

# AUTOMOTIVE

Welcome to the 16<sup>th</sup> 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 second quarter of 2018, touches on matters relating to self-driving cars, emission rules, and other developments in the global automotive markets. All issues of *Morgan Lewis AUTOMOTIVE* are available at [www.morganlewis.com](http://www.morganlewis.com).

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**Mergers & Acquisitions:** BP invests in ultra-fast-charging batteries and other EV technologies; Daimler acquires stake in ride-on-demand app Taxify; Alphabet's self-driving car unit and Fiat Chrysler expand partnership; Volvo funds sensor startup as part of self-driving push; Toyota invests in ride-hailing company Grab; Porsche acquires stake in Croatian tech/electric sports car business; Audi, Hyundai agree on cell vehicle collaboration; Chinese auto parts supplier Ningbo Jifen launches bid for German rival; Magna, BAIC Group form electric car joint venture; Brilliance Auto, BAIC Group cooperate on new energy vehicles.

**Antitrust:** Maruyasu Industries pleads guilty to US antitrust violations; Dutch auto repair shops may set their own prices; Brazil issues cease-and-desist agreements in spare parts probe; Latvia confirms accountability of parents for violations of subsidiaries.

**Regulatory:** In a first for Germany, Hamburg bans older diesel vehicles; California leads challenge to US vehicle emissions rules; EU motors ahead with rules for self-driving cars; Germany paves way for flying car tests; former Roadrunner Transportation executives charged with fraud; China issues new negative list, further opens market to foreign investors.

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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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## MERGERS & ACQUISITIONS

### **BP invests in ultra-fast-charging batteries and other EV technologies**

BP has invested 17.1 million euros (\$20 million) in StoreDot, an Israeli developer of ultra-fast-charging batteries, adding to a series of recent deals aimed at competing in electric vehicle (EV) technology. In addition to investing in StoreDot, BP has agreed to a partnership with NIO Capital, a Chinese private equity group, to invest in “advanced mobility” technology in China. This followed its January acquisition of a stake in FreeWire, a US company developing rapid-charging infrastructure for EVs.

### **Daimler acquires stake in ride-on-demand app Taxify**

Taxify, a European competitor to Uber, has raised 151.1 million euros (\$175 million) in a funding round that included participants Korelya Capital, a French venture capital fund; Taavet Hinrikus, the co-founder of UK-based money transfer startup TransferWise; and existing investor Didi Chuxing, a Chinese ride-hailing firm. The main investor was German OEM Daimler, which also owns MyTaxi. Under the latest deal, Daimler representatives will join Taxify’s board.

### **Alphabet’s self-driving car unit and Fiat Chrysler expand partnership**

Waymo, the autonomous vehicle unit of Alphabet, has agreed to acquire 62,000 minivans from Fiat Chrysler. Delivery is expected to begin in late 2018. The two companies began their partnership in May 2016, in which Fiat Chrysler has delivered 600 Chrysler Pacifica Hybrid minivans to Waymo. The enhanced partnership pushes Alphabet’s ambitions to launch a self-driving taxi service.

### **Volvo funds sensor startup as part of self-driving push**

Volvo Cars has acquired a stake in the Silicon Valley startup Luminar, developing a key component of autonomous driving technology as the OEM pushes to make a third of its vehicles self-driving by 2025. Luminar Technologies produces laser-based sensors known as Lidar that allow autonomous cars to “see” the world around them. Volvo’s investment is the first by Volvo’s technology fund, which launched this year. The transaction includes a partnership to expand testing of Luminar’s sensors in Volvo’s driverless cars.

### **Toyota invests in ride-hailing company Grab**

Grab has raised 848.7 million euros (\$1 billion) from Toyota in a new round of fundraising. The ride-hailing company values at 8.49 billion euros (\$10 billion) following its recent acquisition of Uber’s Southeast Asian business. The latest deal is the biggest investment by Toyota in the ride-hailing sector. Grab raised 1.8 billion euros (\$2 billion) last year from Chinese ride-hailing company Didi Chuxing and SoftBank. To date, it has raised approximately 4.2 billion

euros (\$5 billion). Under the latest investment deal, Toyota announced it would appoint one executive to Grab’s board of directors and send a dedicated Toyota team member to the car-hailing company as an executive officer.

### **Porsche acquires stake in Croatian tech/electric sports car business**

Porsche has acquired 10% of the shares of Croatia-based Rimac Automobili, which manufactures “electric super sports cars” and develops and produces components for electric vehicles, such as electric powertrain and high-voltage battery technology.

### **Audi, Hyundai agree on cell vehicle collaboration**

Audi and Hyundai have entered into a multiyear patent cross-licensing agreement covering a broad range of fuel-cell electric vehicle components and technologies. According to the agreement, Audi and other Volkswagen brands gain access to parts that are based on Hyundai’s expertise accumulated from the development of the ix35 Fuel Cell utility and its successor, the Nexu. Hyundai expects its cooperation with Audi will increase demand for vehicles such as its ix35.

### **Chinese auto parts supplier Ningbo Jifeng launches bid for German rival**

The Wang family, majority owner of Chinese automotive supplier Ningbo Jifeng, has submitted a formal bid for German rival Grammer. The Shanghai-listed company already holds more than 25% of Grammer’s shares. Grammer and Ningbo Jifeng are both active in the production of automotive armrests, headrests, and headrest rods.

### **Magna, BAIC Group form electric car joint venture**

Magna entered into a strategic cooperation agreement with Beijing Electric Vehicle Co. Ltd. (BAIC Group) to set up a joint venture for the engineering and manufacture of electric vehicles. The new joint venture will be located in Zhenjiang, Jiangsu Province. In addition, BAIC and Magna will update BAIC’s existing plant in Zhenjiang; the first vehicle production is planned for 2020.

### **Brilliance Auto, BAIC Group cooperate on new energy vehicles**

Brilliance Auto and BAIC Group have entered into a strategic cooperation agreement concerning the new energy vehicle industry. The two companies will cooperate on new energy vehicles for use as government cars, taxis, private cars, and express logistics vehicles. The two companies will also explore setting up a joint venture for further cooperation.

## ANTITRUST

### **Maruyasu Industries pleads guilty to US antitrust violations**

Maruyasu Industries Co. Ltd., an automotive parts manufacturer headquartered in Japan, has pleaded guilty for its role in a criminal conspiracy to fix prices, rig bids, and allocate customers for automotive steel tubes incorporated into vehicles sold in the United States and elsewhere. The manufacturer was sentenced to pay a 10.3 million euro (\$12 million) criminal fine by the US District Court for the Southern District of Ohio. The company's steel tubes are used in fuel distribution, braking, and other chassis and engine systems for light vehicles.

### **Dutch auto repair shops may set their own prices**

The Netherlands Authority for Consumers and Markets has announced that auto repair shops are allowed to deviate from the recommended retail prices for maintenance services suggested by importers. Auto repair shops and consumers would often incorrectly assume the recommended prices were mandatory. In the authority's view, because repair shops hardly take advantage of the opportunities to compete with one another, consumers may be paying more for services.

### **Brazil issues cease-and-desist agreements in spare parts probe**

The Administrative Council for Economic Defense of Brazil (CADE) has issued two cease-and-desist agreements in administrative proceedings that investigate alleged cartel practices in the automotive spare parts market against payment of 2.8 million reais (\$712,000). One agreement accused TRW Automotive of alleged collusive practices in the production and selling of valves for engines, valve guides, and valve seats in Brazil and Argentina, thus affecting the independent national market for spare parts. The other related to Leoni Wiring Systems Franc S.A.S. with respect to an alleged cartel in the markets of car wire harnesses and electric and electronic components, which include electronic control units, junction boxes, and automotive dashboards and displays (systems with ABS sensor cables, high-voltage cables, components for electric and hybrid vehicles, antennae, and connectors).

### **Latvia confirms accountability of parents for violations of subsidiaries**

The Latvian Supreme Court has ruled in a case involving car-importing companies Moller Auto Baltic AS, Harald A. Moller AS, and Heinz Wilke Autohandel GmbH that parent companies may be responsible for competition infringements of subsidiary companies, thereby confirming well-established European case law precedents. As a consequence, the Latvian Competition Council will be authorized to apply penalties to parent companies in situations where competition violations are committed by their subsidiaries.

## REGULATORY

### **In a first for Germany, Hamburg bans older diesel vehicles**

Hamburg has become Germany's first city to implement a ban on older diesel trucks and cars following a key ruling by the German Federal Administrative Court (see ML Automotive Q1/2018) allowing the ban of diesel vehicles from polluted areas. According to the German Federal Motor Transport Authority, of the 264,406 diesel cars registered in Hamburg at the start of the year, only 96,356 comply with the Euro 6 diesel standard, the latest generation of diesel technology. The remaining 168,000 are Euro 5, Euro 4, or lower and, as a result, would be affected by the ban, as would other German and foreign diesel cars that commute through the city. Also, the Regional Administrative Court of Aachen cleared the way for the city of Aachen to ban diesel cars as of 2019 unless other measures to reduce pollution are taken.

### **California leads challenge to US vehicle emissions rules**

Led by California, 18 US states have filed a lawsuit against the federal government seeking to preserve fuel economy and emissions regulations for cars that were agreed upon under the previous administration. The US Environmental Protection Agency had announced that it sought to abandon the increasingly demanding greenhouse gas emissions standards for vehicles that were planned to be implemented from 2022-2025.

### **EU motors ahead with rules for self-driving cars**

EU Transport Commissioner Violeta Bulc has announced a plan to draft regulations to govern self-driving cars in an effort to catch up with respective developments in China and the United States. Such regulations will be part of an overall effort by the EU "to make Europe a world leader for autonomous mobility systems," including an investment of approximately 450 million euros (\$526.5 million) into road and telecoms networks needed to support driverless cars.

### **Germany paves way for flying car tests**

The German government has signed a letter of intent with Audi and partner Airbus that allows testing air taxis in and around Audi's hometown of Ingolstadt to help reduce traffic congestion on city roads.

### **Former Roadrunner Transportation executives charged with fraud**

Two former executives of Roadrunner Transportation Systems Inc. have been charged for their alleged participation in an accounting and securities fraud scheme. Roadrunner is a publicly traded transportation and trucking company based in Downers Grove, Illinois. The executives are charged with misleading shareholders, regulators, and the investing public, resulting in a loss of more than

\$245 million. The indictment, filed in the US District Court for the Eastern District of Wisconsin, contains one count of conspiracy to make false statements to a public company's accountants and to falsify a public company's books, records, and accounts; one count of conspiracy to commit securities fraud and wire fraud; three counts of securities fraud; and four counts of wire fraud.

### **China issues new negative list, further opens market to foreign investors**

China's National Development and Reform Commission and Ministry of Commerce has published the 2018 version of the Special Management Measures for the Market Entry of Foreign Investment (Negative List). According to the list, China has further opened its auto market to foreign investors by removing the foreign shareholding limit for special and new energy vehicles. The foreign shareholding limits for commercial vehicles and passenger vehicles will be removed in 2020 and 2022, respectively. In addition, the restriction that there be no more than two joint ventures for passenger vehicles will be abolished after five years.

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## **INTELLECTUAL PROPERTY**

### **United States imposes IP-related tariffs on Chinese auto imports**

The US government imposed tariffs on \$34 billion worth of Chinese goods effective July 6, indicating that such measures are defensive and an attempt to stop China from forcing foreign companies to transfer technology to joint venture partners as well as deter intellectual property theft. Equipment covered by the new 25% tariffs includes cars, vans, buses, and certain trucks and vehicle parts from China.

### **Broadcom brings infotainment chip technology patent claims to ITC**

Broadcom has brought an action at the US International Trade Commission (ITC) to investigate claims that a group of Japanese automakers and tech companies, including Toyota, Panasonic, and Denso Ten, are infringing six patents on infotainment chip technology. The claims relate to the sale of rear-seat information/entertainment units. The ITC has yet to decide whether to investigate. ITC investigations are fast procedures whereby complainants bring cases seeking to have imports banned from importation into the United States. The ITC cannot award monetary damages.

# Morgan Lewis

## 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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