

Morgan Lewis

**CURRENT EU REGULATORY
DEVELOPMENTS AND HIGH-PROFILE
INVESTIGATIONS IN THE EU
AUTOMOTIVE INDUSTRY:
THE FUTURE OF CONNECTED CARS, DIESEL
CARS, AND IMPORTED CARS**

March 20, 2019

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Morgan Lewis Automotive Hour Webinar Series

Series of automotive industry focused webinars led by members of the Morgan Lewis global automotive team. The 10-part 2019 program is designed to provide a comprehensive overview on a variety of topics related to clients in the automotive industry. Upcoming sessions:

APRIL | Tax and Tariff Developments and Their Impact on the Automotive Industry

MAY | IP Issues with Emerging Automotive and Mobility Technologies

JUNE | Distribution of Vehicles in the United States and the Impact of State Law

SEPTEMBER | Venture Investing in the Automotive and Mobility Space

OCTOBER | Labor and Employment Issues in the Automotive and Mobility Space

NOVEMBER | Joint Ventures and Alliance Issues in the Automotive Space

DECEMBER | Privacy Considerations and the Use of Collected Data

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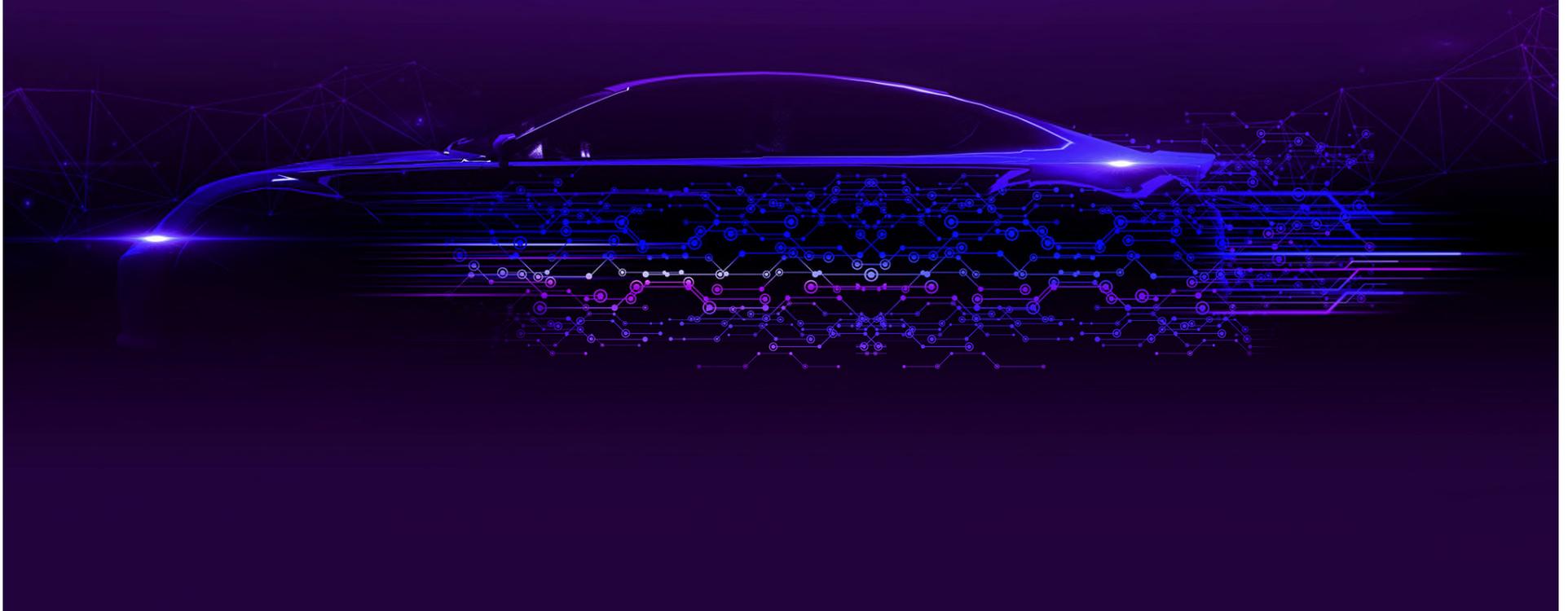
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SECTION 01

INTRODUCTIONS



Presenters



Michael Masling

Michael Masling is part of a global team that advises clients in mergers and other filings; obtains clearance from national and international competition authorities; defends clients in government and private investigations and litigation; provides antitrust counseling; and negotiates with competition agencies. He also helps ensure clients' business operations comply with—but are not unduly restrained by—applicable competition law requirements.



Christina Renner

Christina Renner concentrates her practice on European Union and German merger control, competition, and antitrust law, with experience in cartels and general behavioral matters, abuse of dominance, and EU state aid laws. Christina regularly advises clients concerning mergers reviewed by the European Commission and the German Federal Cartel Office, as well as the French, Austrian, and Belgian competition authorities. She represents diverse international clients in antitrust investigations before the European Commission and other national competition authorities, including in litigation before European courts.



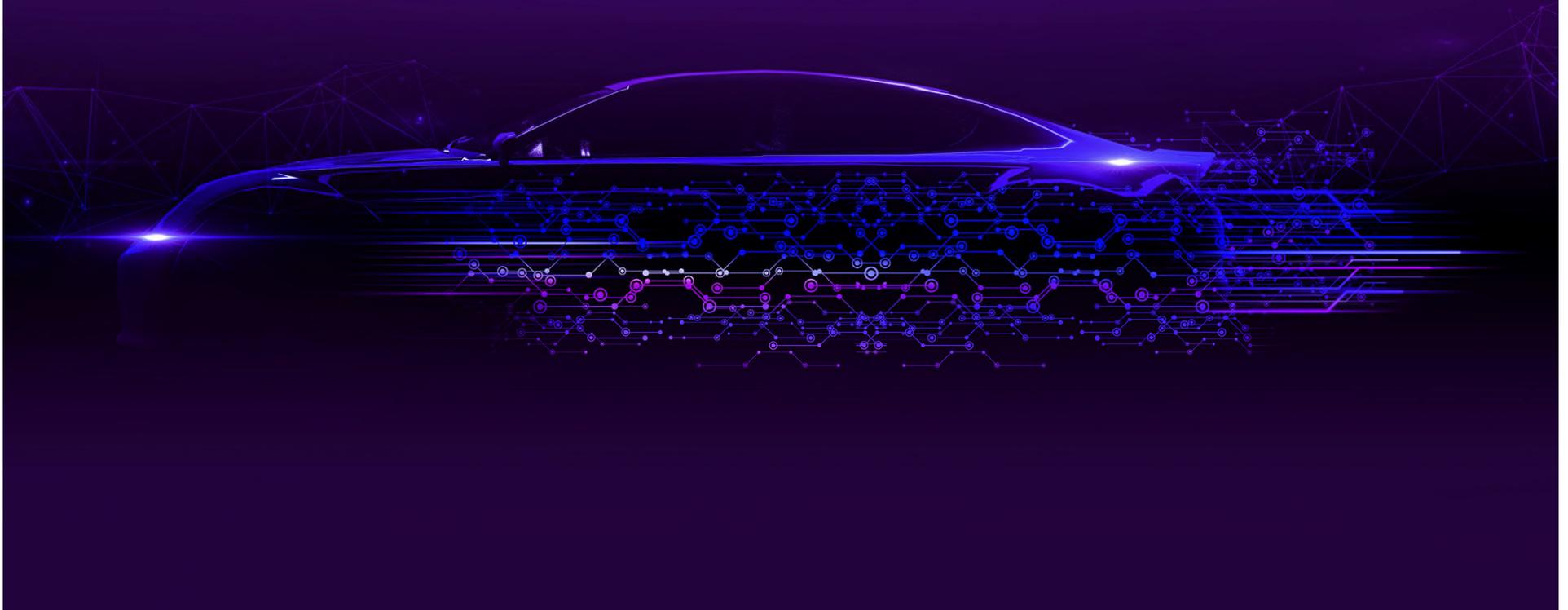
Izzet Sinan

Izzet M. Sinan counsels clients on European Union (EU) law. He advises on all aspects of EU competition law, helps companies obtain clearance for mergers and joint ventures before the European Commission and Member State agencies, and counsels on agreements and issues relating to requests for information. He also advises and defends clients involved in cartel agreements—including onsite European Commission dawn raid investigations and possible leniency and settlement issues—and implements compliance programs.

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SECTION 02

CONNECTED CARS



Connected Cars – EU regulatory path (1/3)

Various initiatives at European Union level to develop regulatory environment for connected cars

- July 2010: Directive 2010/40/EC of the European Parliament and the Council on the framework for the deployment of Intelligent Transport Systems (“ITS”) in the field of road transport and for the interfaces with other modes of transport (“ITS Directive”)
 - Establish interoperable ITS services while leaving the Member States the decision in which specific system they would like to invest
 - Commission can adopt measures (through delegated acts) to introduce functional, technical and organizational measures to address EU-wide introduction of ITS solutions
 - Priority on traffic and travel information eCall emergency system, and intelligent truck parking
- November 2014: Introduction of C-ITS Platform as a EU Commission expert group
 - Provides an operational instrument for dialogue, exchange of technical knowledge and cooperation amongst the Commission, public stakeholders from Member States, local/regional authorities and private stakeholders such as e.g. vehicle manufacturers, equipment manufacturers, road operators, telecom operators and service providers
- October 2015: GEAR 2030 initiative launched
 - Initiative by various member states and NGOs looking into policy for highly automated and connected vehicles
 - Autumn 2015: Industry round tables initiated involving the the telecom and vehicle manufacturing industry to develop synergies of connected and automated vehicles.

Connected Cars – EU regulatory path (2/3)

January 2016: C-ITS Platform's recommendations:

- a 'Day 1' list of commonly agreed C-ITS services for deployment across the EU;
 - a common vision to tackle cyber security detailed in an agreed Trust Model;
 - an assessment of C-ITS benefits across Europe, based on a hybrid communication approach;
 - guiding principles for access to in vehicle data;
 - a detailed analysis of privacy and data protection.
- November 2016: C-ITS Platform recommendations served as essential input for Commission European strategy on C-ITS (*A European Strategy on cooperative intelligent transport systems. A milestone towards cooperative, connected and automated mobility*)
 - Strategy aims to facilitate convergence of investments and regulatory frameworks across the EU enabling deployment of in particular mature-safety related C-ITS services as of 2019

Connected Cars – EU regulatory path (3/3)

- January 2019: Draft Commission Delegated Regulation with regard to the deployment and operational use of cooperative intelligent transport systems
 - C-ITS enable vehicles to interact directly with each other and the surrounding road infrastructure. In road transport, C-ITS typically involves vehicle-to-vehicle (V2V), vehicle-to-infrastructure (V2I) and/or infrastructure-to-infrastructure (I2I) communication, and communication between vehicles and pedestrians or cyclists ('vehicle-to-everything', V2X).
 - Focus is on 'day 1' services, i.e. C-ITS services to be deployed in the short term that will contribute particularly to road safety and traffic efficiency
 - Draft includes obligations on the C-ITS-stations, the C-ITS stations manufacturers, authorized representatives, importers and distributors
 - Draft decides for Wi-Fi based technology, however leaves option for fast track update for new technologies
- Consultation period ended 8 February 2019
- Planned Effective Date: 31 December 2019

Connected Cars – EU Regulatory Outlook

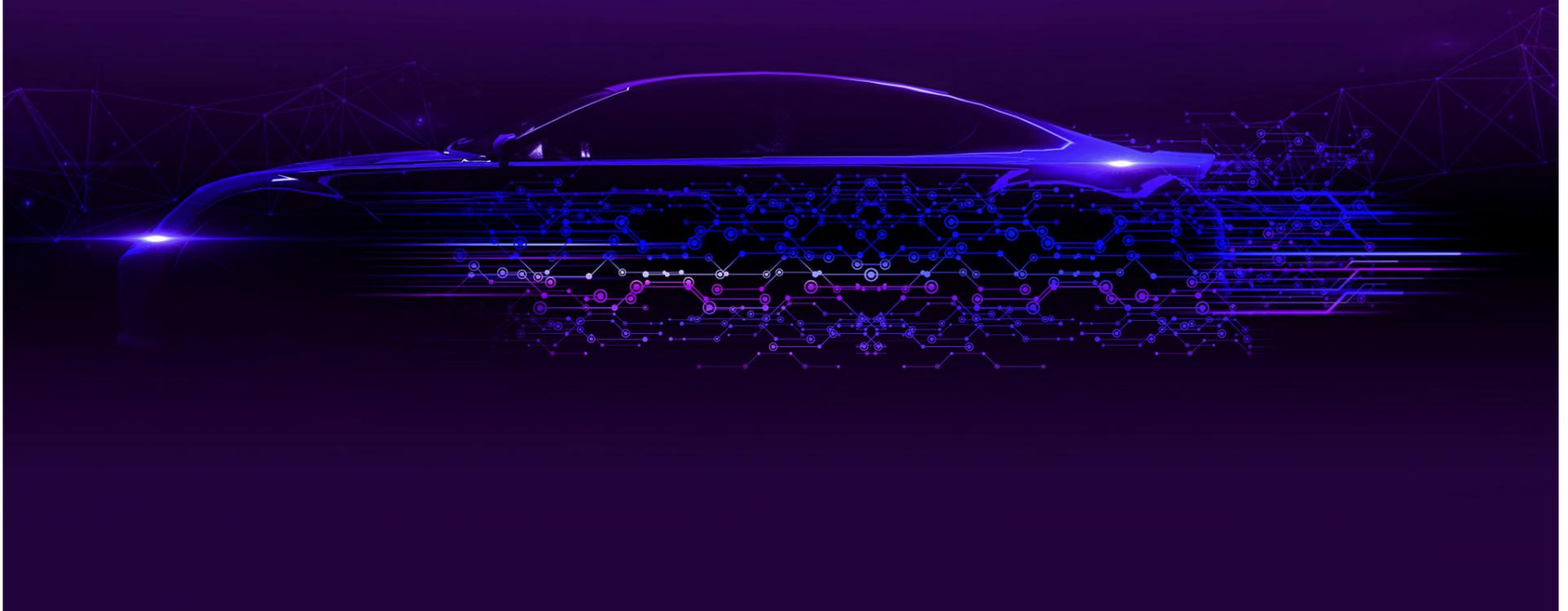
	2020s	2030s
<p>TRUCKS & CARS</p> 	<ul style="list-style-type: none"> Automated driving on motorways (e.g. truck platooning) and at low speed in cities (e.g. garbage trucks or valet parking) 	<ul style="list-style-type: none"> Towards fully autonomous mobility.
<p>PUBLIC TRANSPORT</p> 	<ul style="list-style-type: none"> Automated mobility at low speed (e.g. urban shuttles, small delivery vehicles in cities) 	<ul style="list-style-type: none"> Towards fully autonomous mobility. 25% of trips in cities covered by shared automated vehicles.
<p>ALL NEW VEHICLES</p> 	<p>By 2022</p> <ul style="list-style-type: none"> Connected to the internet Many of them able to communicate directly to each other and their environment as of 2019 Supported by free services high-precision digital mapping thanks to satellite data from Galileo services as of 2019 	 

Connected Cars – EU Regulatory Outlook

- Adoption of the C-ITS Delegated Act week of 12 March 2019
 - No legally binding act but first legal framework in Europe for connected driving
 - Highly political decision on technology to use
- Adoption of the Recommendation on connected driving forthcoming
 - Security
 - Access to data

SECTION 03

ANTITRUST



EU Antitrust – Connected Cars

- EU merger control: “killer acquisitions”
- EU antitrust rules: data as essential input held by OEMs
 - Value beyond auto-repair and after sale markets
 - Obligation to grant access
 - Obligation to license on fair terms

EU Antitrust – high profile investigations

- German carmakers EU probe: novel theory of “harm to innovation”
- Truck cartel: Wave of damages claims in the EU (and globally)
- Automotive industry under heavy scrutiny in 2018 and will remain to be
 - Spark plugs cartel: Three suppliers fined EUR 76 million
Exchange of competitively-sensitive information, price-fixing, market allocation
 - Braking systems cartel: Three suppliers fined EUR 75 million
Exchange of competitively-sensitive information

EU Antitrust – reform of automotive distribution rules (1)

- Current Regulation 461/2010 on vertical agreements in the automotive sector is valid until 31 May 2023
- European Commission has invited tenders for an external study to evaluate:
 - how market conditions have evolved in the sector
 - the adequacy of existing law
 - the need for substantive revisions to the existing law
- Three principal areas of focus:
 - Distribution of new vehicles
 - Provision of repair and maintenance services
 - Distribution of spare parts

EU Antitrust – reform of automotive distribution rules (2)

- **Distribution of new vehicles**

- Foreclosure of new entrants by vertical agreements between manufacturers and dealers
- Insufficient competitive pressure through reduced network density among dealers

- **Provision of repair and maintenance services**

- Availability of information, tools and training enabling independent repairers to compete with authorised repairers
- Nature of warranties
- Network density of authorised repairers

- **Distribution of spare parts**

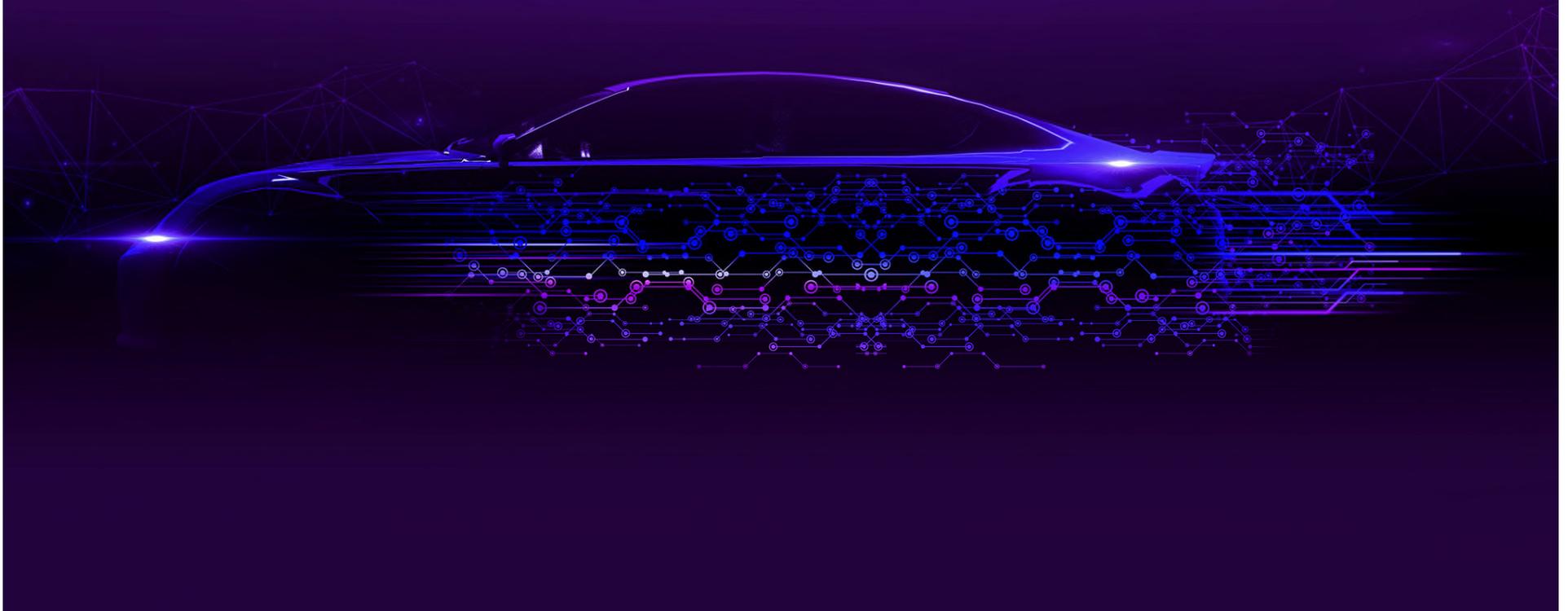
- Structure of rebate and bonus schemes applied by manufacturers to spare part suppliers
- Restrictions on aftermarket supply by manufacturers

EU Antitrust – reform of automotive distribution rules (3)

- Report to address the evolution of the following factors between 2010 and 2017:
 - **Qualitative factors** : *e.g.*, new types distribution channels, entrances and exits, access to data, customary contractual terms
 - **Quantitative factors** : *e.g.*, market share data, barriers to entry, pricing trends, network density of manufacturers and dealers, vertical integration between companies at different levels of supply chain.
- Geographic scope: Germany, France, Italy, Spain, Poland, Romania/UK, and one other EU Member State
- Anticipated publication date: in or around March 2020

SECTION 04

DIESEL QUO VADIS



Diesel Quo Vadis? EU Regulatory background

- Emission thresholds have been introduced in 2008 by Directive 2008/50/EC of the European Parliament and of the Council on ambient air quality and cleaner air for Europe („Clean Air Directive“)
- Member States shall ensure, that throughout their zones and agglomerations emission limit values are not exceeded
 - NO₂: limit value of 40 mg/m³ on average per calendar year
- Member States are obliged to ensure that air quality plans are established for those zones in which limit values are exceeded
- Air quality plans shall set out appropriate measures in case limit values are exceeded to keep period as short as possible

Diesel Quo Vadis? A European discussion

- Across Europe, the discussion on diesel bans is ongoing, e.g.:
 - Paris, Madrid, and Athens plan to ban diesel vehicles from city centers by 2025
 - Copenhagen as soon as 2020
- In Germany, an environmental association has sued a number of cities to comply with the respective cities' air quality plans by imposing diesel driving bans
- The German Federal Administrative Court concluded in February 2018 that the ban of diesel vehicles may be an appropriate measure to be imposed by the relevant authorities to comply with the limit values of a respective cities' air quality plan

Diesel Quo Vadis? Example Germany (1/3)

- Several German cities have announced bans for diesel cars, most of them taking a different approach in terms of (i) effective date, (ii) vehicles concerned, (iii) geographic scope, and (iv) exceptions
- Sanctions for violations are largely unclear
- Control mechanisms face practical and regulatory challenges, in particular with respect to privacy

Diesel Quo Vadis? Example Germany (2/3)

- October 2018: German government introduced the “Concept for clean air and ensuring the individual mobility in our cities” in order to minimize the effects of the driving ban across Germany (14 cities are at risk)
 - Subsidies for hardware updates for heavy city-owned vehicles (e.g., garbage trucks, street cleaning vehicles), as well as for business operators and supplier vehicles up to 80%.
 - Exemption from ban for Euro norm 4 and 5 vehicles emitting less than 270 mg/km nitrogen oxide
 - Vehicle owners whose vehicles exceed the 270 mg/km threshold shall have two options:
 - German OEMs have committed to provide rebates for customers switching from Euro norm 4 and 5 to newer models including the switch between used models. German government expects that non-German OEMs make similar offers
 - At the option of the customer, the German government expects that the OEMS come up for the costs of an hardware update in case technically feasible to comply with the 270 mg/km threshold.

Diesel Quo Vadis? Example Germany (3/3)

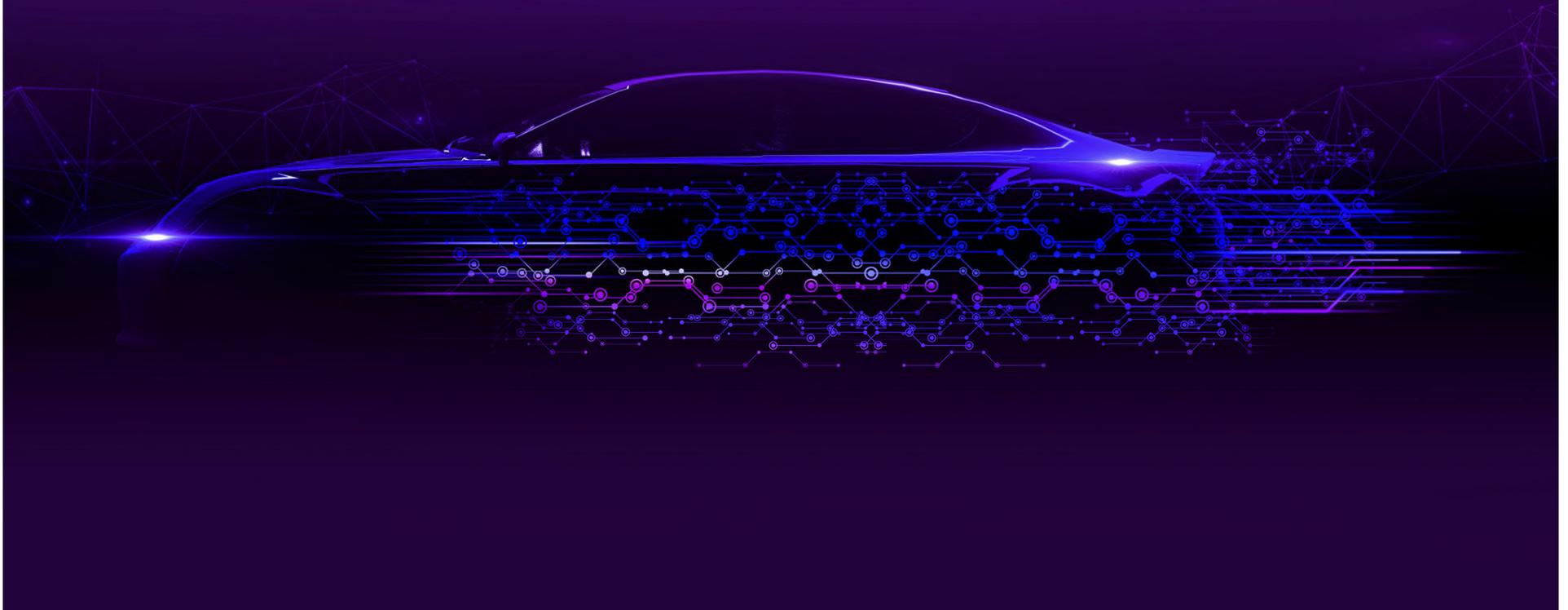
- 14/15 March 2019: Amendments to Federal Immission Control Act and Road Transport Act
 - Diesel driving bans in principal only proportionate when NO₂ limit value exceeds 50 mg/m³ on average per year
 - Exemption of driving bans for
 - Euro norm 6 and VI vehicles
 - Euro norm 4 and 5 diesel emitting less than 270 mg/km
 - Buses, heavy city owned vehicles, business operator and supplier vehicles (2.8-7.5 tons) eligible for hardware upgrades
 - Monitoring through open license plate screening, car and driver photo, deletion of data after 2 weeks

Diesel Quo Vadis? Outlook

- Diesel technology will continue to be an important technology at least in the mid term
 - Diesel engines are more efficient than petrol engines and necessary to reach the climate goals
 - Electric vehicles to overcome challenges
 - The newest diesel technology Euro 6d TEMP / Euro 6d presumably significantly reduce nitrogen oxide emissions
- However, several OEMs have already publicly announced the exit from the diesel technology

SECTION 05

EU JAPAN FREE TRADE AGREEMENT



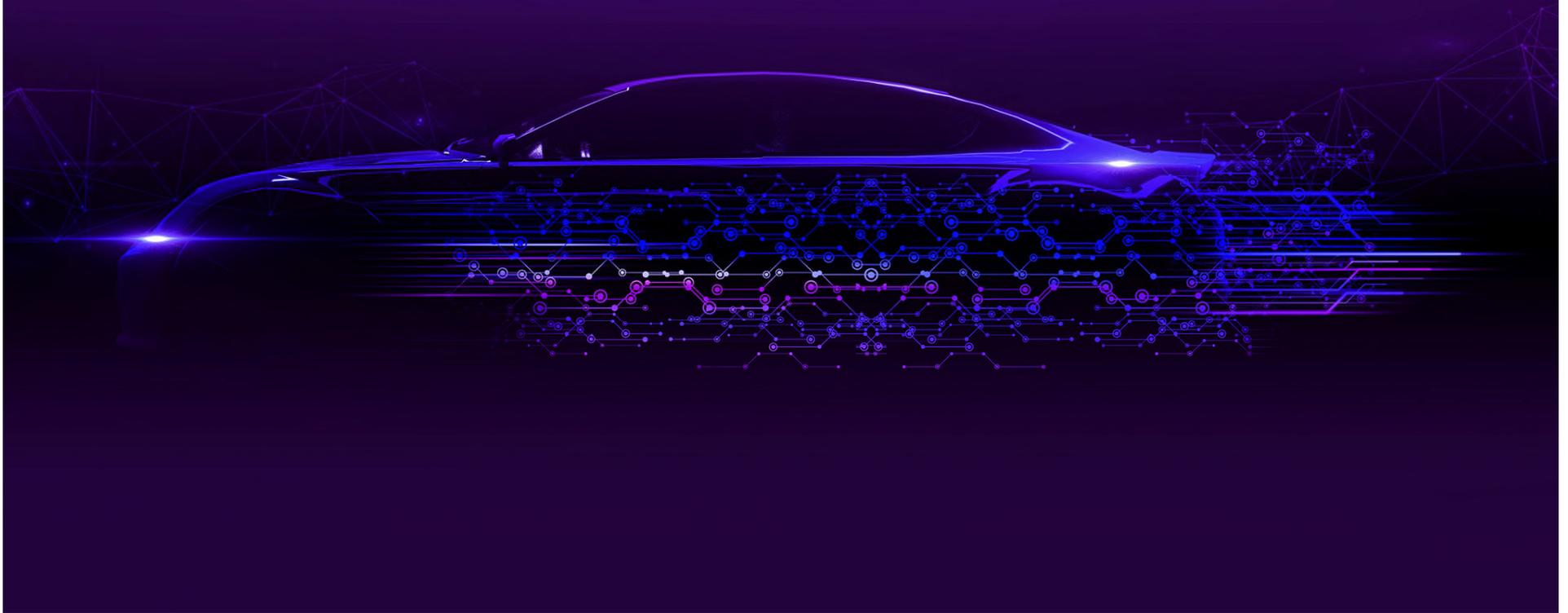
EU – Japan Free Trade Agreement (FTA) (1)

- Currently bilateral trends:
 - Premium cars: EU → Japan
 - Mainstream compact and subcompact cars: Japan → EU
- FTA entered into force on February 1, 2019.
- Key provisions:
 - Gradual reduction in tariffs and duties over 7-year period from 10% to 0%
 - Greater harmonisation of Japanese vehicle standards with UN regulations
 - Removal of other non-tariff barriers

EU – Japan Free Trade Agreement (FTA) (2)

- Main long-term beneficiaries likely to be:
 - Manufacturers of compact and subcompact cars on both sides, due to a lesser need for costly modifications
 - Smaller Japanese manufacturers not currently having a significant presence in the EU
 - European manufacturers that use Japanese components
 - Japanese motorcycle manufacturers that already have a significant presence in the EU (e.g., Honda, Kawasaki, Suzuki and Yamaha)
- Main threats likely to be faced by:
 - European manufacturers in the compact SUV segment, due to the increased competitiveness of hybrid Japanese rivals in the EU
 - Premium Japanese manufacturers (e.g., Lexus), due to the increased competitiveness of European counterparts in Japan
- Many Japanese manufacturers (e.g., Toyota, Nissan, Honda) serve the EU from plants in the UK – depending on the ultimate Brexit scenario, relocation to the continent or back to Japan may be more cost-effective.

QUESTIONS?



THANK YOU

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