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## THE COOPERATIVE FUTURE OF MOBILITY DEALS

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Increasing demand from consumers for Mobility-as-a-Service (MaaS) has dramatically changed the traditional auto manufacturing landscape. To capitalize on this opportunity, automakers are racing to develop ever more sophisticated vehicles equipped with advanced automated driving systems (ADS). But this leap — to the very latest ADS-equipped and electric vehicles, and from isolated to connected solutions — requires a radical reimagining of traditional approaches and fast access to new technology. Innovative deals and collaborations are key.

But with the coronavirus outbreak wreaking havoc in global markets, many such deals are in jeopardy. As corporations come out the other side of coronavirus related operating and financial conditions, transformational deals, partnerships and collaborations are likely to be essential to accelerating solution development, improving speed-to-market and remaining competitive.

The way cars have been manufactured has not changed significantly for decades. OEMs have historically worked with a network of approved suppliers to design and manufacture vehicles. Automakers are on a rapid transformation to meet the significant appetite for the next generation of connected and ADS-equipped vehicles with "infotainment" systems, Internet access, driver assistance packages, advanced safety functions and other technology-based features.

In fact the global connected car market was valued at USD 73 billion in 2017 and is projected to reach USD 219 billion by 2025.<sup>1</sup> Such is demand, that it is predicted that by the end of 2020, an in-vehicle Amazon-style marketplace will be available in 80% of premium vehicles sold and the new generation of this platform will be customized to each driver and passenger.<sup>2</sup>

This article examines partnership models through a legal lens, weighing the strategies automakers can leverage for success.

## PARTNERSHIPS & INVESTMENTS: SPREADING THE RISK

### At a glance

Building partnerships and investing in start-ups to widen portfolio and spread commercial risk of failure.

### Pro

It is often cheaper, faster and less risky to build partnerships or to invest in a start-up to gain access to technology.

### Con

Automakers could be damaged by unreliable tech—considering brand and liability. Complexity of minority investments, particularly those related to competition matters with future investments or sales to competing automakers.

<sup>1</sup> Frost & Sullivan's market research *Global Connected Car Market 2018-2022*

<sup>2</sup> Frost & Sullivan's market research *Global Connected Car Market 2018-2022*

One of the most popular ways automakers are preparing for the future of mobility is by taking minority stakes in and building strategic partnerships with innovative technology and mobility-focused start-ups. Such investments provide a great deal of flexibility in terms of amount of investment but absent a significant stake, sometimes involve exposure to transactions involving competitors. In addition, one-off VC investments prior to creating an internal VC arm can involve the requirement to create internal investment monitoring infrastructure.

Many major automakers have already made strategic investments into externally managed VC funds and direct investments into start-ups such as third-party artificial intelligence-based assistants. Similarly, many of the big automakers have opened offices in Silicon Valley and the industry association Autotech Council was set up to address the gap between innovators and car companies and facilitate introductions.

Partnerships and minority investments allow automakers to invest in multiple start-ups to spread their interest and risk without committing all of their R&D budget to one or two technologies. These arrangements can give consumers greater choice and grant automakers the advantage of speed — meaning they can be first to market with new products.

But partnering does present challenges. The automaker could see liability skyrocket in certain partnership structures, its brand could be damaged by unreliable technology where license arrangements for the parent brand or extensive publicity has occurred, or the level of investment (including future funding rounds) required to maintain a purchase option or blocking right on competitive automaker investment could become more significant than desirable. In addition, automakers have far less control in such structures than if the target business was brought under its own operation. Issues around who has access to the data collected and which parties are responsible for ensuring data privacy regulations are met can also prove difficult and should be resolved at the outset through robust legal contracts.

## KEY ADOPTERS

- Toyota invested in ride-hailing firm Grab.
- Volkswagen and Ford have both invested in self-driving platform Argo AI.
- Hyundai's corporate venture arm, Hyundai CRADLE has funded more than 30 companies since its creation in early 2017.
- BMW Group's venture capital fund, iVentures, focuses on consumer-facing mobility services. BMW also operates a technology accelerator URBAN-X, that targets companies focused on working, living and getting around in cities in a sustainable and resilient way.<sup>3</sup>



## JOINT VENTURES: BALANCING COST WITH ECONOMIES OF SCALE

### At a glance

Joining forces to create a shared venture and capitalize on economies of scale.

### Pro

Gives automakers control without the full cost of buying tech on their own.

### Con

Care needs to be taken to ensure each company's IP is protected and the complexity of negotiation of governance and monetization and exit rights can be surprisingly time consuming.

Automakers see collaboration as the key to success — particularly in the field of electrification — and are looking into Joint Ventures (JVs) in the race to develop mass-produced electric vehicles. JVs allow both companies to take advantage of cost efficiencies from shared development and rapidly scale technology and bring it to market.

Joint ventures can provide a unique mechanism to leverage combined technologies, resources (such as monetary investment and AI design talent) to launch new ventures, but there is no "off the shelf" joint venture other than the terms generated by repeat players in the joint venture market and there is always a degree of shared control, such as blocking rights on certain major transactions, incurring indebtedness and major operational decisions. For example, the rules regarding required future contributions and exist rights related to funding operations are worth discussion.

Protecting intellectual property is critical in this context. With employees from both sides often transferring to the new joint venture, protocols for trade secrets and IP must be established from the outset. Also, the terms of any license of the parent automakers brands should be established. It is wise to determine exactly what IP assets from each company are to be part of the JV, as well as any mechanisms necessary to protect any IP that is not transferring to the JV.

<sup>3</sup> List of investments collated by Consumer Technology Association

## KEY ADOPTERS

- Volkswagen and Aeris, a technology leader in the Internet of Things (IoT), announced formation of Ventic LLC, a joint venture (JV) for the development and operations of connected vehicle platform technologies.
- BMW Group and Jaguar Land Rover established a technical partnership last year for the development of a next-generation electric powertrain.
- Toyota is teaming up with Subaru for a shared EV platform.
- Similar joint ventures are also ongoing between General Motors and Honda for battery technology, and Ford and Volkswagen in the development of commercial vehicles and electric and autonomous cars.

## M&A: BRINGING INNOVATION AND GROWTH IN-HOUSE

### At a glance

Fully acquiring the desired technology and skills and incorporating them into the business.

### Pro

Deals help automakers launch new business models faster than they could on their own.

### Con

Expensive and potential for "culture shock" when large traditional companies start managing start-ups.

Although globally, overall M&A activity may be stagnant, auto-tech deals have more than doubled since 2010 and the number of players in the automotive technology space has broadened to include PE funds, VC funds as well as automakers.<sup>4</sup> This boom in technology-focused M&A is certainly testament to the popularity of this approach among traditional industrials to acquire the platforms and people needed for success. Although the COVID-19 pandemic and global recession has caused many companies to pause making new investments, automotive tech M&A is likely to remain a key adoption method for next generation automotive technology.

M&A allows for full control of the acquired product in the quickest timeline and allows full sharing and leveraging of the acquired technology and work force towards internal goals. However, valuation remains a challenge where tech companies may or may not have revenue but yet seek purchase prices sufficient to pay out venture backed investors and key employees at acceptable levels. Particularly when combined with earn-outs to bridge valuation gaps and representation and warranty policies to address operating risks, we continue to see M&A as a core development strategy. In addition, in light of coronavirus related market turbulence, there may be

opportunities for potential acquirers in the near term if traditional VC funding is not as attractive.

Many OEMs are looking to acquire successful market entrants with proven technology — preferring to buy tech IP and talent and bring it in-house. This has the benefit of keeping the automaker's brand identity intact and makes it far easier when dealing with issues relating to data privacy, long term maintenance and warranties. It can also reduce development cycles leading to faster introduction of new and improved features.

But integrating these companies in a way that preserves value is challenging. Tech start-ups differ from traditional automakers in important ways — they often have different business models, remuneration, ways of working, culture and organizational structures. Retaining the mission, purpose and incentive compensation of the start-up is critical to keeping key personnel, in particular, invested for the long-term.

## KEY ADOPTERS

- General Motors acquired San Francisco-based tech startup Cruise Automation for a reported USD 1 billion to bolster its driverless tech lineup.
- Toyota's acquisition of software engineering team Jaybridge Robotics also made the headlines.
- South Korean tech giant Samsung acquired Harman to become a Tier One auto parts supplier.
- Industry leader in navigation TomTom, which delivers data to Uber and Apple, acquired the autonomous driving start-up Autonomos.

## COLLABORATION IS KEY

Significant investments in innovation and technology research and development will enable the world's leading connected car companies to maintain their leadership in the global market.<sup>5</sup>

To succeed, automakers need to collaborate. There are pros and cons to each partnership approach, but it is clear that innovative tie-ups are reshaping the industry, propelling innovation forward and enabling growth to happen at a faster pace.

With a thorough understanding of the strategic and operational business challenges in the automotive sector and a wealth of experience across all relevant areas of law, Baker McKenzie helps major global organizations implement their strategy by developing commercially effective and innovative solutions. Combining our global reach with decades of industry experience, we deal with their corporate, transactional, employment, tax, IT, IP, regulatory and compliance, and dispute resolution matters. ■

<sup>4</sup> BCG: *As tech transforms auto, deals are booming.*

<sup>5</sup> Frost & Sullivan market research *Global Connected Car Market 2018-2022*



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