Automotive Industry Outlook and Navigating Financial Challenges as the COVID-19 Impact Continues

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Automotive Industry Outlook:

Balancing Near-Term Execution Amidst Industry Disruption

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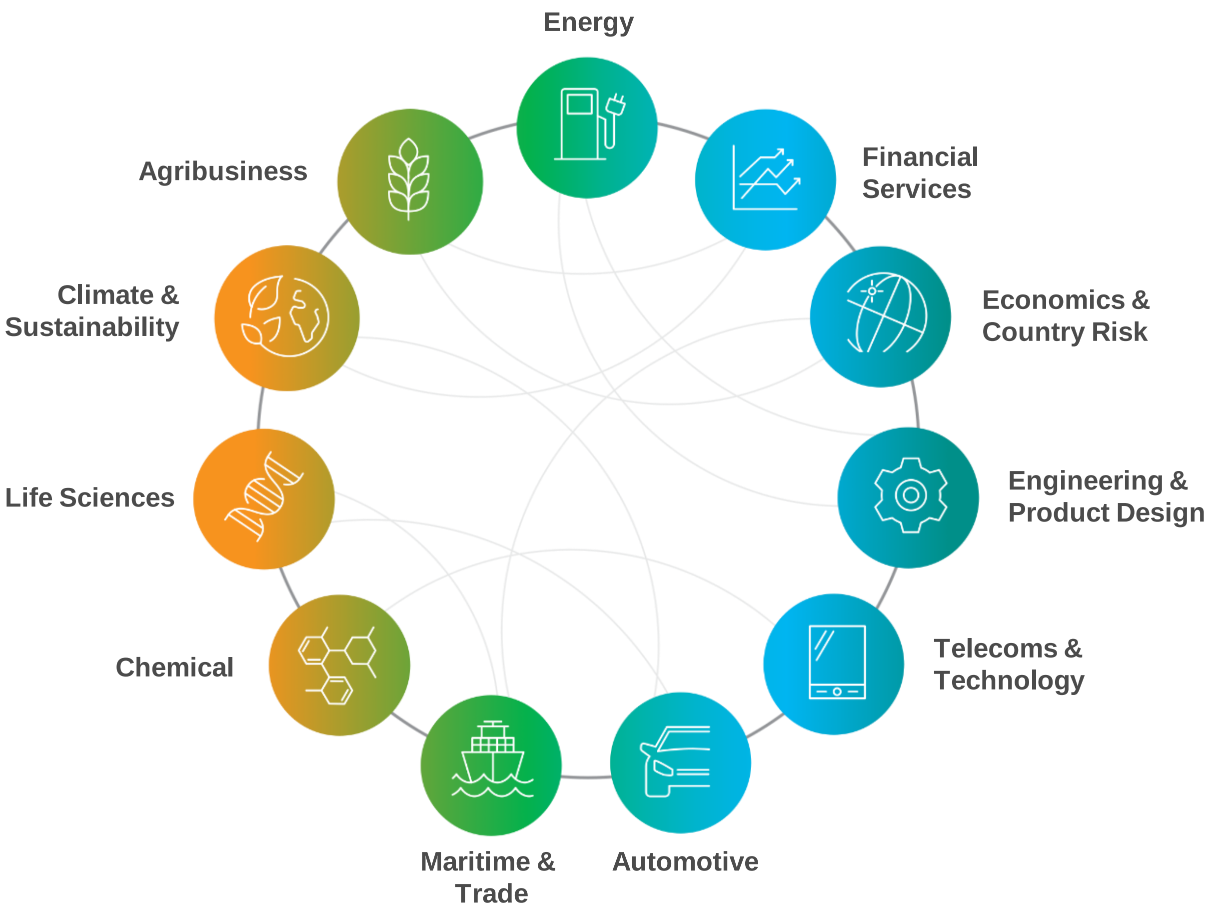
50,000+ customers in over 140 countries	**80%** of the Fortune Global 500
94/100 largest US corporates	**$4B** annual revenue NYSE: INFO



COVID-19 Autos Assessment

Key Forecast Assumptions

- Governments forced to seek sustainable way to live with virus (cannot lockdown forever / too soon for vaccine / Realpolitik vs. science)
- Global real GDP growth hard & fast into “real” recession for 2020 (-5.1%) Recovery prospects mixed into 2021 (+4.2%)
- China real GDP growth set at 1.5% for 2020 – first in, first out
- US real GDP slumps about -4.8% for 2020 – virus spreads south (risks “W”)
- Eurozone GDP growth prospects mixed – -8.7% for 2020 (ITA/ESP worst/DEU better)

Auto Incentives Help Limit Downside

- Government Autos stimulus measures now included (esp. Europe “Big 4” & China)
- China limited support (NEVs / China5 extension / city level measures)
- Europe targeting LEVs could limit upside (uptake mix vs. volume boost)
- Germany / France / Spain / Italy / Greece / EU Next Generation plan
- UK unlikely for 2020 / USA no news

Note: World Economic Outlook – August 2020

COVID-19 Recession Likely Deeper than Global Financial Crisis in 2008-09

Global Financial Crisis			Real GDP	COVID-19 Crisis				
2008	2009	2010	Percent change	2018	2019	2020	2021	2022
1.7	-1.7	4.2	World	3.2	2.6	-5.1	4.2	3.9
-0.1	-2.5	2.6	United States	3.0	2.2	-4.8	3.1	4.1
1.0	-2.9	3.1	Canada	2.0	1.7	-7.0	3.7	4.1
0.3	-4.4	2.1	Eurozone	1.8	1.3	-8.7	4.3	3.4
-0.3	-4.2	1.9	United Kingdom	1.3	1.5	-11.9	4.9	3.3
9.6	9.4	10.6	China	6.7	6.1	1.5	7.1	5.7
-1.1	-5.4	4.2	Japan	0.3	0.7	-5.7	2.2	1.3
3.3	7.7	8.5	India*	6.1	4.2	-6.9	6.5	5.1
5.1	-0.1	7.5	Brazil	1.3	1.1	-7.0	3.8	2.6
5.5	-7.9	4.5	Russia	2.5	1.3	-6.0	3.4	2.5

* Fiscal years starting 1 April

Source: IHS Markit

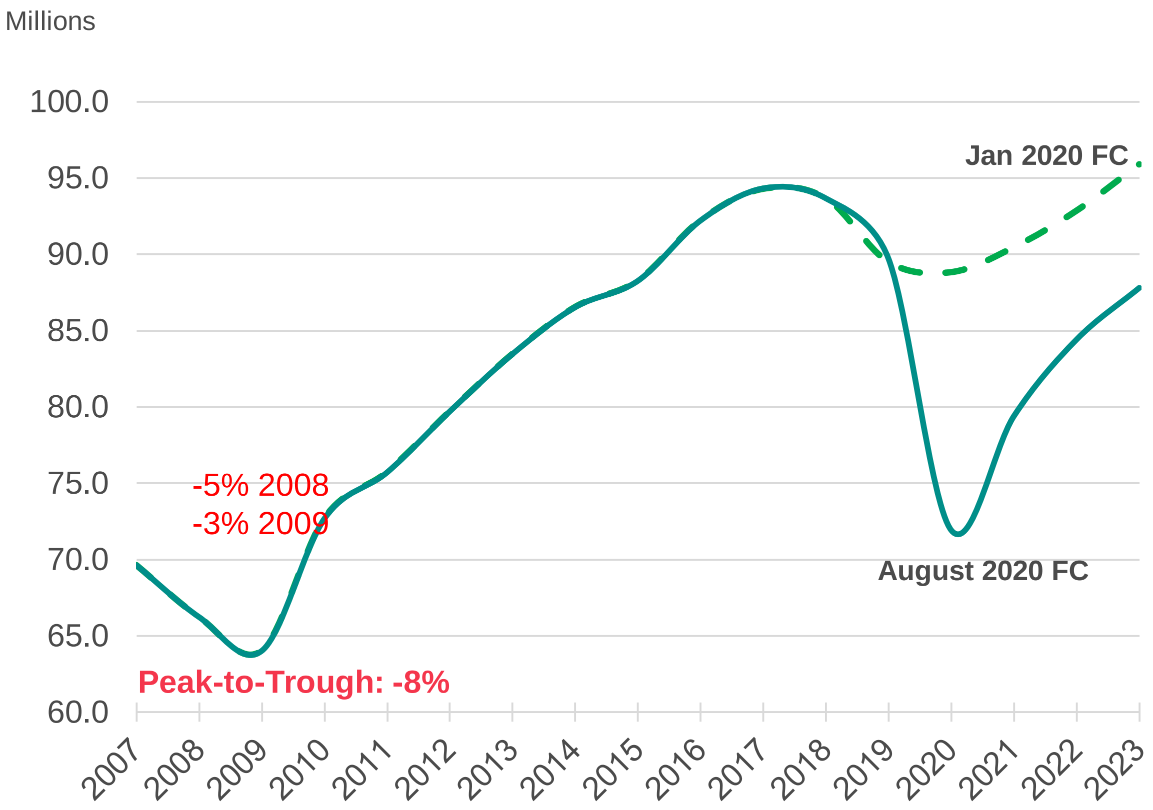
Note: GDP growth forecasts – August 2020

2020 Forecast Outlook

1. COVID-19 uncertainty adds to already-pressured autos industry – 2020 witnesses unprecedented instant stalling of demand – impact and recovery is rolling as virus spreads and economies re-open
2. Global 2020 slump exceed 2-year decline global recession 2008/2009 – risk/recovery is varied & ultra-dependent on government action & support/stimulus packages
3. “Patient zero” China market should bottom out in 2020 – hopes for beginnings of recovery from 2021 – some demand likely to have been destroyed
4. Europe massively impacted by COVID-19 crisis with significant demand contraction – governments stepping in with stimulus/incentives to fill the void (BREXIT talks & EU30 CO_2 plans remain in the background)
5. Quick US recession leads to consumer retrenchment & immediate vehicle demand slump, yet recovery is already underway
6. ROW mixed prospects – high risk for “flare-ups” & still early days for Brazil, Russia, India and others.
7. Remote/flexible crisis working arrangements could influence future mobility patterns…

Near-Term: Cautious Upgrades as Much of the World Re-opens – yet 2020 Autos Outlook Remains Far Worse than 2-year Decline During Great Recession of 2008/09

Global Light Vehicle Sales Outlook



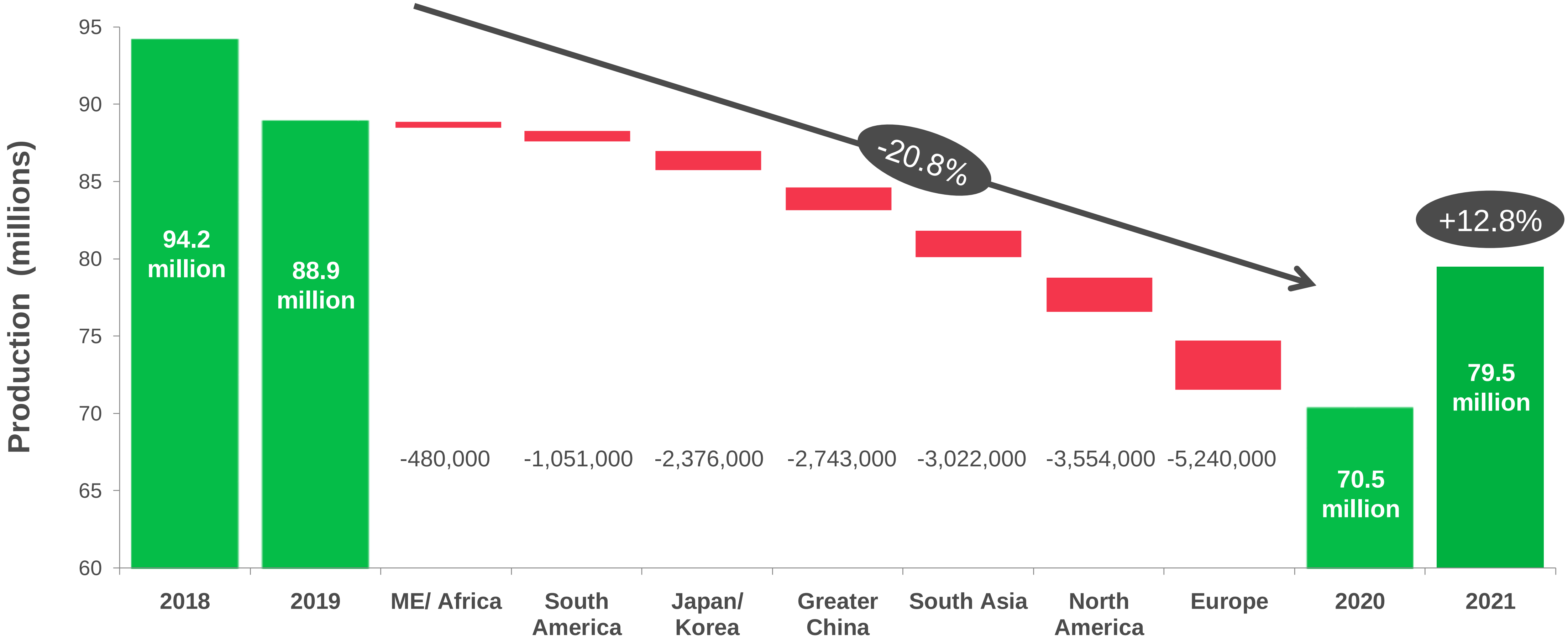
Market	2020 TIV	Growth (% chg)	vs. Jan-20
China	21.9m	-11.9%	-2.8m
USA	13.6m	-20.3%	-3.2m
WE/CE	13.8m	-23.8%	-3.7m
Global	**71.9m**	**-19.8%**	**-16.8m**

Source: IHS Markit – August 2020 LVS Forecast

Note: China refers to Mainland China

Global Light Vehicle Production

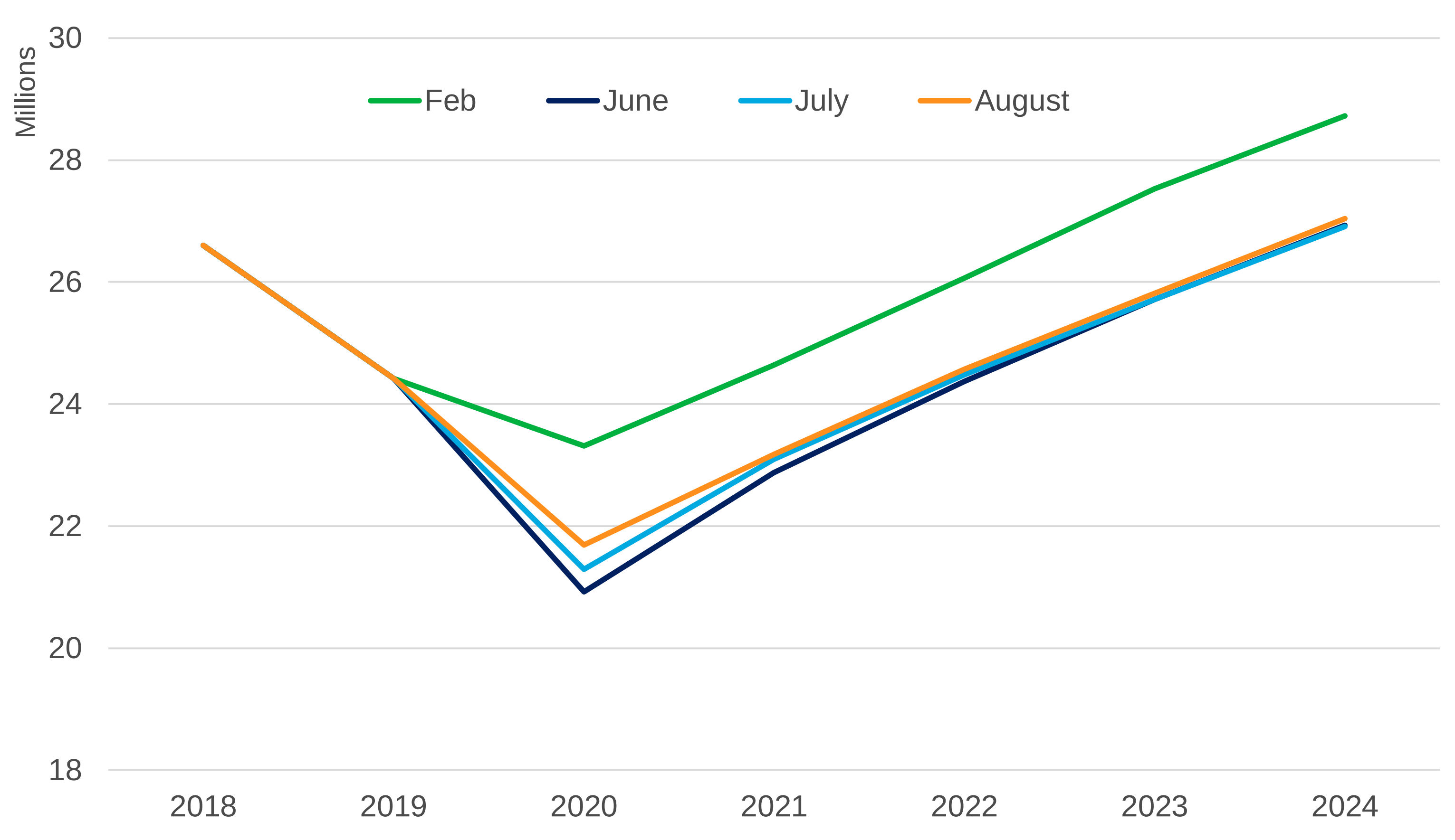
COVID-19 Impact Encompasses All Markets, Including Key Major Markets; Volatility Remains a Concern



Source: IHS Markit Light Vehicle Production Forecast

China: Outlook Increases as Pent-up Demand Released and Government Investment Supports Robust Recovery in Q2; H2 will be Tougher

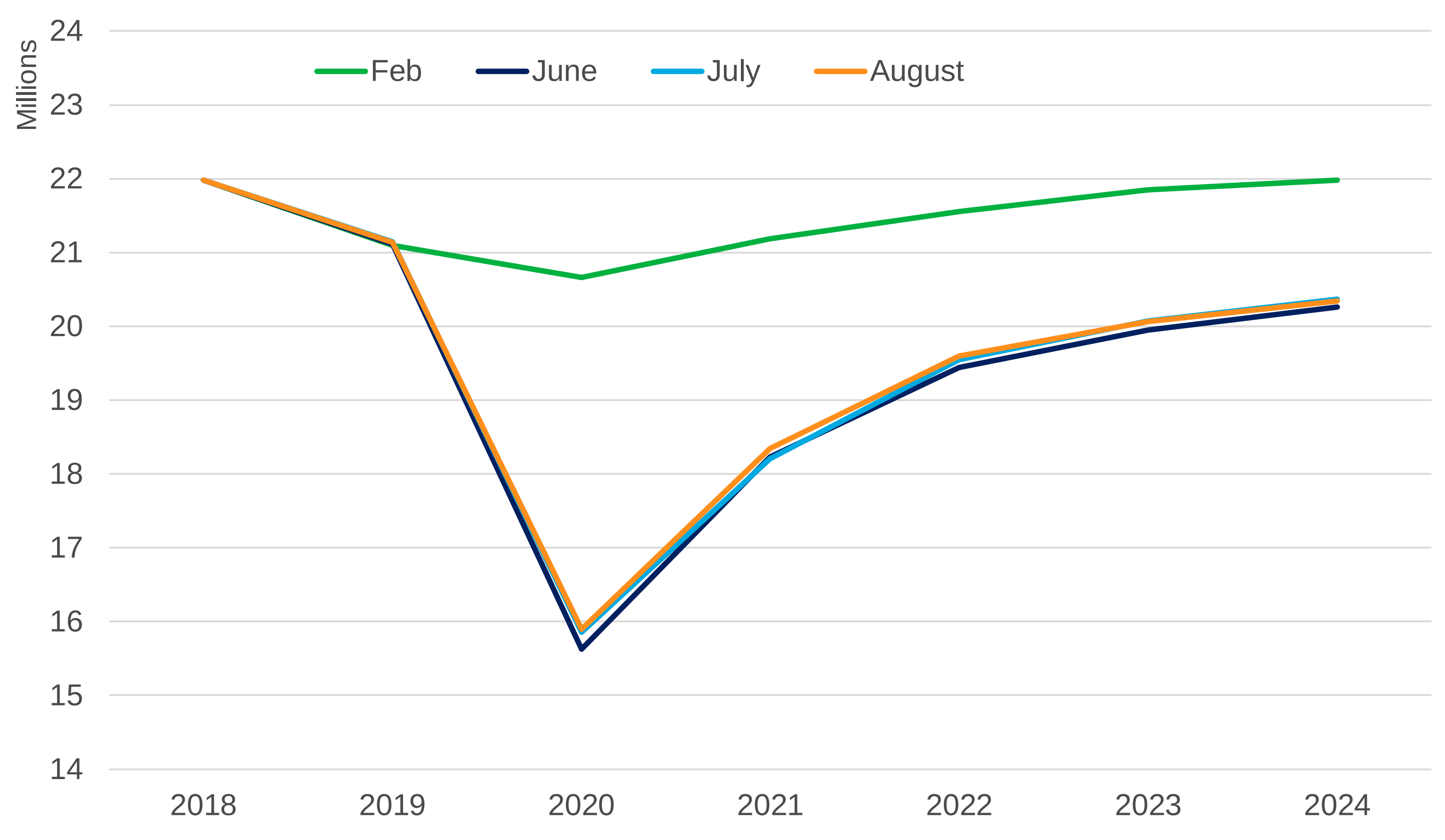
China (Mainland) Light Vehicle Production Forecast Comparisons



- Aligned with recent economic activity output has maintained strong momentum since April. August outlook +404k over July. Mainly driven by commercial vehicle and premium brands.
- Passenger car output is restored to pre-COVID levels as capacity utilization rate approaches 90% for most of international brands and 70% at major Chinese local brands.
- New capacity levels to be determined but government pushing recovery hard. Supply chain issues seemingly navigated.
- Output now down 11.2% in 2020 held to grow by 6.8% in 2021 as COVID-19 effects recede

Europe: Facilities are Restarted Although Shift Patterns are not Fully Restored; Targeted Incentive Schemes Supportive and Impactful in Short-term

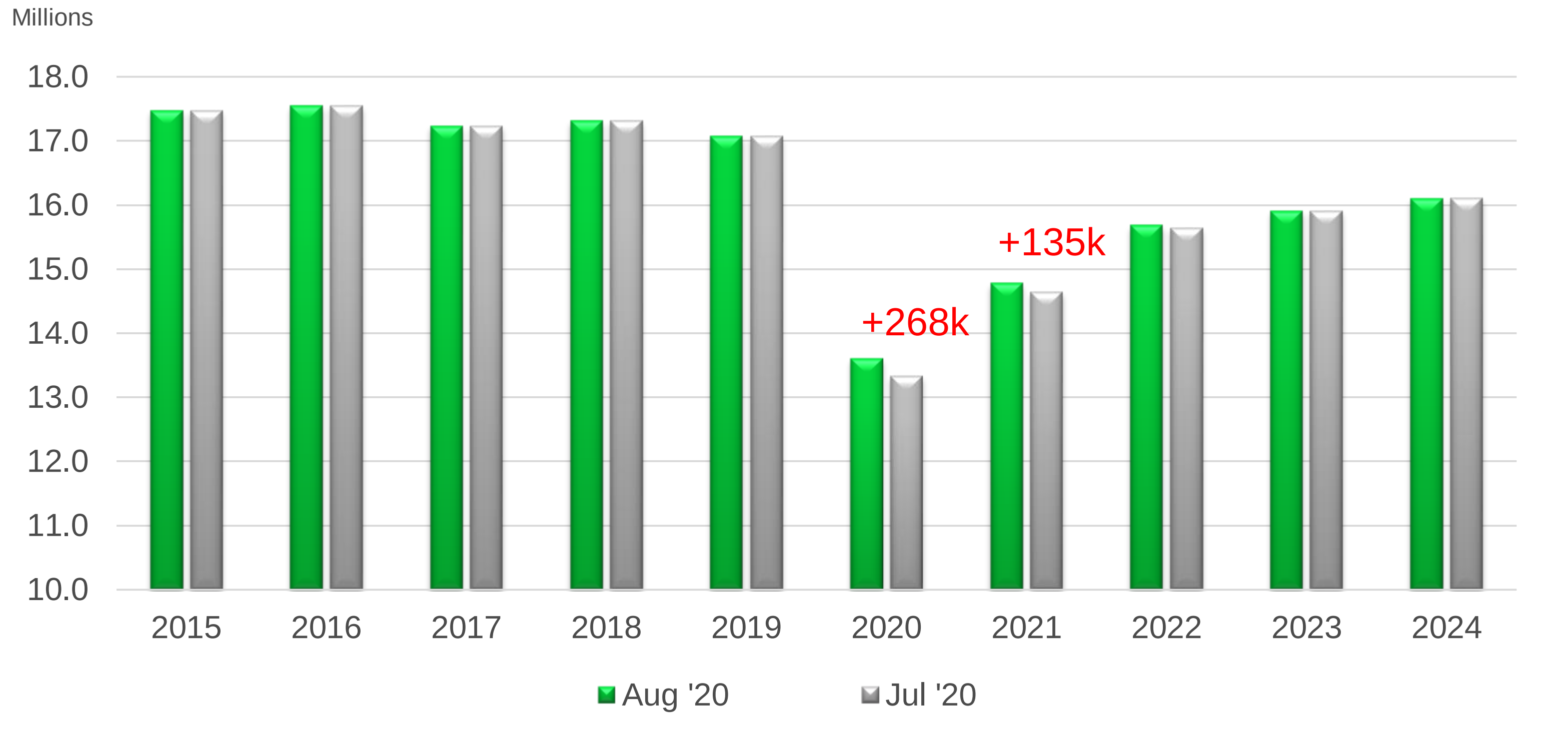
European Light Vehicle Production Forecast Comparisons



- Near-term outlook bolstered by a stronger pace of production recovery and an improved demand outlook for the region, particularly West Europe as government incentive programs are being initiated to stimulate vehicle sales. Outlook increased 41k this month.
- Major producers moved closer to pre-crisis output rates in August with Germany producing at roughly 90% of pre-crisis levels.
- With economies re-opened and manufacturing restarting, the focus has shifted to the financial condition and sentiment of consumers and their appetite to re-engage the light vehicle market.

US: July Sales Advance Recovery in Auto Demand Since April, but Uncertainty and Risk Remain in Second Half of 2020

US: COVID-19 Impacted Light Vehicle Sales Forecast (August 2020)



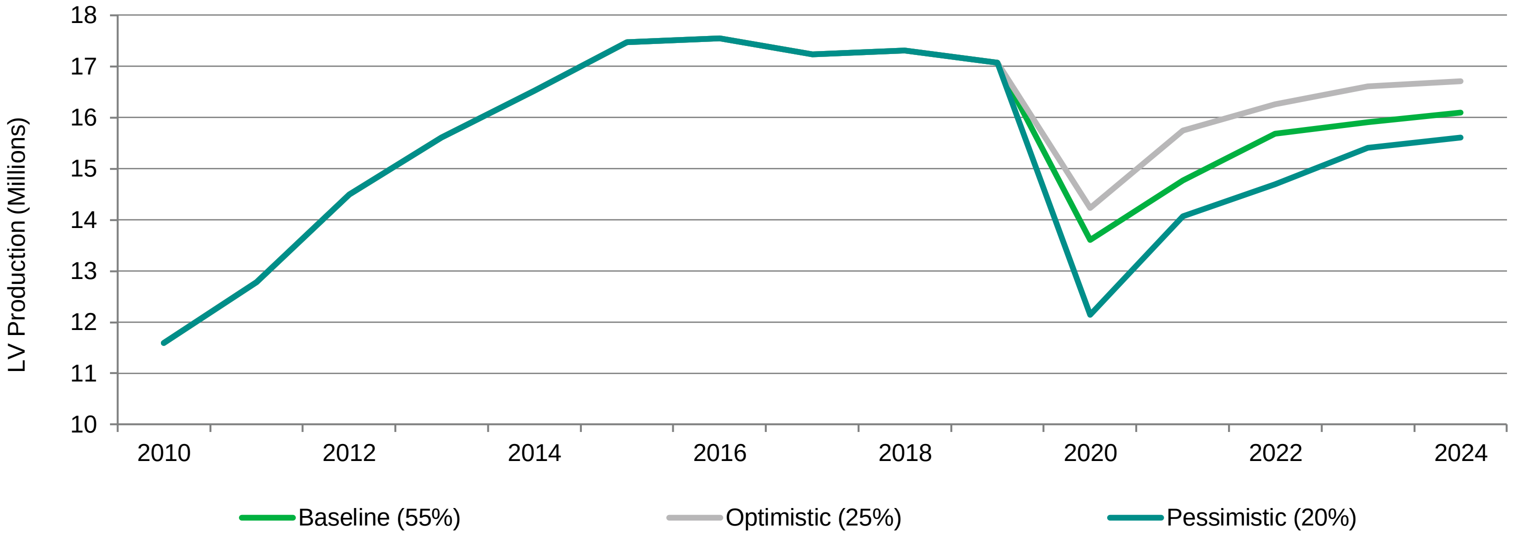
	2020	2021	2022	2023
% Growth YoY	-20.3%	+8.6%	+6.2%	+1.4%
Vol Delta vs. Pre-Crisis Jan Forecast	-3,218,000	-1,813,000	-736,000	-526,000

- We have increased our full-year 2020 LV sales forecast to 13.6m units (August 2020 forecast) but risks to recovering demand levels are present through H2-2020.
- With the rising number of COVID-19 cases in some states, it will be important to track auto sales developments over the next few months. A “second wave” of severe lockdowns is not in the current baseline assumption.
- July sales results exhibited a degree of noteworthy resiliency. Retail sales are recovering much better than fleet sales – with auto consumers motivated by OEM incentives, 0% interest rates, “reopening” activities and likely supported by government stimulus checks.
- Vehicle inventory levels will be an important variable moving through the immediate forecast horizon. There could be some model-level pressures as the sales pace picks up and assembly plants slowly come online.
- 2020 volume LVS setting of 13.6m units (-20.3% y/y) followed by 14.8m in 2021 (up 8.6% y/y).

US Light Vehicle Sales in Alternative Scenarios

Could a “V-Shaped” Recovery Save the Day or Will a “Second Wave” Derail the Market?

US Light Vehicle Sales Contingency Forecast



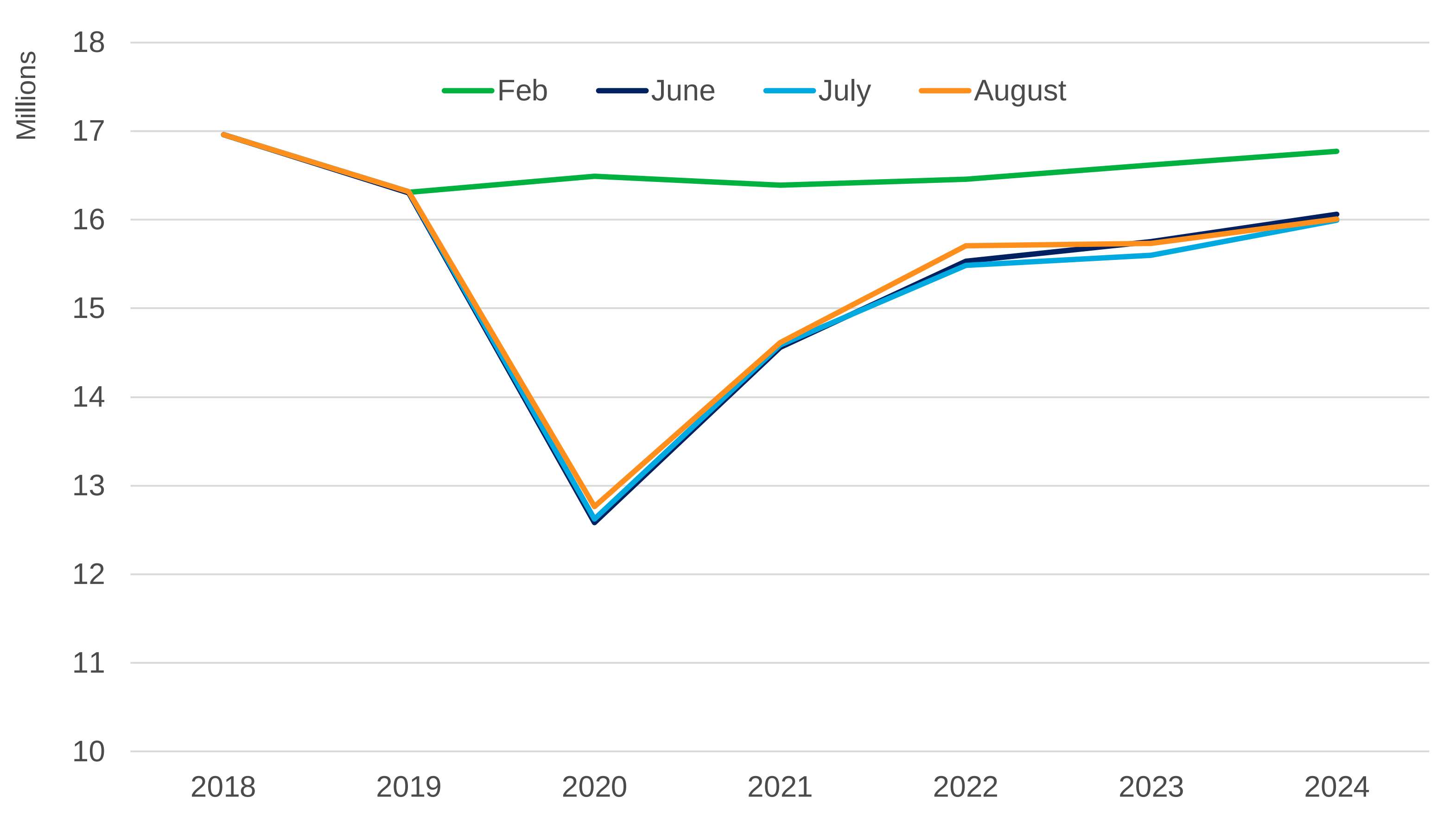
Source: IHS Markit

Sales (M)	2019	2020	2021	2022	2023	2024
Baseline (55%)	17.08	13.60	14.78	15.69	15.91	16.10
Optimistic (25%)	17.08	14.24	15.74	16.26	16.61	16.71
Pessimistic (20%)	17.08	12.15	14.07	14.69	15.41	15.60

- Baseline forecast: Efforts to contain COVID-19 shutter large swaths of the economy and create deeper recession than 2008-09. Inventory in the system offsets some of the plant disruption impact, yet also limits near-term growth prospects; OEMs prioritize production of more profitable programs (e.g. trucks).
- Optimistic forecast: The forecast reflects a broader V-shaped recovery as stimulus measures are expanded globally. Additionally, data from IHS Markit’s “Vehicle Buyers Journey” survey points to COVID-19 boosting interest (bio-safety) and increasing demand for private car ownership in the US, West Europe and China. A stronger economic response in 2021–23 accelerates recovery in light vehicle demand.
- Pessimistic forecast: High COVID-19 infection rates in parts of the world create the risk of a W-shaped cycle with a second downturn in the global economy in late 2020. Additionally, stimulus measures prove ineffective at backstopping the crisis and unemployment rates remain elevated. Economic recovery begins later and at a much slower rate. Severe contractions last through the first-quarter of 2021 and consumer confidence remains depressed.

North America: Recovery Picking up Driven by Inventory Gaps but Situation in US South and Mexico Continues to Present a Downside Risk

North American Light Vehicle Production Forecast Comparisons

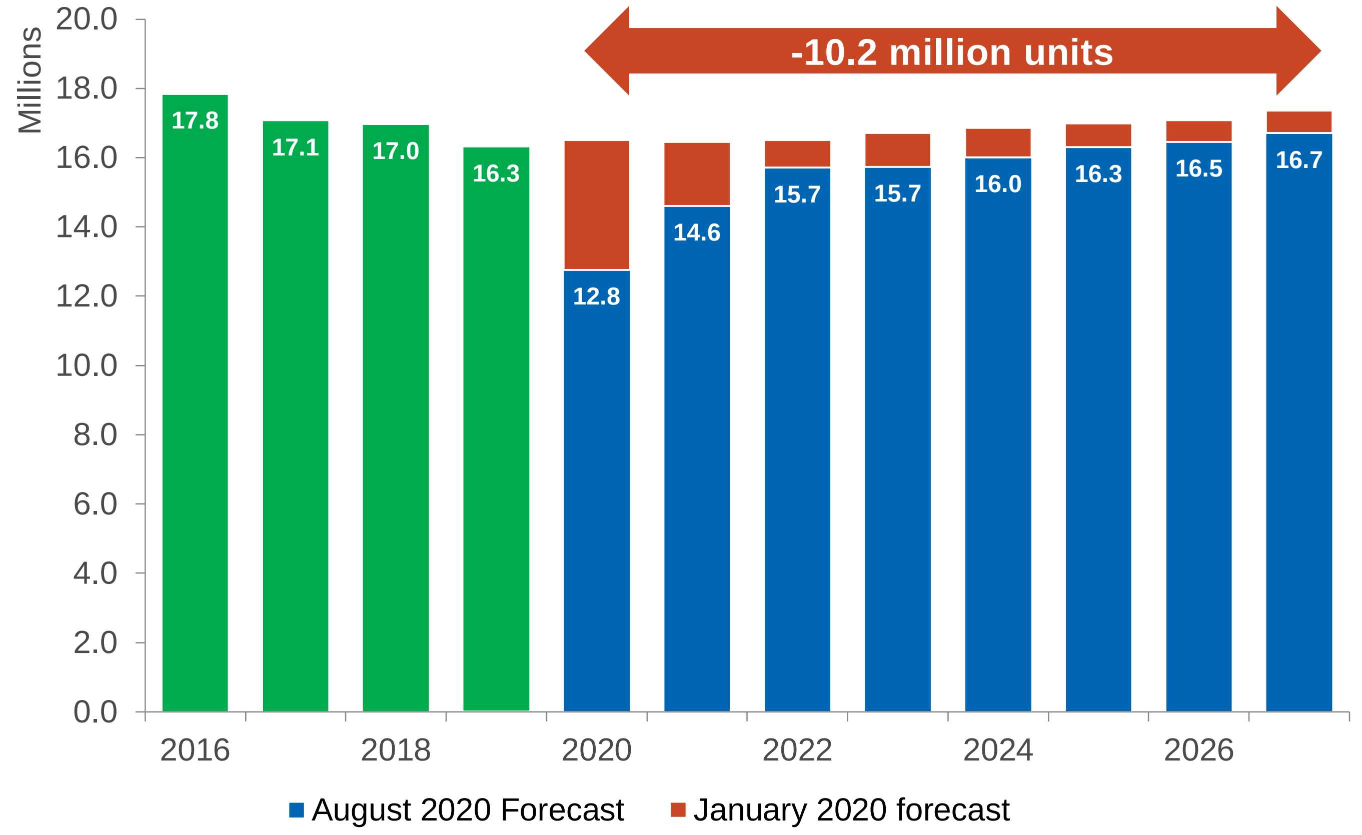


- Production continues to ramp-up following COVID-19 related shutdowns and despite a variety of struggles. Increases this month reflect demand improvement and inventory backfill; -21.8% 2020, +14.5% 2021
- Between March and June 2020, US sales totaled 3.97 million units, while production in the same period totaled 2.33 million units, resulting in an over 1.6-million-unit gap in the supply of vehicles needed to support inventory and demand.
- The production gap is driving manufacturers to increase production to pre-COVID-19 levels that, while justified, may not be sustainable beyond 4Q-2020 and into 2021.

North American Light Vehicle Production

COVID-19 Impact Erases Outlook

North American Light Vehicle Production



Source: IHS Markit

Short term

- COVID-19 implications
  - -3.7M units in 2020
  - Production phases: shutdown, restart, alignment
  - Program delays or timing slippage
- Inventory correction
  - 1.6M unit sales to production gap
  - Restocking production bolsters outlook

Long term

- Sourcing decisions
- USMCA implications
- Capacity
  - Expansion and maximization
  - Second phase developments
  - BEV implications
- Lifecycle pressure

North America Light Vehicle Production

2020 vs. 2019

OEM	2020F (000s)	2019F (000s)	% Δ	Δ Units (000s)
GM	2,371	2,881	-17.7%	-510
Ford	2,014	2,673	-24.7%	-659
Fiat/Chrysler	1,733	2,432	-28.7%	-699
Detroit 3	**6,118**	**7,986**	**-23.4%**	**-1,868**
Toyota	1,570	1,856	-15.4%	-286
Honda	1,391	1,817	-23.4%	-426
Renault/Nissan	915	1,434	-36.2%	-519
Hyundai	690	897	-23.1%	-207
Asian 4	**4,566**	**6,004**	**-24.0%**	**-1,438**
VW	537	709	-24.3%	-172
BMW	384	436	-11.9%	-52
Daimler	324	314	3.2%	10
German 3	**1,245**	**1,459**	**-14.7%**	**-214**
Others	832	866	-3.9%	-34
Total	**12,761**	**16,315**	**-21.8%**	**-3,554**

Source: IHS Markit Light Vehicle Production Forecast





- Production collapse due to COVID-19 impact affecting both production and demand; product launch delays intensify
- GM – T1XX SUVs, Corvette
- Ford – F-150, Bronco Sport and Mustang Mach-E launches
- Key New Domestic launches include Acura MDX, TLX; Hyundai Elantra; Kia K5, Sorento; Nissan Rogue; Tesla Model Y; Toyota Sienna; VW Atlas Cross Sport, VW Tarek, etc.

North America Light Vehicle Production

2021 vs. 2020

OEM	2021F (000s)	2020F (000s)	% Δ	Δ Units (000s)
GM	2,486	2,371	4.9%	115
Ford	2,581	2,014	28.2%	567
Fiat/Chrysler	2,012	1,733	16.1%	279
Detroit 3	**7,079**	**6,118**	**15.7%**	**961**
Toyota	1,649	1,570	5.0%	79
Honda	1,526	1,391	9.7%	135
Renault/Nissan	1,185	915	29.5%	270
Hyundai	873	690	26.5%	183
Asian 4	**5,233**	**4,566**	**14.6%**	**667**
VW	612	537	14.0%	75
BMW	436	384	13.5%	52
Daimler	313	324	-3.4%	-11
German 3	**1,361**	**1,245**	**9.3%**	**116**
Others	938	832	12.7%	106
Total	**14,611**	**12,761**	**14.5%**	**1,850**

Source: IHS Markit Light Vehicle Production Forecast

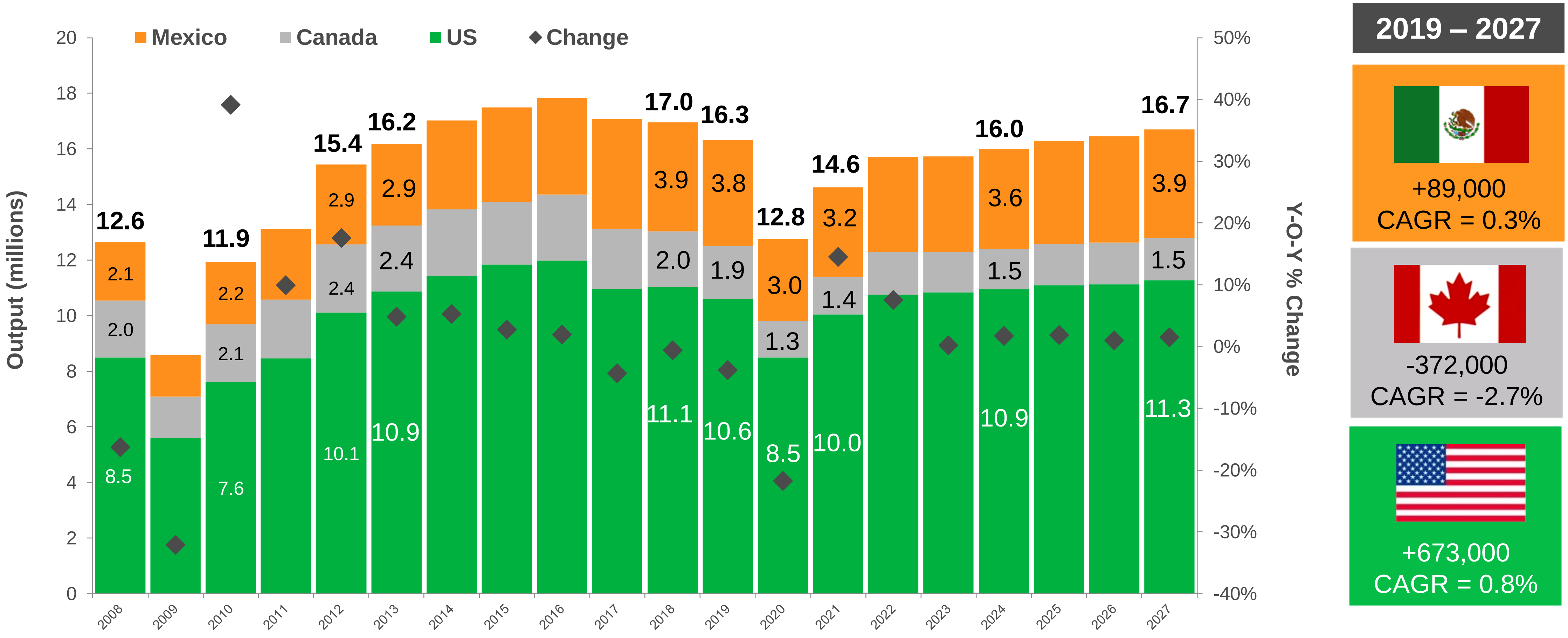




- Production growth as the market recovers from COVID-19 impact
- GM – Hummer EV and Bolt EUV
- Ford – Bronco and Maverick
- FCA – Grand Cherokee and Wagoneer/Grand Wagoneer
- Key New Domestic launches include BMW 2-Series, Honda Civic & HR-V; Hyundai Santa Cruz & Tucson; Lucid Air; Nissan Frontier & Pathfinder; Rivian R1S & R1T; Subaru Impreza; Toyota Corolla Cross & Tundra; Audi Q5 Sportback, etc.

Production Outlook

North American Light Vehicle Production by Country

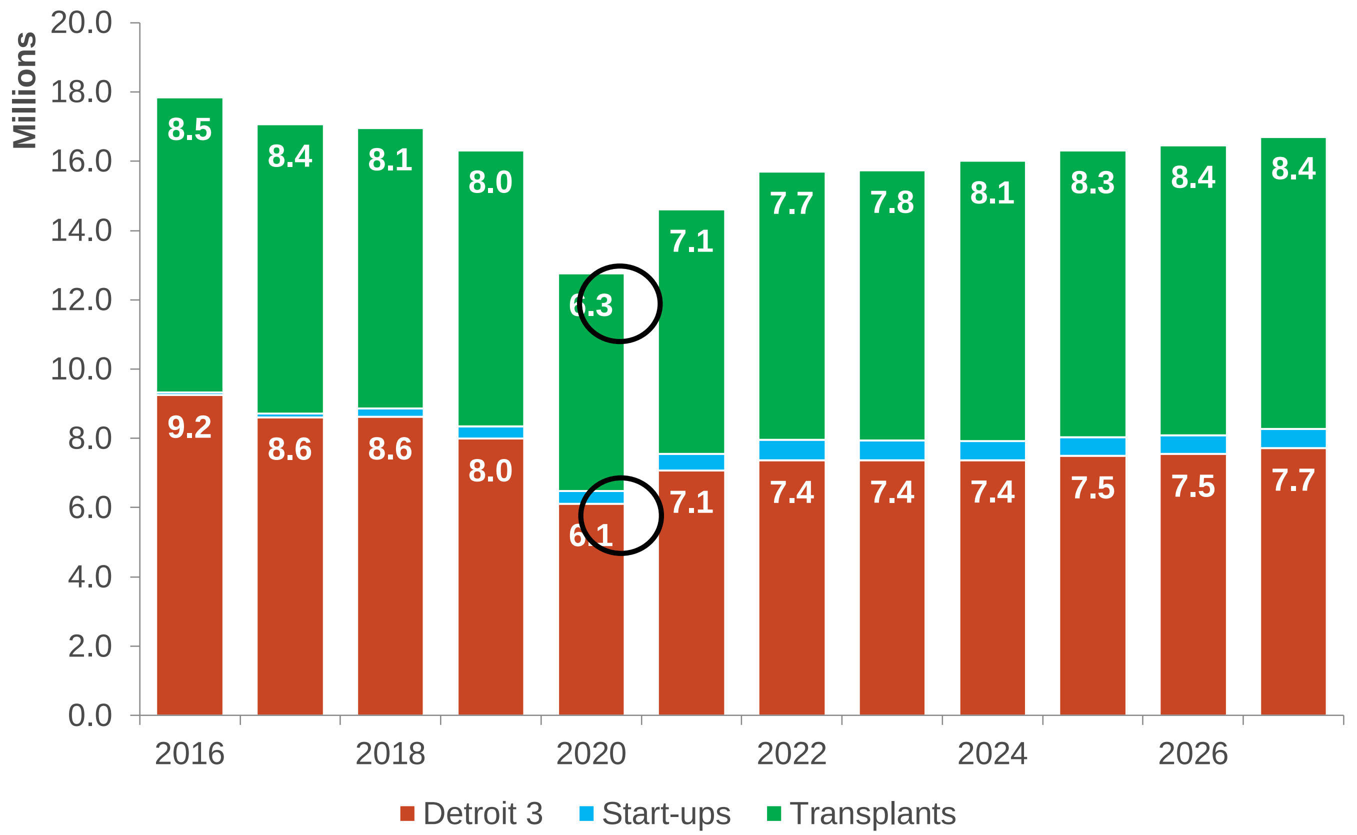


Source: IHS Markit Light Vehicle Production Forecast

North American Light Vehicle Production

COVID-19 Impact is Pervasive, yet Customer Mix Continues to Shift

North America Light Vehicle Production



Source: IHS Markit

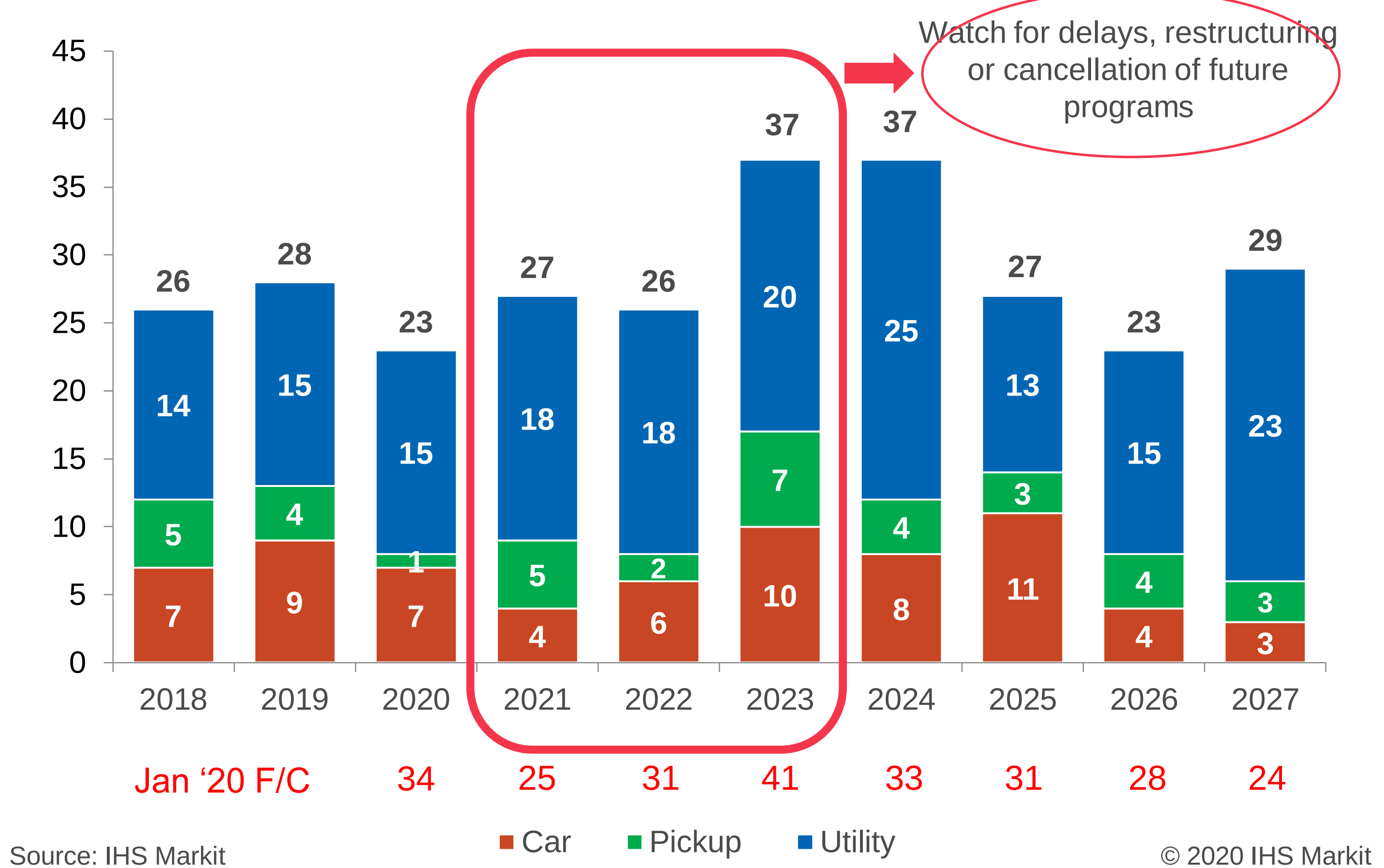
Divergent trajectories – 2019 to 2027

- Domestics
  - -270K units or -3.4%
  - Offshoring to China
  - Increasing shift to trucks
  - More closely tied to US sales
  - Build where you sell
- Transplants
  - +473K units or +5.9%
  - Localization
  - Capacity expansion
  - Global sourcing and increasing exports
- Start-ups
  - +186K units or +50.9%
  - Tesla largest component, although offshoring is slowing growth
  - Monitoring other start-ups

North America Light Vehicle Production Launches by Vehicle Type

Capital Needs Intensify with New Launch Activity; Timing Delays Expected Due to COVID-19

North America Light Vehicle Production Launches



Source: IHS Markit

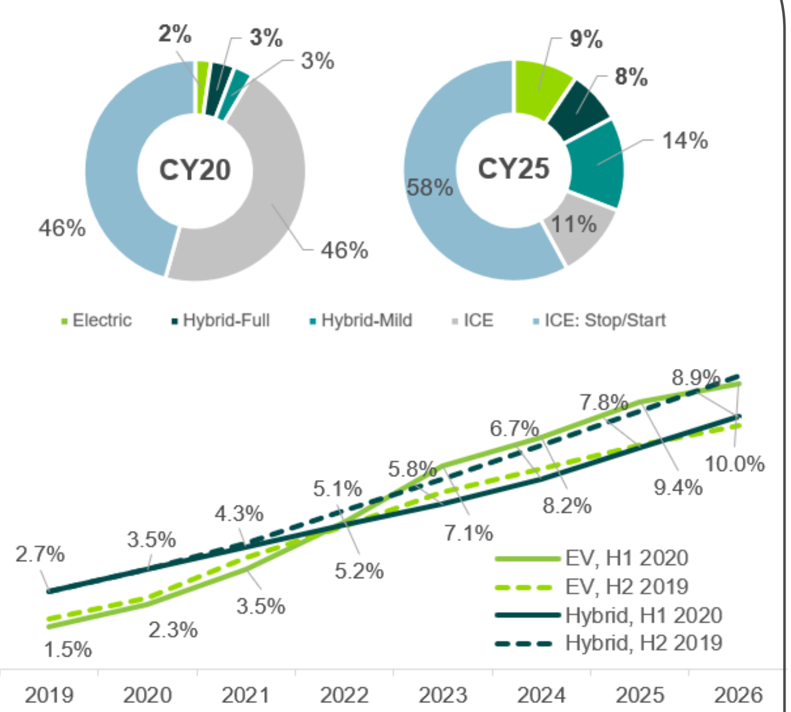
Volatility Extends to Launch Timings

- Launches in late 2021, 2022 and 2023 can be subject to further delay, reprioritization, rescoping or even cancellation
- If possible, OEMs will review portfolios to extend current vehicles – possibly integrating new minor/moderate facelifts to extend the lifecycles
- Utility vehicle expansion continues
  - Competition weights on leaders
  - Splintering segmentation with pricing/margin pressure
- BEV activity
  - 39+ all-new nameplates
  - 10.4% or 1.7 million units of North American production by 2027
  - Product redundancy
- Legacy programs as a hedge

Powertrain Technology Outlook

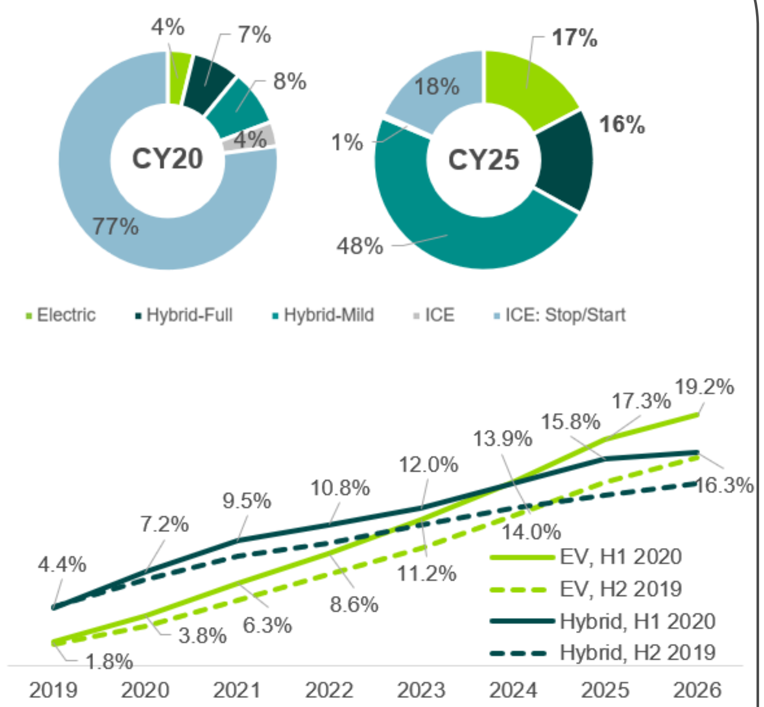
Regional Preferences and Incentives Result in a Varied Propulsion Mix; Watch the Model Count!

United States



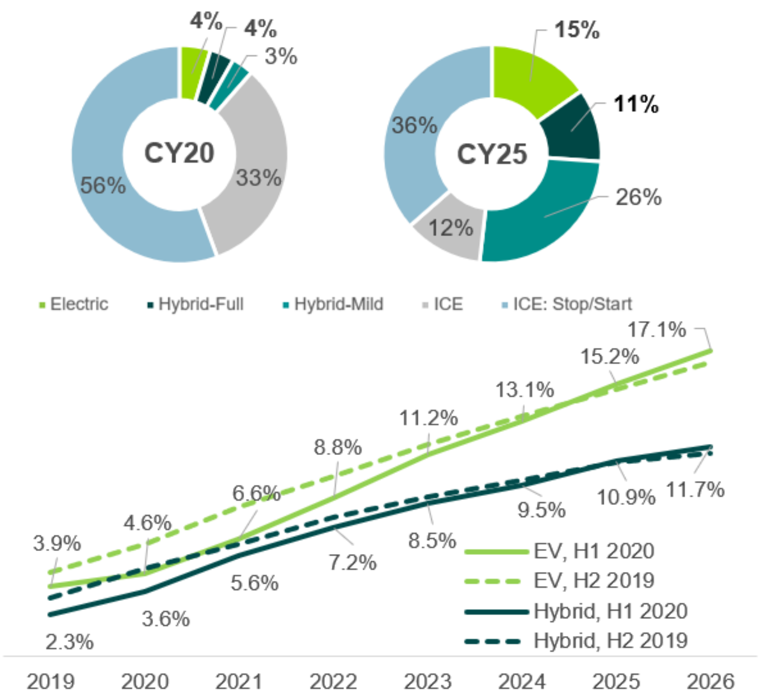
- SAFE rule assumes 1.5% stringency rate increase/yr vs. ~5%/yr for CAFE.
- PHEV and HEV production mix reduced post 2022, improved outlook for BEV

EU28



- Propulsion forecast largely unchanged as little relief expected for CO_2 compliance.
- Most electrified propulsion investments are considered safe.

China

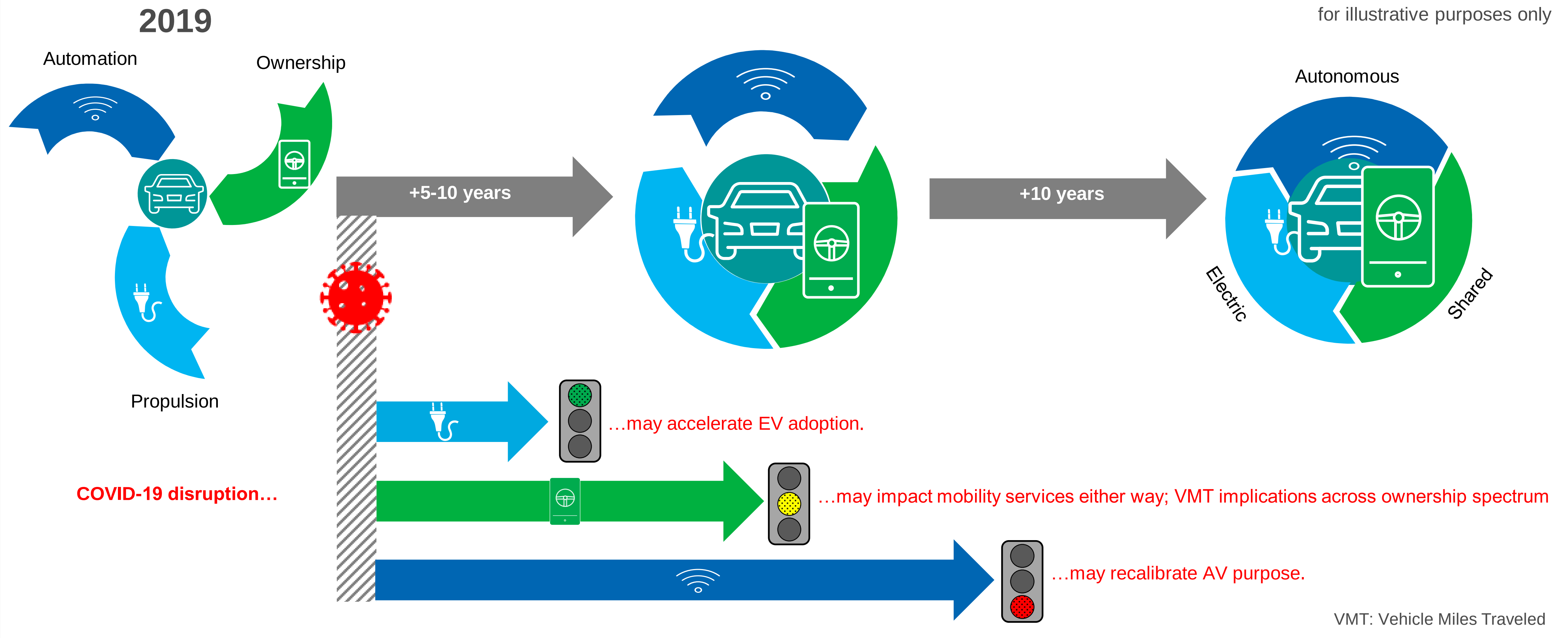


- CAAM may loosen CAFC/NEV credit requirements and increase 2020 plate quotas
- Extended NEV subsidies/exemptions weaken pre-buy in 2020 & boost demand in 2021-22.

Mobility: Consumers and Car Industry are Changing

What Impact will COVID-19 Have on Mobility? Accelerate or Brake?

Disruptive Factors for a Disruptive Industry



Summary

- Extreme volatility emerging in the short term as exogenous events increase market pressures; supplier distress needs to be monitored
- Beyond the current cycle, growth rates will decline as core themes persist: electrification, safety, autonomy and new mobility
- Scale is as important as ever to meet these challenges – FCA/PSA could be just the beginning
- Strategic collaboration doesn’t have to mean Merger & Acquisition as long as the right results are delivered

Thank You!

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Financial Crisis and Restructuring
2020 Update

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Background

- Despite stimulus efforts by Congress and the Administration, the COVID-19 epidemic has had a severe impact on GDP, and on the business outlook for the balance of 2020 and beyond.
- The Stimulus Efforts – particularly the Payroll Protection Program ("PPP") and other government loan programs has, so far, headed off a significant portion of the expected wave of bankruptcy cases, except in the retail, hospitality and energy sectors.
- A few industrial cases have begun, while other companies are waiting for the resolution of their PPP loans or other inflection points in the ongoing crisis to make decisions on their financial future.
- The expected bankruptcy wave, although delayed, may range from high tide to a tsunami.

Presentation

- While there are many ways to reorganize, sell or liquidate a financially troubled business, this presentation will focus on the Chapter 11 process, as the most complex and "legal" process.
- Many businesses can take far less extreme measures, ranging from forbearance agreements with lenders to give short-term relief to asset or stock sales without Court involvement.
- Other measures may include self-liquidation out of court, trust chattel mortgages, composition agreements between a company and its creditors, the appointment of receivers, state law insolvency remedies, including Assignments for the Benefit of Creditors.
- This presentation is going to focus on the rights, duties and opportunities of a debtor in chapter 11, although I will mention issues specific to creditors, suppliers and customers as well.
- Finally, because of the automotive industry's prominence in this area, I will address Accommodation Agreements, Access and Security Agreements and other auto industry-related concerns.

What can Chapter 11 do? Introduction

- Chapter 11 is a versatile and flexible process to permit individuals and businesses to restructure their liabilities, and, where appropriate to:
  - Halt action by secured and unsecured creditors that could threaten the Debtor's viability;
  - Create a breathing spell to examine business options;
  - Maintain existing management in control, unless there is fraud, dishonesty or gross incompetence. At the same time, financial professionals can supplement or even replace management;
  - Provide an opportunity to settle long-standing, expensive litigation;
  - Establish the terms of payment to creditors;
  - Reorganize;
  - Sell all or a part of a company in bulk, usually through an asset sale;
  - Liquidate in an orderly manner

Who can file Chapter 11?

- Almost every type of business, corporate, limited liability company, general and limited partnerships, profit or non-profit enterprises. Only a few specialized entities (certain types of banks, business trusts, stock brokers and commodity brokers) are not eligible. There are very few differences between Chapter 11 cases based on the form of businesses.
- Individuals.
- An individual or business does not need to be insolvent to file Bankruptcy.

Downsides to Chapter 11

- This is a summary – there are many downsides.
- Cost. Cases have significant administrative costs (attorneys, financial professionals, sometimes attorneys and professionals for Banks and Creditors' Committees).
- Limited time periods – depending on the size and complexity of the case, a Plan may be due anywhere from 60 days to 540 days after the case is filed.
- At the same time, loss of flexibility and speed – actions outside of the ordinary course of business most be approved by the Court after notice to creditors. While this process can be sped up by the Court, there is a limit on most Court's willingness to expedite matters.
- Loss of privacy – Bankruptcy depends on open and accurate financial reporting from Debtors, and creditors will have opportunities to inspect books and records. Certain confidential information may be protectable, but the default rule is openness.
- Loss of business opportunities. It is rare for companies in Chapter 11 to be given new, long-term programs.
- Loss of independence. The Court supervises the case, and can force liquidation or other negative business actions.

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The SBRA

- In 2019, Congress passed the Small Business Reorganization Act, which provided for a faster, less costly version of Chapter 11 for smaller businesses.
- Originally, the SBRA was only for businesses with undisputed, non-contingent liabilities of less than $2,725,625.
- However, with the COVID crisis, Congress temporarily amended the SBRA to make businesses with up to $7,500,000 of undisputed, non-contingent liabilities eligible. The higher liability limit is currently scheduled to expire in April 2021, but the date may change.
- In a Small Business Chapter 11, a Trustee is appointed with duties that include evaluating and facilitating the Plan.
- Deadlines in an Small Business Chapter 11 are shorter than a traditional case. While this puts pressure on a Debtor to get issues resolved quickly, it also likely reduces the cost and business burden of cases.
- The SBRA provides significant changes to the Plan confirmation process that benefit many small business debtors. These are summarized in slide 17.

Key Concepts in Chapter 11

- The next 10 slides will address key concepts in Chapter 11 cases. These include:
  - The Automatic Stay
  - The Debtor-in-Possession
  - The Use of Cash Collateral and Financing
  - Asset Sales
  - Leases and Executory Contracts
  - The Disclosure Statement
  - The Plan.
- Except for the Disclosure Statement and Plan, each concept is substantially similar in "traditional" Chapter 11 cases and the SBRA.

The Automatic Stay

- Section 362(a) of the Bankruptcy Code provides an automatic, broad and general stay against creditors seeking to take action against the Debtor or its assets outside of the Bankruptcy Court.
  - Items stayed include foreclosure actions, enforcement of judgments, pending litigation, collection letters, evictions, termination of contracts, enforcement of liens and setoffs.
  - Creditors can modify the automatic stay with permission of the Court for cause or where the Debtor lacks equity in assets that are the subject of the creditors' action, and those assets are not necessary to an effective reorganization.
- Some important exceptions to they stay are governmental police actions, evictions where the Debtor's lease has expired prior to the Bankruptcy or has been terminated, and actions against 3d parties liable for creditor claims, including guarantors.
- The automatic stay prevents suppliers from increasing prices to make up for credit losses.

The Debtor-in-Possession

- In the overwhelming majority of Chapter 11 cases, the debtor, its existing management, and any professionals employed by the debtor continues to manage the debtor's business as well as the bankruptcy case.
- The Debtor-in-Possession generally is removed only for serious pre-bankruptcy misconduct, "bad acts" in connection with the case or gross incompetence.
- One of the primary benefits of the Debtor-in-Possession is the exclusive ability to file a Plan within the first 120 days of the case. For good cause, that period can be extended by another 16 months.

Creditor’s Committees

- Creditor’s Committees are formed in some cases by the United States Trustee’s Office – a division of the Department of Justice with some supervisory responsibilities for Bankruptcy Cases. Generally, Committees are formed from the unsecured creditors with the largest claims who wish to serve, although sometimes smaller creditors are added to get the most representative committee.
- The Committee can employ counsel and financial advisors at the expense of the Debtor.
- The Committee has standing to appear on and be heard on any issue in the case.
- The purpose of the Committee is to negotiate the terms of a Plan with the Debtor.
- The Committee also investigates the validity of secured claims as well as whether claims exist against any party, including former and current owners and officers of the Debtor.

Use of Cash Collateral and Financing

- "Cash Collateral" is cash on hand, deposit accounts, accounts receivable and inventory as of the date of the Bankruptcy, and, in certain respects, proceeds of that collateral.
- "Adequate Protection" are measures that provide a secured party with the "indubitable equivalent" of the value of its collateral, as that collateral existed as of the date the Debtor's case filed.
  - Adequate protection can consist of new liens, continuation of existing liens, enhanced reporting requirements, new priority claims and even deadlines set for plans and sale processes. Cash Collateral and Financing Orders can be exceedingly complex.
- The Debtor cannot spend cash collateral, obtain a new loan or draw upon an existing loan without permission of the Court. These matters are usually initially addressed within 3 business days of the commencement of the case on an interim basis.
- In order to obtain permission to use cash collateral or financing, the Debtor must show that secured creditors' claims are adequately protected. This is most often done through negotiation and consent, but can be determined by the Court.
- Unsecured creditors sometimes obtain additional protections through cash collateral and financing orders as well.
- Financing Orders can provide that new lenders "prime" or take priority over existing loans, or for new liens for new lenders, "super-priority claims" and other protections.

Asset Sales

- Subject to Court approval, a Chapter 11 Debtor may sell assets outside of the ordinary course of business free and clear of liens, claims and interests.
- Chapter 11 sales may include substantially all operating assets of a business, or the division of a business, and may be the exit strategy for a business.
- While there is no set requirements for a Chapter 11 sale, it is common to obtain an agreement with a "Stalking Horse" [initial] buyer and to permit other potential buyers to submit higher and better offers after access to due diligence.
- Going concern assets sales can be done in 30 days or even somewhat less if there is a compelling reason to rush the process, although the average process would take around 90 days or more.

Leases and Executory Contracts

- Chapter 11 allows the Debtor to reject unfavorable unexpired leases and executory contracts with Court permission. It is rare for the Court to overrule the Debtor's business judgment on these matters.
- This can include unfavorable customer or supplier contracts. Rejection is a pre-bankruptcy breach of the contract or lease.
  - This means that claims for breach of the rejected contract are pre-bankruptcy unsecured claims;
  - For non-residential leases, there are caps on the unsecured damage claim (the great of 1 year's rent or 14% of the remaining term of the lease).
- The ability to reject contracts is a powerful incentive to the renegotiation of contracts.

The Disclosure Statement

- Not every Chapter 11 Case will have a Disclosure Statement – the Disclosure Statement is only prepared in connection with a Chapter 11 Plan;
- The Disclosure Statement is similar to a securities prospectus, and must provide substantial information about proposed distributions to creditors, a business's history, claims against third parties, financial prospects, business plans, the qualifications and salary of officers and directors and financial projections, as well as information on the means of implementing a Plan, including risk factors. It can contain additional information. The purpose is to provide a creditor with adequate information to make an informed vote to accept or reject a Plan.
- Disclosure Statements are subject to Court approval.
- In an SBRA case, a formal Disclosure Statement is not required, although the Plan must provide some of the information typically contained in a Disclosure Statement.

The Plan

- A Chapter 11 Plan, at its essence, is a binding contract between the Debtor and its creditors. It sets forth the distribution to creditors, the way that the Plan will be implemented and other contractual terms.
- A Plan divides creditors into similar classes and groups and provides for the treatment of those classes and groups. The Plan can impair creditors or leave their rights unchanged.
- The Plan may not unfairly discriminate against classes of creditors, but need not provide identical treatment to every class (for example, some smaller unsecured claims may be paid 25% of their claims in cash, while larger claims get paid a lesser dividend over a long time.
- To be approved by the Court, a plan must be accepted by ½ in number and 2/3 in dollar amount of claims that actually vote on the Plan.
- A Plan must also be feasible.
- If any class of creditor rejects the Plan, the Plan can only be confirmed if it meets certain legal requirements, which include, but are not limited to:
  - At least one impaired class must accept the Plan.
  - The Plan must provide creditors with more than they would receive in a Chapter 7 Liquidation.
  - If the rejecting class is a class of unsecured creditors, the Plan must not make any distribution to any class with lower priority than the rejecting class.
  - The Plan must not unfairly discriminate against any class of creditor.
- If a class of unsecured creditors rejects the Plan, equity cannot retain their ownership interests, and either the Plan is not confirmed, or the equity interests get sold in some fashion.

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The Plan under SBRA

- The Plan can be confirmed without an impaired accepting class.
- Equity can retain its interests even if higher priority creditors reject the Plan.
- Unless creditors accept the Plan, the Plan must provide for all net disposal income (based on projected income and expenses) for the next 3-5 years to be distributed to secured and unsecured creditors.
- Only the Debtor may file a Plan (in certain circumstances, in traditional bankruptcy cases, other parties can file a Plan).
- The Plan must be filed within 90 days of the commencement of the case.
- A Trustee is appointed with certain administrative responsibilities, including evaluation of the Plan.

Detecting Insolvency

- No magic formula
- Preparation for customer or supplier insolvency does not involve any specific formula.
- Key is following best business practices and including regular communication between management, credit and sales.
- Legal strategies are more effective the further in advance problems are identified.
- Look for:
  - Payment delays
  - Management changes, employment of consultants
  - Lack of communication
  - If a public company, delays in filing of financial reports
  - Sudden changes in forecasts – building of banks, or the opposite – slowing production
  - Cancelation or delay of programs or new orders.
  - Layoffs and other departures
  - Rumors.

Considerations in Dealing with Insolvent Companies In the Supply Chain

1. Set objectives for relationship. What is our overriding goal and what are our secondary goals? What (if anything) are we willing to invest, and what is the risk of our strategy's failure? Make sure that the goals are achievable – better some cost than a customer shutdown.
2. Negotiate. Maintain critical production, or create a path to the earliest possible solution.
3. Document the workout with Agreements:

   Accommodation, Access, Security, Subordinated Participation, Intercustomer
4. Consider whether agreements work best in or out of court (note, if we are the customer we may not control this):
   a. Court creates enforceable agreements
   b. Court also creates expense and unintended consequences
   c. Court costs are significant
5. Treat the problem as you would a crisis to your own operations, with a SWAT team [engineers, finance, legal, inventory, plant, logistics, sales (customer communication)]
6. Pay particular attention to OEM "designated" suppliers: OEM won't help you if that supplier becomes insolvent or demands price increases

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Considerations for Suppliers – pre-Bankruptcy

- Be rigorous about keeping customers on terms – not only does this maximize cash on hand, it limits preference risk if a customer declares bankruptcy.
- If a customer does not stay on terms, establish your SWAT team to address the issues. Attempt to obtain information from the customer.
- If the customer is insolvent, a supplier can stop delivery on shipments in progress and/or alter terms to COD or CIA.
- In all cases "get the money" – even if later exposed to preference risk, it is better to have the money.
- Consider termination of contracts pre-bankruptcy (this could permit price changes, even in a later bankruptcy case).
- Carefully track PO expiration dates, consider whether to accept new POs.

Executory Contracts – Supplier Side

- Usually, the best result in a bankruptcy case for a supplier is to have their contracts assumed, or assumed and assigned.
- If the contracts are assumed, the Debtor must promptly cure all arrearages and provide assurance of future performance.
- If the contracts expire, beware of new contracts, especially those accepted by performance (acceptance of new contracts could cost you the possibility of assumption).
- If the contracts are rejected, the supplier has no more obligations to the Debtor.
- As a general matter, assumption of an executory contract likely immunizes the supplier from preference claims.
- Assumption or Rejection of contracts is within the Debtor's discretion, and (except for leases) does not have a set time deadline. A creditor cannot force assumption of a contract, except that (i) the creditor can ask the Court to set a deadline; and (ii) the creditor can and should use its business leverage to influence the decision.

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Consideration for Customers – pre-Bankruptcy

- Identify troubled suppliers as early as possible
- Look for signs of distress
  - Quality and delivery problems
  - Grumbling from employees/industry gossip/media reports
  - Loss of other customers
  - Requests for term or price changes or for financial bailout
  - Heavy turnover of personnel
  - Litigation (involving any customer(s))
  - Decreasing profits – no new projects
  - Shift of resources towards production for other customers.

Customer Exit

- If things go wrong, can you exit, or are you bound to the supplier?
  - Tooling ownership
  - Production Processes and Equipment owned by supplier
  - OEM direction
  - Ease and timing of exit, possibility of disruption
  - Need for a production bank
  - Availability of other industry capacity
  - Know your contracts, their expiration date and the ability to bind suppliers

Customer Exit (con't)

- Do we need to make accommodations to the supplier, short-term or long? If so, what business needs do we need to fill with any agreement. Consider:
  - Tooling Rights
  - Sale Mandates
  - Options to Purchase Equipment
  - Security Interests for Access
- Adequate Assurance Demands
- Termination of/Modification of Contracts
- Never be the last customer in (which must fund overhead and deal with personnel departures).

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Accommodation Agreements

- An Accommodation Agreement is used primarily in the automotive industry. It is an agreement by a customer or multiple customers between a debtor and usually its lender. Often the debtor's principals may be involved.
- An Accommodation Agreement is intended to prevent supply chain disruptions.
- Often customers will provide direct or indirect financial support to troubled suppliers (price increases, loans, loan participations, shortened trade terms, enhanced protection of lender's collateral, agreements to purchase inventory or not setoff against receivables). In exchange the customer gets continued production, the ability to build production banks, the ability to resource under appropriate conditions, and other enhanced rights and protections.
- An Accommodation Agreement is often a bridge to a going-concern sale (if the supplier has an important role in the supply chain), or a customer resourcing. Accommodation Agreements should not be considered long-term agreements. Companies negotiating Accommodation Agreements should know that the clock is ticking… the customer wants to protect production, not to rescue its suppliers at any cost.

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