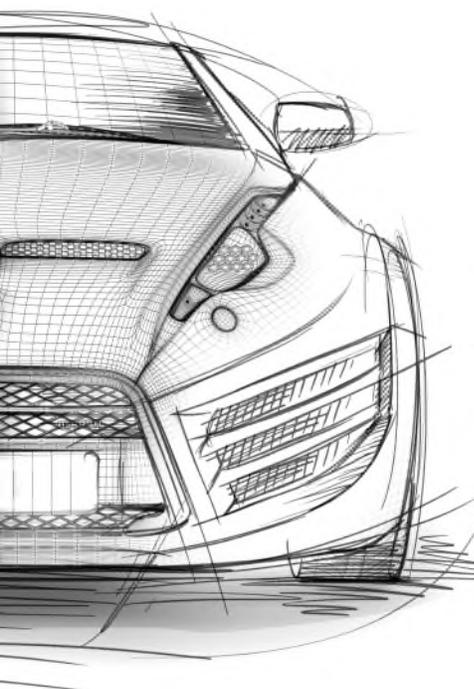


# AUTOMOTIVE

Q2 / 2017



This is the 12th issue of our newsletter on developments in the automotive industry published by Morgan Lewis's automotive team, with contributions from around the globe by leveraging the experience of the lawyers in our 30 offices. We counsel 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 2017, touches on issues relating to self-driving cars, proposed regulations for diesel engine vehicles, 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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**Antitrust:** EU Commission issues decision on vehicle lighting cartel; Canadian Court fines Mitsubishi Electric Corporation for bid rigging; German Federal Cartel Office's activity report provides insights on complaints against OEMs with respect to access to spare parts.

**Regulatory:** Active discussions on connected cars in Washington DC; US steel producers complain about foreign competitors; Car manufacturers collectively settle claims with respect to Takata airbags; German Federal Commissioner for Data Protection issues recommendations on data privacy for autonomous driving; Roundup: Emission rule compliance continues to be in spotlight.

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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.

# MERGERS & ACQUISITIONS

## **Porsche Automobil Holding SE Purchased PTV Group**

Porsche Automobil Holding SE (Porsche SE), the majority investor in Volkswagen AG, has acquired approximately 97% of the shares of PTV Group for more than €300 million (\$349.1 million). PTV Group, which is headquartered in Karlsruhe, Germany, provides software solutions for traffic simulation and transportation logistics.

## **Ferdinand K. Piëch to Divest Stake in Porsche Automobil Holding SE**

Ferdinand K. Piëch agreed to divest 14.7% of its stake in Porsche Automobil Holding SE to other members of the Porsche and Piëch families. The Ferdinand Karl Beta Foundation, which is influenced by Mr. Piëch, will retain an undisclosed amount of shares in the company. Mr. Piëch remains a member of the supervisory board of Porsche SE.

## **Toyota Motor Corporation Divests Stake in Tesla**

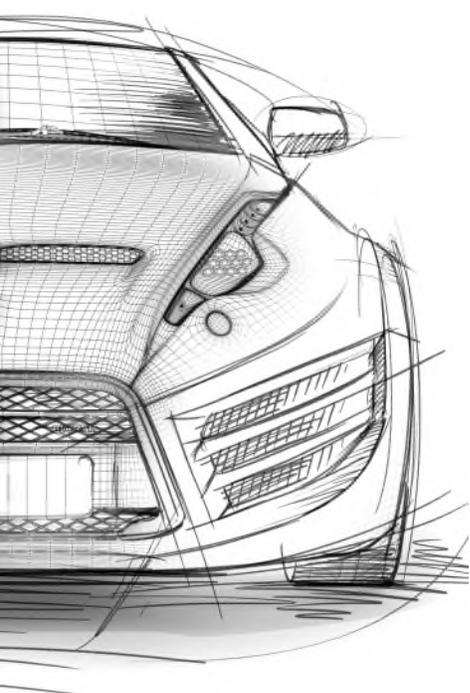
Japanese OEM Toyota Motor Corporation (Toyota) announced it has divested its stake in the electric car manufacturer Tesla. The transaction, which was already completed by the end of 2016, was only announced in the second quarter of 2017. The sale constitutes the end of a six-year development cooperation between Toyota and Tesla. Toyota launched its own all-electric car developing program in November 2016.

## **Geely to Acquire Control over Proton**

China OEM Zhejiang Geely has acquired 49.9% of the shares of Malaysian car manufacturer Proton from DRB-Hicom Bhd., a Malaysian automotive conglomerate, for RM 460 million (\$68.1 million). The transaction includes the acquisition of 51% of the shares of Proton's subsidiary Lotus, the UK sports car manufacturer. Zhejiang Geely also owns, inter alia, Sweden's Volvo Cars, the London Taxi Company, Lynk & Co, and the Geely portfolio of car brands.

## **Deere & Company to Acquire Road Equipment Manufacturer Wirtgen Group**

US equipment manufacturer Deere entered into an agreement to acquire the privately held Wirtgen Group, a manufacturer of construction equipment for \$5.2 billion. Deere manufactures agricultural, construction, and forestry machinery, as well as diesel engines. Wirtgen supplies equipment for road construction from processing, mixing, paving, and compaction to rehabilitation under the brand names Wirtgen, Vögele, Hamm, Kleemann, Benninghoven and Ciber.



# MERGERS & ACQUISITIONS

## **Daimler and Robert Bosch to Cooperate on Autonomous Driving**

German OEM Daimler and tier-1 supplier Robert Bosch have formed a cooperation regarding the development of a system for fully automated (SAE-level 4) and driverless (SAE-Level 5) vehicles. The companies intend to jointly develop software and algorithms for such autonomous driving system. Daimler intends to contribute its car manufacturing capabilities while Bosch will contribute its system and hardware knowhow to the cooperation.

## **ZF and Faurecia to Cooperate on Safety Technologies for Self-Driving Cars**

The auto parts suppliers ZF and Faurecia, which is partly owned by the PSA Group, have announced a strategic cooperation for the development of interior and security technologies for several occupant positions for self-driving cars. The cooperation does not include any capital exchange.

## **Waymo to Cooperate with Avis, Apple with Hertz on Autonomous Driving**

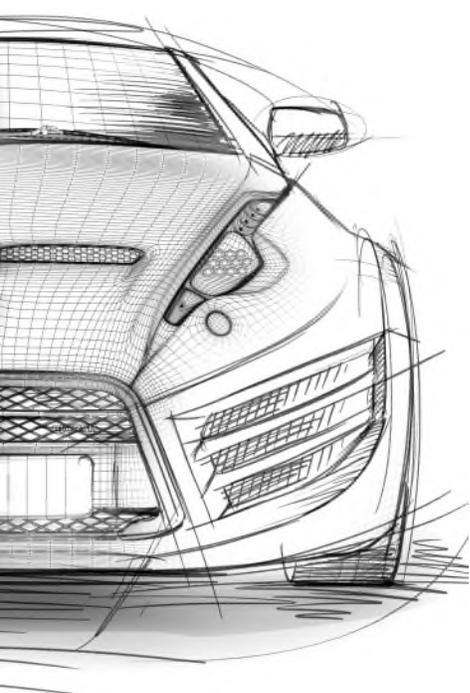
Waymo, Alphabet Inc.'s self-driving car business and the rental car provider Avis Budget Group have entered into a non-exclusive agreement under which Avis will service and store Waymo's fleet of autonomous vehicles (Chrysler Pacifica minivans) in Phoenix. Waymo will continue to own the vehicles and will pay a fee to Avis for its services. Simultaneously, Apple Inc. and the fleet management unit of rental car provider Hertz agreed that Apple will lease Lexus RX450h sports utilities vehicles from Hertz to test autonomous vehicles on the roads of the state of California. The California Department of Motor Vehicles has granted a permit to Apple allowing the company to test self-driving car technology.

## **Key Safety Systems to Acquire Takata Corporation**

Key Safety Systems (KSS), a manufacturer of active and passive safety systems for vehicles, has agreed to acquire Takata Corporation for approximately \$1.59 billion. KSS will acquire almost all of Takata's assets except those associated with the production and distribution of airbag inflators. The transaction follows Takata's filing for insolvency in the United States and Japan. The combined enterprise would have approximately 60,000 employees in 23 countries.

## **Zhengzhou Coal Mining Machinery Group and China Renaissance Capital Investment to Acquire Bosch's Starter and Generator Business**

Zhengzhou Coal Mining Machinery Group (ZMJ), a manufacturer of auto parts and coal mining machinery, and private equity investor China Renaissance Capital Investment (CRCI) have agreed to acquire Robert Bosch's starters and generators business for \$593 million. ZMJ previously acquired the ASIMCO Group in 2016 from Bain Capital, which is also active in starters and generators, as well as noise, vibration, harshness (NVH) parts, and powertrain products.



# ANTITRUST

## **EU Commission Issues Decision on Vehicle Lighting Cartel**

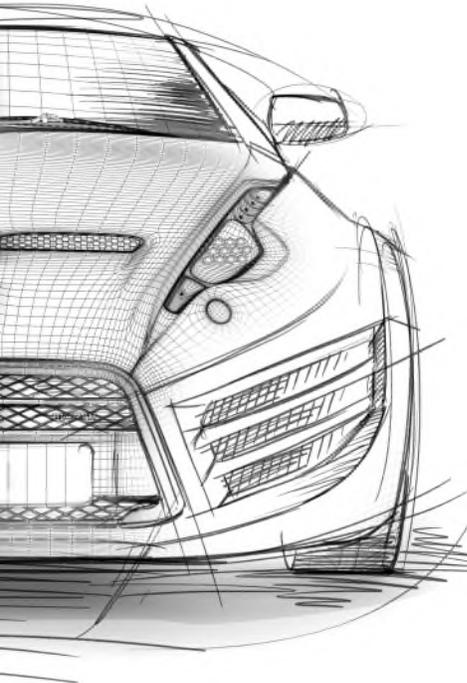
The European Commission imposed a total fine of €29.8 million (\$34.69 million) on Automotive Lighting and Hella for participating in a vehicle lighting cartel. Valeo was not fined as it disclosed the cartel to the commission and, therefore, received leniency. The cartel concerned anticompetitive conduct including price-fixing for more than three years in the aftermarket segment for the supply of spare parts of vehicle lighting systems to original equipment manufacturers or their authorized service networks. Further auto parts investigations by the commission are ongoing, including with respect to occupant safety systems.

## **Canadian Court Fines Mitsubishi Electric Corporation for Bid Rigging**

The Ontario Superior Court of Justice imposed a fine of approximately \$10.2 million on Mitsubishi Electric Corporation for rigging bids for alternators sold to Honda and Ford and ignition coils sold to General Motors between 2003 and 2006. Three investigations into bid rigging among auto parts suppliers have resulted in the largest fines ever imposed by courts in Canada for bid-rigging infringements.

## **German Federal Cartel Office's Activity Report Provides Insights into Complaints against OEMs with respect to Access to Spare Parts**

The German Federal Cartel Office (FCO) published its activity report for the reporting period 2015 and 2016 explaining that it had received several complaints relating to access to OEM spare parts or technical information on these spare parts. While most of the complaints have not led to any formal investigations, the FCO is currently analyzing one complaint with regard to whether an OEM needs to provide a spare part provider access to an individual vehicle code that the OEM uses when installing a steering unit to establish the communication with other units. The spare parts provider allegedly needs the code to install a spare steering unit. The FCO explained that its assessment focuses on whether the denial of access is justified.



# REGULATORY

## **Active Discussions on Connected Cars in Washington D.C.**

Connected cars were a topic of active discussion in Washington DC at the end of June 2017. The United States Congress held hearings on a range of proposed legislation designed to address the development and regulation of connected cars. Two regulatory agencies with oversight of connected and autonomous vehicles, the National Highway Traffic Safety Administration (NHTSA) and the Federal Trade Commission (FTC), held a joint workshop on the topic of connected cars. Further coverage and analysis on these discussions is available in the [July Morgan Lewis Automotive Update](#).

## **German Federal Commissioner for Data Protection Issues Recommendations on Data Privacy for Autonomous Driving**

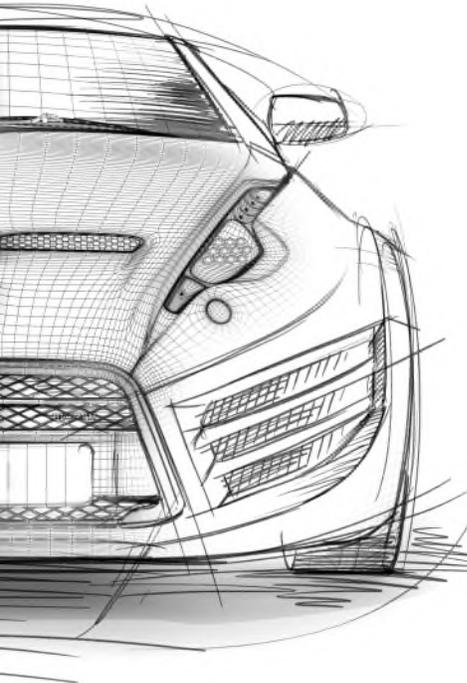
The German Federal Commissioner for Data Protection and Freedom of Information issued 13 recommendations for data privacy for autonomous driving. The recommendations include that the storage of data should not be required in the driving mode. In case data needs to be transferred between vehicles, the data should be effectively encrypted and protected from the unauthorized use of third parties. Users should also be able to delete their personal data in case its storage is not required by law. These recommendations are likely to influence the drafting of an amendment to the German Road Traffic Act later this year.

## **Car Manufacturers Collectively Settle Takata Airbag Claims**

BMW AG, Mazda Motor Corporation, Subaru Corporation and Toyota Motor Corporation have filed an agreement in a federal court in Miami to collectively settle claims of owners (current and formers) of approximately 15.8 million vehicles equipped with Takata airbag systems for approximately \$553 million. The settlement shall serve, inter alia, as reimbursement for the cost of replacement vehicles while the malfunctioning airbags were fixed. The settlement does not cover personal injury claims.

## **US Steel Producers Complain about Foreign Competitors**

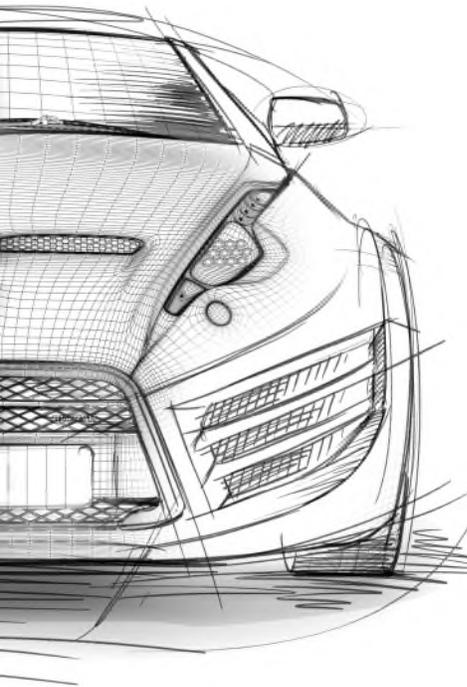
Several US steel manufacturers have complained against foreign competitors alleging that they have an unfair competitive advantage by supplying cold-drawn mechanical tubing at artificially low prices due to benefitting from home turf subsidies. This material is used in many automotive applications such as shock absorbers or steering columns. The US Department of Commerce and the US International Trade Commission are reviewing the complaint and could consider imposing tariffs in order to raise the import prices to US domestic prices.



# REGULATORY

## Roundup: Emission Rule Compliance Continues to be in Spotlight:

- The Public Prosecutor's Office in Frankfurt, Germany, concluded its investigation into Opel for alleged manipulation of diesel vehicles emission due to a lack of sufficient evidence.
- Public prosecutors in France have opened a formal investigation against the PSA Group with respect to the alleged manipulation of diesel emissions.
- US District Judge Sean F. Cox of the Eastern District of Michigan has approved a plea agreement under which Volkswagen pleads guilty to manipulating diesel emissions testing, and ordered Volkswagen to pay a criminal fine of \$2.8 billion.
- US District Judge Charles Breyer of the Northern District of California has granted final approval for the 3.0 liter Volkswagen diesel-emission settlement which already received preliminary approval in February 2017 under which Volkswagen AG has to pay at least \$1.22 billion to repair or repurchase approximately 80,000 diesel vehicles. Judge Breyer has also granted final approval to the settlement of German car part supplier Robert Bosch. Bosch has agreed to pay \$327.5 million to Volkswagen diesel vehicle owners based in the United States for its role in the development of the engines.
- A class action was filed in the US District Court for the Eastern District of Michigan in Detroit against General Motors (GM) alleging that the company used defeat devices in its 2011-2016 Silverado and Sierra trucks equipped with its Duramax engines. The lawsuit follows an earlier complaint against GM alleging that it manipulated the emissions of its diesel engines included in its Cruze models.
- Fiat Chrysler has applied to the US Environmental Protection Agency (EPA) and the California Air Resources Board for certification for two 2017 models (Jeep sport-utility vehicles and Dodge Ram pick-up trucks) proposing an emission fix for approximately 100,000 of its diesel vehicles for which the EPA has issued a notice of violation earlier this year as these vehicles' emission allegedly went beyond the legal limits.
- The European Commission initiated an infringement procedure against Italy for its alleged failure to comply with its obligations under EU vehicle type-approval legislation with regards to Fiat Chrysler Automobiles. The commission is concerned that Fiat Chrysler has only insufficiently justified the technical need and thus the legality of the use of a defeat device and will clarify whether Italy has failed to meet its obligation to adopt corrective measures regarding the type in question and to impose penalties on the OEM. The commission has taken similar actions against other member states including the Czech Republic, Germany, Greece, Lithuania, Luxembourg, Spain, and the United Kingdom, for failure to set or apply sanctions to Volkswagen with respect to the defeat device.



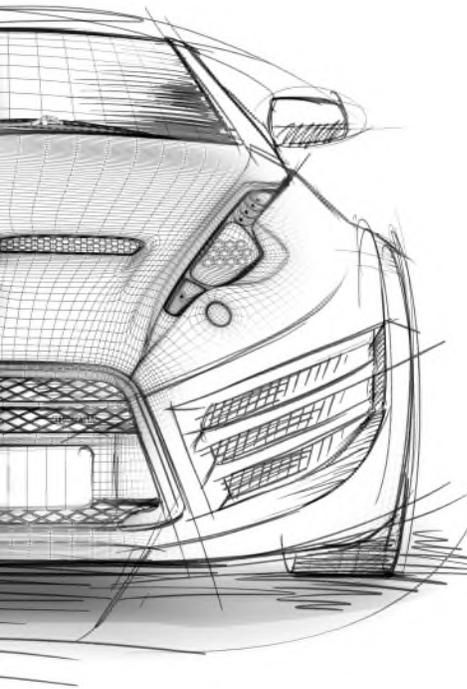
# INTELLECTUAL PROPERTY

## **Desktop 3D Printing Reaching the Automotive Assembly Line**

Volkswagen Autoeuropa, an automobile manufacturing plant in Portugal owned by Volkswagen, reports that it has been using desktop 3D printers to make custom tools and parts used on its manufacturing line. The company has printed gauges, jigs, and fixtures on demand that has resulted in a 95 percent reduction in tool development time and a reduction of 90% on tool production costs. 3D printing is expected to have a major impact on all types of manufacturing.

## **Traditional Auto Makers Rank Ahead of Silicon Valley Companies on Self-Driving Cars in Survey**

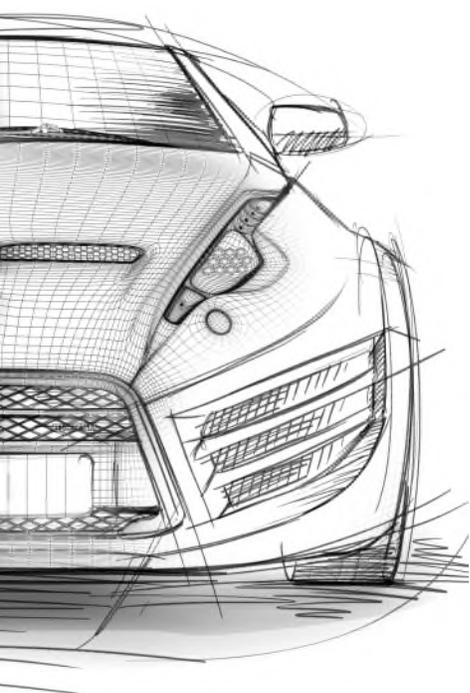
Navigant Consulting, an independent research firm, issued a report on Automated Driving assessing the strategy and execution of eighteen companies developing automated driving systems. Despite popular impressions that Silicon Valley companies are leading in automated driving, the Navigant study puts traditional car companies Ford, GM, and Renault-Nissan in the leader spots ahead of Silicon Valley upstarts and others. Ford was ranked by Navigant as the leader. According to the study, “[a]dvances in computational architectures and sensing technology are driving the market forward, and when coupled with dramatic cost reductions, vehicle electrification, and ubiquitous connectivity, highly automated vehicles are quickly nearing a level of maturity that will enable initial deployments for consumers.” The report comes with the caveat that “[t]hese [results] are by no means final” as the introduction of automated vehicles will play out over many years, if not decades.



# MORGAN LEWIS'S 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.



## CONTACTS AND CONTRIBUTING AUTHORS

**Robert C. Bertin**

2020 K Street, NW  
Washington, DC 20006-1806  
USA  
+1.202.373.6672  
[robert.bertin@morganlewis.com](mailto:robert.bertin@morganlewis.com)

**Michael Masling**

OpernTurm  
60306 Frankfurt  
Germany  
+49.69.714.00.753  
[michael.masling@morganlewis.com](mailto:michael.masling@morganlewis.com)

**Daniel L. Goldberg**

One Federal Street  
Boston, MA 02110-1726  
USA  
+1.617.951.8327  
[daniel.goldberg@morganlewis.com](mailto:daniel.goldberg@morganlewis.com)

**Daniel S. Savrin**

One Federal Street  
Boston, MA 02110-1726  
USA  
+1.617.951.8674  
[daniel.savrin@morganlewis.com](mailto:daniel.savrin@morganlewis.com)

**Ethel J. Johnson**

1000 Louisiana Street, Suite 4000  
Houston, TX 77002-5006  
USA  
+1.713.890.5191  
[ethel.johnson@morganlewis.com](mailto:ethel.johnson@morganlewis.com)

**David L. Schrader**

300 South Grand Avenue, 22nd Floor  
Los Angeles, CA 90071-3132  
USA  
+1.213.612.7370  
[david.schrader@morganlewis.com](mailto:david.schrader@morganlewis.com)