, Wabtec to settle first “no poach” investigation

Knorr-Bremse AG and Westinghouse Air Brake Technologies Corp. settled allegations by the US Department of Justice (DOJ) that the two companies did not hire each other’s employees, beginning in 2009. This is the first case under the DOJ’s 2016 guidelines stating that “no poach” agreements may constitute a violation of antitrust rules.

REGULATORY

Beijing regulates road testing for self-driving vehicles

The Beijing Municipal Commission of Transport, the Beijing Traffic Management Bureau, and the Beijing Municipal

Commission of Economy and Information Technology jointly issued the Beijing Guidance on Accelerating Road Testing for Self-driving Vehicles and Beijing Implementing Rules for Managing Road Testing for Self-driving Vehicles. The regulations apply to testing autonomous vehicles in Beijing and they are the first regulations of their kind in China.

VW reaches settlement with diesel owners in Canada

Volkswagen agreed to a settlement worth up to \$232 million with about 20,000 owners of 3.0-liter VW, Audi, and Porsche diesel vehicles affected by the automaker’s diesel emissions. VW also agreed to pay a \$200 million civil penalty.

AWSA challenges order of EU Commission to repay public funding

Polish motorway operator Autostrada Wielkopolska (AWSA) appealed the order of the European Commission to repay \$269 million of public funding to the Polish state at the EU’s first-tier court. The European Commission had decided AWSA had been overcompensated for a change in national law on road tolls.

German court allows cities to ban diesel-operated cars

Germany’s Federal Administrative Court ruled that bans on the operation of diesel engine vehicles are allowed as an exception if they are the only measure to comply with the statutory limits of air pollution control and the air preservation plans of the German federal states. The federal states of Baden-Wuerttemberg and North-Rhine Westphalia had issued temporary bans on the operation of diesel engine vehicles in the cities of Stuttgart and Düsseldorf, because the relevant European nitrogen dioxide emissions limit was exceeded in these cities. While the court ruled that the two specific bans were unlawful, it acknowledged that such bans could be an admissible measure with respect to the principle of proportionality under European and German law. The court ruled that German law generally prohibits the federal states to issue bans on the operation of diesel vehicles. According to national law, traffic bans due to emissions performance need to be based on the existing environmental badges (green, yellow, and red stickers) and not solely on the type of fuel used by the vehicle. To ensure the unrestricted effectiveness of European law, it is, however, possible to issue traffic bans on diesel vehicles if they are the only measure available to comply with the nitrogen dioxide emissions limit under European law. In these instances, the national law must not apply if it cannot be interpreted in a manner compliant with European law.

China issues ‘Key Tasks for Standardization of Intelligent-Connected Vehicles’

China’s Ministry of Industry and Information Technology (MIIT) recently issued “Key Tasks for the Standardization of Intelligent-Connected Vehicles” to boost intelligent-connected vehicle (ICV) development in China. The Key

Tasks highlight research and the establishment of key standards in various areas, including advanced driver-assistance systems, autonomous driving testing, auto information security, and the Internet of Vehicles industry. The Key Tasks also state that research on the requirements of ICV communications and high-definition maps for autonomous vehicles and traffic infrastructure should be developed as soon as possible.

Shanghai issues regulations on self-driving car road testing

The Shanghai Municipal Economic Information Commission, Shanghai Municipal Public Security Bureau, and Shanghai Municipal Transportation Commission jointly issued the Shanghai Regulations on Intelligent and Connected Vehicle Road Testing. According to the regulations, only independent legal entities registered in China may apply for a self-driving test. The regulations also require a test applicant to purchase minimum traffic accident insurance of RMB 5 million (\$787,000) or provide an equivalent letter of guarantee for each test vehicle. Under the regulations, the test applicant must also have the relevant capability in technology research and development, manufacturing, or testing of vehicles and components; an assessment program for closed area and road testing; and remote data monitoring platform for test vehicles.

China unveils policy for NEV battery recycling

The MIIT and six other government departments jointly released guidelines for the recycling of new energy vehicle (NEV) batteries to make manufacturers of electric vehicles responsible for setting up facilities to collect and recycle spent batteries. According to the guidelines, NEV battery producers must provide technical information on dismantling their products as well as necessary training to auto makers, while auto makers are encouraged to build maintenance networks so as to better serve NEV owners. Moreover, the MIIT, together with the General Administration of Quality Supervision, Inspection, and Quarantine, will build a unified information tracking platform to strengthen information sharing and the tracing of batteries.

UK kicks off regulatory review to pave the way for self-driving cars

The United Kingdom announced the start of a three-year review by the Law Commission of England and Wales and the Scottish Law Commission to examine any legal obstacles to the widespread introduction of self-driving vehicles and highlight the need for regulatory reforms to ensure that the UK remains one of the best places in the world to develop, test, and drive self-driving vehicles. The work will be crucial in examining how current driving laws—designed with traditional motoring in mind—can support the next generation of vehicles.

INTELLECTUAL PROPERTY

Honda sues Great Wall Motor for patent infringement

Honda Motor Company Limited filed a lawsuit in the Beijing intellectual property court against Chinese automaker Great Wall Motor for the infringement of two patents. The lawsuit alleges that an upgraded black H6 infringed a Honda patent for vehicle rear-door structure and a patent for vehicle decoration-mounting structure. Honda asked Great Wall to stop the infringement and also asked for compensation of RMB 22.1 million (\$3.5 million) in losses.

China focuses on electric vehicle standardization

China, in promoting a shift from fossil fuel to electric vehicles, announced standardization efforts that will focus on recharging, battery design, and fuel consumption. China also announced it will promote its own standards and benchmarks for electric and plug-in electric vehicles overseas, taking advantage of economies of scale to become a global leader in standardization. Some 777,000 electric vehicles were sold in China in 2017, a jump of 53% on the year and the most sold in any one country.

France Brevets sells 150 automotive, autonomous vehicle patents

Seattle-based Tangible IP LLC, a patent brokerage firm, announced that it had brokered the sale of 150 patents from France Brevets covering LIDAR, RADAR, and other detection-related assets. The portfolio had originally been developed by Thales, a France-based defense contractor. The buyer is reported to be Didi Chuxing, a China-based ride-sharing service, which also announced ride-sharing services in Mexico.

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OUR AUTOMOTIVE TEAM

Morgan Lewis's automotive 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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