

AUTOMOTIVE & MOBILITY

Welcome to the 30th edition of our newsletter on developments in the automotive industry published by Morgan Lewis's automotive and 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 fourth quarter of 2021, touches on numerous acquisitions across automotive suppliers and manufacturers, recent antitrust litigation, new regulation as it relates to electric vehicle (EV) infrastructure, and notable trends in intellectual property. All issues of Morgan Lewis *AUTOMOTIVE & MOBILITY* are available at www.morganlewis.com.

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Antitrust: Jury Verdict Compels Automotive Supplier to Pay Trebled Damages; German FCO Calls for More Competition in Charging Infrastructure for EVs; Daimler to Secure Win in Follow-on Damages Claim Litigation

Regulatory: Chinese National Information Security Standardization Technical Committee Released Security Guideline for Processing Automotive Acquisition Data; US Bipartisan Infrastructure Bill; Australia to Pass Future Fuels and Vehicles Strategy; New German Government: Its Coalition Treaty Could Give Automotive a Boost

Intellectual Property: Patent Litigation by Non-practicing Entities Significantly Increases; Trade Secrets Continue to Feature Prominently in EV Disputes

MERGERS & ACQUISITIONS

Gogoro, Yadea, and Dachangjiang to Partner in China

Taiwanese battery swapping infrastructure provider Gogoro cooperates with the China-based two-wheel makers Yadea and Dachangjiang to enter the Chinese market. Together they launched the Huan Huan battery swapping brand.

Volvo to Acquire Luqiao Manufacturing Plant from Geely

Swedish car manufacturer Volvo Car Group agreed with its parent firm Geely Automobiles Holding to fully take over the Luqiao manufacturing plant for an undisclosed amount. In the course of the next two years, Volvo Cars will hold 100% ownership of all Luqiao plants.

Geely Auto to Acquire Another 10% Stake in ZEEKR

China-based Geely Automobiles Holding entered into a framework agreement with Geely Group Limited to acquire 220 million shares of ZEEKR Intelligent Technology. Upon completion of the potential transaction, Geely Auto would hold 54.5% of China-headquartered ZEEKR. ZEEKR is an EV company launched in 2021 by Geely.

Bridgepoint to Acquire a 60% Stake in Planung Transport Verkehr AG

UK-based Bridgepoint Advisers Ltd. agreed with the German car manufacturer Porsche SE to acquire a 60% stake in Planung Transport Verkehr AG (PTV). PTV is a German software company and consulting service for traffic and transportation, mobility, and logistics. Porsche SE will retain a minority stake in PTV.

Lear to Acquire Kongsberg's Interior Comfort Systems Business Unit

US-American Lear Corp. has acquired the Interior Comfort

Systems Business Unit of the Norwegian automotive supplier Kongsberg Automotive Holding AS for an undisclosed amount. Lear Corp. is an automotive supplier with a focus on interior systems for passenger cars.

Lear and Shinry to Establish Joint Venture

US-based automotive supplier Lear Corp. and China-based Shinry Technologies Co. Ltd. agreed to establish a joint venture (JV). The parties contribute to the JV their respective portfolios of onboard vehicle chargers and multifunction integrated power modules. The JV will operate out of Shenzhen, China. Shinry Technologies is a Tier 1 supplier of electronics for EVs.

Volkswagen to Acquire a Stake in EIT InnoEnergy for Strategic Partnership

Volkswagen announced that it will acquire a stake in the Netherland-based sustainable energy investor EIT InnoEnergy. EIT InnoEnergy invests, among others, in the transport and mobility sector.

BEDEO Acquired Protean Electric

UK-based EV supplier and manufacturer BEDEO announced the acquisition of Protean Electric from National Electric Vehicle Sweden (NEVS), a subsidiary of China-based Evergrande New Energy Vehicle Group. Protean Electric is an automotive technology company specializing in in-wheel motor technology used for passenger cars, light commercial vehicles, and future transport solutions.

Orlando Management to Acquire a Stake in BOS

ESSVP IV, an investment vehicle of German Orlando Management AG, has acquired a significant minority stake in Germany-based automotive supplier BOS. The stake was sold by family shareholders of BOS, who remain majority stakeholders in the company.

Li Auto Acquired 100% Interest in Changzhou Chehejin

Li Auto Ltd. acquired from Changzhou Wunan New Energy Vehicle Investment Co., Ltd. its 100% equity interest in Changzhou Chehejin Standard Factory Construction Co., Ltd. (Chehejin). Chehejin owns the land-use right and buildings that were previously rented to Li Auto's Changzhou manufacturing base.

Daimler Buses to Sell Mercedes-Benz Minibus GmbH

German vehicle manufacturer EvoBus GmbH, wholly owned by Daimler Truck AG, agreed to sell its Germany-based subsidiary Mercedes-Benz Minibus GmbH to AEQUITA for an undisclosed amount. AEQUITA is a German Family Office with a focus on the automotive sector. After the sale, Daimler Buses will focus on the production of complete buses and chassis more than 8 tons.

Hankook & Company to Acquire a Stake in Preciseley Microtechnology

South Korea-based holding company for the Hankook Tire Group agreed to acquire about 57% of Canadian Preciseley Microtechnology (PM) for \$102.9 million. PM is a provider of microelectromechanical systems used in, among other things, micromirrors for autonomous driving and advanced driver assistance systems.

Farasis Energy and TOGG to Establish JV

Chinese automotive supplier Farasis Energy and the Turkish car manufacturer TOGG agreed to establish the JV SIRO. Both parties will equally invest in SIRO. The JV develops and produces batteries for electric cars.

Kia Corporation Acquires a 20% Stake in Hyundai Capital

South Korean Kia Corporation announced that it will increase its stake in Hyundai Capital Services (HCS) up to 40.1%. HCS is a South Korea-based car-financing company and the financial service unit of the Hyundai Motor Group. Kia agreed to acquire the 20% stake for \$740.8 million from two special acquisition vehicles.

METEOR Group to Acquire Creative Extruded Products Inc.

Germany-based METEOR Group, part of the AEQUITA Portfolio, has acquired the US-based manufacturer of extruded plastic and elastomer profiles Creative Extruded Products Inc. METEOR is a manufacturer of sealing systems for the automotive market.

Geely and Lifan Technology to Establish JV

Chinese car manufacturers Geely Automobile Holdings and Lifan Technology signed an agreement on establishing a new JV. The JV will work on research and development, sales, and operations of vehicles, including but not limited to rechargeable vehicles.

LiveWire to Merge with AEA-Bridges Impact Corp.

LiveWire, the electric motorcycle division of Harley Davidson, agreed with AEA-Bridges Impact Corp. (ABIC) on a merger. ABIC is a special-purpose acquisition company (SPAC) formed by AEA Investors and Bridges Fund Management. After the merger, Harley Davidson will own a 74% stake, ABIC's shareholders a 17% stake, and ABIC's founders a 4% stake in the newly formed company. The motorcycle manufacturer KYMCO will also own a 4% stake of the newly formed company.

Brightstar Capital to Acquire Novae Corp.

Brightstar Capital Partners has acquired Novae Corp., a US-based manufacturer of utility trailers for an undisclosed amount. Brightstar is a private equity fund focused on middle market investments.

Volvo, Daimler, and Traton to Establish JV

Three vehicle manufacturers, the Swedish Volvo Group and both Germany-based Traton SE and Daimler Truck Holding AG, agreed to establish a JV. The JV will be equally owned by the three parties and will conduct business out of the Netherlands and operate a European public charging network for electric trucks and coaches. The parties committed to invest a total of \$500 million.

ANTITRUST

Jury Verdict Compels Automotive Supplier to Pay Trebled Damages

A federal jury in the US District Court for the District of Delaware issued a verdict on September 15, 2021, in favor of the BASF Corporation and against the Ingevity Corporation and Ingevity South Carolina, LLC (collectively, Ingevity) for infringing Sections 1 and 2 of the Sherman Act (15 USC §§ 1-2) and Section 3 of the Clayton Act (15 USC § 14). The jury found that Ingevity's long-term exclusive supply agreements, which obligated fuel vapor canister manufacturers to purchase honeycomb carbon adsorbent scrubbers exclusively from Ingevity as a means of meeting new emissions regulations, amounted to an illicit tying agreement that was designed to exclude BASF from competing in the product market and allowing Ingevity to protect its monopoly power. The jury also found that Ingevity's business practices tortiously interfered with BASF's customer relationships. BASF was awarded \$84.9 million in trebled damages.

German FCO Calls for More Competition in Charging Infrastructure for EVs

The German Federal Cartel Office (FCO) published an interim report on its sector inquiry into charging infrastructure for EVs. So far, the sector inquiry has not provided any evidence that charging prices are abusively excessive.

The FCO fears that local or regional market-dominating positions of charging infrastructure providers could arise in the future and that this would lead to obstacles to competition. However, the FCO also emphasizes that these are currently only potential barriers to competition, but must be monitored, especially in the market ramp-up phase.

Daimler to Secure Win in Follow-on Damages Claim Litigation

Daimler secured a win in its appeal at the Higher Regional Court of Stuttgart regarding damages claims pursued by two companies. The Higher Regional Court's decision followed a decision by the German Federal Court of Justice (FCJ), in which the FCJ stated that the existence of a cartel is only an indication and not prima facie evidence for the presence of damages.

The FCJ found that when assessing whether damages incurred, the initial European Commission decision must be considered exhaustively and comprehensively. Nevertheless, claims brought to court merely on the grounds of the existence of a cartel can be rebutted by a defendant anytime. As a consequence, the FCJ referred the matter back to the Higher Regional Court.

The Higher Regional Court of Stuttgart annulled its prior ruling on the grounds of the FCJ decision and referred the case back to the Regional Court of Stuttgart.

REGULATORY

Chinese National Information Security Standardization Technical Committee Released Security Guideline for Processing Automotive Acquisition Data

The National Information Security Standardization Technical Committee of China (the Committee) released the technical document “Security Guideline for Processing Automotive Acquisition Data” (the Guideline). The Guideline regulates the security requirements on the transmission, storage, and export of the data collected by automobiles.

The Guideline focuses on automobile manufacturers, clarifies certain provisions under Several Provisions on the Security Management of Automobile Data for Trial Implementation (the Several Provisions), and provides further details on certain requirements in combination with the current technological situation. The Guideline is the first standardized document issued by the Committee as a technical document.

In terms of data content, the Guideline provides that the data collected includes out-of-car data, cockpit data, operating data, and position trajectory data. Regarding data transmission, the Guideline prohibits transmitting data outside the vehicle that contains personal un-anonymized information, as well as cockpit data via internet, unless exceptions apply, or the individual concerned has separately agreed. In terms of data storage, the storage time for data outside the vehicle and location trajectory data should not exceed 14 days except under certain exceptional circumstances. Out-of-car data, cockpit data, and position trajectory data should not be exported, and operational data may be exported after passing a data export security assessment.

US Bipartisan Infrastructure Bill

The US Congress passed the Bipartisan Infrastructure Bill (Infrastructure Investment and Jobs Act - IIJA). The bulk of the proposed spending is directed to rebuild US infrastructure in the form of physical improvements on roads, bridges, airports, and ports, with additional

investment and tax credits to support clean energy generation and storage, EVs, and energy efficiency. The government will spend a total of \$7.5 billion to establish the National Electric Vehicle Formula Program (the National EV Program) and the Charging and Fueling Infrastructure discretionary grant program (the Grant Program).

The IIJA allocates \$5 billion through 2026 for the National EV Program, which will provide funding to US states to strategically deploy EV charging infrastructure and to establish an interconnected network to facilitate data collection, access, and reliability.

The goal of the Grant Program is to strategically deploy publicly accessible EV charging, hydrogen fueling, propane fueling, and natural gas fueling infrastructure. Therefore, the Grant Program extends \$2.5 billion in funding.

The US Department of Transportation’s Federal Highway Administration recently issued a notice seeking public comment on the two new programs.

Also, \$110 billion will be invested in funding to repair roads and bridges. This also includes the Safe Roads for All program that will contribute to the reduction of traffic fatalities. Another \$89.9 billion will be allocated to improve public transportation. Buses shall be upgraded to clean, zero-emission vehicles.

Australia to Pass Future Fuels and Vehicles Strategy

The Australian government passed a strategy on carbon neutral vehicles, which includes an expanded funding in the Future Fuels Fund to support vehicle and infrastructure development. The Future Fuels Fund will extend to a total of \$250 million, including \$178 million in new funding. The funding will focus on public EV charging and hydrogen refueling infrastructure, heavy and long-distance vehicle technologies, commercial fleets, and household smart charging.

New German Government: Its Coalition Treaty Could Give Automotive a Boost

The new German government, to be led by the new chancellor, Olaf Scholz, is an uncommon arrangement that brings together three parties—his Social Democrats, the environmentalist Greens, and the pro-business Free Democrats. Their Coalition Treaty, though not legally binding, serves as a way to ensure that members are all on the same page, especially when faced with a crisis or unexpected events. The goal is to minimize tensions between partners and to ensure the stability and durability of their governing alliance. It is a document mostly aimed at the domestic audience, but there were important European or global issues at stake, too.

German automakers were breathing a collective sigh of relief as a new three-party coalition government appeared to hold off from radical action that might have brought an

earlier-than-expected demise to new internal combustion engine (ICE) vehicle sales. There are numerous provisions in the Coalition Treaty that set goals for better data privacy that could affect the automotive sector, such as:

- Promotion of anonymization techniques, legal certainty through new standards,
- Criminal liability for unlawful de-anonymization,
- A legal right to open data, improvement of data expertise of public bodies,
- Better enforcement and coherence of data protection at the European level, and
- The current structure of German data protection with the unique feature of data protection agencies in every German state, will not be overhauled.

On the political level, the Coalition Treaty contains a short chapter on automotive that states, in particular: “We support the transformation of the automotive sector in order to achieve the climate targets in the transport sector and to preserve jobs and value creation in Germany. We will make Germany the lead market for electromobility and a center of innovation for autonomous driving and are massively accelerating the expansion of the charging station infrastructure. Our goal is to have at least 15 million fully electric cars by 2030.”

In the same vein, the new government further promises to support the shift in automotive regions toward electromobility mainly through targeted cluster funding. The continuation and further development of the European Battery Projects (IPCEI) and the establishment of additional cell production sites, including recycling, in Germany are of central importance to the government. It wants to bundle the existing cooperation and dialog formats at the federal level in the automotive industry sector into a strategy platform “Transformation Automotive Industry.” The new dialogue platform will be made up by the mobility industry, environmental and transport associations, social partners, scientists, the German Bundestag, the federal states, leading municipal associations, and the responsible federal ministries.

Other priorities of the government in the automotive sector are the extension of the EV charging infrastructure, competition-neutral use of vehicle data, and a new law on autonomous driving.

The concrete measures to reach these goals obviously will take time. Given the international tensions and challenges due to COVID-19 for the new government and its shifting priorities, there is no clear timetable yet.

INTELLECTUAL PROPERTY

Patent Litigation by Non-practicing Entities Significantly Increases

The National Law Review reported on November 9 that Non-practicing Entity (NPE) patent owners brought the most patent litigation in the third quarter of 2021 since 2016. While a high percentage of these cases are brought against high-tech companies, NPE cases against automotive companies had the largest increase, growing by 182% in Q3 2021 as compared to Q3 2020. Prominent new uses of computer and communications technologies in EVs and OEMs current automobile line-ups have made this trend inevitable.

Trade Secrets Continue to Feature Prominently in EV Disputes

There have been many recent high profile trade secret cases brought between EV competitors in the Bay Area of California, some of which have settled and some of which continue. The cases generally include allegations of hiring former employees and downloading proprietary documents that are shared with a new employer. Pursuant to the recently enacted Uniform Trade Secrets Act, trade secret civil and criminal penalties have been enhanced, which has led to more consequential cases between competitors. In order to ensure that a trade secret remedy is available should misappropriation occur, companies need to ensure that they have security systems in place to mark, segregate, and protect confidential information throughout their organizations.

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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