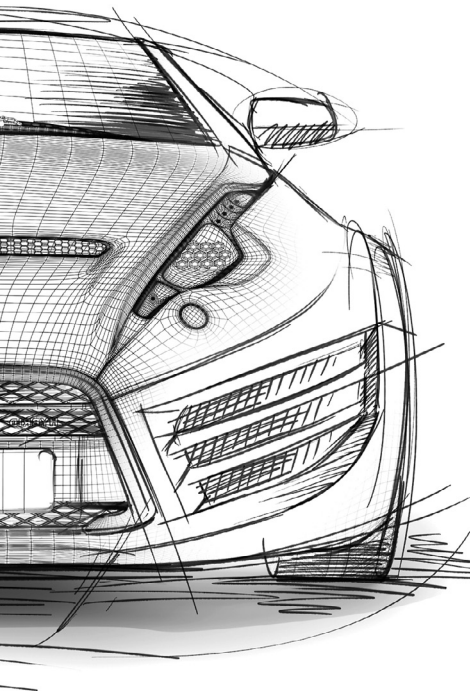


# AUTOMOTIVE

Q3/2017

Welcome to the 13th 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 (IP), and labor and employment.

This issue of *Morgan Lewis AUTOMOTIVE*, which covers the third quarter of 2017, touches on topics relating to self-driving cars, proposed regulations for diesel engine vehicles, and other developments in the global automotive markets. Find back issues of *Morgan Lewis AUTOMOTIVE* at [www.morganlewis.com](http://www.morganlewis.com).



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**Mergers & Acquisitions:** Renault, Brilliance China Automotive to form joint venture; Tsubaki Nakashima acquires bearing components business; Toyota to cooperate with Mazda; Ron Dennis divests shares in McLaren; Ford to joint venture with Zotye Auto on electric vehicles in China; Volvo Group divests its shares in Deutz AG; Fosun, Nanjing Nangang Iron & Steel complete Koller acquisition; Tencent, Guangzhou Automobile to cooperate on connected cars; Daimler, Via form joint venture for van ridesharing services; Aston Martin to expand trade and operations in Japan

**Antitrust:** Germany imposes fines on heat shield manufacturers; EC approves Opel's acquisition by Peugeot; EC Fines Scania €880 million in EU truck cartel probe

**Regulatory:** Automobile sales measures become effective in China; EU court confirms decision to partly block state aid for BMW; EU Commission orders Polish motorway operator to repay €210 million; India issues guidelines for dealers distributing car insurance; Emission rule compliance still in spotlight

**Intellectual Property:** Ferrari to lose Testarossa brand; ADAS engineers face performance, compliance challenges; Shape of Land Rover's Defender is in play; Ford patents autonomous car with passenger table

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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

## **Renault, Brilliance China Automotive to Form Joint Venture**

French OEM Groupe Renault and Brilliance China Automotive Holdings Limited (CBA) have signed a framework cooperation agreement on the formation of a joint venture for the manufacture and sale of light commercial vehicles. The joint venture intends to develop, produce, and distribute light commercial vehicles both under CBA's JinBei brand and the Renault brand in China.

## **Tsubaki Nakashima Acquires Bearing Components Business**

Japanese industrial bearings producer Tsubaki Nakashima has acquired NN Inc.'s precision bearing components group for \$375 million. The divestiture includes two manufacturing facilities in Erwin and Mountain City, Tennessee.

## **Toyota to Cooperate with Mazda Motor Cooperation**

Toyota Motor Corporation and Mazda Motor Cooperation have entered into a cooperation agreement that includes the formation of a joint venture manufacturing site in the United States with an estimated annual production capacity of approximately 300,000 vehicles by both Toyota and Mazda. The companies also intend to jointly develop technologies for electric vehicles, cooperate on advanced safety systems, and expand complementary products. Toyota also agreed to acquire approximately 5% of the shares in Mazda, while Mazda plans to acquire about 0.25% of Toyota's shares.

## **Ron Dennis Divests Shares in McLaren Technology Group**

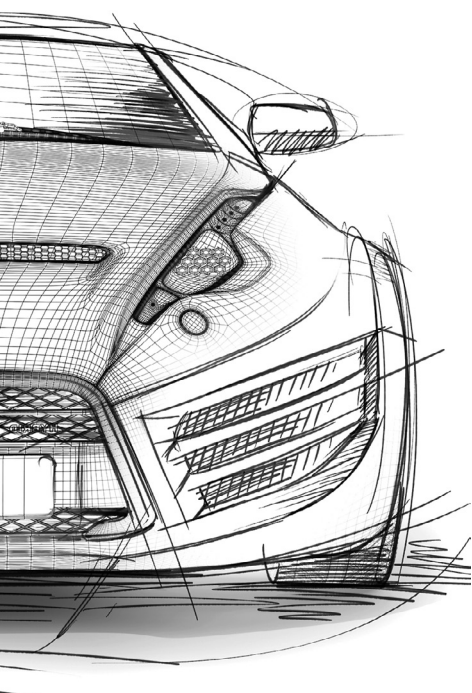
Ron Dennis has agreed to divest its shares in McLaren Technology Group and McLaren Automotive to the remaining shareholders of the companies for an estimated £275 million (\$362.5 million). Following the announcement of the sale, McLaren Automotive and McLaren Technologies will be combined under a single corporate roof to be named the McLaren Group.

## **Ford to Joint Venture with Zotye Auto on Electric Vehicles in China**

Ford Motor Company and Anhui Zotye Automobile Co. Ltd., a major manufacturer of zero-emission all-electric vehicles in China, have signed a memorandum of understanding to establish a 50/50 joint venture for the development, production, marketing, and servicing of a new line of all-electric passenger vehicles in China.

## **Volvo Group Divests Its Shares in Deutz AG**

The Volvo Group, a manufacturer of trucks, buses, and construction equipment, has divested its complete shareholding of approximately 25% in Deutz AG, the German publicly listed engine manufacturer, to institutional investors for approximately 1.895 billion Swedish krona (\$232 million).



# MERGERS & ACQUISITIONS

## **Fosun, Nanjing Nangang Iron & Steel Complete Koller Acquisition**

Fosun International and its joint venture Nanjing Nangang Iron & Steel United Co. Ltd. have completed the acquisition of a majority stake in Koller Beteiligungs GmbH, a German automotive tier 1 and/or tier 2 supplier active in tool making, lightweight construction, and injection molding.

## **Tencent, Guangzhou Automobile to Cooperate on Connected Cars**

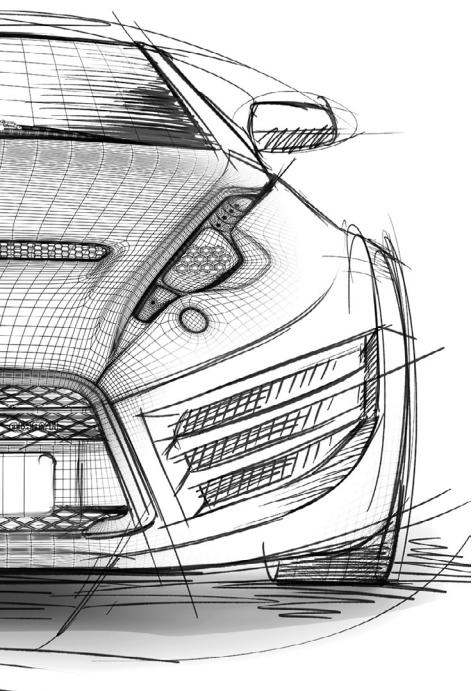
Chinese internet company Tencent and Chinese OEM Guangzhou Automobile Group have entered into an agreement to cooperate in the development of connected and self-driving cars. Earlier this year, Tencent acquired a 5% stake in Tesla.

## **Daimler, Via Form Joint Venture for Van Ridesharing Services**

German OEM Daimler and US internet company Via have formed a joint venture for van ridesharing services with the objective of introducing on-demand ridesharing services in Europe. London was the first city to go live with the service earlier this year.

## **Aston Martin to Expand Trade and Operations in Japan**

Aston Martin has announced a five-year, £500 million (\$659 million) trade and investment deal between the United Kingdom and Japan, which will include increased exports to Japan; the purchase of approximately £70 million (\$92 million) in components from Japanese suppliers including Bridgestone, Denso, Mitsubishi, and Yazaki; and an increased office and dealer network presence across Japan. The deal is intended to boost the export and production of Aston Martin's new sports cars and the introduction of its first SUV.



# ANTITRUST

## **Germany Imposes Fines on Heat Shield Manufacturers**

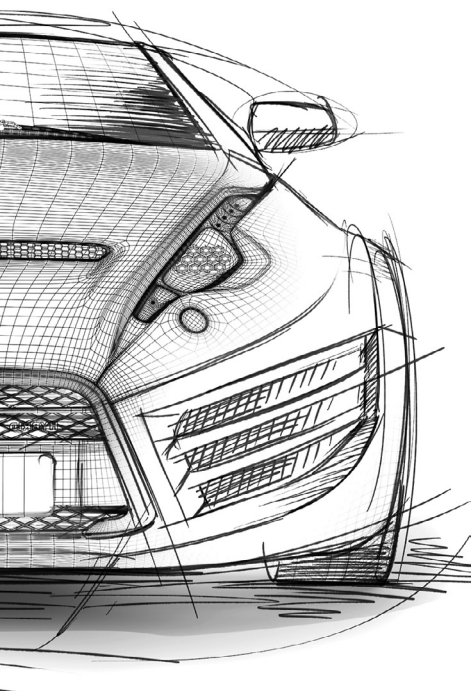
The German Federal Cartel Office has imposed total fines of €9.6 million (\$11.3 million) on automotive heat shield producers Iring Klinger Abschirmtechnik AG (Switzerland), Estamp SAU (Spain), and Lydall Gerhardt GmbH & Co. KG (Germany) for agreeing to pass increased materials costs on to their customer Volkswagen. Carcoustics International GmbH (Germany) applied for leniency and was granted immunity as a result of its cooperation.

## **EC Approves Opel's Acquisition by Peugeot**

The European Commission has unconditionally cleared Peugeot's proposed acquisition of sole control over Opel. The commission concluded that the transaction was unlikely to raise competitive concerns due to the combined market shares being relatively small in all relevant markets for the manufacture and sale of motor vehicles. The commission also concluded that the retail and distribution markets remain competitive because of Peugeot's and Opel's different distribution channels and the existence of independent distributors, importers, and retailers.

## **EC Fines Scania € 880 million in EU Truck Cartel Probe**

The European Commission has imposed an €880 million (\$1 billion) fine on truck manufacturer Scania for its alleged participation in the European truck cartel from 1997 to 2001. The commission alleges that Scania engaged in coordinating gross list prices, manipulated the timing for the introduction of new emission technologies, and passed emission technologies costs on to customers for medium and heavy trucks. The alleged cartel was not targeted at manipulating the truck emission systems. The decision is subject to appeal.



# REGULATORY

## **Automobile Sales Measures Become Effective in China**

The Measures for the Administration of Automobile Sales issued by China's Ministry of Commerce became effective on July 1, 2017. The measures aim to promote fair competition among market participants in the Chinese automotive industry. They also abolish the need for auto dealers to receive authorization from brand owners, and include changes to after-sales services management and the OEM's restrictions on car dealers.

## **EU Court Confirms Decision to Partly Block State Aid for BMW**

The European Union General Court has confirmed the European Commission's decision to allow aid of no more than €17 million (\$20 million) to increase the manufacture of electric and hybrid passenger cars in its production site in Leipzig, Germany. Germany initially intended to grant €45 million (\$53 million) for BMW's plans. The court dismissed the company's argument that the commission wrongly calculated the costs of the proposed project. The decision is subject to appeal at the European Court of Justice.

## **EU Commission Orders Polish Motorway Operator to Repay €210M**

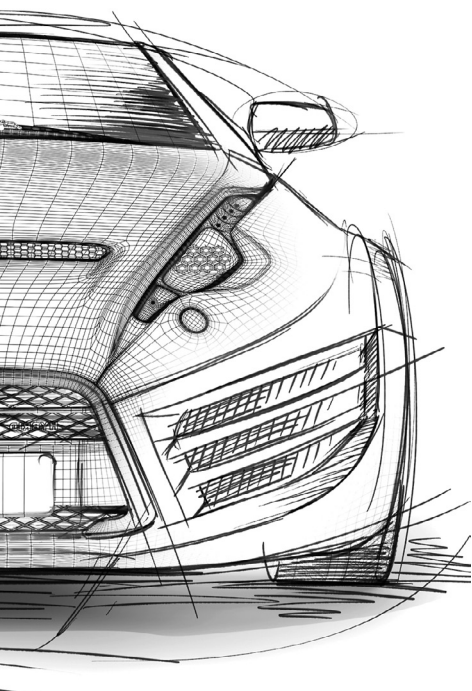
The European Commission has issued a decision ordering Polish motorway operator Autostrada Wielkopolska S.A. (AWSA), which manages the Polish motorway A2, to repay approximately €210 million (\$247 million). The commission concluded that, due to reliance on an outdated calculation basis, AWSA was overcompensated by the Polish state for an amendment to Polish law that resulted in a loss of revenues of the motorway operator.

## **India Issues Guidelines for Dealers Distributing Car Insurance**

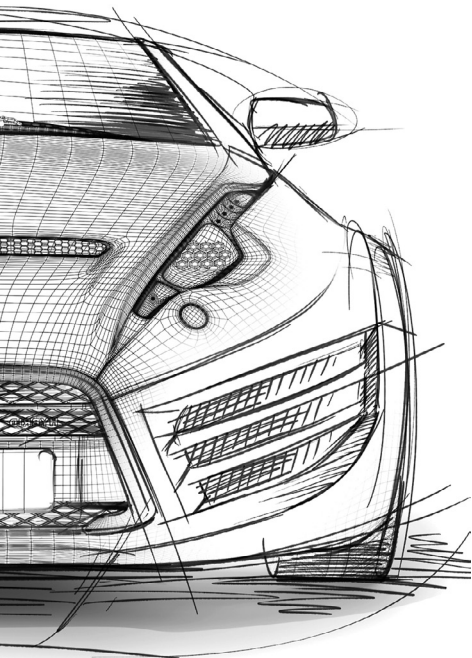
The Insurance Regulatory and Development Authority of India has issued guidelines for auto dealers distributing car insurance on behalf of insurance companies. The goal of the guidelines is to gain regulatory oversight of car dealers active in marketing car insurance. Among other things, the guidelines specify the appointment by the insurer, training, renewal of license, and review of the auto dealers' operations.

## **Roundup: Emission Rule Compliance Still in Spotlight**

- The Public Prosecutor's Office in Stuttgart, Germany initiated an investigation against unknown employees of Porsche regarding fraud and criminal advertising in the context of alleged diesel emission manipulation.
- The US Environmental Protection Agency and the California Air Resources Board approved Volkswagen's plan to fix 326,000 2.0-liter diesel-engine vehicles in the United States. The plan includes the removal of the defeat device software and a hardware upgrade in which the emission catalysts will be replaced.
- The German Federal Ministry of Transport and Digital Infrastructure withdrew the registration of a Porsche Cayenne model ordering the company to recall approximately 22,000 Porsche Cayenne with 3.0-liter diesel engine sold in Europe allegedly equipped with defeat device software.



# REGULATORY

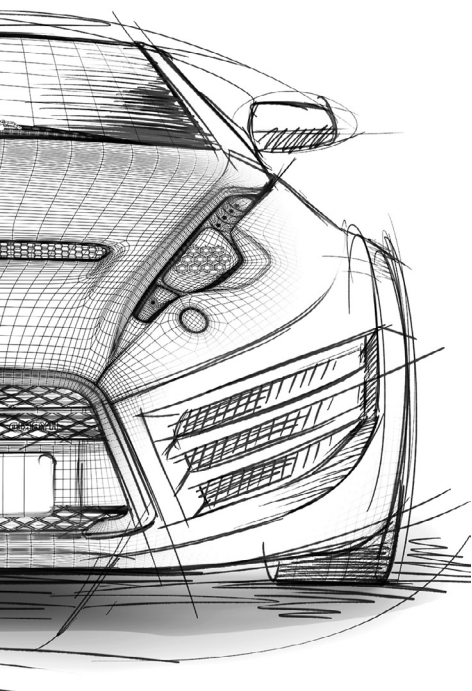


- Representatives of the German federal government and Volkswagen, Porsche, AUDI, Mercedes, BMW, Opel, and Ford met at the so-called “diesel summit” where the OEMs have agreed to provide software upgrades for Euro 5 and Euro 6 model diesel vehicles.
- A former Volkswagen executive has pleaded guilty to conspiring to defraud the United States, to commit wire fraud, and to violate the Clean Air Act. In exchange for the guilty plea, federal prosecutors dropped the charge of wire fraud.
- The US Department of Justice (DOJ) has charged a former Audi manager with conspiracy to defraud the US government, wire fraud, and violations of the Clean Air Act.
- The Munich Public Prosecutor has initiated an administrative offense investigation against Audi into diesel emissions manipulations after the prosecutor’s office had previously initiated a probe against unknown employees of Audi.
- The Stuttgart Administrative Court has upheld Deutsche Umwelthilfe’s complaint against the German state of Baden-Württemberg confirming that the state’s measures proposed in its clean air plan are not sufficient to comply with the emission limits for nitrogen dioxide in the Stuttgart environmental zone and that the driving ban of certain diesel vehicles would be the most efficient measure to comply with the emission limits. The decision is subject to appeal.
- Fiat Chrysler received approval from the US Environmental Protection Agency and California Air Resources Board to resume the production and distribution of its RAM 1500 and Jeep Grand Cherokee model with 3.0-liter diesel engines after updating engine control software that addresses emissions concerns.
- A US magistrate judge in the Northern District of California has found that the DOJ cannot share evidence it gathered during its probe into a company’s emission rule compliance with a German law firm retained by the DOJ to pursue the DOJ’s alleged claims against Volkswagen in Germany to recover losses to the retirement savings plan for US Government employees. The judge held that Germany’s discovery rules are stricter than those in the United States and that a disclosure could involve the risk that Volkswagen would need to share the documents with other plaintiffs in the securities action in Germany.

# INTELLECTUAL PROPERTY

## **Ferrari to Lose Testarossa Brand**

The Regional Court in Düsseldorf, Germany has issued a decision ordering Ferrari to consent to the deletion of the domestic and international Testarossa brand. The dispute that led to the decision was brought by toy manufacturer Kurt Hesse, who argued that Ferrari has not used the brand for more than 20 years. The court dismissed Ferrari's argument that the company is still active in the maintenance and repair of Testarossa vehicles, as the company provides these services under the Ferrari brand and the spare parts business generates only limited revenues. As a result, Mr. Hesse is no longer obliged to pay licensing fees for the use of the Testarossa brand, which he plans to use for bicycles, e-bikes, and shavers. The decision is subject to appeal.



## **ADAS Engineers Face Performance, Compliance Challenges**

Engineers engaged in designing advanced driver assistance systems (ADAS) have significant performance and compliance challenges. Technical specifications for automotive-grade IP blocks are incorporating standards such as ISO 26262 (functional safety with levels A-D), AEC-Q100 (reliability), and TS 16949 (now IATF 16949 covering quality management) that contain significant reliability requirements. IP blocks used in ADAS systems present the most significant challenges because high-speed processing requirements of collision avoidance and other high-performance safety systems are driving IP blocks to be realized in cutting-edge 7 nanometer, 14 nanometer, and 16 nanometer FinFET technologies. Design tool vendor Synopsys and others report that cooperation among IP developers, semiconductor foundries, integrated circuit vendors, and design tool vendors is required to achieve automotive-grade IP blocks sufficient in performance that are also compliant with the new standards.

## **Shape of Land Rover's Defender Is in Play**

Jaguar Land Rover (JLR) is reportedly seeking to trademark the shape of the Land Rover Defender from its release in 1948 to more recent Defender models amid announcements and attempts by Ineos to release a similar vehicle. The question of whether another model infringes JLR's trademarks ultimately will depend on whether a member of the public, looking at the design of the rival vehicle, would be confused as to whether it is the Defender or its JLR-fielded replacement. The extent to which the Defender's look is iconic is likely to play a role in that analysis.

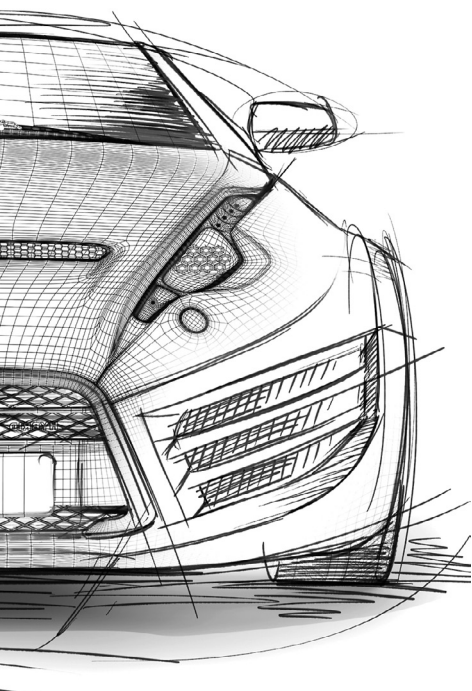
## **Ford Patents Autonomous Car with Passenger Table**

Ford Motor Company has filed a patent on an autonomous vehicle with front seats that swivel 180 degrees to face the rear with a retractable table that rises between the front and rear seats. (See US Patent Publication No. 2017/0259772). The table is equipped with an airbag.

## 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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