

AUTOMOTIVE & MOBILITY

Welcome to the 20th edition of our newsletter on developments in the automotive industry published by Morgan Lewis's automotive & 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 2019, touches on matters relating to electric vehicles, emission rules, and other developments in the global automotive markets. All issues of *Morgan Lewis AUTOMOTIVE & MOBILITY* are available at www.morganlewis.com.

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Hoses; China National Machinery Import and Export Corporation and Jianghuai to Acquire Allur; UCAR INC. to Acquire Beijing Borgward.

Antitrust: Russian Authority Prohibits Joint Venture Between Hino Motors and Traton; Public Consultation for Review of Vertical Block Exemption Regulation; Chinese Authority Imposed Fines Against Vertical Monopoly Agreements.

Regulatory: European Court of Justice Decides on Method to Measure Air Quality; European Commission Approves German State Aid Scheme for Diesel Retrofitting; European Court of Justice Decides Proposed German Passenger Vehicle Tolling to Violate EU Law; Market Admission Rules for Road Motor Vehicle Manufacturer and Products Come into Effect in China; Administrative Measures for Recycling of Scrapped Motor Vehicles Effective on June 1, 2019 in China.

Intellectual Property: Car Makers and Tech Infrastructure Providers Propose Conflicting Standard Essential Patent (SEP) Guidelines in Europe; Mexico Ratifies the United States-Mexico-Canada Agreement (USMCA); Bipartisan, Bicameral Proposed Update to Patent Eligibility.

MERGERS & ACQUISITIONS

Harbin Dongan Auto Engine to Acquire Stake in Harbin Dongan Automotive Engine Manufacturing

Harbin Dongan Auto Engine has decided to exercise its option to acquire a further stake of at least 19.64% in its China-based joint venture Harbin Dongan Automotive Engine Manufacturing for \$22.65 million. The Chinese auto parts manufacturer already owns a 36% stake in the joint venture, which is active in the manufacturing of automotive engines, automatic transmissions and manual transmissions. Other shareholders include Mitsubishi Corporation and Malaysian-China Investment Holdings.

Aichi Automobile to Invest in Jiangling Motor Holding

Aichi Automobile, a Chinese electric vehicle startup, has announced that it will invest CNY 1.75 billion (\$253 million) in car manufacturer Jiangling Motor Holding, a subsidiary of Chinese automaker Chongqing Changan, via a capital increase in exchange for a 50% stake. After completion of the deal, Chongqing Changan's stake in Jiangling Motor will decrease from 50% to 25%.

Deutz and Sany to Enter into Engine Manufacturing Joint Venture

Deutz, a German manufacturer of drive systems, has announced that it will enter into a joint venture with Chinese construction equipment maker Sany. The newly formed joint

venture in which Deutz will hold a majority stake of 51% is set to take over the production of Sany's engine portfolio. Reportedly, Deutz will invest \$40 million-\$60 million in the joint venture.

Evergrande Health Industry Acquires Protean Holdings

Evergrande Health Industry Group announced that its Swedish subsidiary National Electric Vehicle Sweden AB (NEVS), a manufacturer of electric vehicles, has acquired US-based Protean Holdings in order to merge it with and into NEVS subsidiary Virtue Surge Limited. Protean Holdings' products include in-wheel electric motor technology for passenger cars, diagnostics, automotive-standard communications and advanced vehicle dynamics functions.

Hutchinson and Mann+Hummel to Establish Joint Venture

French company Hutchinson, a subsidiary of French Total SA, which is active in thermoplastic elastomer and rubber solutions for the aerospace, automotive, defense, oil & gas and railroad markets, has acquired a majority stake from the German filtration systems manufacturer Mann+Hummel in Thermal Control Systems Automotive in order to form a joint venture. The joint venture will be based in Laval, France and active in the development of thermal management and battery cooling systems.

NFI Group Acquires Alexander Dennis

Canadian bus manufacturer NFI Group announced an agreement to acquire Alexander Dennis, a bus manufacturer based in Scotland. The acquisition is valued at \$400 million on a cash-free, debt-free basis.

Moovel to Acquire Validated

Moovel (REACH NOW), a subsidiary of German car manufacturers Daimler AG and BMW Group that develops transportation and tracking apps, announced an agreement to acquire Validated. The US company, based in Seattle, provides a technology platform that allows local businesses such as retailers and restaurants to link their offerings to shared mobility services.

Genuine Parts to Acquire Remaining Stake in Inenco Group

Genuine Parts Company, a distributor of automotive parts based in Atlanta, announced an agreement to acquire a further 65% stake in Inenco Group. Genuine Parts already holds a 35% stake in the Australian distributor of industrial parts such as power transmissions, fasteners, driveshafts and various maintenance products.

PetroChoice to Acquire Superior Petroleum

Petroleum lubricant distribution company PetroChoice, based in Riddlesburg, Pennsylvania, has acquired Superior

Petroleum, based in Crown Point, Indiana. Both companies are active in the distribution of oils, greases and other lubricants to the automotive and manufacturing industries. PetroChoice is backed by US private equity firm Golden Gate Capital.

WE Solutions to Acquire Stake in Supercar Manufacturer

WE Solutions, an electric vehicle maker from Hong Kong, announced that it has signed an agreement to acquire 40% of Sino Partner Global Limited from Ideal Team Ventures Limited. Sino Partner Global Limited is active in the design, development, manufacture and sale of high-performance supercars under the brand Apollo (formerly Gumpert). The transaction values up to HKD 480 million (\$61 million).

Michelin to Acquire Masternaut

French tire manufacturer Michelin announced an agreement to acquire 100% of Masternaut from private equity investors Summit Partners and FLEETCOR Technologies. Masternaut is a provider of internet-based vehicle telematics software solutions headquartered in the United Kingdom.

Dana Electric to Acquire Stake in Prestolite Electric

Dana Electric Holdings, a subsidiary of Ohio-based Dana Incorporated and supplier of drivetrain, sealing and thermal management solutions in the United States, has signed an agreement to acquire a 50% stake in Prestolite Electric, a motor maker based in Beijing, from Chinese electrical equipment maker Zhongshan Broad-Ocean Motor. The transaction is valued at \$47.8 million.

Meritor to Acquire AxleTech

Meritor, Inc., a supplier of drivetrain, mobility, braking and aftermarket solutions for commercial vehicle and industrial markets, announced an agreement with an affiliate of investment firm The Carlyle Group under which Meritor will purchase AxleTech for approximately \$175 million. AxleTech manufactures and sells braking solutions and drivetrain components for on- and off-highway heavy-duty commercial vehicles. Both Meritor and AxleTech are located in Troy, Michigan.

Kasai Kogyo to Acquire Röchling Production Plant

Kasai Kogyo Co., Ltd., a Japan-based automotive supplier and auto parts maker, announced an agreement to acquire the operations of German plastics engineering company Röchling Automotive SE & Co. KG, located in Wolfsburg-Hattorf, Germany. The plant in Wolfsburg-Hattorf produces door and side panels for the automotive industry. Röchling Automotive SE & Co. KG is part of the Röchling Group, based in Mannheim, Germany.

Schaeffler to Acquire XTRONIC

German automotive and industrial supplier Schaeffler AG, through its subsidiary Schaeffler Technologies AG & Co. KG, has announced an agreement to acquire XTRONIC GmbH, a developer and supplier of customized software and electronics solutions for the automotive industry headquartered in Böblingen, Germany.

Yulon Nissan Motor Sells Three Shareholdings to Guangzhou Aeolus Automobile

Taiwanese car developer Yulon Nissan Motor has announced the sale of its shares in three China-based companies to Chinese car part manufacturer Guangzhou Aeolus Automobile. The deal comprises a 49% stake in Dong Feng Yulon Used Cars (active in the purchase, rental and selling of used cars), a 45% stake in Shenzhen Lan You Technology (active in software developing and related consulting), and a 33.12% stake in Aeolus Automobile (active in automotive consulting). The total deal value amounts to \$41.24 million.

Zhejiang Fenglong Electric to Acquire Majority Stake in Tuson Precision Machinery

Chinese automotive components maker Zhejiang Fenglong Electric announced an agreement to acquire a 51% stake in Tuson Precision Machinery (Jiaxing) from Illinois-based auto components manufacturer Tuson Corporation for \$10.97 million. Tuson Precision Machinery (Jiaxing) is primarily active in the manufacture and distribution of electric motors, hydraulic valves and pumps, and gears.

Geely to Acquire Yiwu Geely Powertrain

Global automotive group Geely Automobile Holdings, Ltd., headquartered in Hangzhou, China, announced an agreement to acquire China-based Yiwu Geely Powertrain Company Limited from Zhejiang Geely Automobile Company for \$48 million. Yiwu Geely Powertrain is active in technology research as well as the development, production and sale of engines and related components in China.

CETITEC to Be Acquired by Porsche

German sports car manufacturer Dr. Ing. h.c. F. Porsche AG, a subsidiary of Volkswagen AG and Porsche SE, announced an agreement to acquire a controlling interest in Germany-based software developer CETITEC GmbH on undisclosed terms. CETITEC is active in the development of firmware products and related configuration tools such as automotive middleware framework and automotive communication systems.

Allison Transmission to Acquire Vantage Power and AxleTech's EV Systems Division

Indianapolis, Indiana-based Allison Transmission Holdings, a provider of commercial duty fully automatic transmissions, announced an agreement to acquire Vantage Power and AxleTech's electric vehicle systems division. Vantage Power is a London-based manufacturer of electric hybrid engines for buses, whereas AxleTech, headquartered in Troy, Michigan, provides braking solutions and drivetrain components for on- and off- highway heavy-duty commercial vehicles.

Hörmann Group to Acquire KLATT Fördertechnik

Hörmann Group, a German automotive and industrial components company, announced an agreement to acquire Austria-based KLATT Fördertechnik GmbH through its subsidiary Hörmann Logistik GmbH. KLATT is a manufacturer of conveyor systems and builder of high-bay and automated small-parts warehouses.

Hamaton Automotive Technology to Acquire Westfalia Metal Hoses

China-based Hamaton Automotive Technology, a manufacturer and seller of tire valves and related auto components, signed an agreement to acquire German Westfalia Metal Hoses Group from Heitkamp & Thumann for \$48.74 million. Westfalia Metal Hoses Group is a supplier of battery components and elements *inter alia* for the automotive industry.

China National Machinery Import and Export Corporation and Jianghuai to Acquire Allur

China National Machinery Import and Export Corporation (CNMIEC) and Jianghuai Automobile jointly announced the execution of an agreement to acquire a major stake of Allur Group. Allur is the largest automobile industry group in Kazakhstan. After the acquisition, CNMIEC and Jianghuai will become the controlling shareholders of Allur with 51% of the shares.

UCAR INC. to Acquire Beijing Borgward

The shareholders' meeting of UCAR INC. approved the company's proposal to acquire a 67% stake of Beijing Borgward from Changsheng Xingye (Xiamen) Enterprise Management Consulting Co., Ltd. at a price of CNY 41.0911 billion (\$6.12 billion). Beijing Borgward has a dual qualification production license for traditional fuel vehicles and new energy vehicles, holds a vehicle and engine factory, and owns research and development centers in China, Germany and America.

ANTITRUST

Russian Authority Prohibits Joint Venture Between Hino Motors and Traton

Russia's Federal Antimonopoly Service has prohibited the proposed formation of a procurement joint venture between truck manufacturers Hino Motors Ltd, a subsidiary of Toyota Motor Corp., and Traton AG, which is part of the Volkswagen Group. The procurement joint venture was proposed as one part of a strategic partnership announced in September 2018.

Public Consultation for Review of Vertical Block Exemption Regulation

The European Commission is currently in the process of reviewing the Commission Regulation (EU) No 330/2010, which exempts certain vertical agreements and practices from the European Union's general competition rules (Vertical Block Exemption Regulation). The Vertical Block Exemption Regulation is set to expire on May 31, 2022. After the initial evaluation period, which ended in December 2018, the European Commission conducted a public consultation until May 25, 2019. The entire review process is planned to end in the second quarter of 2020.

Chinese Authority Imposed Fines Against Vertical Monopoly Agreements

The China State Administration for Market Regulation (SAMR) imposed a total fine of CNY 162.8 million (\$23.63 million) on Changan Ford Automobile Co., Ltd. (Changan Ford) for its alleged vertical monopoly agreements. The SAMR found that since 2013, Changan Ford has restricted the minimum resale price for vehicles sold by its downstream distributors through the formulation of price list, execution of price self-regulation agreements, and limiting of the minimum sales price in vehicle exhibition and the online minimum price.

REGULATORY

European Court of Justice Decides on Method to Measure Air Quality

The Court of Justice of the European Union (ECJ) has decided on questions of how stringently EU law should apply to air quality measurements. After *inter alia* an environmental group sued the local authorities in Brussels, Belgium over its local air quality scheme, the competent court has referred the case to the ECJ.

In the referral procedure, the competent court asked the ECJ (i) about the stationing of air quality sampling points, which measure toxic substances in the air and (ii) if results from several sampling stations can be averaged to determine a broader region's compliance with air quality standards.

The ECJ held that sampling stations should be set up in areas with the highest pollution levels. Further, air quality compliance should be assessed on the results from the individual sampling stations but not on the area's average results. Irrespective of an area's overall air quality, it will be already deemed a violation of EU air quality standards if one particular station significantly exceeds the maximum level of fine dust emissions, nitrogen dioxide or other pollutants referred to in the European Union's Air Quality and Clean Air Directive.

European Commission Approves German State Aid Scheme for Diesel Retrofitting

The European Commission cleared a set of state aid measures proposed by Germany to support the retrofitting of municipal and commercial diesel vehicles with an overall budget of around €431 million (\$483 million). According to the European Commission, the measures, which are a part of the German Federal Government's "Immediate Clean Air Program for 2017-2020" (Sofortprogramm Saubere Luft 2017-2020), would comply with EU State Aid provisions contributing to the European Union's environmental goals without unduly distorting competition. It is estimated that over one million heavy and light municipal and commercial vehicles equipped with diesel engines will benefit from the program.

European Court of Justice Decides Proposed German Passenger Vehicle Tolling to Violate EU Law

The ECJ found the toll for passenger vehicles using the federal highway network (Autobahn) as proposed by German lawmakers to be discriminatory and in breach of the principles of the free movement of goods and of the freedom to provide services — two key principles of the European Union.

Germany had intended to introduce a tolling system for passenger cars using federal highways. The legal framework drafted by German lawmakers intended that every user of the Autobahn had to pay a toll. However, the owners of cars registered in Germany would have received a full de facto compensation via an envisaged tax reduction. Non-German registered car users would not have received any compensation.

Austria, having considered the proposed tolling system to be in violation of EU law, brought the case before the ECJ in an infringement proceeding under the Treaty on the Functioning of the European Union. While Austria was supported by The Netherlands, Germany was supported by Denmark.

Market Admission Rules for Road Motor Vehicle Manufacturer and Products Come into Effect in China

Administrative Measures on Admission of Road Motor Vehicle Manufacturing Enterprises and Products (Admission Measures), which was promulgated by the Ministry of Industry and Information Technology (MIIT) on October 24, 2018, became effective June 1, 2019. On the same day, two implementing rules respectively regulating manufacturer admission and product admission also took effect, namely, the Requirements for Admission Review of Road Motor Vehicle Manufacturing Enterprises and the Requirements for Admission Review of Road Motor Vehicle Products.

The Admission Measures introduced a series of changes to reform the regulatory regime for the market admission of automobile manufacturers as well as the admission of motor vehicle products. The notable changes are as follows:

- The previous 19 subcategories of road motor vehicles are now reclassified into six categories. If a company obtains the manufacturer admission for motor vehicles in a certain category, it can manufacture any vehicles (even of different subcategories) within the same category without additional approval from MIIT.
- The Admission Measures confirmed the legitimacy of the contract manufacture model for automotive vehicle production. Companies with new technologies may now partner with existing automotive vehicle companies to manufacture new motor vehicles, saving capital investment in vehicle production facilities.
- The Admission Measures allow an auto manufacturer to apply for waivers of certain conditions required for manufacturer admission or product admission that cannot be met because of use of any new technology, new method, or new materials. This will be evaluated on a case-by-case basis.

Administrative Measures for Recycling of Scrapped Motor Vehicles Effective on June 1, 2019 in China

The State Council of China released the Administrative Measures for the Recycling of Scrapped Motor Vehicles (the Recycling Measures) on April 22, 2019, which took effect on June 1, 2019. The Recycling Measures lifted restrictions on the selling of a scrapped vehicle's engine, gearbox, front and rear axle and frame to eligible automobile remanufacturing enterprises at market prices, which were previously only allowed to be sold as scrap metal to iron works. Thus, the Recycling Measures are expected to stimulate the consumption of new and second-hand cars.

The Recycling Measures canceled the preincorporation license requirement for the recycling companies and abolished the quota control on the number of recycling companies. The Recycling Measures kept the recycling business qualification system, but simplified the qualification requirements and

deleted the previous requirements on registered capital, the area of its dismantling site, recycling and dismantling capacity, etc. The Recycling Measures instead generally urge enterprises to comply with environmental protection requirements in terms of storage, equipment, facilities and operation specifications regarding the recycling of scrapped motor vehicles.

INTELLECTUAL PROPERTY

Car Makers and Tech Infrastructure Providers Propose Conflicting Standard Essential Patent (SEP) Guidelines in Europe

Dueling guidelines for when and how SEPs should be enforced in Europe have been proposed that will affect how technology is licensed for the connected car and other innovations. Major SEP infrastructure licensors, including Cuirassier, Dolby Laboratories Inc., EnergySquare, Ericsson, Fractus, France Brevets, Ikusi (Velatia), InterDigital, Knowence, Koninklijke Philips N.V., Mitsubishi, Nokia, Orange, OSTIUM Group, Panasonic R&D Center Germany GmbH, Qualcomm, Vitrover submitted proposed guidelines and principles known as CWA1. In June, under the auspices of a CEN (the European Committee for Standardization) CENELEC (the European Committee for Electrotechnical Standardization) Workshop Agreement (CWA), with support of Deutsche Institut für Normung, 56 organizations, including large and small European, American and international companies and industry associations, submitted opposing policy proposals for evaluating SEP licensing practices, known as CWA2. Among the submitting organizations are automotive players including BMW, Renault, Honda, Volkswagen, Daimler, Ford, and Toyota in addition to household names in electronics such as Apple, Cisco, Juniper, Hitachi, HP, and Lenovo. While there is support for both sets of proposals, stark differences reflect broad areas of disagreement that will play out in the rollout of 5G technology, connected cars, the internet of things and other areas.

Mexico Ratifies the United States-Mexico-Canada Agreement (USMCA)

Mexico has become the first to ratify the USMCA. The USMCA includes many IP provisions relevant to the automotive industry, including robust enforcement of trade secrets and enhanced protections for trademarks associated with established brands. It also includes provisions to protect against circumvention of technological measures to protect software and systems such as those found in modern cars that may be subject to hacking.

Bipartisan, Bicameral Proposed Update to Patent Eligibility

A bipartisan, bicameral draft bill was proposed on May 22 by a group in Congress that would reform Section 101 of the United States Patent Act to eliminate judicially created exceptions to patent eligibility under Section 101 and to require the interpretation of Section 101 in favor of patent eligibility. Many automotive innovations directed to computer software are potentially adversely affected by recent court decisions under Section 101, both substantively and procedurally in the event of enforcement. The legislation would nullify the impact of the U.S. Supreme Court's decision in *Alice Corp. v. CLS Bank International*, 573 U.S. 208 and many cases since, that have decided to invalidate patents using *Alice* based approaches, on request, in enforcement proceedings because they are "abstract" under the courts' interpretation of Section 101.

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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