

AUTOMOTIVE & MOBILITY

Welcome to the 21st 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 third quarter of 2019, touches on significant acquisitions and investments, patent litigation and regulatory measures relating to antitrust, and other developments in the automotive markets. All issues of *Morgan Lewis AUTOMOTIVE & MOBILITY* are available at www.morganlewis.com.

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MERGERS & ACQUISITIONS

Blackstone to Acquire Stake in Sona BLW

US private equity firm Blackstone has acquired a 33% stake in Indian differential gear maker Sona BLW Precision Forgings. It is reported that Blackstone plans to merge its recently acquired India-based auto components firm, Comstar Automotive Technology, with Sona BLW.

Toyota to Acquire Stake in Suzuki

Japanese automakers Toyota Motor Corporation and Suzuki Motor Corporation entered into a capital alliance in which Toyota agreed to acquire a 4.95 % stake in Suzuki via a third-party allotment for \$908 million.

Toray to Acquire Alva Sweden

Toray Industries Inc., a Tokyo-based company engaged in the manufacturing of industrial products, has agreed to purchase all of the shares of Alva Sweden AB, including its Portuguese and Tunisian subsidiaries (Alva) from AB Anders Westerlind for a reported \$37.8 million. Alva is a retailer of automotive parts and manufacturer of cushions for automotive airbag systems based in Sweden.

WE Solutions to Acquire More Shares of Sino Partner Global

WE Solutions Ltd., a manufacturer of electric vehicles, announced that it has signed a supplemental agreement to its May 2019 agreement with Ideal Team Ventures Limited, allowing it to increase its shareholding interest in Sino Partner Global Limited from approximately 40% to 86.06%. The transaction values up to HKD 1.033 billion (\$132 million). Sino Partner Global Limited is active in the design, development, manufacture, and sale of high-performance cars under the Apollo brand.

Pacific Equity Partners to Acquire Horizon Global's Asia-Pacific Unit

Horizon Global Corporation, the Michigan-based manufacturer of towing and trailering equipment, has agreed to divest its Asia-Pacific business segment to Australia-based Pacific Equity Partners Pty Ltd., a private equity investment firm, for AUD 340 million (\$230 million) in cash, subject to customary closing adjustments.

Nidec and GAC Components to Establish Joint Venture

Japanese motor manufacturer Nidec Corporation and Chinese interior auto components maker GAC Components Co. Ltd. announced an agreement to establish a joint venture to develop, produce, and sell automotive traction systems and parts. The joint venture named Guangzhou Nidec Auto Drive System will be registered in China. Its share capital amounts to CNY 600 million (\$87 million, JPY 9.3 billion) and Nidec and GAC will hold a 51% and 49% stake, respectively.

Ford to Acquire Journey

US car manufacturer Ford Motor Company has agreed to acquire Journey Holding Corporation, an American developer of vehicle-tracking software, through its subsidiary, Ford Smart Mobility. Journey is said to be merged with Ford's subsidiary TransLoc, a provider of technology solutions for on-demand and fixed-route systems for public and private transit operations.

Ford to Acquire Quantum Signal

Ford has acquired the American mobile robotics and software company Quantum Signal, which has particular experience in the areas of vehicle remote control and real-time simulation applied in autonomous driving.

Toyota Motor to Invest in DiDi Chuxing and Form Joint Venture

Toyota Motor Corp. has entered into an agreement with DiDi Chuxing Technology Co., Ltd., a Chinese ride-hailing firm. Toyota and Didi will establish a joint venture with GAC Toyota Motor Co., Ltd. for vehicle-related services for ride-hailing drivers. Toyota will invest \$600 million (approximately CNY 66 billion) in DiDi and the joint venture.

BAIC to Acquire 5% Stake in Daimler AG

Chinese automotive company Beijing Automotive Group Co., Ltd. (BAIC) acquired a 5% stake of the share capital in the German automaker Daimler AG, which includes 2.48% of direct shareholdings and a right to acquire an additional right to vote equivalent to 2.52% of Daimler's share capital. BAIC becomes Daimler's second major Chinese shareholder after Geely chairman Li Shufu took a 9.69% stake in the German manufacturer in 2018.

Groupe Renault to Form Joint Venture with Jiangling Motors

French automobile company Groupe Renault and Chinese state-owned automaker Jiangling Motors Corporation Group (JMCG) announced that they reorganized Jiangling Group New Energy Motors Co., Ltd. (JMEV) into a 50-50 joint venture. JMEV was previously a wholly owned subsidiary of JMCG and has obtained a license for the manufacture of pure electric passenger vehicles. Groupe Renault acquired 50% shares in JMEV through increasing its share capital by RMB 1 billion (\$144 million).

Volkswagen to Invest in Argo AI

German automaker Volkswagen AG announced an investment in Argo AI LLC, an autonomous vehicle technology startup based in Pittsburgh. Volkswagen is joining forces with Ford Motor Company, which announced its intention to invest in Argo AI in 2017. Volkswagen contributes \$1 billion in capital. Further, Volkswagen will contribute its subsidiary Autonomous Intelligent Driving, a developer of self-driving technology based in Munich, Germany, to the joint venture that is valued at approximately \$1.6 billion.

Denso and Toyota to Establish Joint Venture

Japan-based DENSO Corporation, a manufacturer and supplier of automotive electronics, systems, and components, and Toyota agreed to establish a joint venture for research and development of in-vehicle semiconductors. Each of DENSO and Toyota will hold a 51% and 49% interest, respectively.

One Rock Capital Partners to Acquire Engineered Components & Systems Unit of Actuant

US industrial conglomerate Actuant Corporation, based in Wisconsin, will divest the majority of its Engineered Components & Systems segment, a provider of motion, actuation, and control solutions, to US private equity firm One Rock Capital Partners, LLC for \$214.5 million.

Schaeffler Production Plant Sold to Management

German automotive and industrial supplier Schaeffler AG announced the sale of its Hamm plant, Schaeffler Friction Products Hamm GmbH, to its management. Schaeffler Friction Products Hamm is a manufacturer of carrier plate-type friction linings for dry dual-clutch systems, and will be renamed INNO FRICTION.

Volkswagen and Northvolt to Establish Joint Venture

Volkswagen and Swedish battery company Northvolt AB agreed to establish a joint venture to build a production facility for lithium-ion batteries in Salzgitter, Germany, in which each party will hold a 50% interest. Start of the production is scheduled for 2023/2024.

Toyota Boshoku, Delta Kogyo, and Toyo Seat Establish Joint Venture

Toyota Boshoku Corporation, a Japanese automotive component and seat manufacturer, announced an agreement to enter into a joint venture named Toyota Boshoku AKI USA, LLC, with Delta Kogyo Co., Ltd., and Toyo Seat Co., Ltd. The new company will produce automotive seats to be delivered to the US automotive production plant of Mazda Toyota Manufacturing, USA, Inc. Toyota Boshoku holds a 50% stake in the joint venture, while 50% of the shares are owned by AKI USA Corporation, a US-based joint venture between Delta Kogyo and Toyo Seat.

ANTITRUST

European Court of Justice Decides on Independent Spare Parts Retailers' Access to Information

The Court of Justice of the European Union (ECJ) has ruled that, under the currently applicable law, car manufacturers do not have to provide independent spare part retailers with comprehensive technical information on their cars. The question was presented to the ECJ in a referral procedure initiated by the German Federal Court, which has to decide a litigation in this regard.

Japan Firms Fined \$7.7 Million in South Korea for Carving Up Auto Parts Market

Japanese companies including Hitachi, Denso, and Diamond Electric have been fined an approximate total of \$7.7 million by Korea Fair Trade Commission for bid rigging in tenders held by carmakers in South Korea in 2014.

AvtoKraz Creditor Oshchadbank Wins Court Ruling Allowing It to Sell Controlling Stake

Ukraine's state bank, Oshchadbank has obtained a court ruling allowing it to sell the controlling stake in AvtoKraz, a Ukrainian truck maker. The Commercial Court of Kiev granted the bank's claim against a group of companies including Ferrexpo, Gas Turbine Technologies, New Industrial Technologies, Prominek, and Pert regarding the execution of the companies' shares in AvtoKraz through a public sale in order to repay debts owed to the bank under a loan agreement.

Toyota Financial Services' Acquisition of SMM Auto Finance Cleared

The Chinese competition enforcer SAMR and the European Commission both unconditionally approved the proposed concentration of Japanese Toyota Financial Services and SMM Auto Finance in Japan. SMM Auto Finance, Inc. is an auto finance operator incorporated in Japan that is jointly

owned by Sumitomo Mitsui Banking Corporation, Cedyne Financial Corporation, and Mazda Motor Corporation. Toyota Financial Services will acquire all the shares of SMM held by Cedyne as well as part of the shares held by Sumitomo Mitsui and Mazda. Upon completion of the transaction, Toyota Financial Services and Mazda will jointly control SMM.

SAMR Approves BMW's Acquisition in BMW Brilliance Automotive

SAMR unconditionally approved the proposed concentration of 25% equity interest in BMW Brilliance Automotive Ltd. by BMW. Upon completion of the proposed transaction, BMW will own 75% equity interest in BMW Brilliance Automotive Ltd. and Shenyang Jinbei Vehicle Manufacturing Co., Ltd.—a state-owned enterprise—will own the remaining 25% equity interest in BMW Brilliance Automotive Ltd.

SAMR Approves Nanjing Valeo's Acquisition in Suzhou Dongfeng Motor Clutch Co.

SAMR unconditionally approved the proposed merger of Nanjing Valeo Clutch Co., Ltd. and Suzhou Dongfeng Fineblanking Engineering Co., Ltd. Nanjing Valeo, a company engaged in manufacturing and sales of passenger clutches, intends to acquire 70% of the shares in Suzhou Dongfeng Motor Clutch Co., Ltd., a subsidiary of Suzhou Fineblanking.

SAMR Approves Chinese Joint Venture of Daimler AG and Zhejiang Geely Holding Group

SAMR unconditionally approved a proposed 50-50 joint venture in China of carmakers Daimler AG and Zhejiang Geely Holding Group. The joint venture, headquartered in China, will be active in the development of small urban vehicles.

REGULATORY

New PRC Vehicle Purchase Tax Law

The PRC Vehicle Purchase Tax Law became effective on July 1, 2019, setting the vehicle purchase tax rate at 10%. The newly introduced law also allows tax refunds when consumers return vehicles to the car manufacturers or car dealers at a given discount rate, depending on how long after the purchase the car is returned. In addition, the PRC's Ministry of Finance and the State Taxation Administration jointly issued the Announcement on the Renewal of Preferential Policies on Vehicle Purchase Tax, pursuant to which the vehicle purchase tax will be exempted for purchases of new energy vehicles until the end of 2020.

Daimler Fined for Diesel Violations in Germany

The public prosecutor's office in Stuttgart, Germany, imposed a fine of 870 million euros (about \$970 million) on Daimler AG for the negligent violation of supervisory obligation that led to operational approvals being granted for diesel vehicles, even though their nitrogen oxide emissions allegedly did not meet the regulatory requirements. The public prosecutor's office based its accusations on recall notices issued by the Federal Motor Transport Authority for a total of approximately 684,000 Daimler vehicles. Daimler has waived its right to appeal, so the decision is binding.

tect software and systems such as those found in modern cars that may be subject to hacking.

INTELLECTUAL PROPERTY

Ford Wins Design Patent Appeal in Federal Circuit

The US Court of Appeals for the Federal Circuit affirmed a Michigan court's decision that Ford Global Technologies can enforce its design patent rights on certain vehicle hood and vehicle headlight designs against members of the Automotive Body Parts Association (ABPA). Ford had brought a design patent infringement suit to prevent infringement by ABPA members selling replacement F-150 auto body parts without authorization. The ABPA defended by arguing that there is no design patent protection for functional shapes as well as that auto body parts, such as the hood and headlights at issue, are necessarily functional. The Federal Circuit disagreed, noting that ABPA "effectively ask[ed] this Court to eliminate design patents on auto-body parts," and instead found that the ABPA had failed, as a matter of law, to prove Ford's designs functional by clear and convincing evidence. *Automotive Body Parts Assn' v. Ford Global Technologies, LLC*, No. 2018-1613 (Fed. Cir. 2019).

LG Chem and SK Innovation Battle Over Battery Patents and Technology and Competing Products

South Korean companies LG Chem, Ltd. and LG Chem Michigan Inc. (LG) and SK Innovation Co., Ltd. (SK) have brought a series of separate lawsuits against each other before the US International Trade Commission (USITC) and the US District Court for the District of Delaware. In April, LG filed complaints in the USITC and in Delaware accusing SK of, among other things, misappropriating LG's trade secrets relating to batteries used in electric vehicles. Most recently, LG asserts in the ITC and in Delaware that SK infringes five LG patents related to battery cells and modules. SK asserts that LG infringes two of its patents by selling battery technology that LG makes and sells in Michigan. The lawsuits are in the early stages and underscore growing competition in the battery space.

Velodyne Sues Hesai Photonics and Suteng Innovation in California

San Jose-based Velodyne filed separate patent litigation actions against Shanghai based Hesai and Shenzhen based Suteng in August, alleging one of Velodyne's patents was infringed. Velodyne and its founder, David Hall, patented so-called "LiDAR" technology in 2011. LiDAR stands for "light detection and ranging," and various forms of LiDAR are used in autonomous vehicles today. The asserted patent has survived patent challenges at the Patent Trial and Appeal Board, and Velodyne has announced significant shipments of its LiDAR products to date. The lawsuit is in the early stages and underscores growing competition in LiDAR for autonomous vehicles.

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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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