



**Ofcom**

TV production sector evolution and impact on PSBs

December 2015

## Mediatique has analysed recent developments in the UK independent production sector as part of Ofcom's review of the regulations governing trade between independent suppliers and broadcasters

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- Following a request from the Department for Culture, Media and Sport (DCMS), and consistent with the observations in its Third PSB Review document (*Public Service Broadcasting in the Internet Age*, July 2015), Ofcom is launching a review of the terms under which qualifying independent production companies transact with public service broadcasters (PSBs)
- This constitutes the first such formal review since 2006 (the year in which Ofcom's *Television Production Sector Review*, TPSR, was conducted and completed) – although Ofcom has on several occasions considered the market and its characteristics (for example, through research commissioned in 2012, more generally as it prepared PSB reviews, PSB Annual Reports and Communications Market reviews and most recently in the form of a discussion document published as part of its Third PSB Review in September 2014)
- In the present context, Ofcom has identified four key areas for assessment:
  - A review of the changes in market dynamics and structure in the past 20 years, and in particular in the period since the TPSR;
  - A consideration of the degree to which the objectives of the framework governing relationships between suppliers and PSBs continue to be met;
  - The implications of changes in market context (including shifts in supply and demand trends) on the ability of PSBs to meet their own obligations; and
  - A review of how well the current framework is working to deliver on objectives in light of sector developments
- To support its work in this area, Mediatique was commissioned to analyse how recent changes in the independent production sector have affected the relationship between suppliers and broadcasters, and the extent to which the public policy regime relating to UK production continues to drive market outcomes

### **Important information**

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**How effective are current interventions in the UK TV production sector? How and why might they be reformed in future in order to meet policy objectives?**

**How have the structure and dynamics of the TV production sector changed over the last 20 years?**

**What are the potential scenarios for future development in the sector?**

**What are the current and potential future impacts of the regulatory regime on PSBs and content investment?**

**How might the system be adjusted to improve the delivery of the original objectives and/or lessen any negative impacts on PSBs?**

### Definitions and sources

- Throughout this report, we refer to the independent or external sector to distinguish suppliers from in-house PSB production; external suppliers are often referred to as “independent” even where they do not qualify for the 25% quota; as such, we distinguish between qualifying independents (“QI”) and non-qualifying independents (“NQI”). A further explanation of the categorisation of independent production companies can be found in **Appendix 1**
- When we calculate market shares, we have used income arising from UK production (i.e., excluding foreign direct commissions) and have sought where possible to exclude revenues associated with non-UK production (e.g., format and sales associated with programmes commissioned outside the UK); this explains our adjustments for Endemol Shine, for example
- When we calculate market shares to include in-house BBC and ITV, we have excluded Global Entertainment rights income for ITV and all BBC Worldwide income – in practice, elements of this revenue may be comparable to segments of income included within external sector totals; however, lack of granular data precludes reliable categorisation
- We underline that the two key public sources on the dynamics of the external supply sector – Ofcom and the Pact Financial Census – produce figures that are not always directly comparable and careful note should be taken of caveats and clarifications in the notes herein; among key differences are whether news and sport are included in origination expenditure and the account taken of expenditure by PSBs for digitets (i.e., the digital channels of commercial PSBs); there are also data gaps (e.g., no census report undertaken by Pact in 2006, change in methodology in 2009) and generally financial information pre-2003 is complicated by lack of deep archives at predecessor regulators and the absence of like-for-like data generated by the former ITV licensees now grouped as ITV plc; there are also year end differences and changes in survey methodologies
- In addition to the sources listed in the relevant footnotes, we also conducted a range of confidential interviews with key value-chain participants

### Key market developments

- Both the size and structure of the independent (external) supply sector in the UK have altered significantly since the time of Ofcom's last dedicated review of external TV supply dynamics in 2006
  - There are fewer companies overall, and greater consolidation industry wide; most recently, the sector has seen an accelerated influx of international capital
  - Sector revenues have climbed to nearly £3bn in 2014, compared to just under £2bn in 2006, with the contribution of international key to the growth profile
  - UK income has grown at a slower pace; while still a critical revenue stream, the value of primary commissions from UK broadcasters has grown at a more modest rate – to £1.6bn in 2014 compared to £1.2bn in 2006; this would be even lower were multi-channel budgets excluded
  - The PSBs spent 15% less in real terms on first-run original content between 2008 and 2014, according to Ofcom's latest figures: however, the PSBs, excluding the commercial PSB portfolio channels, accounted for 85% of expenditure on first-run UK non-sport originated content in 2013 (delivered via commission or through the integrated production arms of the BBC and ITV)
- The independent sector has been underpinned by a positive regulatory regime – consisting of the independent quota and the Terms of Trade; taken together, these have been a crucial intervention in fomenting an external supply sector characterised by growth, financial stability and critical mass
- There are now recognisable categories of “indie” – the vertically integrated (often foreign-owned) companies that do not qualify as “independent” under the regulations; the large indies that nonetheless qualify as they do not have links to UK broadcasters; and a long tail of smaller indies, a few owned by broadcasters and therefore non-qualifying and the vast majority qualifying

### Scope of our report

- In this report, we consider whether the changes in sector size and structure, when amplified by broader market changes affecting TV production and broadcast, have rendered the rules around external supply redundant or whether there is still a need for prescriptive regulation
- In particular, we ask whether the balance of power between buyers and sellers has sufficiently altered to render the rules no longer fit for purpose (and question whether other regime objectives, such as stimulating SME growth and promoting diversity, can be met without regulation)

**Structure of our report cont'd**

- We also ask whether the existence of the regulatory regime, in light of market dynamics and sectoral change, generates disbenefits for the pursuit of PSB objectives – for example, are UK tastes and preferences adequately addressed despite the globalisation of the supply sector; are PSBs being disadvantaged in favour of distribution channels owned by vertically integrated suppliers; are challenged genres being addressed by the most innovative of external suppliers; are PSBs equipped via indie relationships and current Terms of Trade to compete against new entrants targeting global audiences for which the UK is only one market?

**Provisional conclusions**

- Our provisional conclusion (having identified the need for further evidence) is that there may still be a role for a quota and protections conferred by the Terms of Trade – at least for smaller entities
- However, there are signs that market dynamics may lead in the medium term to a requirement to change elements of the regime – perhaps both the quantum of the quota and the definition of a qualifying producer
- There are also signs that the Terms of Trade may need to be renegotiated and/or subject to revised guidance from Ofcom – owing to outdated approaches around the value and dynamics of primary versus other ancillary windows, as new entrants forge relationships with UK producers and respond to signals from global markets

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## **Section 1: Market development**

Section 2: Scenarios for future market development

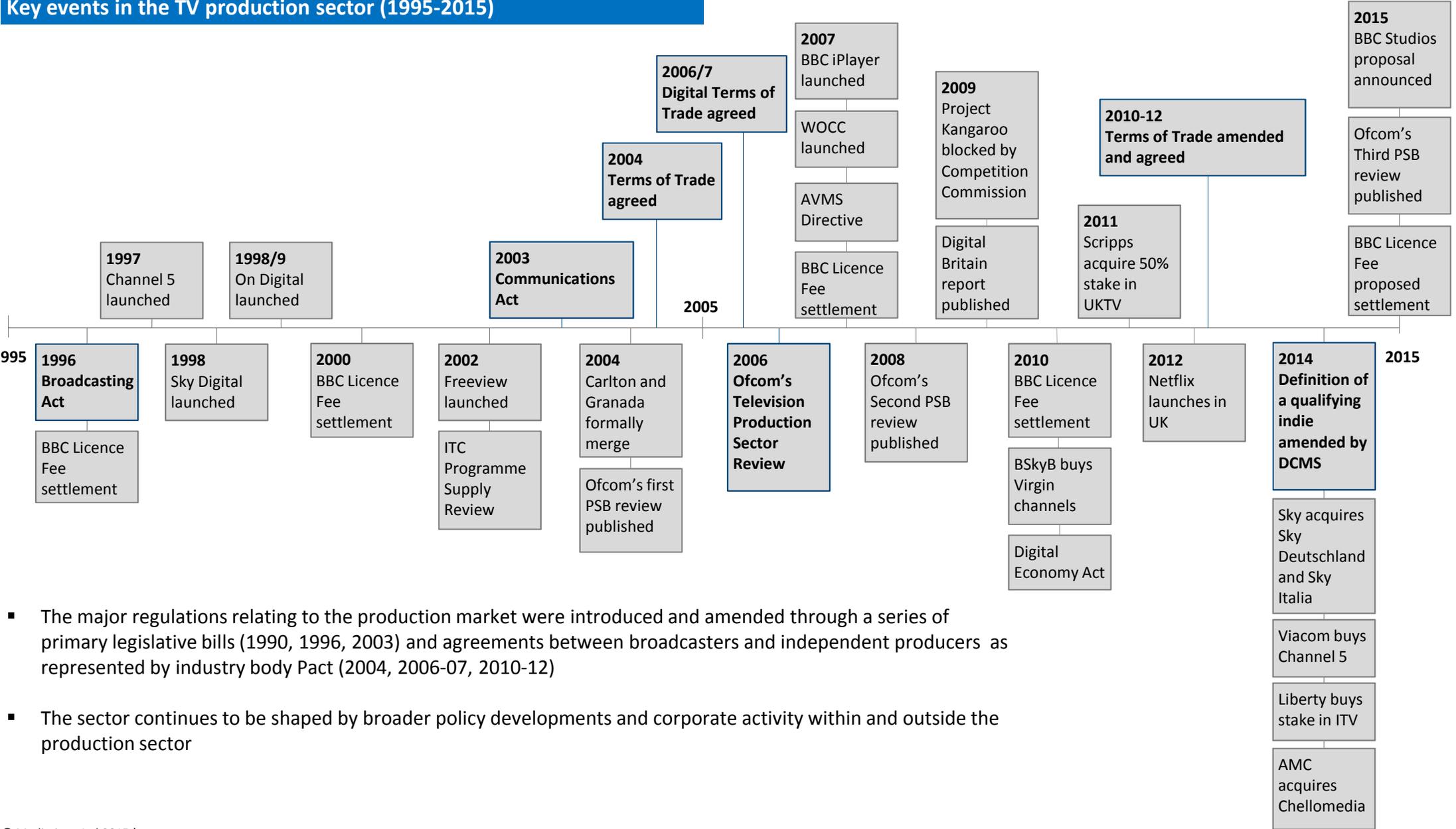
Section 3: Current and future impacts of the regime on PSB and content investment

Section 4: Potential adjustments to the existing regulatory regime

Section 5: Appendix

The last 20 years has seen a number of key corporate and policy developments which form an important context for considering the shifting market landscape in the independent production sector

**Key events in the TV production sector (1995-2015)**



- The major regulations relating to the production market were introduced and amended through a series of primary legislative bills (1990, 1996, 2003) and agreements between broadcasters and independent producers as represented by industry body Pact (2004, 2006-07, 2010-12)
- The sector continues to be shaped by broader policy developments and corporate activity within and outside the production sector

## A number of revenue and consumption developments are observable the past 10 years, and these have had an effect on investment profiles for broadcasters

- In the period since the last formal review of TV production in 2006, there have been a number of further changes in market dynamics, which have had a significant effect on the value chain for the external supply of TV content
- In terms of the sector revenues that ultimately underpin investment in content, the three key revenue streams have experienced quite different dynamics in this period, with advertising growing only slightly in nominal terms (and declining once inflation is accounted for), subscription revenue up modestly and “online” revenues (AVOD, TVOD and SVOD) growing significantly
- The advertising revenue line was severely affected by the slowdown in 2008-09, with a knock-on effect on content investment (compounded by the freezing of the BBC licence in 2010)
- In 2006, “non-linear” (long form content consumption via time-shifting and on demand) was just 2% of total TV hours; by last year, this had risen to 17%
- Over the same period, the share of core PSB channels (i.e., all the BBC services available at the point of data capture, plus the core channels of ITV, Channel 4 and Channel 5) dropped significantly from 68% in 2006 to just more than 50% in 2014
- Another key development has been a rise in pay-TV penetration, the result of modest growth at Sky (from 8m UK homes to 9.6m in 2014), and additions of “lite pay” homes via new entrants such as BT and TalkTalk
- Broadband penetration has increased markedly, from just half of homes in 2006 to 80% by end of last year (this has been amplified by aggressive bundling from both ISPs and Sky and Virgin)

### Overview of the changes in the TV market

	2006	2014	CAGR
TV NAR revenue (£m)	3,462*	3,838	1.3%
TV subscription revenue (£m)	3,795	5,989	5.9%
Online TV revenue (£m)	11	793	70.7%

PSB viewing share (exc. commercial diginets and +1s)	67%**	52%	-3.3%
Linear viewing share (vs. non-linear)	98%	83%	-2.1%

Free TV penetration (end of year)	55%	40%	-3.9%
Pay TV penetration (end of year)	45%	60%	6.7%
Online Netflix subscribers (and % household penetration, end of year)	N/A	3.8m (14%)	N/A
Broadband penetration (end of year)	50%	80%	6.1%

Source: Mediatique, Ofcom Communications Market Reports; all figures nominal

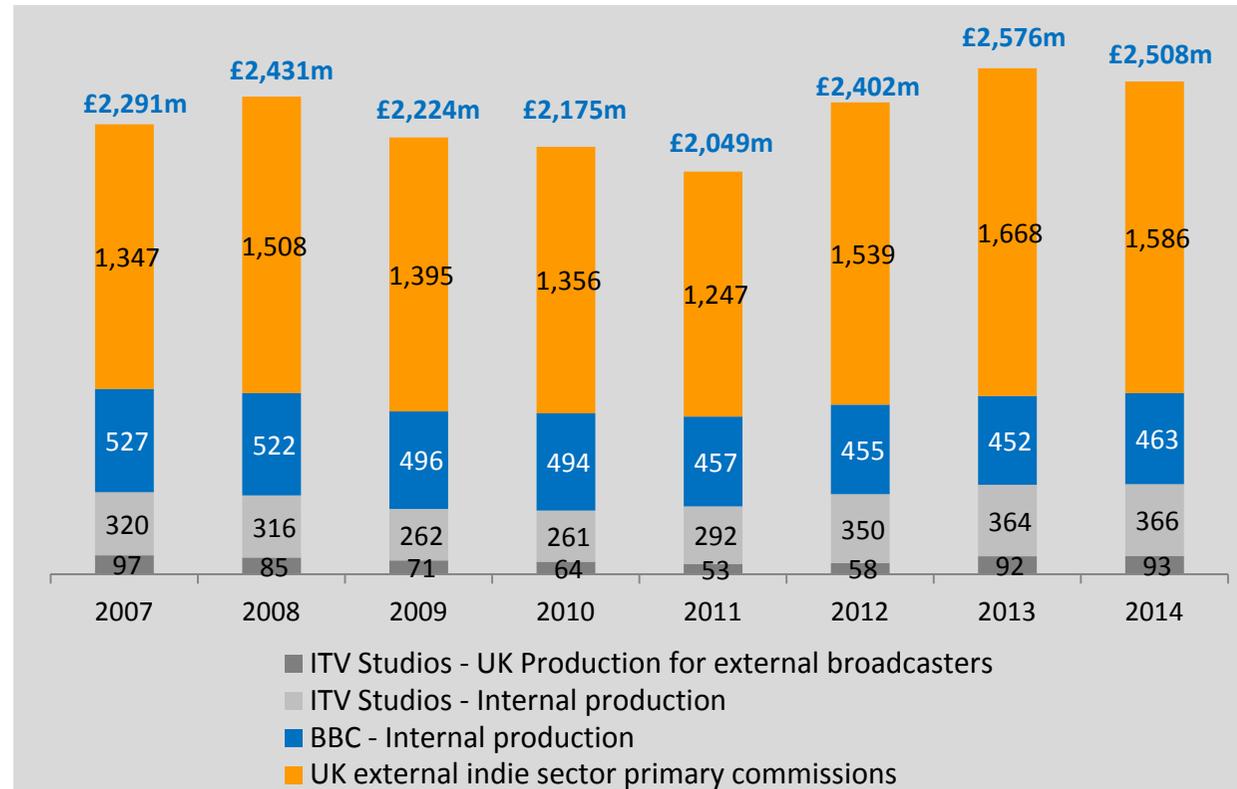
\*Based on Ofcom’s calculations in the 2011 Communications Market Report; methodology has since been altered and subsequent years re-stated

\*\*Includes S4C

# The effects of the economic slowdown are obvious in the evolution of total UK origination production over the past 10 years...

- Before focussing specifically on the indie sector, we provide at right the total TV production revenues over the past 10 years – i.e., including both the BBC and in-house contributions\*
- Reliable data is patchy before 2004 for ITV, prior to the formal merger of Carlton and Granada; in 2004, the total revenues for ITV Productions (later Studios) from both internal and external commissions was £510m
- This combined internal/external revenue line was put under severe pressure during the economic slowdown, dropping from £400m in 2008 to £325m in 2010, its lowest point in a decade
- The BBC production expenditure (in-house) remained relatively stable in 2009-2011
- The primary commissions from broadcasters (the PSBs and multi-channel operators) secured from the independent sector declined between 2008 and 2011, dropping 17% in nominal terms
- Taken together, in-house and external commissions declined between 2008 and 2011 – reflective of reductions in overall spending by PSBs on originated content
- These trends did not generate significant declines in audience appreciation of PSB content according to Ofcom’s own analysis; in addition, declines in content investment were the result of a number of factors, including production cost trends, scheduling and genre allocation and offsetting contributions from external suppliers (e.g., tax credits, co-productions, pre-sales and deficit funding)

Combined UK originated production revenues\*\* (£m)



Source: Mediatique, Pact/O&O, ITV Annual Reports, BBC; all figures nominal

\*ITV Studios’ production revenue excludes news sourced from ITN. ITV Studios UK revenue (both internal and for external broadcasters) excludes Global Entertainment income; BBC internal spend on production does not include BBC Worldwide (e.g., format and programme sales abroad, DVDs sales, etc.)

\*\*Pact/O&O data not available for 2005; Pact census methodology differs for data set pre-2008; BBC Internal production is for FY (Apr-Mar); all others are calendar year; UK External indie sector primary commissions does not include news and sport, although the effect on revenues in the latter case is likely to be small

# The independent sector in the UK has transformed over the last 20 years, driven by a number of underlying developments and forces...

## Drivers of development of the production sector

### “Professionalisation” of a previously cottage industry

- The early days of the independent sector were characterised by small-scale entities, operating as producers-for-hire; the BBC and ITV made the majority of their own content, and the independent sector was small and generating little if any profit
- The launch of Channel 4, with a specific remit to source content externally, heralded the beginnings of a larger and more professional cohort; the sector has since become a highly competitive and financially attractive market, and UK suppliers are seen as a model of best practice in development and production

### Consolidation of smaller production entities

- The independent sector has witnessed significant corporate activity over the last 20 years, leading to consolidation of smaller players and talent into large holding companies typically running multiple production brands
- Such consolidation has been driven by easy access to capital (enabled by financial success and the increasing exploitation of rights in secondary windows), enabling investment, expansion and acquisition
- This consolidation has led to a concentration of supply at the top end of the market, and improvements in efficiency and the costs of production: a long tail of small independent producers (including “one-man bands” and lifestyle businesses) remains however – in part reflecting the fluidity of the market, in which production talent can establish new start-up operations with relative ease

### Increasing international influence

- Key to the expansion of the independent production sector in very recent periods has been internationalisation, both in terms of ownership and sources of revenue as indies seek to capitalise their rights and formats overseas
- Following periods of intra-sector consolidation, listings on public markets and investments by private equity, the key source of recent funding (and consolidation) has been international, with large media companies acquiring UK production houses
- The relative outperformance of the UK production sector is a fundamental reason for the growing international appetite for UK-based suppliers, in addition to the attractions of English-language content and a highly developed skills base

### A recent shift towards vertical integration

- The acquisition of UK production suppliers by international players – including Discovery, 21<sup>st</sup> Century Fox, NBCUniversal and Time Warner – has resulted in significant vertical integration, with content supply now controlled by the operators of distribution channels
- Such trends have been compounded by vertical integration among UK broadcasters, with ITV strategically targeting production as a key source of future company growth, and Sky acquiring UK production companies to complement its UK operations

## Public policy has also played a key role in driving the evolution of the independent sector – such policy is a crucial determinant of the nature of relationships between suppliers and the buy side

- The operation of the independent production sector, including its relationship with the PSBs, is underpinned by a regulatory regime originally drafted in the 1990s and consolidated and built upon by subsequent regulation
- There are two main elements to this regime – a quota of supplied hours from the independent sector and Terms of Trade which set down the terms on which content is supplied to the PSBs
- The objectives of this regime are threefold:
  - Promoting cultural diversity, creativity and new talent
  - Stimulating SME growth
  - Balancing vertical integration
- This regulatory regime has been wholly positive for the sector as a whole, by providing a safety net for the level of demand from the PSBs and by giving suppliers the inherent right to own the underlying IP associated with any commission
- ...this latter point has crucially enabled independent suppliers to exploit secondary rights (subject to revenue shares with the original commissioner), which were previously typically in the full control of the original commissioning broadcaster, and were typically under-exploited (if at all)
- Critically, these protections only accrue to qualifying suppliers, which does not by definition include a vertically integrated player with broadcast operations in the UK (initially, this targeted the BBC and ITV; more recently, it excludes the “indies” now owned by US studios operating UK channels)

### Elements of the production policy regime

#### Indie production quota

- The relationship between the independent production sector and the key broadcasters (i.e., the PSBs) has been subject to sector-specific intervention since the 1990 Broadcasting Act, which first established the statutory quota of 25% of qualifying hours of broadcast to be supplied from independent, external providers (in excess of the 10% now applied at European level) – effectively targeting the BBC and ITV as producer-broadcasters
- The definition of an “independent” producer was most recently amended in 2014 to clarify that owners with broadcasters outside the UK could own qualifying companies as long as they did not own a UK-based broadcaster

#### Terms of Trade\*

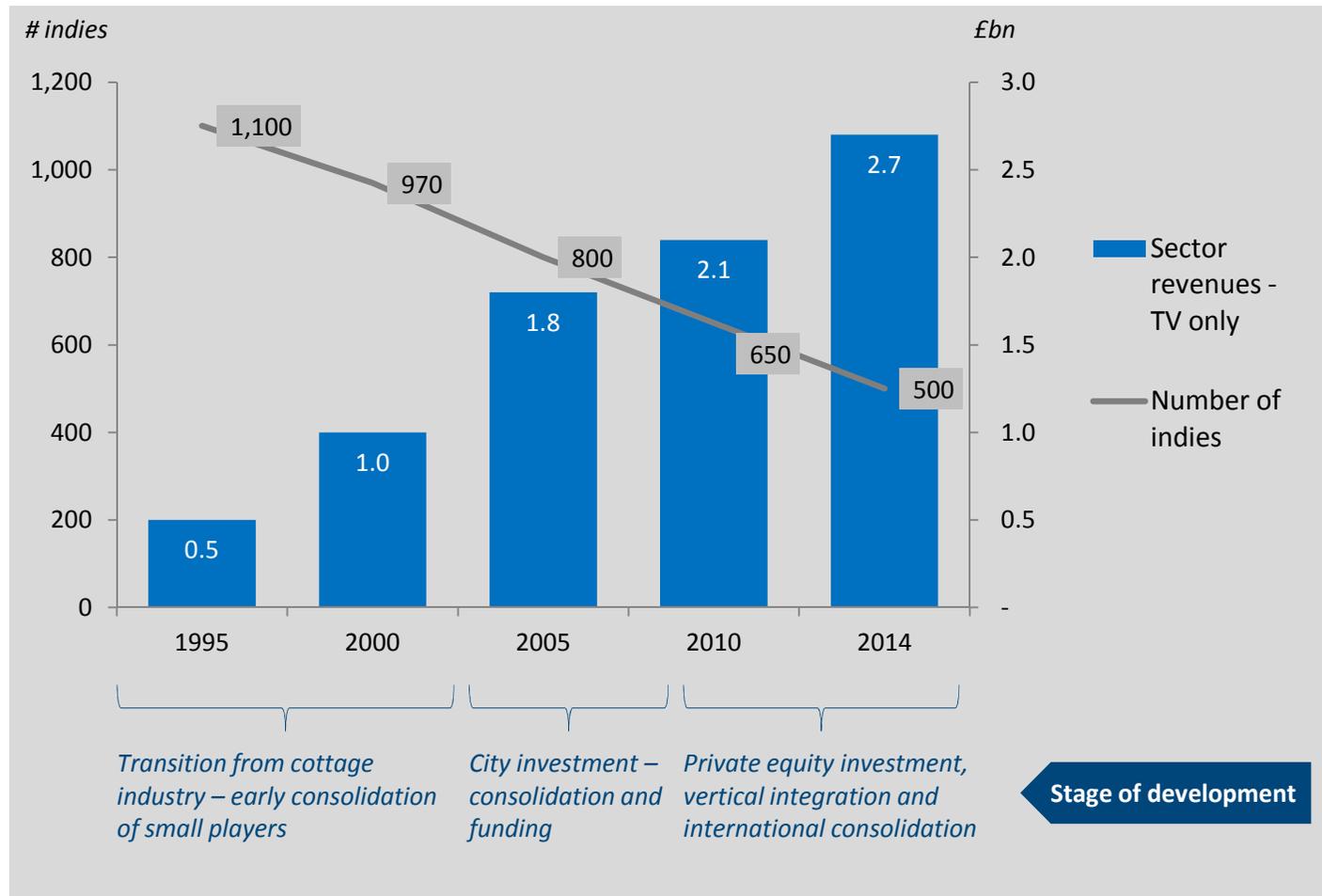
- Under the Communications Act (2003) the PSBs were asked by Ofcom to draw up Codes of Practice to govern their relationship with independent companies; under these, broadcasters agreed Terms of Trade (“ToT”) which specified the terms by which broadcasters would secure content from external suppliers
- These are subject to periodic review by Ofcom and were specifically updated at Ofcom’s insistence following the TPS Review to cover “digital” rights as the market for non-linear developed from 2006 onward
- These ToT are agreed by the broadcasters and suppliers (led by trade association Pact) and are not prescriptively defined by Ofcom; the terms typically include tariffs by genre and day part, extent of holdbacks, and “back-end” revenue shares; parties may choose to trade outside the ToT

*\*A summary of each broadcaster’s current Terms of Trade is provided in the Appendix*

# These factors have enabled the independent sector to achieve significant financial growth over the last 20 years – they have also led to a concentration of supply...

- The external sector has undergone a number of development phases over the last 20 years, but all the time being able to grow revenues
- The sector has grown from total revenues of roughly £500m in 1995 to more than £2.7bn in 2014 (not including “Other” income not related to TV) – at the launch of Channel 4 in 1982, revenues were only £120m\*
- Such growth has occurred alongside significant consolidation, with the total number of independent companies (Pact members) falling by more than half since 1995
- This has been driven by strategic and financial factors, with consolidation enabling more professional working practices and the sharing of cost and risk
- Despite a decline in the total number of operating entities over the last 20 years, the sector continues to be characterised by low barriers to entry and a constant replenishment of talent, typified by senior executives leaving super indies and setting up standalone production entities

## Evolution of the independent production sector (1995 to date)

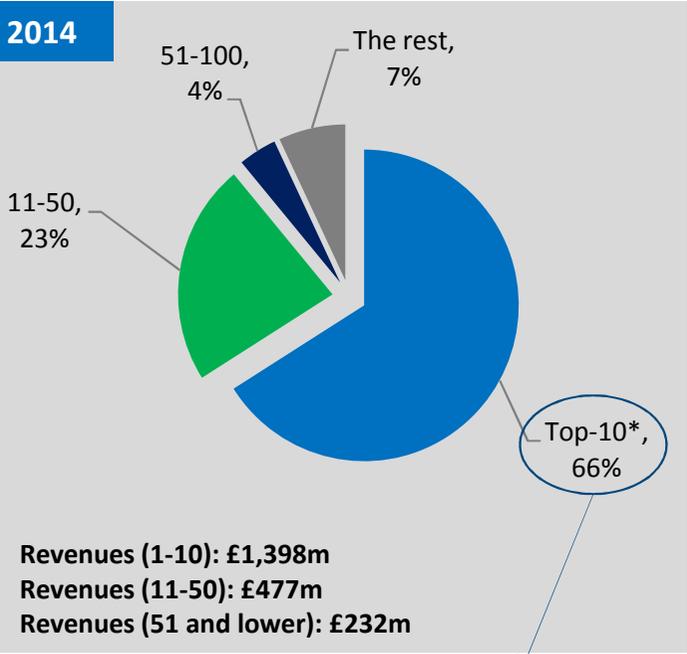
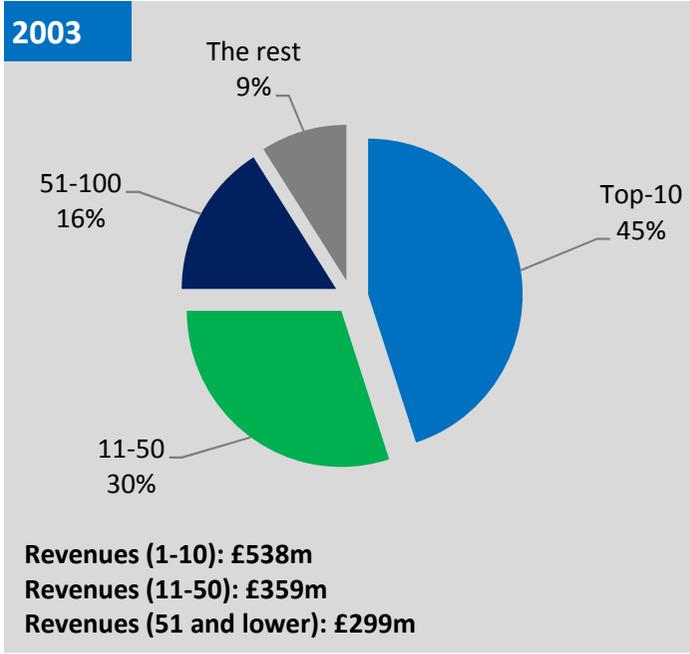
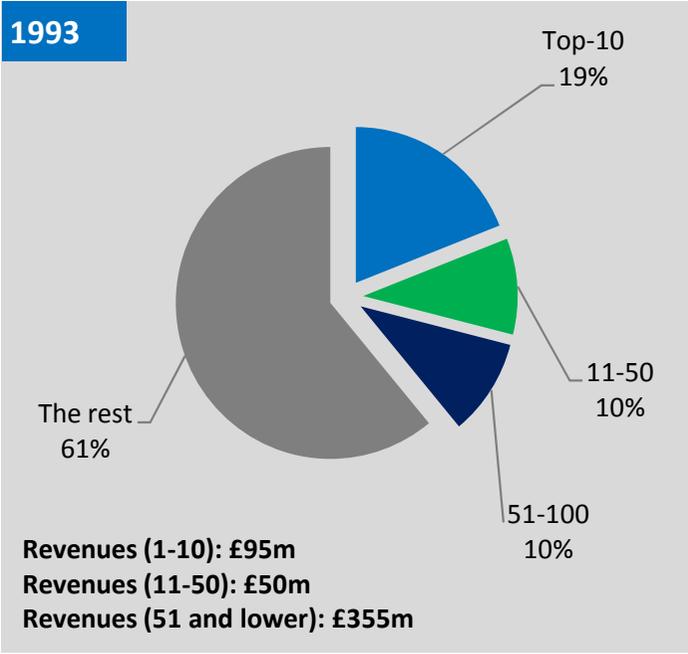


Source: Pact, Mediatique estimates; all figures nominal

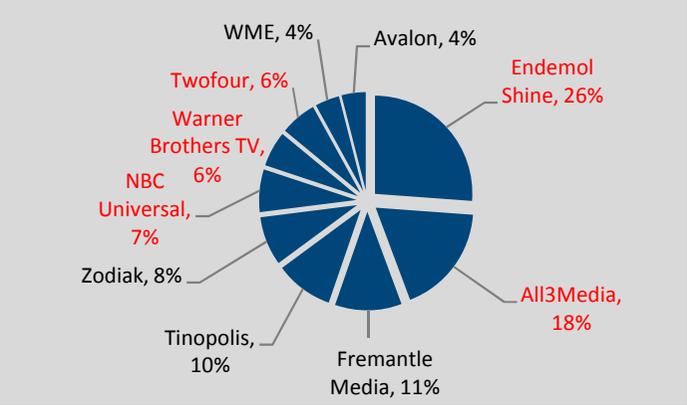
\*There are no industry standard data sets on the independent production sector prior to 1993, when Televisual began to publish its annual survey; these surveys are available online from 2009; hard copies of prior years are no longer available through the publisher; Pact surveyed the sector in 2005 (covering calendar 2004) and then again in 2007 (covering 2006) and each year since then; for the period prior to 2005, including historical periods prior to 1993, we have relied on data accumulated and published by Mediatique, Evolution of the UK Production Sector, 2005; some limited data can be found in ITC archives via the Ofcom website

The independent production sector has seen a significant concentration of activity among the largest suppliers, with a polarisation between large “managerial” companies and small “lifestyle” players...

Share of UK turnover, by size of supplier (by size rank, %, 2014)



\* Breakdown of the top-10 (2014, share of top-10 revenues)



- The top-10 companies generate 66% of all sector revenues (UK), and span multiple production brands under one roof – e.g., All3Media includes 18 constituent companies including Lime Pictures, Company Pictures, Lion Television, Studio Lambert, Neal Street Productions and Optomen
- Organic growth, mergers and external investment has led to a tri-partite structure with a super-indie tier, a “mid-bulge” (depleted over the past dozen years through consolidation) and a long tail of small indies
- This long tail secures a relatively small share of the sector but is the source of considerable innovation and is attractive to larger players seeking to bolt on production talent

Source: Mediatique estimates, Broadcast, Televisual, Pact; all figures nominal  
 Note: Revenues from Endemol’s EWD distribution arm were included by Broadcast for the first time in 2014; we have adjusted these to ensure they reflect only UK-related sales (Mediatique estimate)

Companies in red are now non-qualifying  
 WME – William Morris Endeavor

# The independent sector has seen an increase in the scale and scope of demand for primary commissions, driven by the entry of new players and the success of UK production firms internationally

## Sources of demand for independent production

### The PSBs

- The PSBs (BBC, ITV, Channel 4, Channel 5, S4C) remain the largest commissioners of original content in the UK, in reflection of their regulatory obligations to produce original content across various specified genres: Channel 4 and Channel 5 both operate as publisher-broadcasters, entrenching their commitment to the external supply sector; alongside the independent sector, both the BBC and ITV continue to produce significant amounts of content in-house, with ITV strategically targeting production as a key source of future company growth
- The scope of supply relationships with the PSBs have expanded, as all the PSBs now operate a branded portfolio of channels focused on key genres or targeted at specific demographics and have launched on-demand players online and on TV platforms

### Multi-channel networks

- Channel operators such as Sky, UKTV and Discovery traditionally relied on acquired programmes to fill schedules; in recent years, however, these groups have begun to re-balance schedules in favour of commissioned UK content
- Sky has been the most aggressive multi-channel commissioner of original content, in particular for its Sky Atlantic, Sky 1 and Sky Living channels; all of Sky's commissions are from external providers, although Sky's parent, 21<sup>st</sup> Century Fox, is a shareholder in Endemol Shine, which is a major supplier of content to UK broadcasters; Sky also acquired Love Productions and Blast recently

### New media players

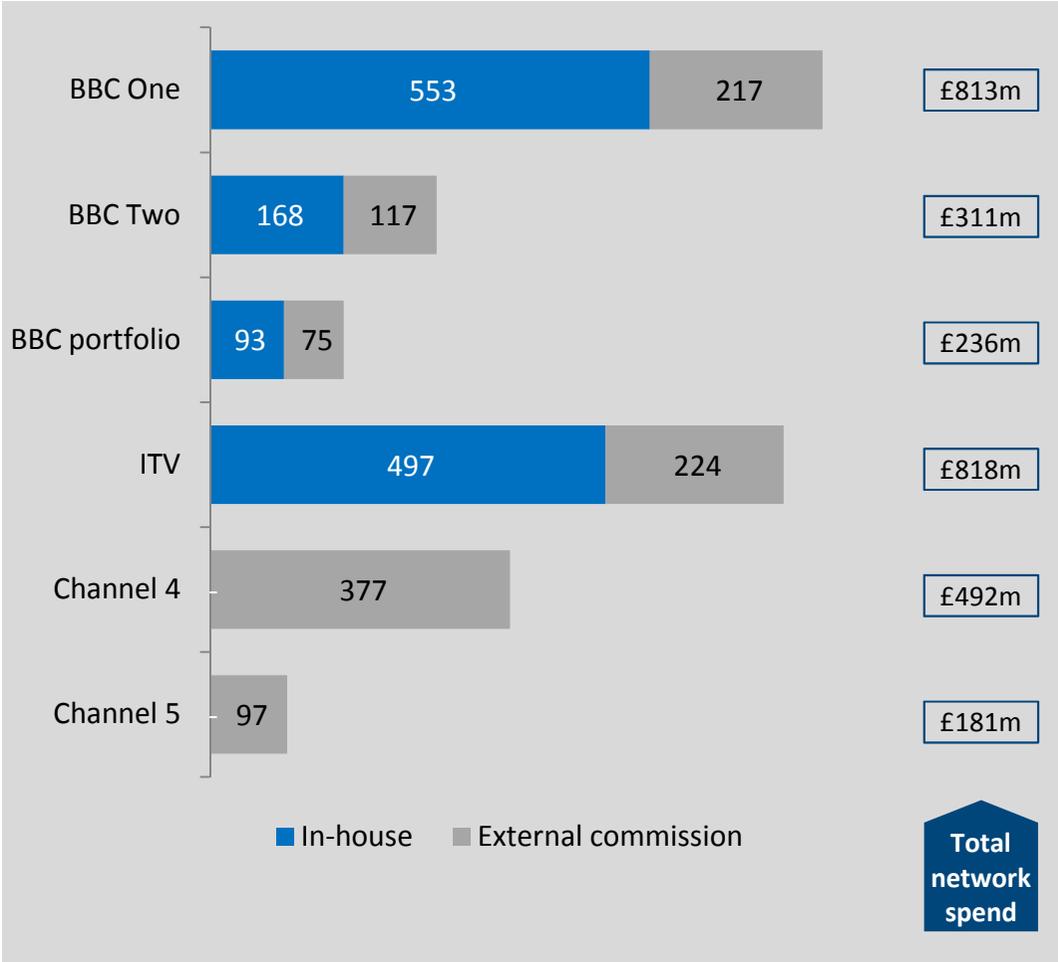
- The emergence of online distributors such as Netflix and Amazon has also increased competition for original content, as well as offering an additional revenue stream for rights holders beyond the initial premiere/airing and traditional downstream windows
- To date, new media investment has been largely limited to acquiring secondary rights of finished programmes, although players are increasing investments in primary commissions; thus far, these have been largely limited to commissions in the US and Canada (although *The Crown*, made by Left Bank, will premiere on Netflix)

### International players

- International broadcasters have also emerged as a key source of demand for the independent sector, buying rights to finished programmes and formats, and increasingly commissioning original series from UK production companies (the ability of UK-based companies to supply foreign broadcasters directly has been enabled in part by their success in the UK market (conferring a track record and credibility)

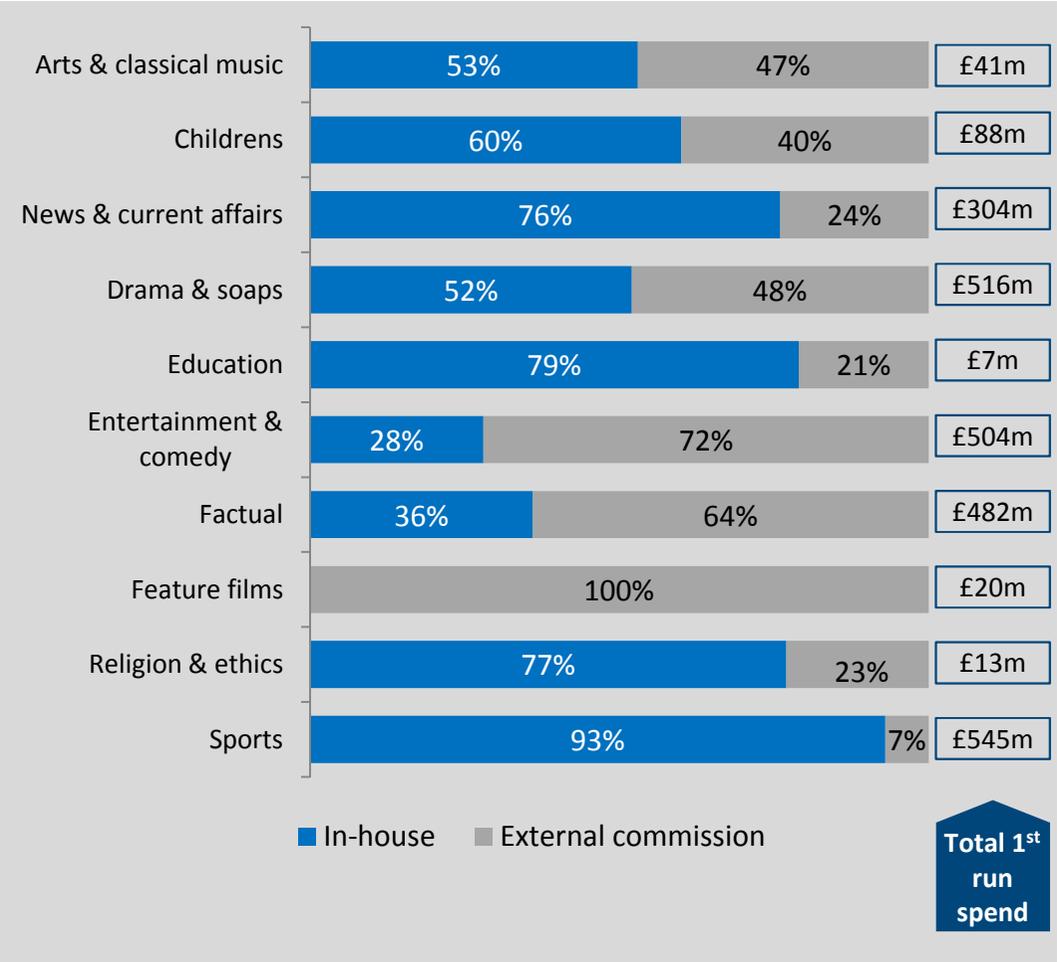
Among the PSBs in particular, the independent sector has been able to secure a significant share of investment in 1<sup>st</sup> run commissions, notably in high profile genres such as entertainment, comedy and drama

**Investment in 1<sup>st</sup> run commissions, by PSB (2014, £m, by source)**



Source: Ofcom  
 Note: PSB channels only. First-run network commissions including news and sports rights. BBC portfolio channels included: BBC Three, BBC Four, CBBC, CBeebies. ITV excludes ITV Breakfast for the first run commissions, but includes ITV breakfast for "Total network spend"

**Investment in 1<sup>st</sup> run commissions, by genre (2014, % spend, by source)**

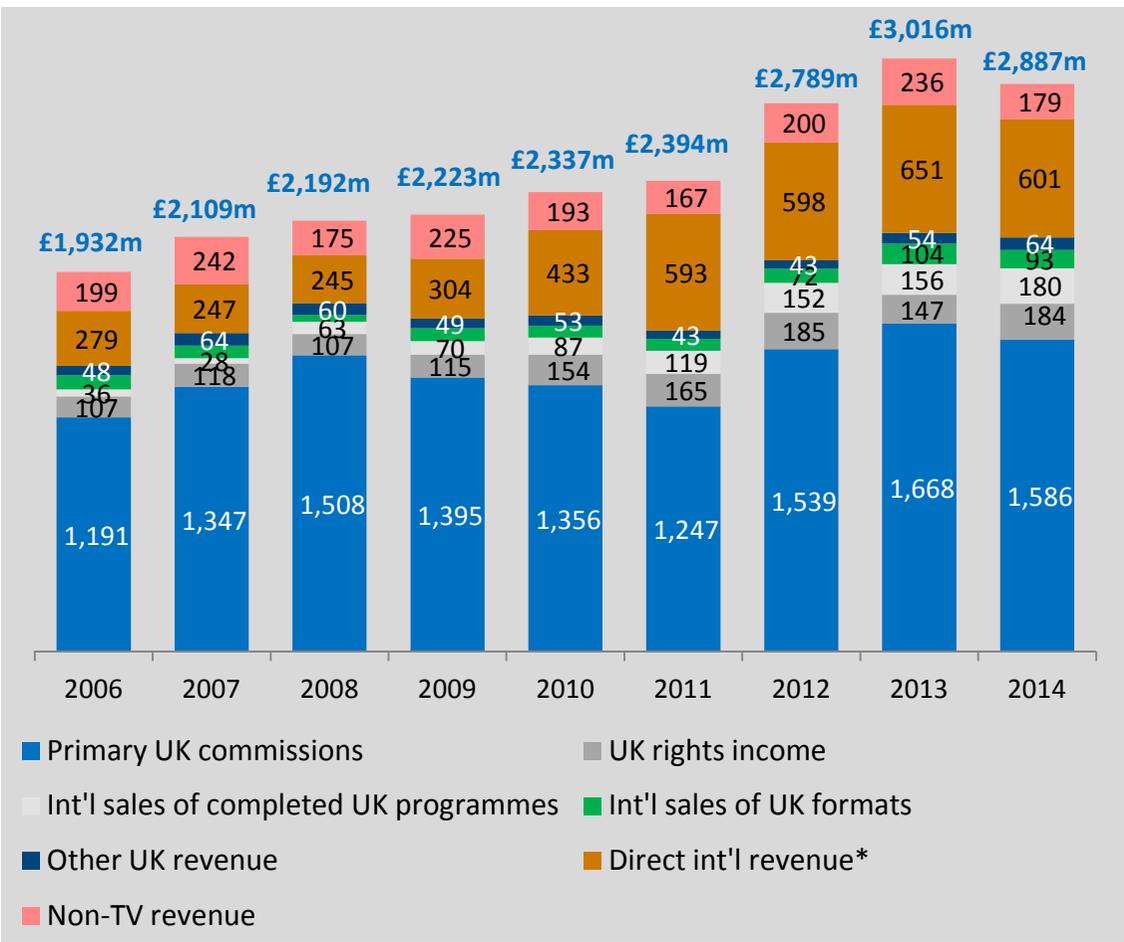


Source: Ofcom  
 Excludes regional output

# The overall financial health of the sector does hide some structural challenges among the main commissioners of original content, however

- The independent sector has been able to drive revenue growth via the exploitation of rights in secondary windows, including the sale of programmes to channels and other content aggregators in the UK and in international markets
- Such success has enabled the sector to compensate for variable financial performance at the key commissioning broadcasters
- Indeed, investment in UK primary commissions continues to be affected by underlying economic challenges at the key commissioning broadcasters, including pressures on the BBC Licence Fee and structural issues facing commercial broadcast channels in general
- Investment in primary UK commissions has fallen in real terms since 2008 and, notwithstanding recent increases in origination budgets at Channel 4 and Channel 5, is likely to remain structurally challenged in the next 5-10 years
- Total sector revenues have grown at an annual compound rate of 2.5% since 2008, with primary commissions growing at 0.8%; the saving grace of international has grown by 19% a year over this period
- In the period between 2006 and 2014, there has been a divergent trend around the relationship between external suppliers and the PSBs: the share of total expenditure on original content by the PSBs spent with the external sector has increased, from 41% to 53%; meanwhile, the share of total external sector income derived from the primary commissions of PSBs has actually declined, as international and other revenue has grown – see table at right

**Total indie sector revenues – qualifying and non-qualifying (£m)**



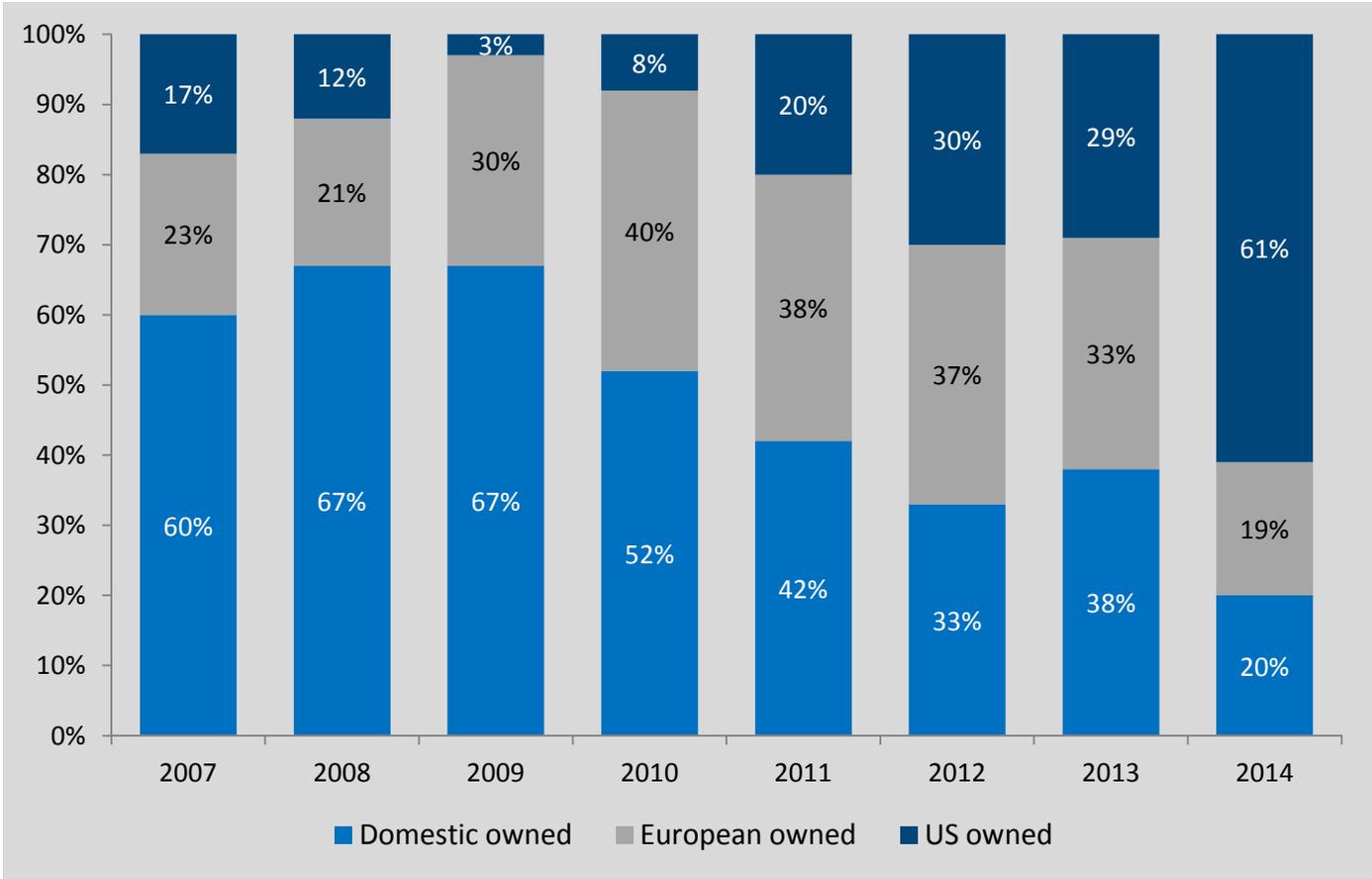
Revenue stream (£m)	2006	2014
UK primary commissions as % of total	62%	55%
Direct international* as % of total	14%	21%

Source: Mediatique, Pact; all figures nominal  
 \*Direct international revenues include primary commissions from overseas broadcasters "other international" and "pre-production"(sic)

The sector has seen most recently an acceleration in the international ownership of UK production supply – with US companies now owning a significant share of the external production market

- The past five years in particular have seen an influx of US investors into UK production, attracted by the UK’s talent base, strong commissioning foundation and clear title on retained rights
- In 2007, 60% of the revenues generated by the top-10 independent suppliers (by group) came from domestically owned firms, reaching a high of 67% in 2007 and 2009
- By 2014, the percentage of revenues generated by domestically owned groups among the top-10 was just 20%
- US-domiciled parent companies now generate more than 60% of the revenues among the top-10 once the merger of Shine and Endemol (under US-based 21st Century Fox and Core) and takeover of All3Media (by Liberty and Discovery) are factored in
- This acquisition spree, when combined with deals done by ITV, Sky and Discovery in the UK, crystallised value for shareholders of the target indies of £2bn (Mediatique estimate based on industry sources and trade press)

Nationality of ownership of top-10 independent suppliers (by revenue, %)



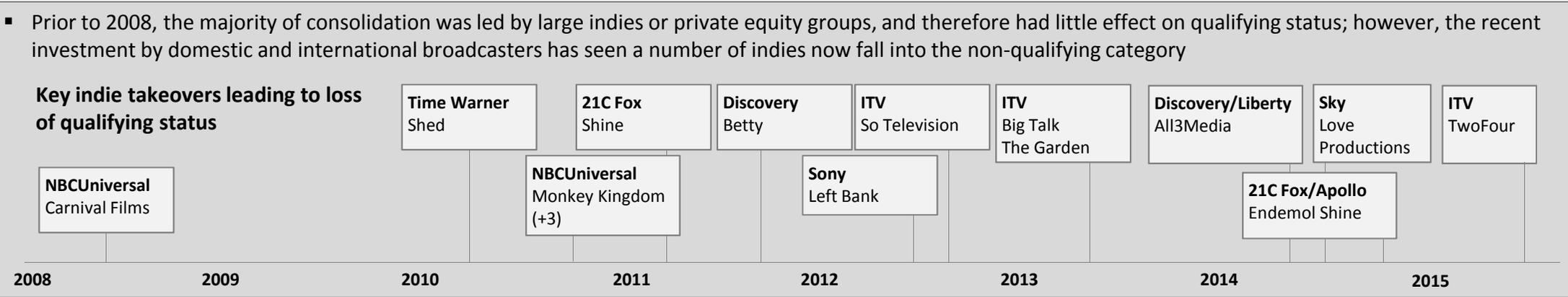
Source: Mediatique, Broadcast; all figures nominal  
 Note: No data for the years prior to 2007 is available due to lack of relevant reporting granularity in Broadcast Indie Survey; revenues from Endemol’s EWD distribution arm were included by Broadcast for the first time in 2014; we have adjusted these to ensure they reflect only UK-related sales (Mediatique estimate); all revenues from Endemol Shine Group attributed to the US ownership category

# International ownership has also ushered in a new period of vertical integration, which has dramatically reduced the number of qualifying indies – this has potential implications for public policy

- Consolidation in the sector has been largely led by domestic (e.g., ITV, Sky) and international (e.g., Discovery, 21<sup>st</sup> Century Fox) broadcasters, with broadcaster-owned indies now contributing 54% of the total UK external sector revenue in 2014, up from just 9% in 2003
- The definition of a qualifying independent producer was most recently amended in 2014 to clarify that owners with broadcasting operations outside the UK could own qualifying companies as long as they did not own a broadcaster addressing the UK market
- Broadcaster investment and subsequent market consolidation have reduced the number of qualifying indie brands from 98 of the top 100 qualifying in 2008 to just 64 in 2014



- These developments pose a number of issues for the effectiveness of public policy:
  - Given the scale of non-qualifying suppliers, are the PSBs able to meet the quota without compromising quality and schedule?
  - Is there sufficient diversity and innovation in the face of significant consolidation?
  - Is the scale of international ownership likely to affect the nature of content produced and distributed in the UK?
- The evolution of the sector is also dependent on the nature of developments in the wider media sector including audience behaviours and corporate strategies



Source: Mediatique, Pact

## We summarise here the key outcomes of recent changes in the size, structure and ownership of the external sector, provided on the basis of changes in market share

- In summary, there have been significant changes in the profile of the external supply sector since the last TPS Review
- Chief among these changes has been the shift in the number of companies that now qualify for “independent” status under the relevant legislation and the number of external suppliers now owned by non-UK companies
- On the measure of “qualifying” status, the share of sector revenues (UK only, excluding BBC and ITV in-house production) that is provided by qualifying companies has dropped from 91% in 2007 to 57% in 2014
  - When the ITV and BBC in-house production figures are included, the share of adjusted sector revenues provided by qualifying companies (the NQIs plus the BBC and ITV) dropped from 58% in 2007 to 40% in 2014
- The foreign ownership effects are also marked: in 2007, 32% of sector revenues were delivered by non-UK owned companies, rising to 58% by 2014
  - When the ITV and BBC internal production figures are included, the share of adjusted sector revenues delivered by non-UK owned companies rose from 20% to 41%
- The share of all UK external revenues delivered by the top 10 companies, which rose dramatically between 1993 and 2007 (e.g., the time of the last TPS Review) has in fact reduced since then, from 81% in 2007 to 66% in 2014
  - This is a result of two factors – the relatively modest increase in UK (as opposed to foreign direct) sector income and the fact that recent changes in ownership were of already-consolidated entities such as All3Media

### Evolving role of non-qualifying indies and consolidation in the UK

	2007	2014
UK revenues of external producers (£m)*	1,620	2,107
Top-10 share of external revenue	81%	66%
Non-qualifying share of external revenue**	9%	43%
Qualifying share of external revenue	91%	57%
Internationally owned share of external UK revenue	32%	58%
UK production revenues (including BBC in-house and ITV Studios UK) (£m)	2,564	3,029
Top-10 share of total UK revenue	83%	73%
Non-qualifying share of total UK revenue***	42%	60%
Qualifying share of total UK revenue	58%	40%
Internationally owned share of total UK revenue	20%	41%

Source: Pact, Broadcast, ITV, Mediatique estimates; all figures nominal

\* Includes revenue from international markets for UK formats and acquisitions; excludes direct international commissions and non-TV revenue

\*\*To calculate non-qualifying revenues, we have taken the UK revenues from all non-qualifying production companies, including Sky and STV

\*\*\* Non-qualifying revenues include UK revenues from non-qualifying production companies; ITV Studios UK revenue (both internal and for external broadcasters) is included but we exclude Global Entertainment income; BBC internal spend on production is included but we disregard BBC Worldwide (e.g., format and programme sales abroad, DVDs sales, etc.)

**Note that the list of constituents of the top 10 in 2003, 2007 and 2014, with their relevant revenues, is provided in detail in Appendix 2 by way of background**

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Section 1: Market development

**Section 2: Scenarios for future market development**

Section 3: Current and future impacts of the regime on PSB and content investment

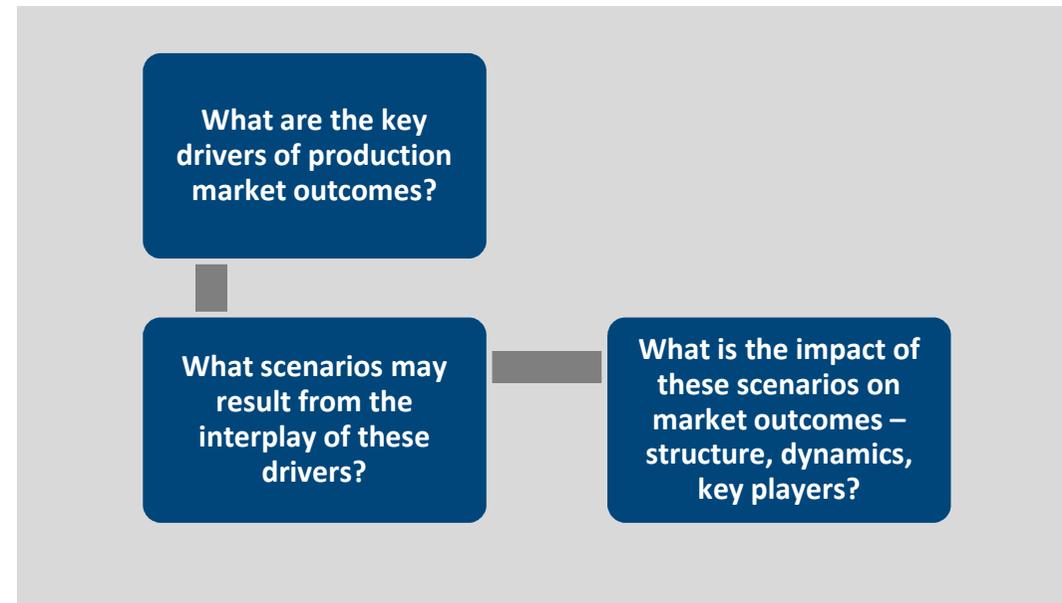
Section 4: Potential adjustments to the existing regulatory regime

Section 5: Appendix

# The pace and nature of future evolution in the production sector will be determined by a number of developments in the media sector, including viewing trends and audience preferences

- Media markets are subject to the shifting dynamics of technology and consumer behaviour, driven by increasing penetration of connected and portable devices and changes to viewer preferences
- Future outcomes are uncertain, and the role of independent production companies and their ability to deliver quality and variety in UK content, is equally uncertain
- In addition to these market dynamics, there are two “known unknowns” likely to have an impact on sector dynamics, neither of which can be accurately predicted today – the potential privatisation of Channel 4 (and the possibility that it emerges with a new status as a producer-broadcaster pursuing a more commercial strategy) and the creation of a market-facing BBC Studios
  - We discount these potential developments in this section
- We have identified a number of scenarios which track key developments – and implications over a 5-10 year period

## Building blocks of scenario analysis



# We have identified the major factors that will determine the pace of change and future structure of the production market over the next 5-10 years...

## Determinants of future market outcomes

### Viewing behaviours and preferences

- The nature of video consumption is subject to structural change as the take-up of connected devices allows viewers to consume content on an anytime-anywhere basis: newer forms of content and entertainment, such as gaming and short-form video, are also more able to compete with traditional long-form narrative video content
- Continuing shifts in audience preferences towards on-demand consumption and/or viewing on non-TV devices and/or a shift towards short-form or non-AV content will present fundamental challenges to the role of PSBs and the nature of content funding models

### PSB strength and content strategies

- The continuing salience of the PSB brands is a significant influence on the future dynamics of the production market:
  - These players are uniquely placed to commit large budgets to commission new ideas (often in marginalised or unproven genres), any shift away from these brands may see a fragmentation (and potential reduction) in total production budgets
  - Equally, however, a shift in content strategy towards greater in-house production, towards content that is more suitable to global tastes or towards (cheaper) acquired content may result in a withdrawal of funds from the UK production sector

### Barriers to entry

- The entry of new content aggregators to the production market can act as both a growth driver (i.e., additional demand for original ideas, additional funding) and an inhibitor of growth (e.g., reliance on content with global appeal), depending on the nature of entry:
  - The scale and risk appetite of new entrants will vary significantly, which in turn will influence the nature of commissioned content
  - Indeed, small risk-averse new entrants are likely to rely on cheaper acquired content, while global players (e.g., Netflix) are likely to focus on content with global appeal rather than a purely UK focus

### Market activity

- The ability of new production talent to emerge will crucially affect the diversity and creativity of the UK production sector; this will depend on the ability of new players to secure funding either via financial investors/backers or via corporate activity
- Such corporate activity will in turn depend on the financial prospects of the UK production sector and the desire of consolidating entities (notably, UK and international broadcasters) to invest in or acquire production entities

**These determinants are interlinked in multiple ways, such that the strength of PSBs (and their approach to independent production companies) influences the scale and nature of barriers to entry and also the ability of producers to access funding/investment; the strength of the PSB brands and the popularity of content within their distribution channels will in turn influence viewing behaviours**

# We have developed three core scenarios that capture the interplay of these determinants – they are rooted in plausible outcomes for audience behaviour over time

- We have considered three broad outcomes for the production market, which demonstrate the potential implications of changes in market dynamics; we have not sought to predict how the market might evolve, but to identify how the drivers of change may play out over time
- This approach also allows us to consider the implications of market dynamics on the policy regime – and posit those areas that Ofcom in any event should keep under close review

## Parameters of future scenarios

Scenario	Nature of distribution and viewing outcomes	Indicative nature of TV viewing (% of total viewing hrs, 2020)
 <p><b>Evolution</b></p>	<ul style="list-style-type: none"> <li>▪ Linear viewing continues to represent the majority of all viewing outcomes</li> <li>▪ The scale of non-linear and out-of-home consumption increases, but at an evolving rate allowing legacy operations (notably the PSBs and their relationships with suppliers) to transition on a sustainable basis</li> <li>▪ Consumer preferences continue to value original long-form content with a UK focus/perspective</li> </ul>	 <p>75%</p>
 <p><b>Structural change – Good*</b></p>	<ul style="list-style-type: none"> <li>▪ Viewing outcomes shift more rapidly to on-demand and mobile consumption – traditional broadcast aggregators lose traction</li> <li>▪ Barriers to entry lessen for new aggregators, aided by technology and new functionality</li> <li>▪ Search and navigation functionality develops, allowing viewers to source more international and archive content; content originators/producers forge direct relationships with viewers</li> </ul>	 <p>50%</p>
 <p><b>Structural change – Bad*</b></p>	<ul style="list-style-type: none"> <li>▪ Viewing outcomes shift much more rapidly to on-demand and mobile consumption</li> <li>▪ Content is widely available on multiple platforms and via multiple aggregators; the range of formats broaden, including short-form, interactive and new forms of content</li> <li>▪ Content aggregators remain important, although national brands are displaced by operators with global scale</li> </ul>	 <p>40%</p>



\*"Good" and "bad" here are from the perspective of the PSBs – the perspective we have specifically been asked to address in our work.

# We have evaluated the impact of each of these scenarios on market structure and activity over 5-10 years

## Market implications under each scenario

Scenario	Market structure and activity	Strength of the commissioning market	Quality and nature of content produced
 <p><b>Evolution</b></p>	<ul style="list-style-type: none"> <li>PSBs remain the cornerstone of commissioning, with some additional spend from new players (multi-channel networks and OTT operators)</li> <li>Dynamics support a mix of small and large production entities</li> <li>Consolidation continues, driven by economies of scale and vertical integration – PSBs face growing pressure to meet quotas</li> <li><i>Indicative number of indies (2020): &lt;450</i></li> </ul>	<ul style="list-style-type: none"> <li>Commissioning budgets are funded across linear and non-linear windows</li> <li>Some pressure on primary production revenues, compensated by incremental upside from secondary windows</li> <li><i>Indicative scale of UK primary commissions (2020): £2bn</i></li> </ul>	<ul style="list-style-type: none"> <li>Long-form original commissions remain the cornerstone of value creation</li> <li>TV content production remains UK-focused</li> <li>PSB genres are supported (including content from the nations/ regions), though necessarily underpinned by regulatory compact)</li> </ul>
 <p><b>Structural change – Good*</b></p>	<ul style="list-style-type: none"> <li>Legacy broadcasters innovate in line with viewing behaviours</li> <li>Global and local OTT players gain traction, driving rights inflation for local content</li> <li>Indies forge direct relationships with viewers via OTT portals</li> <li>Content ownership becomes a key driver of value generation</li> <li><i>Indicative number of indies (2020): &lt;600</i></li> </ul>	<ul style="list-style-type: none"> <li>Strong competition for ideas leads to innovation, diversity and creativity in production and commissioning</li> <li>Content is funded via multiple revenue streams and operators</li> <li><i>Indicative scale of UK primary commissions (2020): £2.5bn</i></li> </ul>	<ul style="list-style-type: none"> <li>Local content flourishes alongside increasing availability of content made for global audiences</li> <li>Vibrancy and creativity of the indie sector sustained via fragmentation/long tail</li> <li>PSBs pay an important role as owners/producers of content, rather than simply as publishers</li> </ul>
 <p><b>Structural change – Bad*</b></p>	<ul style="list-style-type: none"> <li>New OTT players enter, driven by global content producers/aggregators</li> <li>Legacy broadcasters lose share of viewing – and commissions</li> <li>Vertical integration drives further consolidation</li> <li>UK production companies seek global expansion; the long tail struggles to maintain market traction</li> <li><i>Indicative number of indies (2020): &lt;200</i></li> </ul>	<ul style="list-style-type: none"> <li>Local production is sidelined, other than large scale projects; content loses UK focus</li> <li>Small and medium size indies unlikely to secure commissions from global players</li> <li>Large players consolidate; global commissions predominate</li> <li><i>Indicative scale of UK primary commissions (2020): £1bn</i></li> </ul>	<ul style="list-style-type: none"> <li>Global tastes trump local preferences; production focuses on seeking global hits; innovation and diversity decline</li> <li>Broadcasters rely more heavily on acquisitions (sometimes through co-prods as junior partner)</li> <li>PSB genres are heavily challenged</li> </ul>

\*"Good" and "bad" here are from the perspective of the PSBs – the perspective we have specifically been asked to address in our work.

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**Section 3: Current and future impacts of the regime on PSB and content investment**

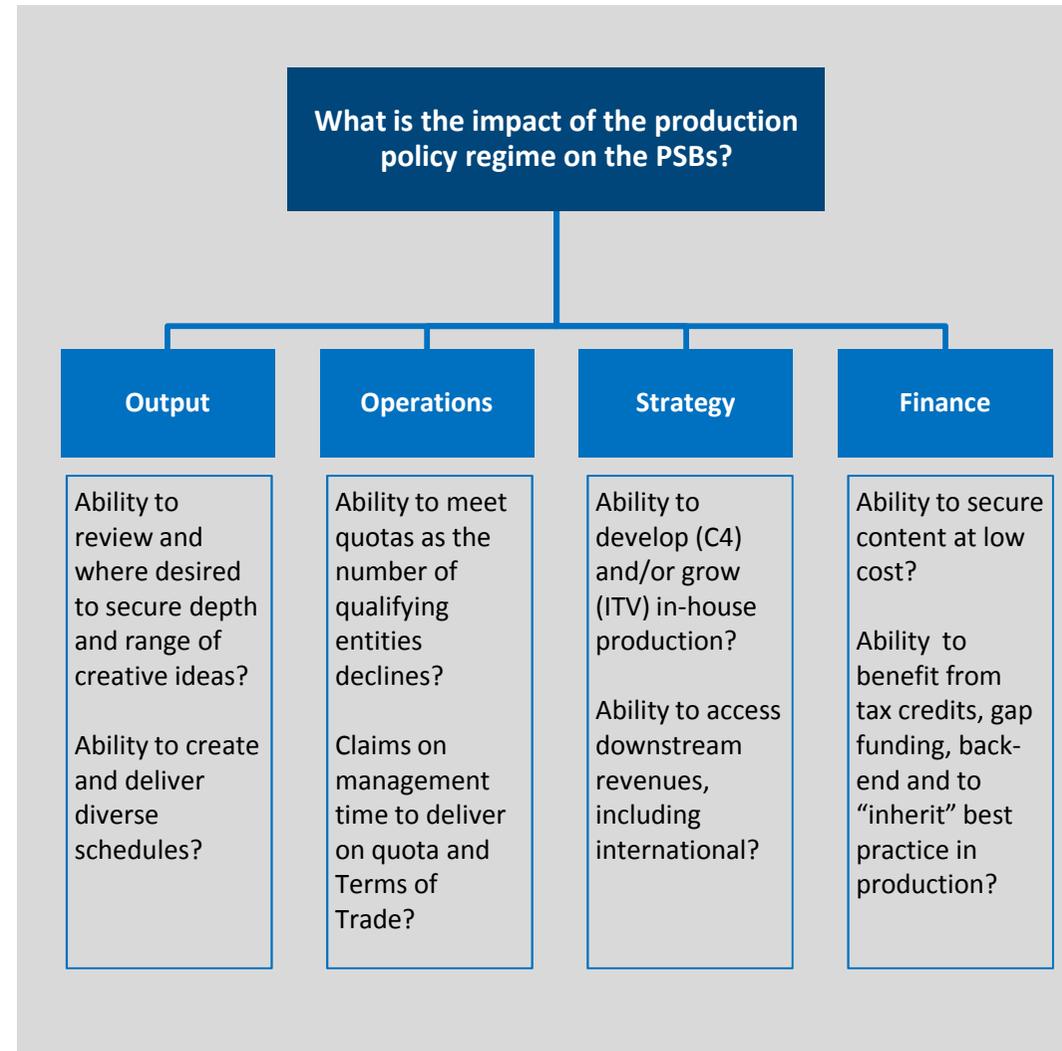
Section 4: Potential adjustments to the existing regulatory regime

Section 5: Appendix

# We were asked by Ofcom to consider the current and future impacts of the regulatory regime on the public service broadcasters...

- In our analysis, we have sought to capture current and future impacts of the indie regulatory regime on the PSBs (the BBC, ITV, Channel 4 and Channel 5) in four key areas: on-screen output, operations, strategy and finance
- Our analysis was informed by our engagement with sector players, including all the PSBs, Pact and representative indies (from the larger and smaller segments, qualifying and non-qualifying), on a confidential basis
- In this section, we look first at the output impacts (including the expenditure trends across PSBs, the impact of new entrants and the question of meeting the external (qualifying) quota before considering the impact of the Terms of Trade
- We cover the dynamics of internal versus external commissions, the ability of broadcasters to secure content at affordable cost and the degree to which the Terms of Trade permit an equitable split of revenues reflective of the balance of risks
- Finally, we cover the issues around the transition of suppliers from qualifying to non-qualifying around the application of the Terms of Trade, the ability of broadcasters (where permitted) to reduce reliance on external suppliers
- At the conclusion of this section we summarise the case for and against reform from the perspective of the PSBs and the original objectives of the intervention

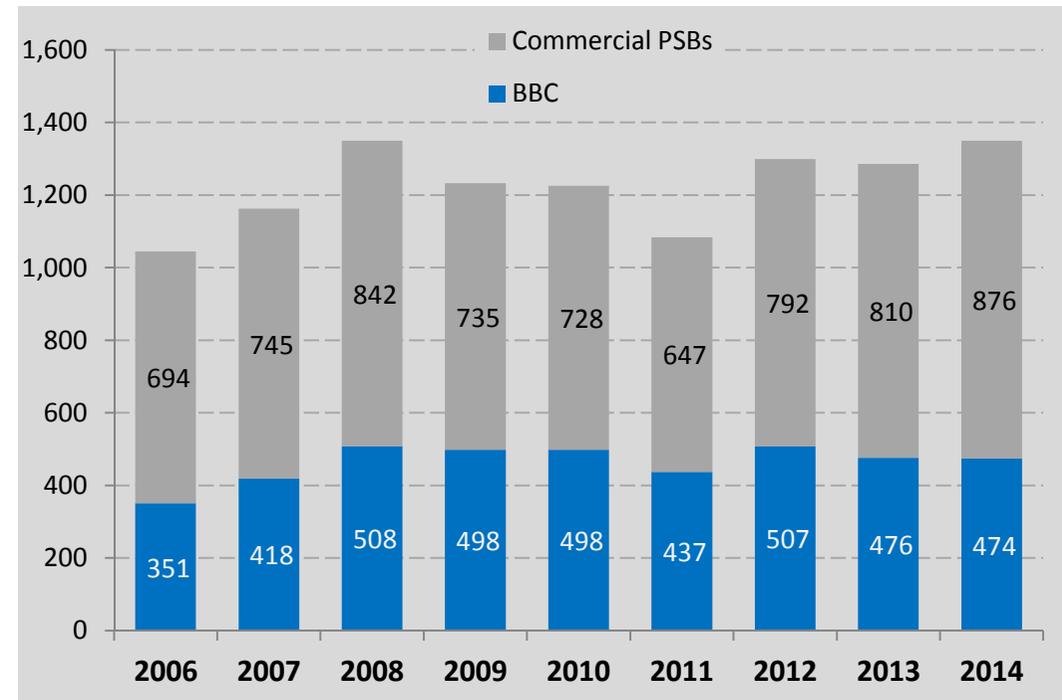
## Impacts on the PSBs – areas of analysis



## The relationship between PSBs and the external sector is ultimately determined by the scale of investment: PSBs reduced their expenditure on original commissions in the recession, with the level recovering since

- The business models of the PSBs are shaped by both cyclical and structural factors, which have a significant influence on the scale of investment in first-run original commissions:
  - The commercial PSBs reduced investments as a result of weakness in the advertising market in 2010-12; recent increases in 2013-14 reflect a return to growth in advertising, and growing external investment by Channel 4 and Channel 5
  - The BBC has maintained the nominal level of its investments in external production as a result of its most recent licence fee settlement
- All the PSBs continue to monitor their investments in primary commissions in light of the implications of changing viewer behaviour on the value of the broadcast window:
  - As viewing behaviours continue to shift towards on-demand viewing, the returns that the commercial PSBs can derive from the linear window are being affected
  - This presents a further challenge to the traditional model of fully funding original commissions in return for full value retention in the linear window
- The PSBs have successfully extended their ToT with the external sector to include certain on-demand rights, although there are signs that rights negotiations between these two parties are becoming more fraught as viewing behaviours continue to devalue the value of the primary broadcast window

PSB\* external commissions, by broadcaster category (£m)



Source: Pact, Mediatique; all figures nominal

\*BBC includes BBC One, Two, Three, Four, CBBC, Cbeebies, News and Parliament; commercial PSBs includes commercial diginets (e.g., ITV2, E4)



## New OTT players have become a new source of funding for original production, although thus far this has had a very limited impact on the UK

- The role of new content aggregators is a key development in international media markets, which is driven by underlying changes in consumer behaviour and the take-up of connected devices
- These new players represent a new source of income for rights holders and production companies, by acquiring on-demand rights for finished programmes and commissioning original series
- Netflix and Amazon Instant Video are the main examples of such players, which collectively have more than 5m subscribers in the UK alone
- The key characteristic of these players is their global reach, which in turn influences their content strategy; content is typically selected on the basis of its appeal to global audiences
- To date, almost the entirety of their original commissions have been sourced from the US, leaving little scope for incremental revenue for UK producers
- An exception is Netflix's recent UK commission for *The Crown* (neither the BBC nor ITV could match the financial terms on offer)

### Original commissions from OTT players, including producer and country of origin

Title	Commissioner	Producer	Country
<i>House of Cards</i>	Netflix (2013)	Media Rights Capital	US
<i>Orange is the New Black</i>	Netflix (2013)	Titled Productions, Lionsgate	US
<i>Hemlock Grove</i>	Netflix (2013)	Gaumont International, ShineBox SMC	Canada
<i>Turbo FAST</i>	Netflix (2013)	Dreamworks, Titmouse	US
<i>Bad Samaritans</i>	Netflix (2013)	Fox Digital Studio	US
<i>Marco Polo</i>	Netflix (2014)	Weinstein Company	US
<i>BoJack Horseman</i>	Netflix (2014)	Tornante Company, ShadowMachine Films	US
<i>Veggie Tales in the House</i>	Netflix (2014)	Big Idea Entertainment, Little Stranger	US
<i>All Hail King Julien</i>	Netflix (2014)	Dreamworks	US
<i>Bosch</i>	Amazon (2015)	Amazon Studios, Fabrik Entertainment	US
<i>Transparent</i>	Amazon (2015)	Amazon Studios, Picrow	US
<i>Unbreakable Kimmy Schmidt</i>	Netflix (2015)	Universal Television, Little Stranger	US
<i>Bloodline</i>	Netflix (2015)	Sony Pictures	US
<i>Daredevil</i>	Netflix (2015)	Marvel Television, ABC Studios	US
<i>F is for Family</i>	Netflix (2015)	Gaumont International, WildWest Television	US
<i>Grace and Frankie</i>	Netflix (2015)	Skydance Productions	US
<i>Marseille</i>	Netflix (2015)	Federation Entertainment	France
<i>Between</i>	Netflix (2015)	Don Carmody TV, Elevation Pics, Mulmur Feed	Canada
<i>Wet Hot American Summer: First Day of Camp</i>	Netflix (2015)	Showalter Wain, Abominable Pictures, Principato-Young Entertainment	US
<i>Master of None</i>	Netflix (2015)	Alan Yang Pics, 3 Arts Ent, Universal	US
<i>Jessica Jones</i>	Netflix (2015)	Marvel Television, ABC Studios	US
<i>Narcos</i>	Netflix (2015)	Gaumont International	US
<i>Sense8</i>	Netflix (2015)	Studio JMS, Georgeville TV, Unpronounceable	US
<i>Hand of God</i>	Amazon (2015)	Amazon Studios, LINK Entertainment	US
<i>The Man in the High Castle</i>	Amazon (2015)	Amazon Studios, Electric Shepherd Prods, Headline Pics, Picrow, Scott Free Prods	US
<i>The Crown</i>	Netflix (2016)	Left Bank Pictures, Sony	UK

## The policy regime (rooted in rights retention for the supplier) has generated a number of indirect benefits to the PSBs, including talent development and best practice in origination and production

### Indirect impacts of a professionalised production sector

#### On-screen quality and diversity

- The UK is consistently praised internationally regarding the quality and variety of TV content produced here; there is of course no objective basis on which to confirm this, but it remains the case that the UK secures a significant share of the international market for formats and finished product (aided by the English language and cultural allegiances)
- The independent sector remains a key driver of the quality and diversity of TV content; there is broad consensus in the market that the policy regime of quotas and ToT underpin the ability of suppliers to grow revenues, raise capital and to expand their businesses – certainly valuations achieved by the independent sector bear this out

#### Best practice in origination and production

- The highly active UK production market has been able to develop best practice in a number of areas, including research and development, origination and production
- Industry consolidation has also led to significant efficiencies, particularly in relation to business affairs and legal costs, which in turn help to reduce the transaction costs of the PSBs' commissioning decisions
- These cost efficiencies have been cemented by the ToT in particular, as these have streamlined the process of agreeing and signing contracts with smaller suppliers (although where PSBs have recently sought to diversify, as with Channel 4's move toward using smaller suppliers, the reverse can also be true)

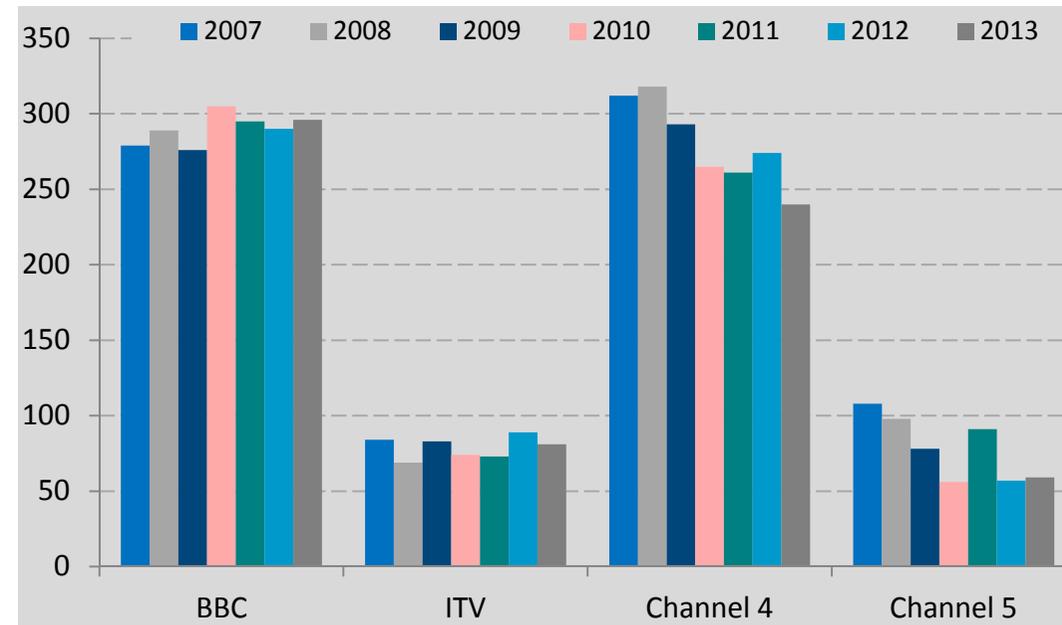
#### Security, longevity and robustness

- The independent sector has become a highly professionalised and efficient industry, driven in part by the policy regime and the ability of companies to secure investment and growth
- Production companies are now typified by financial robustness and security, which indirectly benefits commissioning broadcasters who are able to rely on a level of professionalism throughout the supply chain; by way of example, Pact reports that there were 136 suppliers with turnover of more than £1m in 2013, up from 106 companies in 2008

## The PSBs work with a significant number of indies, with the BBC and Channel 4 maintaining a broad plurality of supply in particular

- Despite recent consolidation, there are still almost 500 independent production companies operating in the UK across all genres, and this compares to five major buying points (the BBC, ITV, Channel 4, Channel 5 and Sky), with a handful of smaller multi-channel players (Discovery, UKTV) and nascent new entrants (Netflix, Amazon)
- The PSBs continue to commission content from a considerable number of suppliers, thus confirming (at least ostensibly) that plurality of supply is an established element of the market
- On average over the last 7 years, the BBC and Channel 4 have commissioned from 290 and 280 indies respectively, with ITV and Channel 5 both securing content from approximately 80 indies
- The sheer number of supply relationships does point towards substitutability among external suppliers, although this does vary by genre
- Furthermore, this does not reflect the reliance on individual suppliers within the schedules of some PSBs (e.g., ITV-Fremantle, Channel 5-Endemol Shine)
- The choice of supplier is ultimately determined by the quality of creative ideas, the nature/longevity of the relationship between supplier and broadcaster, and the requirements of the broadcasters' schedule
- We note that the re-categorisation that arises when companies move from qualifying to non-qualifying may generate short term challenges as commissioners re-calibrate; the offset of this is that broadcasters may pressurise NQIs to enter immediately into commercial negotiations outside the ToT, which may favour the commissioner

### Number of independent production companies supplying the PSBs\*



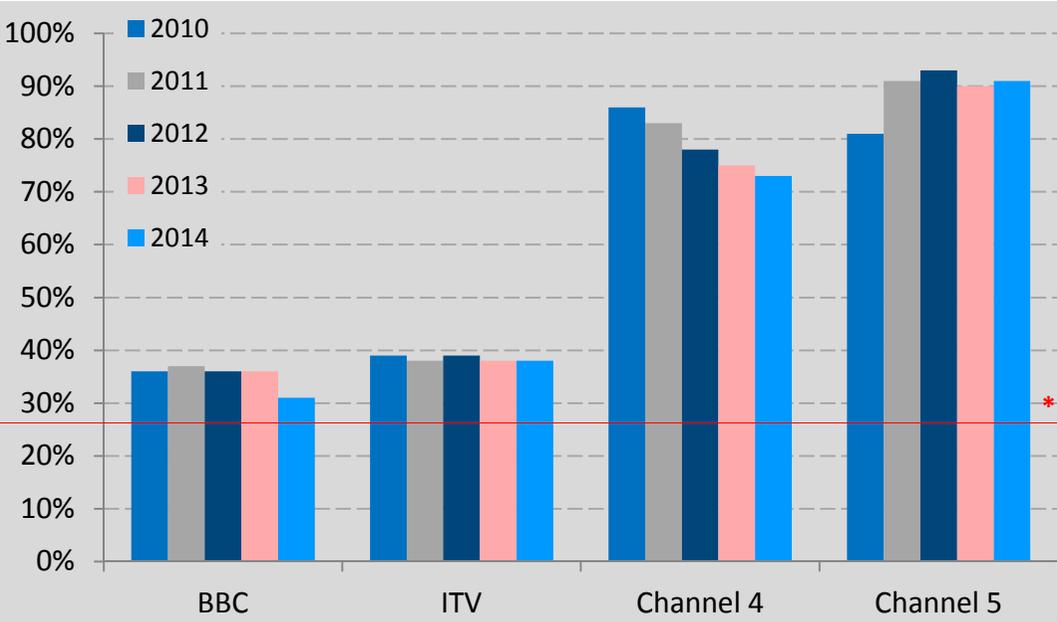
Source: PSB data via Ofcom, published in Channel 4 annual reports

\*Data is unavailable on a like-for-like basis prior to 2007

# The PSBs significantly outperform their quota of hours sourced from qualifying independent production companies; however, they predict issues in future if recent consolidation trends persist...

- The actual share of hours from independent suppliers varies significantly by broadcaster, depending on their remit and strategy – notably, each broadcaster’s status as either a producer-broadcaster (BBC, ITV) or a publisher-broadcaster (Channel 4, Channel 5), with the latter relying exclusively on external suppliers
- In discussions with the PSBs, all report that the quota may become harder to meet in future: this is owing primarily to recent consolidation the market, which has seen a number of relatively large-scale operators transition to non-qualifying status – including Endemol Shine and All3Media – and two smaller players (Love Productions, Two Four) being bought by companies (Sky and ITV respectively) with UK broadcasting businesses
- Thus, a number of the companies contributing to the quota fulfilment in the past will no longer count as qualifying suppliers in future
- In the case of Channel 5, the shift from qualifying to non-qualifying hours is expected to have a significant effect from 2015, as the large-scale contracts (in terms of hours) with Princess Productions and Endemol change category
  - Of the 80,000 qualifying minutes in 2014 (c1,300 hours), Princess supplied c30,000 (nearly all for *The Wright Stuff*); upon re-commission and starting in 2015 these are now in the non-qualifying category, which would mean a drop from 91% of qualifying hours in 2014 coming from QIs to close to 50% in 2015
- The BBC reports that it is careful to fill the quota but that a range of targets (by channel and for Regions and Nations) creates a complicated task every year (and one that is getting harder over time); we look in greater detail at the BBC overleaf

## Performance of PSB hours against quota



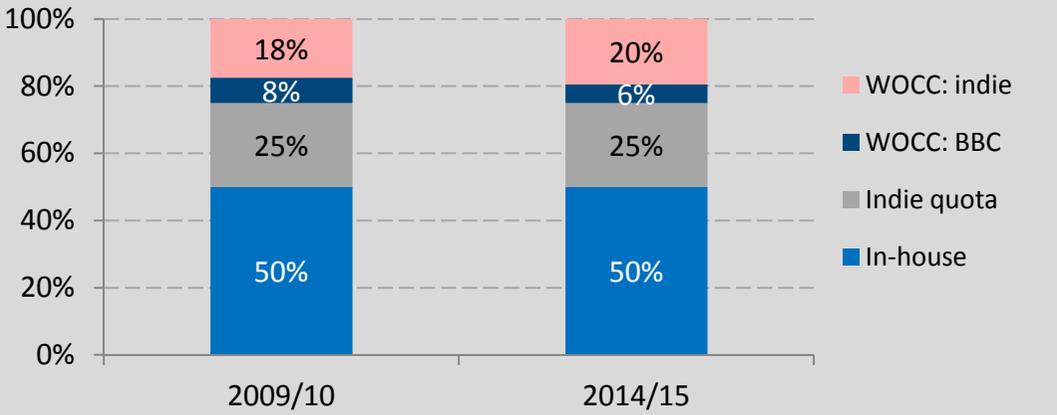
Source: Ofcom

**\*25% share of hours quota**

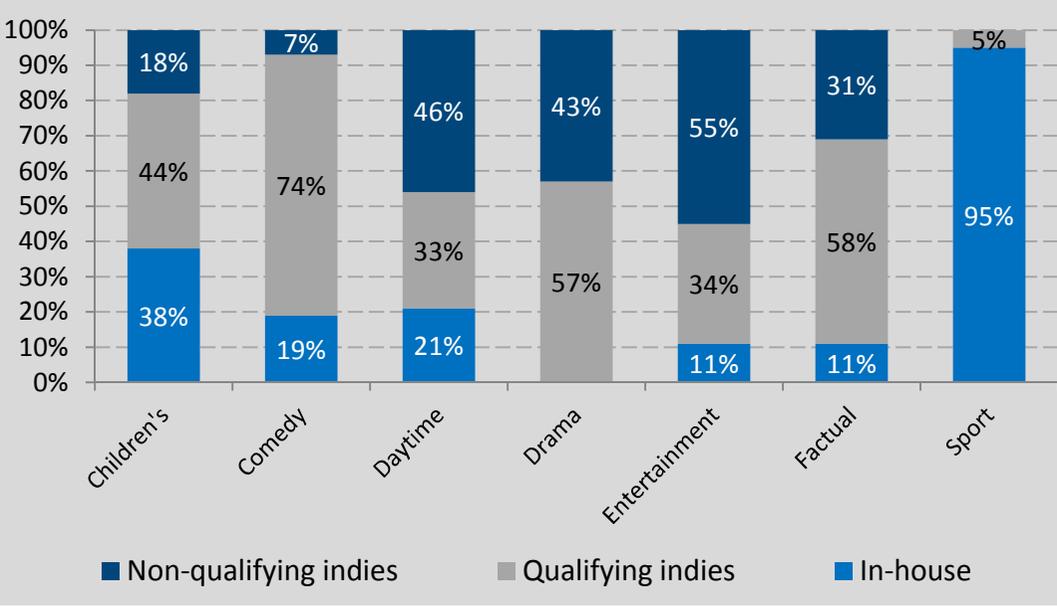
# The implications of recent changes in the ownership and qualifying status of key suppliers is illustrated by reference to the BBC's WOCC...

- We looked at the BBC's split of production supply to illustrate the potential impact of supply-side ownership on the PSBs' ability to meet the quota
- The BBC currently operates a tiered system of production supply: an in-house guarantee of 50% of hours, its indie quota of 25% of hours, and a window of creative competition (WOCC) that makes the remaining 25% of hours available to any supplier
- The BBC estimates that 75% of the WOCC is secured by independent suppliers:
  - Assuming that the most recent round of consolidation (notably including the acquisitions of All3Media and Endemol Shine) did not take place, qualifying indies would have secured roughly half of these hours
  - Once ownership changes are taken into account, the share of hours produced by qualifying indies would have fallen to 17% of this total
- This outcome is particularly skewed in certain genres – notably daytime, drama and entertainment where the role of non-qualifying suppliers is now significant
- These dynamics are set to change as the BBC proposes to fundamentally change its approach to production (see page 43)
- Tony Hall recently remarked that the WOCC “has begun to forcibly corral producers into three separate tribes [i.e., the BBC, vertically integrated indies and small independents]”

## Breakdown of BBC hours, by supplier (%)



## Share of the WOCC, by genre/supplier (2014-15, %)



Source: BBC, Broadcast, Mediatique

## While changes in the market landscape have forced the PSBs to monitor the quota more closely, there is no direct evidence that the quota is influencing strategy or commissioning decisions at present

### Dynamics of PSBs' adherence to independent production quota

#### Recent consolidation has given the quota a more prominent role

- Recent ownership changes in the independent sector has reduced the number of companies that qualify under the quota: virtually all recent corporate activity at the top-end of the market has been at the expense of qualifying status, such that there are relatively few qualifying indies of size left (Tinopolis, Hatrick, Zodiak, WME, Fremantle); most of the very largest suppliers outside the BBC and ITV are all now non-qualifying (All3Media, Endemol Shine, Warner-Shed)
- The PSBs report that some additional management time is now required to ensure that commissioners are aware of the potential implications of changes in the ownership of suppliers and that they can ultimately meet the quota; in practice, however, we found that the scale of resources required to manage the quota is not material
- Ultimately, commissioning decisions are not being made on the basis of whether suppliers are qualifying or not; these decisions are driven by the nature of the creative concept and the quality of the content.
- Further, all PSBs continue to have leeway in their commissioning decisions before coming up against the quota, with Channel 5 is the closest of the PSBs to meeting the quota, largely as a result of its reliance on Princess (now owned by Endemol Shine)

#### Some PSBs may be guilty of an over-reliance on certain key suppliers

- We did hear from many producers that a 25% quota was a reasonably low benchmark, and that any concerns at the PSBs about meeting this quota would reflect a conscious over-reliance on certain suppliers that have become NQIs more recently
- Indeed, a key aim of the indie quota is to ensure plurality in the UK production sector, and the PSBs are obliged to ensure such plurality as part of the PSB compact; even in cases where the PSBs might be struggling to meet the quota based on current commissioning decisions, there remains plenty of scope for any broadcaster to forge wider relationships with qualifying independents

#### Meeting the quota will become more challenging if consolidation continues

- However, any acceleration in consolidation and the loss of qualifying status by large suppliers may further challenge the ability of the PSBs to meet the quota in future; this is of course a possibility in light of recent corporate activity and the continuing attractiveness of UK indies as takeover targets
- This could likely materialise in the short term if one or more of the remaining large qualifying independents in the top-10 (e.g., Fremantle, Tinopolis, Hat Trick or Zodiak) was acquired by a broadcaster and lost qualifying status

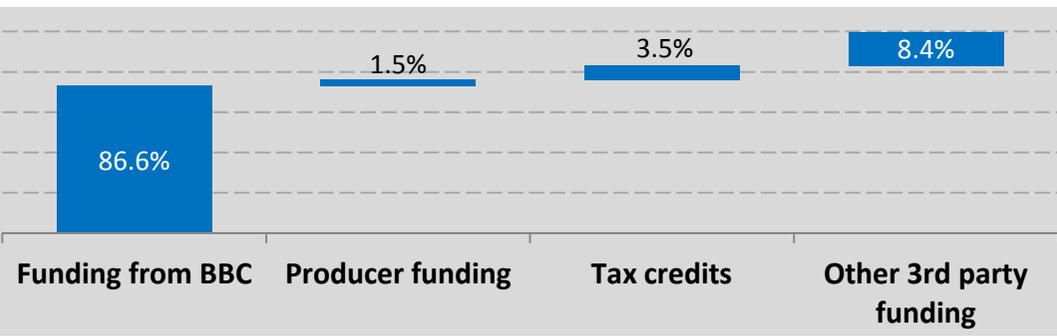


**According to Pact, the PSBs have benefited from the ability of UK indies to source external funding; the PSBs respond that the amount of “indie” capital that is truly at risk is tiny compared to other forms of finance**

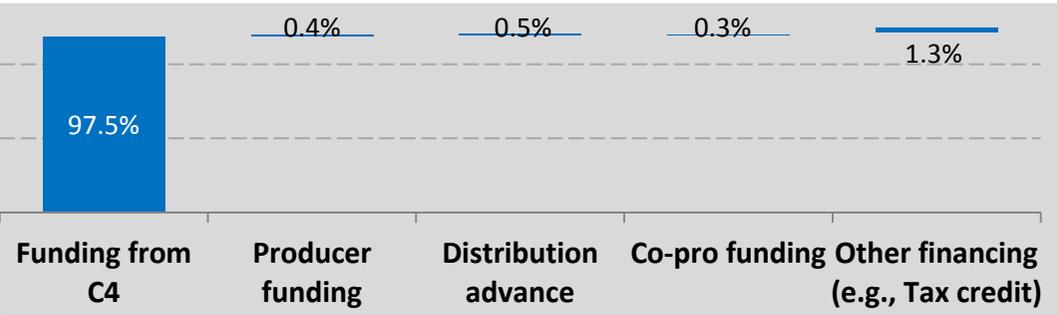
- The PSBs are spending less on commissions in real terms according to Ofcom data – through a combination of lower production costs, genre distribution changes (with cheaper genres emphasised) and the ability to secure gap funding
- From the supplier’s perspective, the ability to retain rights to secondary windows/markets has allowed indies to offer more competitive prices on commissions (including accepting lower margins or a deficit in the primary commission) and to accept competitive terms at renewal
- Suppliers (including ITV in-house and BBC via BBC Worldwide) have been able to secure gap funding such as pre-sales of finished programmes and formats, co-production and tax credits, and direct funding from investors and lenders to gap finance development and production (and/or internal risk capital)
- Pact estimates external funding associated with external supply was approximately £230-260m in 2014, and Ofcom itself estimated that third-party contributions to first-run origination costs were £238m in 2013; Pact estimates c£130m-£140m in 2014 was in the form of “gap” funding
- The BBC and ITV are most likely to access deficit funding (for drama, scripted comedy and natural history): C4 and 5, by contrast, maintain they fund nearly all externally provided original content; even the BBC and ITV report very limited “at risk” capital from suppliers (see data from the BBC, C4 and C5 at right)\*
- It remains unclear whether external suppliers are providing risk capital on a significant scale or primarily acting as agents to secure tax credits, co-production, pre-sales and other income reliant on commissions

*\*Mediatique asked ITV to provide similar data. ITV responded that it had already provided detailed figures to Ofcom for the Third PSB Review and therefore declined our invitation to update these. We would encourage Ofcom to request up-to-date data sets as appropriate to reliably identify the true extent of “at risk” capital provided by external suppliers*

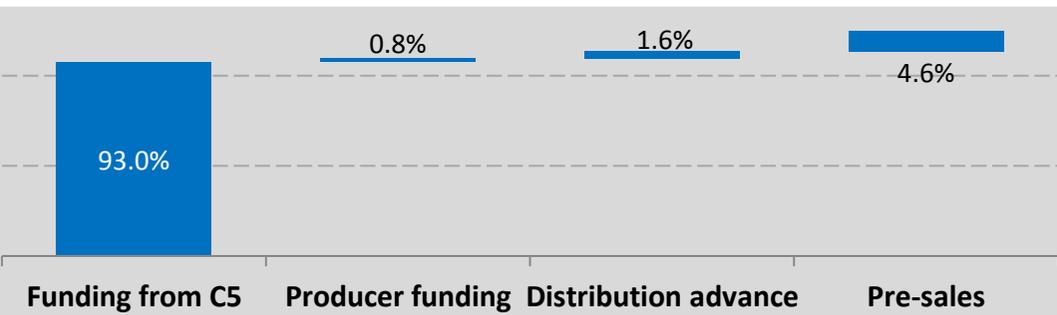
**Contributions by all sources to BBC external commissions (2014)**



**Contributions by all sources to Channel 4 external commissions (2014)**



**Contributions by all sources to Channel 5\*\* external commissions (2014)**

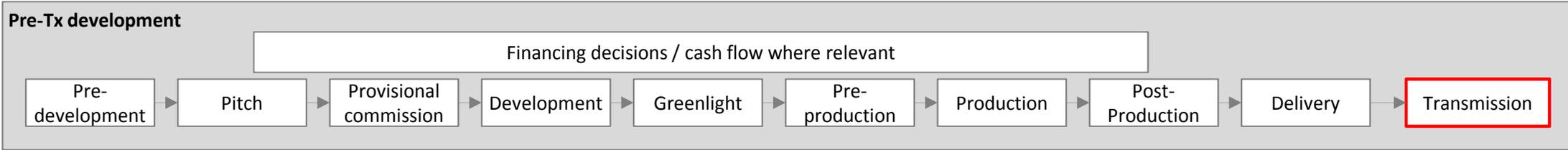


Source: BBC, Channel 4, Channel 5

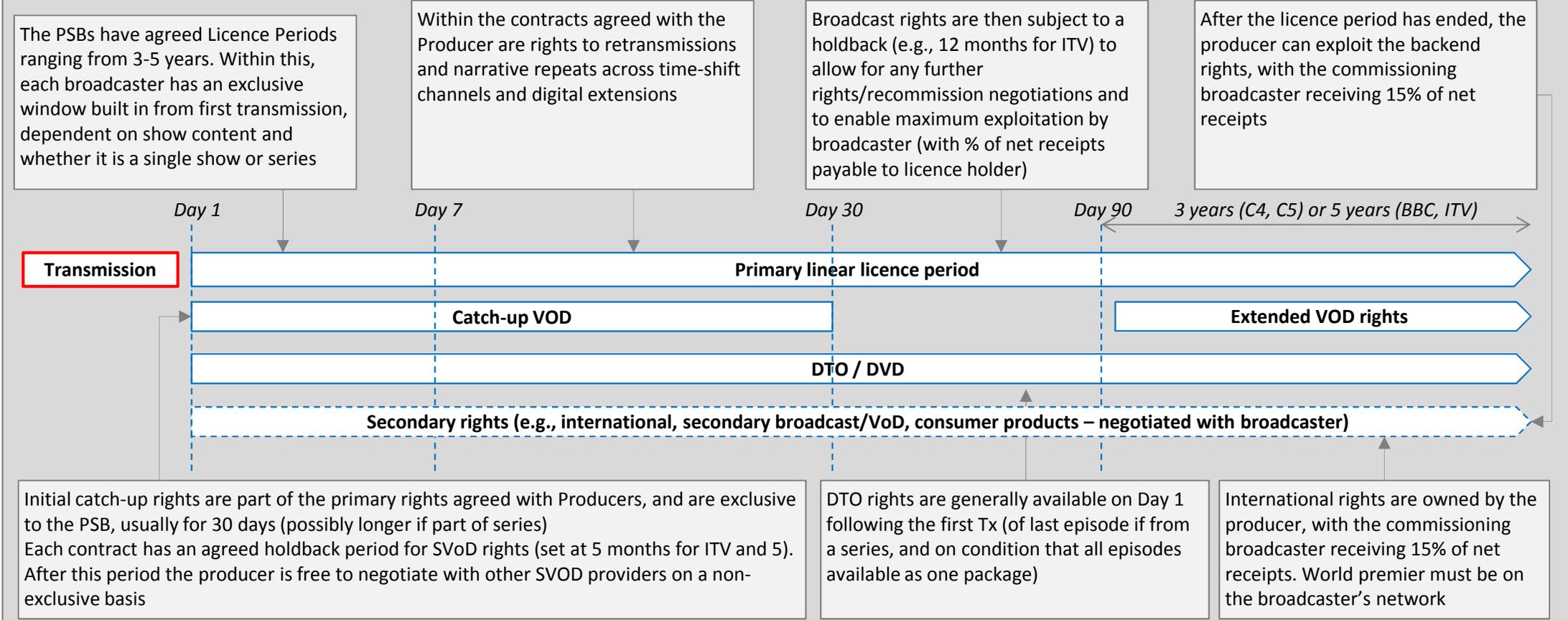
\*\*Channel 5 excludes news, children’s programmes and programmes made by 5 Productions

The stages of TV production are complicated; even more so are the rights windows once content has been produced: these are summarised here and are the basis for establishing the ToT outcomes

**Stages of television production, transmission and distribution\***



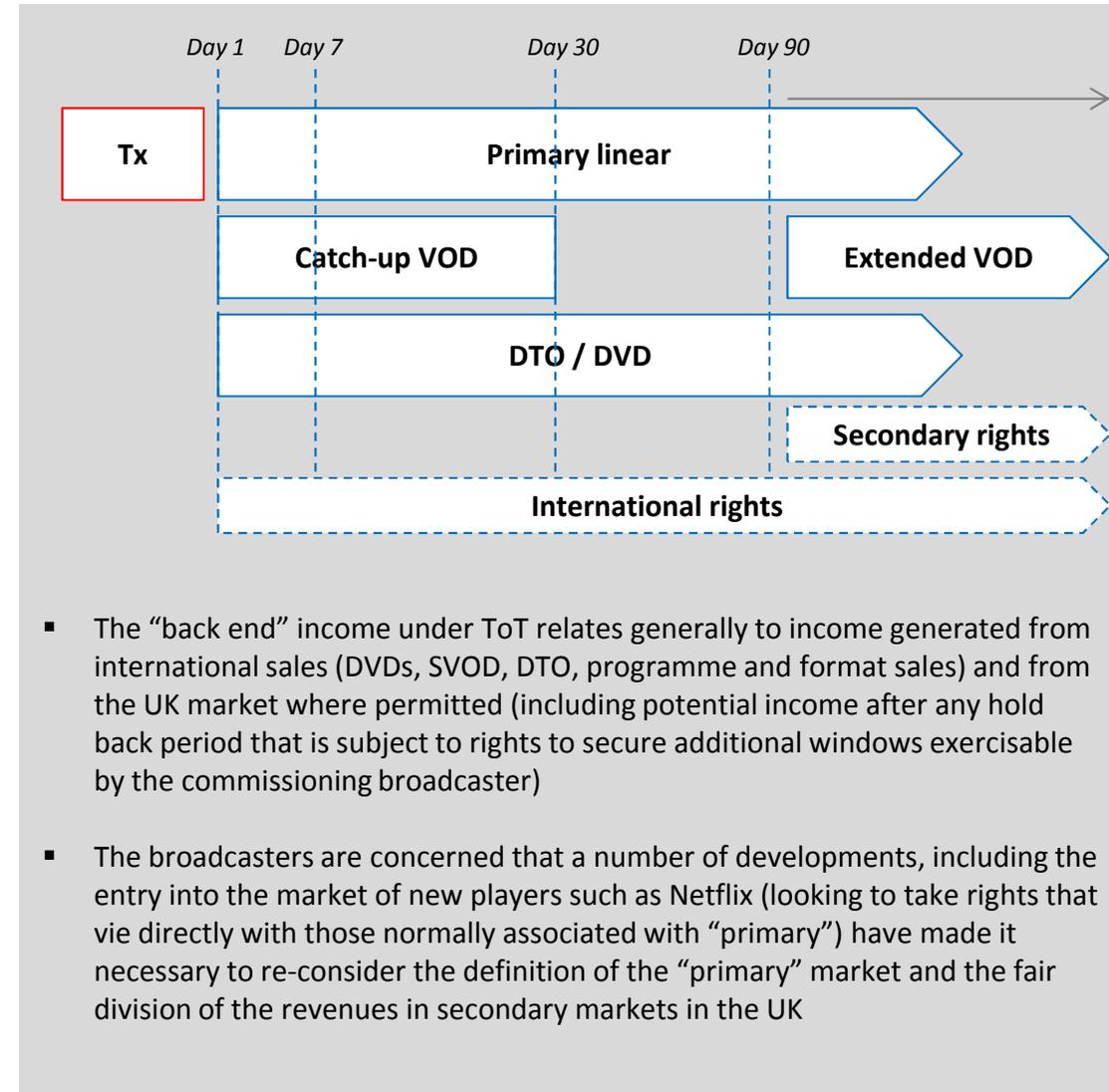
**Post Tx Windows and the ToT**



## The PSBs have also secured direct financial benefits from sharing back-end revenues; however, the commercial PSBs maintain that the current revenue shares do not reflect market dynamics and value

- The ToT give the PSBs a share of secondary revenues, with various arrangements depending on the window and broadcaster; the external sector's total "distributable" income in 2014 was £520m (i.e. international and UK secondary rights); even if all of that were subject to terms of trade, it would only amount to a share of between 50% (for UK secondary) and 15% for international to commissioning broadcasters, or no more than £140m across all the PSBs (and very likely less)
- However, the dynamics are contentious here:
  - The PSBs argue that the broadcast window is primary driver of returns in all other windows, and that such value would not exist were the idea not commissioned – and very often fully funded – by the broadcaster in the first instance; they further argue that changes in consumption and pressures on rights windows combine to reduce the value of the "primary" terrestrial right in any event (see at right)
  - The suppliers, for their part, argue that the broadcaster can generate no value without an original idea being developed and produced; equally, they maintain that value is being generated in secondary windows because the suppliers are incentivised to exploit rights aggressively
- The current sharing of revenues reflect current market practice and agreed terms between demand and supply side; the core questions are:
  - whether the PSBs benefit from the ToT (i.e., a share of the back-end) or whether they are foregoing their "rightful" returns by sharing; and
  - whether dynamics have changed such that the current splits do not represent market dynamics around "primary" and subsequent rights

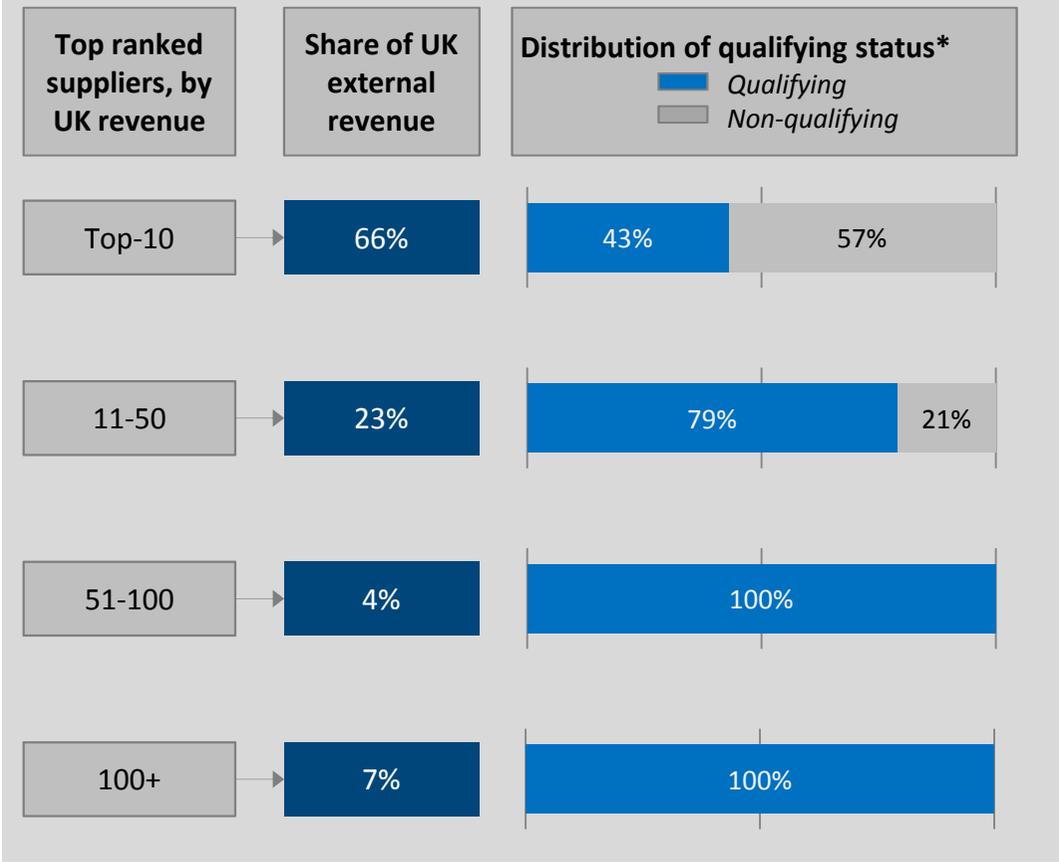
### Pressure points acting on the primary window include DTO/SVOD



**In addition to these ToT issues, PSBs are facing a significantly consolidated supply sector, ensuring that many production companies are no longer subject explicitly to the policy regime...**

- Consolidation on the supply-side has led to the significant concentration of UK external production revenues among the top-50 players, with two thirds of all revenues accruing to the top-10 companies
- The emergence of such large players indies has created a more level playing field between commissioners and suppliers – albeit a long tail of small companies heavily reliant on very few buying points still remains
- The accelerating trend towards vertical integration has also seen a significant number of these companies lose their qualifying status, with approximately 40% of the top-10 companies’ revenues now generated by qualifying indies
- As a result, many of the largest external suppliers have lost their qualifying status, and in turn have lost the protections of ToT in their negotiations; this has effectively improved the negotiating position of the PSBs, or at the very least provides an automatic counterbalance to the potential impact of increased scale on the supply side
- Nevertheless, qualifying status is still afforded to some major suppliers, including those with revenues in excess of £100m (Fremantle, Tinopolis, Zodiak)
- The key question for policy makers is whether these large companies still require the backstop of regulatory protection in their negotiations with PSBs

**Role of non-qualifying indies in the UK market (2014, % UK turnover)**

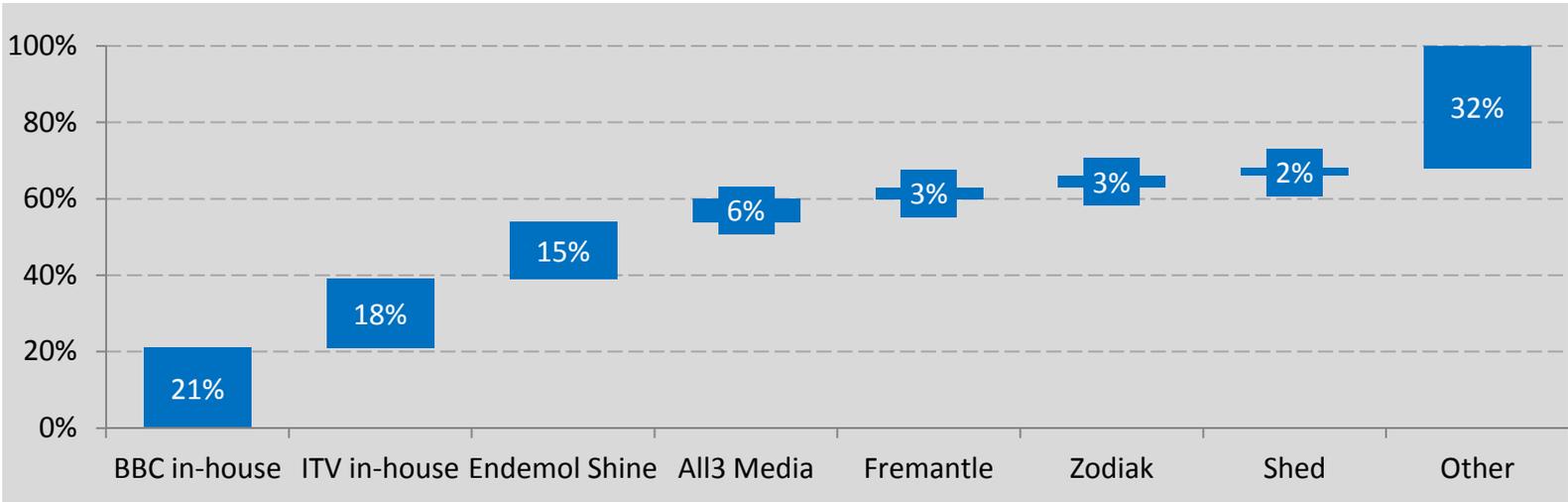


Source: Pact, Broadcast, Mediatique  
 \*% of revenues in each category; revenues from Endemol’s EWD distribution arm were included by Broadcast for the first time in 2014; we have adjusted these to ensure they reflect only UK-related sales (Mediatique estimate)

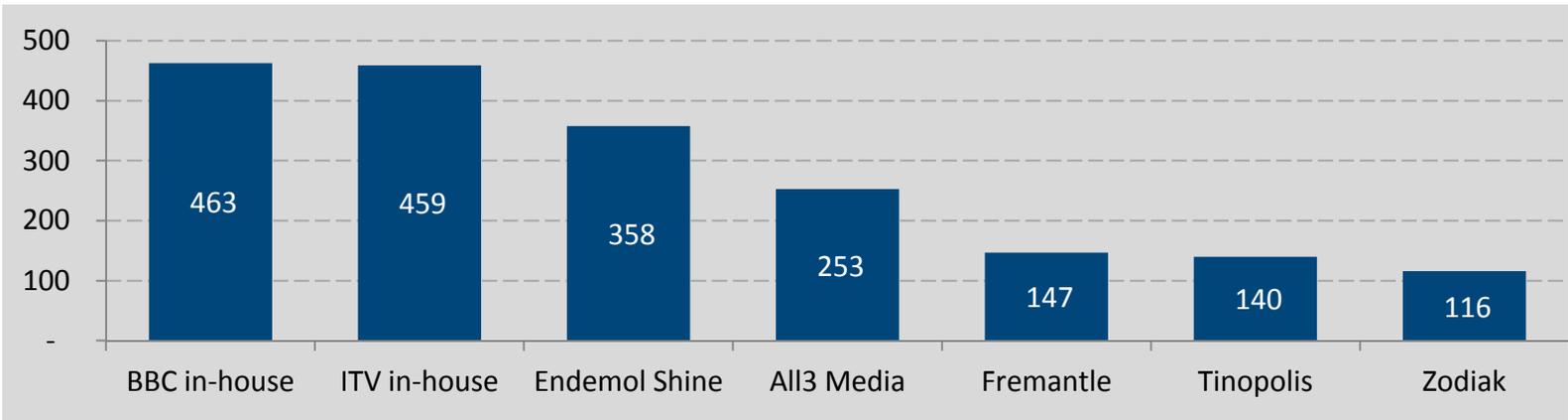
# The negotiating power of external suppliers is mitigated by the role of in-house production at the BBC and ITV

- Despite the recent wave of consolidation, expenditure on external supply remains relatively plural and competitive
- Among the major suppliers of original content to the PSB channels, the largest independent (Endemol Shine) supplied 15% of hours in 2013, and the largest five independents collectively supplied 29% of these hours
- By comparison, the BBC and ITV's in-house operations supplied almost 40% of PSB hours
- Notably, ITV has decreased the proportion of its first-run commissions that are sourced externally – falling from 44% in 2008 to 32% in 2013
- In turn, the BBC and ITV secure a significant share of UK production revenues, outweighing some of the larger external suppliers

## Share of PSB hours, by supplier (% , 2013)



## UK turnover of largest suppliers\* (2014, £m)



Source: Mediatique, Pact submission to Ofcom's third review of public service broadcasting, Broadcast, BBC, ITV  
 \*Revenues from Endemol's EWD distribution arm were included by Broadcast for the first time in 2014; we have adjusted these to ensure they reflect only UK-related sales (Mediatique estimate)

# The nature of negotiations between the PSBs and suppliers has become more complex following recent changes in the ownership of key suppliers

## Dynamics of negotiations between the PSBs and content suppliers

### ToT act as a backstop – in practice, outcomes are different in individual cases

- There is no one-size-fits-all approach to negotiations between commissioning broadcasters and suppliers: the PSBs are able to use their discretion to decide whether to offer ToT to non-qualifying suppliers as part of negotiations; the strategy and approach of each PSB has varied in recent years, as we highlight overleaf
- Qualifying indies are able to negotiate outside ToT if they wish: this may be the case for suppliers where they are seeking to develop a deeper relationship with the commissioning broadcaster or where both parties agree that cooperation will increase total revenues in secondary windows (allowing the supplier to benefit even where it accepts a lower share of the total)
- Suppliers that lose qualifying status are no longer formally subject to the ToT; however, ToT remain a benchmark against which all negotiations tend to be compared, whether or not the status of a supplier means it is subject to the ToT backstop
- Ultimately the terms of engagement are determined by negotiation in each case

### There is no evidence to suggest that PSBs prefer to deal with non-qualifying suppliers

- The PSBs are increasingly able to get better terms from non-qualifying suppliers (notably a better share of the back-end): this has the potential to alter incentives, with the PSBs potentially more inclined to deal with non-qualifying indies through which they can secure better terms; however, we have found no evidence that this has become standard practice
- For qualifying indies, we also found no evidence that the PSBs are making commissioning decisions dependent on suppliers agreeing to deal outside ToT
- The long tail of small and medium sized independent suppliers continues to rely on both the quota and ToT to ensure their ability to trade effectively: all broadcasters and suppliers that we spoke to maintained that some form of intervention is necessary in order to protect this long tail
- It continues to be the case that ultimately creative ideas drive negotiated outcomes: *“content is still king. When any producer pitches the programme idea to a commissioner it does not matter how large or small you are. The only thing that matters is the strength of the idea you’re selling”*, Sara Geater, Pact Council (2015)

Each PSB has its own approach towards the application of Terms of Trade – although this looks set to converge to a tougher stance towards non-qualifying indies over time...

**Specific approach to supplier relationships, by PSB**

	<b>Current approach to supplier relationships</b>	<b>Approach to policy reform</b>
<b>BBC</b>	<ul style="list-style-type: none"> <li>▪ The BBC has a standard policy of treating all suppliers on the same basis, with the approach to negotiations the same for qualifying and non-qualifying indies; the BBC, of course, has the flexibility of in-house production to offset any disadvantageous terms agreed with external suppliers</li> <li>▪ The BBC’s current focus remains on implementing its plans for BBC Studios, rather than securing any policy change; nevertheless, the BBC (as with all PSBs) is concerned about any acceleration in the pace of consolidation that may threaten their ability to meet the quota (including alongside the BBC’s other commitments in regions/nations) and to secure reasonable terms with large suppliers, particularly at renewal</li> </ul>	<ul style="list-style-type: none"> <li>▪ Accepts need for quotas, ToT – propose that Ofcom be given latitude to determine quanta and other elements in place of need for primary legislation in future</li> </ul>
<b>ITV</b>	<ul style="list-style-type: none"> <li>▪ ITV typically seeks to negotiate bespoke terms with all suppliers, rather than relying solely on the ToT as the blueprint for agreements</li> <li>▪ ITV is increasingly concerned that the ToT cannot reflect changes in viewing preferences, and in particular increasing expectations of content availability in the primary window (multi-platform, multi-device)</li> <li>▪ ITV has a continuing focus on investing in in-house production, and has reduced its commitment to external supply over recent years; this may well accelerate if ITV cannot secure the commercial terms it seeks with suppliers</li> </ul>	<ul style="list-style-type: none"> <li>▪ Seeking changes to indie definitions specifically for the application of ToT (although not necessarily quota)</li> </ul>
<b>Channel 4</b>	<ul style="list-style-type: none"> <li>▪ Channel 4 has sought to secure better terms from non-qualifying independents that are not subject to the ToT; this has been the case since the acceleration in consolidation and international ownership of key indies</li> <li>▪ We understand that Channel 4 has a consistent policy of re-negotiating terms with indies once they have lost their qualifying status, and push hard to secure a higher share of the back-end returns</li> </ul>	<ul style="list-style-type: none"> <li>▪ Seeking changes to indie definitions and reduction in quota in line with market changes</li> </ul>
<b>Channel 5</b>	<ul style="list-style-type: none"> <li>▪ Channel 5 is seeking to secure better terms from non-qualifying independents that are not subject to the ToT</li> <li>▪ Channel 5 has recently written to all non-qualifying indies setting out some broad guidelines for future commercial negotiations; this includes extended linear rights (including flexibility to distribute on secondary channels throughout the Viacom portfolio), extended VOD windows and an equal share of the back-end</li> <li>▪ It remains to be seen whether Channel 5 has the negotiating strength to achieve these improved terms, though Viacom’s ownership is likely to add strength to commercial negotiations</li> </ul>	<ul style="list-style-type: none"> <li>▪ Seeking changes to indie definitions and reduction in quota in line with market changes</li> </ul>

**Our research did not reveal that recent consolidation in the supply side (including vertical integration) has led to the withholding of content from the PSBs – indeed it may have positive implications for the sector as a whole**

## Implications of vertical integration in the supply chain

### FTA windows remain crucial to underpinning all returns

- We consistently heard that maintaining supply relationships with the PSBs was crucial to validating the business models of all independent suppliers: the ability to get primary commissions agreed and made remains foundational to the industry, and suppliers (and their corporate owners) are still unlikely to jeopardise relationships with the largest commissioning broadcasters
- This is in part a reflection of the relative rights position in the UK: *“we now make programmes directly for an American channel, but because the ToT work so well for TV producers here in the UK, it’s always our first choice to make programmes for British broadcasters”*, Cat Lewis, Nine Lives Media (2013)

### Vertical integration has not led to a withholding of content

- It did not appear to us that vertically integrated suppliers were withholding content from the PSBs and favouring supply relationships with their corporate owners – certainly not those companies recently bought by non-PSB broadcasters such as Sky or Discovery (there may be an argument that ITV influenced the outcome by which *The Voice* moves to ITV)
- The main drivers of recent acquisitions by international broadcasters has been to secure economies of scale, diversification (geographic variety, shift away from dependence on individual programme titles) and exposure to key IP assets in the UK, rather than securing direct supply relationships between their wholly owned channels and newly acquired suppliers
- For example, Carnival (now owned by NBCUniversal) is not seeking to distribute *Downton Abbey* on the Universal Channel; similarly, the strategy of Endemol Shine (now part owned by 21<sup>st</sup> Century Fox) remains rooted in securing high-value commissions from the PSBs, rather than securing commissions from Fox

### Internationalisation is potentially positive for the sector

- The increasing role of vertically integrated international broadcasters in the independent sector has potentially positive impacts on its health and creativity
  - Suppliers are able to share best practice in origination, gain access to a broader talent base and to share research/development costs
  - Suppliers are able to benefit from the financial stability of parent companies, gaining access to more stable cashflow and improving their risk profile

**It does not appear that vertical integration has, thus far, lead to a diminution in the production of UK-focused content or reduced innovation – it may be too early to tell, however**

- In analysing the output of the main non-qualifying suppliers, it remains the case that their key shows remain UK-focused and of high-quality: indeed, many of these shows will have no international appeal at all
- This is of course a judgement, and it may be the case that the full implications of vertical integration have yet to filter through to the screen
- A major mitigating factor against a dilution of UK-focused content is the role of the PSBs – in almost all cases where a supplier secures a commission from a PSB, the broadcaster will take an active role in ensuring content meets certain standards and expectations
- This will typically include regular meetings with commissioners and channel controllers – as a result, any risk that content will no longer be suitable for UK audiences will be weighed up by the broadcaster
- Similarly, any movement towards generic content – either lacking in innovation or suitability to the UK market – is unlikely to result in successful commissions
- The relative fluidity of the supply market is likely to see any moves towards generic content countered by the emergence of new talent/new production entities by executives seeking to pitch successful UK-focused ideas to the PSBs

**Key titles produced by non-qualifying suppliers**

Supplier	Parent/Owner	Key shows
<b>Carnival Film &amp; TV</b>	NBCUniversal	<i>Downton Abbey; The Lost Honour Of Christopher Jeffries</i>
<b>Tiger Aspect</b>	Endemol Shine*	<i>Ripper Street; Benidorm; Bad Education; Mount Pleasant</i>
<b>Lime Pictures</b>	All3Media**	<i>Hollyoaks; TOWIE; Geordie Shore; Educating Joey Essex; Rocket's Island</i>
<b>Left Bank Pictures</b>	Sony Pictures TV	<i>Outlander; DCI Banks; Tommy Cooper: Not Like That, Like This; Cardinal Burns</i>
<b>Wall to Wall</b>	Warner Bros TV	<i>The Voice UK; New Tricks; Long Lost Family; Who Do You Think You Are?</i>
<b>Studio Lambert</b>	All3Media**	<i>Gogglebox; Four In A Bed; Undercover Boss; Great Interior Design Challenge</i>
<b>Optomen</b>	All3Media**	<i>Great British Menu; Store Detectives; Worst Cooks</i>
<b>Remarkable TV</b>	Endemol Shine Group*	<i>Pointless; The £100K House; Two Tribes; Million Pound Drop</i>
<b>Kudos Film and TV</b>	Endemol Shine Group*	<i>Utopia; The Smoke; The Tunnel; Grantchester; Law &amp; Order</i>
<b>Initial</b>	Endemol Shine Group*	<i>Big Brother; The Singer Takes It All; Soccer Aid</i>
<b>Neal Street Prod's</b>	All3Media**	<i>Call The Midwife; Penny Dreadful</i>
<b>Shine TV</b>	Endemol Shine Group*	<i>MasterChef; The Island with Bear Grylls; Britain's Best Bakery</i>
<b>Raw TV</b>	All3Media**	<i>The Secret Life Of Students; Revelations; Siberian Mill</i>

Source: Mediatique

\*Endemol Shine is owned by Apollo/21<sup>st</sup> Century Fox; \*\*All3Media is owned by Discovery Communications/Liberty Global

**The PSBs themselves are also seeking to increase their investments in production, in part to take advantage of the potential value accruing to secondary windows in the future**

- The PSBs have all sought to increase their exposure to production and are themselves part of a broader shift towards even greater vertical integration
- The rationale for these moves are various; as with the examples of international broadcasters, these investments are not wholly about securing guaranteed supply of content:
  - Some investments are driven by broadcasters seeking better links with talent and more robust relationships with production entities
  - Investments enable the PSBs to de-risk supply relationships and to diversify their income (geographically and by business line)
  - ITV in particular has sought to balance its reliance on UK broadcasting channels via international acquisitions of production companies, securing format revenues and increased production fees
- The scale of these investment strategies is inevitably limited by the policy framework, as acquisitions of key suppliers will result in the loss of qualifying status:
  - Both the BBC and Channel 4 have sought to limit their investments to less than 25%, and thus to retain the target suppliers’ qualifying status
  - Recent acquisitions by ITV will see these targets lose their right to negotiate with other broadcasters in line with ToT and in fulfilment of the quota
- However, there seems to be limited evidence that ITV’s corporate strategy is being limited by the policy regime as, if anything, its acquisition strategy has accelerated in line with corporate activity in the sector

**PSB ownership/investments in production companies**

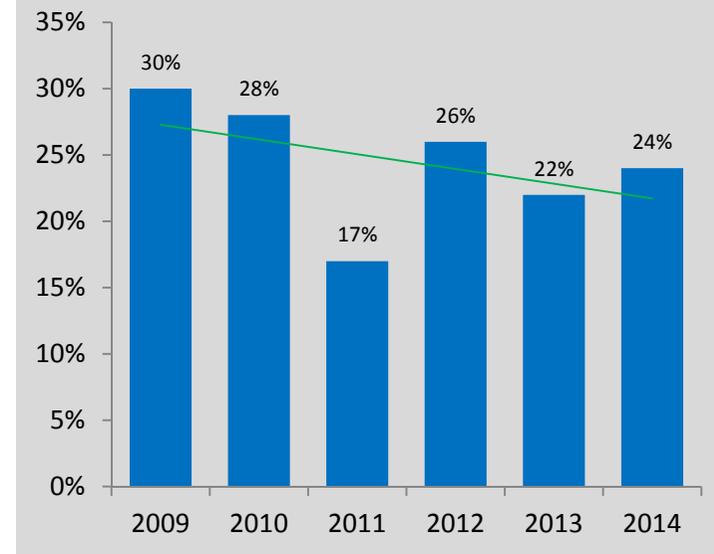
	<b>Production company ownership/investments</b>
<b>BBC Worldwide (investments of &lt;25%)</b>	<ul style="list-style-type: none"> <li>▪ Left Bank Pictures (originally 25% share, reduced to 12.2% after sale to Sony)</li> <li>▪ Hardy &amp; Sons (15% share purchased through Left Bank)</li> <li>▪ Cliffhanger Productions</li> <li>▪ Clerkenwell Films</li> <li>▪ Baby Cow</li> <li>▪ Sprout Pictures</li> <li>▪ Curve Media</li> </ul>
<b>ITV (outright acquisitions)</b>	<ul style="list-style-type: none"> <li>▪ Twofour</li> <li>▪ Mammoth</li> <li>▪ Boom</li> <li>▪ Talpa</li> <li>▪ Big Talk</li> <li>▪ 12 Yard</li> <li>▪ So Television</li> <li>▪ Shiver Productions (in-house Northern Factual/Light Entertainment Department)</li> <li>▪ Leftfield (US Indie)</li> </ul>
<b>Channel 4 (investments of &lt;25%)</b>	<ul style="list-style-type: none"> <li>▪ Arrow Media</li> <li>▪ Lightbox</li> <li>▪ Popkorn</li> <li>▪ True North</li> <li>▪ Eleven Film</li> <li>▪ Voltage TV</li> <li>▪ Renowned Films</li> </ul>

Source: Mediatique

## The external sector may benefit materially if proposed changes at the BBC’s production arm take effect – the impact will ultimately be determined by suppliers’ ability to pitch creative and compelling content ideas

- The BBC plans to establish BBC Studios as a standalone commercial entity, thereby removing all in-house guarantees on production and abolishing the WOCC; the 25% independent quota would remain as a regulatory obligation
- These plans (dubbed *Compare or Compete*) would allow the BBC to become a commercial supplier of content to other channels, but also to provide more opportunities for external suppliers to pitch for BBC commissions
- The BBC describes the moves as “pro-competitive” and are designed to ensure that the BBC secures the best ideas/execution irrespective of the source (all plans are subject to approval by the BBC Trust)
- There are a number of potential impacts on the external sector, however:
  - The independent sector will have opportunities to bid for the 50% of BBC hours that are currently guaranteed for in-house production; given the external sector’s current success in bidding for hours within the WOCC, this is likely to be positive for the sector
  - However, the BBC is understood to be retaining an in-house commitment to certain genres/brands (including news, sport and certain big entertainment shows); in practice, this will reduce the full contestability of commissions
  - The independent sector will ultimately face competition from the BBC for the supply of content to other broadcasters; this will mirror the model of ITV Studios (which, for example, makes *University Challenge* for the BBC and *Come Dine With Me* for Channel 4) and there may be crowding out effects
  - The BBC has a variable record on external supply, and has seen its own share of the WOCC fall in recent years; it remains to be seen whether a commercially driven BBC production arm will be incentivised to increase its share of BBC hours, not least so it can seek to leverage its international scale via BBC Worldwide

Share of WOCC hours produced in-house (BBC all channels, %)



- **The external production sector could also be materially affected by future developments at other organisations – including the potential privatisation of Channel 4 (and any related moves to in-house production at Channel 4 and/or a watering down of its commitment to external supply)**
- **An impact analysis of this is outside the scope of this report**

# It is legitimate to ask whether the policy regime is currently flexible enough to deal with structural market changes over time

- By definition, all policy interventions contain an element of arbitrariness, however, there is a degree of in-built flexibility in the regulation of UK production
  - The independent quota contains some self-correction in automatically conferring non-qualifying status for those suppliers acquired by companies with relevant broadcasting operations
  - The ToT are able to evolve by negotiation between supplier and broadcaster as and when market forces dictate a change: new ToT agreements have been reached periodically following their initial adoption, allowing broadcasters to launch VOD services and to change holdbacks in order to allow exploitation in secondary windows
- However, it is true that the definition of a qualifying indie (linked to its association with a broadcaster in the UK) does not address the issue of relative size and therefore the balance of negotiating strength in and of itself
  - In other words, is size itself a source of potential disruption in the ability of PSBs to deliver content via the external market?
  - If so, should the definition of an QI include a size threshold in place of or indeed (as a “double lock”) in addition to the vertical integration test?
- Overleaf, we summarise some of the policy options favoured by participants across the value chain

## Future developments affecting the regulatory regime

### Viewing outcomes

- As we laid out in our scenarios analysis, an acceleration in the transition towards an on-demand anywhere/anytime landscape will threaten the ability of PSBs to fund content
- The broadcasters are likely to seek longer and deeper rights windows from their external suppliers as a result
- They will also seek to see off any competition from new content aggregators, which may extend to owning all UK rights, including SVOD and pay-VOD rights – this is particularly the case where all (or the majority) of funding still comes from the broadcasters
- This will require indies to optimise rights agreements with new players such as Netflix who are increasingly seeking earlier access to UK rights

### Market structure

- Any acceleration in the consolidation or vertical integration of the supply sector may see the PSBs struggle to meet the quota, and indeed may see commissioning decisions ultimately determined by this requirement – this may have knock-on effects on schedules
- Further, such supply-side concentration may see the negotiating position of external suppliers improve; conversely, however, this may lead to a greater commitment to in-house production at the PSBs (where allowed under their remit)

## There are a number of arguments put forward by stakeholders that the current policy regime is not fit for purpose...

### Arguments in favour of policy reform

#### The policy regime protects large suppliers

- Consolidation has led to the emergence of several super-indies with significant revenues and access to capital; many of these have been acquired by broadcasters and no longer qualify under the quota, but there remain several super-indies with revenues of more than £50m that remain qualifying indies
- These players are still protected by the quota and the ToT, whereas many argue that their scale gives them significant negotiating strength with commissioners with no need for policy protection

#### The regime will not cope with further consolidation and vertical integration

- Recent examples of vertical integration (Endemol Shine, All3Media) have led to some pressure on PSBs to meet the quota, and this may be further challenged if the trend continues
- There appear to be few signs that consolidation will slow materially – questions remain over the current ownership of Fremantle (by RTL) and Zodiak (by De Agostini), and large broadcasting groups (e.g., ITV, NBC Universal, Sky) continue to seek further opportunities in production and content ownership

#### Broadcasters are not properly compensated for their value contribution

- The traditional relationship between commissioner and supplier is rooted in a broadcast model where returns in specified windows (primary transmission, repeats, catch-up) are sufficient to fully fund original production
- There are concerns that the current ToT do not fully reflect market developments, including changes in audience behaviour that potentially undermine the robustness and longevity of these initial windows

#### New entrant displacement

- The threat of new entrants, and in particular competition from SVOD players to move into the window traditionally occupied by broadcasters, is a singular pre-occupation of major network players in the UK

## However, there remain strong arguments that the health of the UK production market could be significantly impaired without a policy regime in place

### Arguments against policy reform

#### Negotiating strength of buyers would be entrenched without production supply policy

- The PSBs all adhere to the current independent production quota, but without such a regulatory floor, the producer-broadcasters (ITV and BBC) would have freedom to produce more in-house: indeed, such capability provides incentives to maximise in-house provision, particularly where the sharing of returns with external suppliers in growing secondary windows is financially sub-optimal
- Recent experience at ITV demonstrates that its commitment to in-house production is increasing, at the cost of external production; further, any removal of regulation would enable a greater shift towards vertical integration with broadcasters seeking to own more production capability and rights

#### Current policy protects plurality, diversity and innovation

- There is widespread agreement that smaller indies require regulatory protection in order to secure appropriate negotiating strength against much larger commissioning broadcasters: any removal of the quota and ToT would see a loss of this protection and a potential transfer of value from producer to broadcaster
- Any negative impact on the long tail of suppliers is likely also to affect the innovation, plurality and diversity of the sector which is reliant on the creativity of smaller players

#### The PSBs would warehouse rights without the ToT

- Current ToT establish the principle that suppliers are the underlying owners of content rights and are able to exploit them in secondary windows (subject to revenue sharing arrangements with broadcasters); this practice is often cited as a key driver of revenue growth in the external sector as it incentivises producers to make/distribute content in multiple windows
- Broadcasters, by contrast, can be incentivised to limit downstream competition from other platforms/services/windows and a case can be made that the PSBs would warehouse rights were they not obliged to cede control to the underlying supplier

#### Policy reform would diminish the financial health of the production sector

- Any moves by broadcasters to control more rights, to increase in-house production and to limit rights exploitation by competing services (e.g., Netflix) may ultimately challenge the financial health of the sector
- Exploitation in secondary windows may be compromised in favour of maximising returns in primary windows, leading to a loss of sectoral attractiveness, reduced investment and ultimately a loss of market activity and creativity

**Summary: any decision to alter the policy regime must take into account the impact on PSBs; their view of the current market impacts are summarised here...**

### Impact of production policy regime on PSBs: key findings

	Ability to meet quota	Operational impacts	Financial impacts	Creative impacts
<b>BBC</b>	<ul style="list-style-type: none"> <li>The BBC reports a “Rubik’s cube” of challenges around its many quotas – regional, in the Nations, by channel, online; it has not tested a breach of the “indie” quota to date</li> </ul>	<ul style="list-style-type: none"> <li>The BBC has significant compliance costs given the complicated range of quotas it must meet</li> <li>It is also has extensive costs related to supplier contracts</li> </ul>	<ul style="list-style-type: none"> <li>The BBC has successfully reached agreement on extending rights for 30-day iPlayer and BBC Store</li> <li>It secures attractive co-pro deals in drama, scripted comedy and natural history</li> </ul>	<ul style="list-style-type: none"> <li>The BBC maintains it is able to see key content available from the external market but recognises there may be subtle changes to the market owing to the global focus of a growing number of indies</li> </ul>
<b>ITV</b>	<ul style="list-style-type: none"> <li>ITV reports that it is relatively relaxed about the quota and reserves its real concerns for the application of the Terms of Trade to QIs as these grow in size</li> </ul>	<ul style="list-style-type: none"> <li>ITV reports that a significant proportion of key supplier contracts require bespoke negotiation and take up considerable time operationally</li> </ul>	<ul style="list-style-type: none"> <li>ITV reaches “satisfactory” arrangements with most suppliers and is happy to work with both QIs and NQIs</li> <li>It is concerned that larger QIs can unduly benefit from ToT</li> </ul>	<ul style="list-style-type: none"> <li>ITV has targeted the growth of its own production and rights owning division in recent years</li> <li>The impact has been to improve the balance and lock in creative programming</li> </ul>
<b>Channel 4</b>	<ul style="list-style-type: none"> <li>Channel 4 expresses no concern about meeting the quota <i>per se</i>; however, it calls for a recognition that protections should not apply to large suppliers – whether QI or NQI</li> </ul>	<ul style="list-style-type: none"> <li>Channel 4 reports reasonably high transaction costs owing to the number of indies it deals with and the level of reporting required across the indie quota and the additional regional quotas placed on it</li> </ul>	<ul style="list-style-type: none"> <li>Channel 4 has estimated that it could be better off by £15-20m a year if it could reach more equitable ToT with suppliers</li> <li>This would be re-invested in content</li> </ul>	<ul style="list-style-type: none"> <li>Channel 4 has made a point in recent years of re-calibrating its supply chain – both through engaging with more smaller providers and investing in start-ups to ensure access to the best content</li> </ul>
<b>Channel 5</b>	<ul style="list-style-type: none"> <li>Channel 5 indicates that it is very concerned about the quota, given its reliance on a few suppliers the status of which has only recently shifted</li> </ul>	<ul style="list-style-type: none"> <li>Channel 5 does not report issues around the impact on operations other than to point out that it will need to replace some current contracts with QI</li> </ul>	<ul style="list-style-type: none"> <li>Channel 5 invests more in its own production as a result of what it sees as increasingly inequitable shares of the value it creates for independents</li> </ul>	<ul style="list-style-type: none"> <li>The publisher broadcaster model provides C5 with the ability to secure content in its preferred genres – supplemented by a growing in-house production</li> </ul>

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Section 1: Market development

Section 2: Scenarios for future market development

Section 3: Current and future impacts of the regime on PSB and content investment

**Section 4: Potential adjustments to the existing regulatory regime**

Section 5: Appendix

# Our key observations on the evolution of the independent production sector are summarised here and overleaf...

## Key observations (1)

### Key changes

- The production sector has witnessed changes in dynamics since 1995:
  - Consolidation of smaller indies and the emergence of large well-funded players
  - Increasing vertical integration of content producers and broadcasters/platforms (joining legacy integrated players the BBC and ITV)
  - International ownership of key production houses, notably US and European owners
  - The evolution to a well-funded, professional, innovative and creative sector

### Role of policy to date

- Public policy has played a key role in sectoral development, with the quota and codes of practice underpinning the business models (and resource requirements) of independent producers and critically creating a vehicle for “replenishment” as production talent has left consolidated big players to strike out on its own

### Sector structure

- Recent consolidation and corporate activity has reduced the number of indies operating in the UK (and notably reduced the number of companies qualifying under the quota) – however, the sector remains plural and active, with more than 500 companies still operating and access to funding still relatively robust
- The very biggest of the “mega indies” have in fact consolidated away from protected status through becoming vertically integrated (this has the effect of a self-correction whereby companies have grown and transitioned in terms of status on the way)

### Proliferation of revenue sources

- New sources of commissioning have emerged (OTT players, multi-channel broadcasters, international broadcasters) which have compensated to some extent for relatively flat (indeed declining) origination budgets at the PSBs; the PSBs still retain the lion’s share of commissioning budgets, however, and relationships with these players remain crucial to the health of the sector

### Overall sector health

- Nevertheless, the sector remains in strong financial health – with secondary revenues (from international, on-demand and non-TV markets/windows) driving revenue growth and underpinning access to 3<sup>rd</sup> party finance (co-productions, pre-sales, gap funding); such revenues do remain dependent on the primary window for funding and audience traction, however

### Key observations (2)

#### PSBs and the indie sector

- The PSBs still retain significant negotiating strength, *albeit* this is being reduced by multi-channel, new media and international spend
- The supply side is still relatively fragmented and plural, despite the emergence of mega indies; PSB role critical in marginal genres

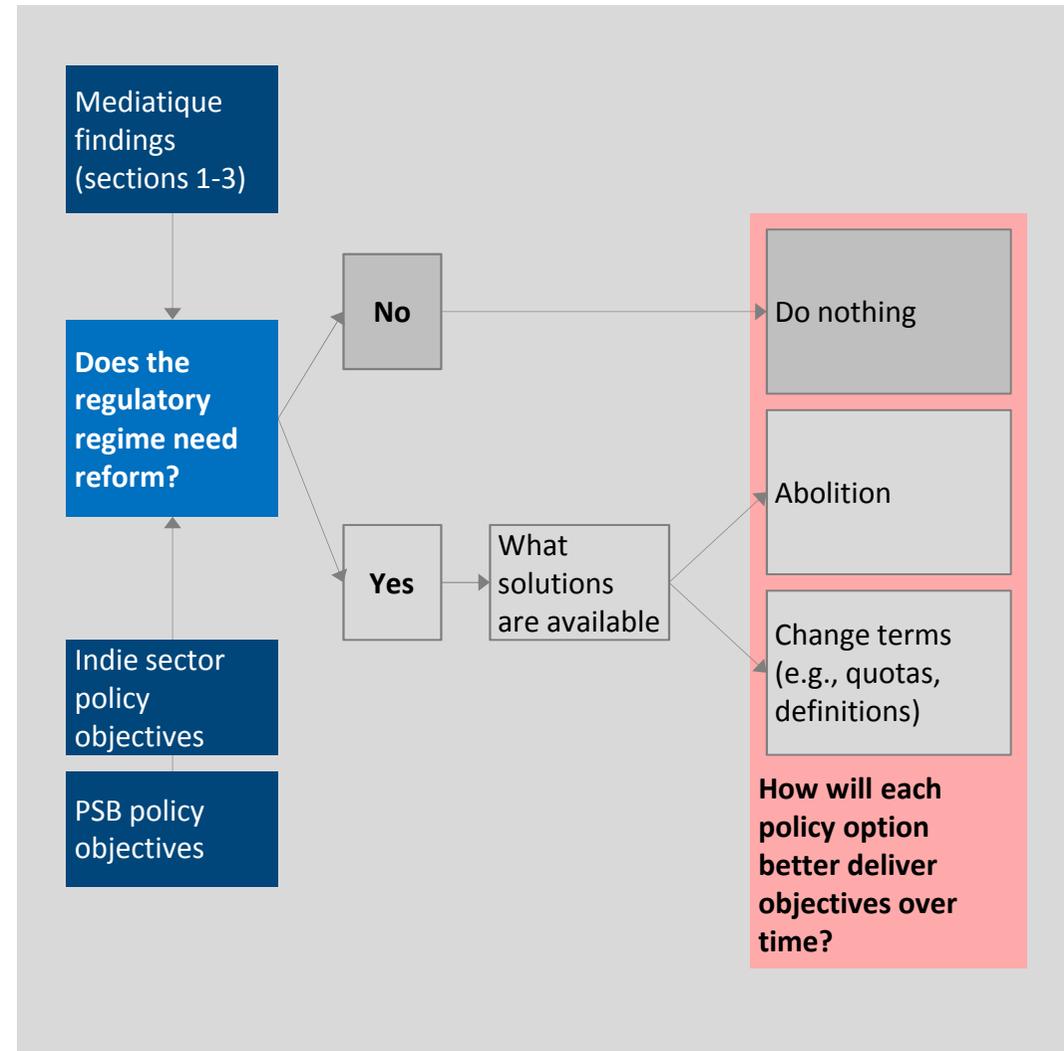
#### Implications of the Terms of Trade

- There is no one-size-fits-all approach to negotiating with indies/suppliers – and this varies by PSB
  - Smaller and qualifying indies are still protected by ToT
  - ToT still remain the benchmark against which all deals (even with non-qualifying suppliers) are compared
- Without the ToT, it is potentially the case that the sector would witness a return to more warehousing of rights, reduced investment in content development/innovation and a fall in the financial health of suppliers
- Indies report aggressive pricing of content on commission and attempts to lock in multiple seasons; suppliers are prepared to provide cost-effective content in return for the rights they retain

# What are the policy aims – and on what basis can we assess the necessity and viability of future reform?

- The key aims of the current intervention (summarised overleaf) are likely to remain central in the thinking of both the regulator and Government
- These include addressing the imbalances that occur from excessive vertical integration, containing the negotiating strength enjoyed by buyers (traditionally a characteristic of the UK market) and ensuring plurality of supply
- Supplemental aims (of Government, rather than relative to economic regulation or fair competition) include promoting the interests of SMEs and stimulating exports
- There is no doubt that the independent supply sector has seen radical transformation – and that the recent developments (since 2006) in market dynamics and the size and structure of external supply have been profound
- A primary question is whether the changes mean the intervention is no longer warranted: from our review of key dynamics and available evidence it appears clear that the wholesale removal of the quota and the Codes of Practice/Terms of Trade cannot be justified:
  - There is still significant negotiating strength on the side of buyers
  - The long tail of smaller indies cannot trade fairly without protections
- However, it does appear that some changes might be warranted (if not now, on the basis of currently observable dynamics) then at some point in future
  - What practical steps might be considered?

## Decision tree for reform of current policy regime



# We summarise here the key issues for policy makers when considering whether market evolution and changing structures have rendered the intervention no longer fit for purpose

## Policy interventions in the external supply of PSB content

Intervention	Objectives	Market developments	Issues and concerns raised
<b>Production quota</b>	<ul style="list-style-type: none"> <li>Promote diversity of content and suppliers (geographically, culturally)</li> <li>Limit the effects of vertical integration</li> <li>Improve the innovation pipeline</li> <li>Encourage new entry and competition</li> </ul>	<ul style="list-style-type: none"> <li>External sector consolidation has reduced the number of qualifying companies</li> <li>Bigger companies have emerged on the supply side able to negotiate more effectively with commissioners</li> </ul>	<ul style="list-style-type: none"> <li>Commissioners may need to consider the quota ahead of other objectives (with an impact on genre and programme choices)</li> <li>Non-qualifying companies may restrain supply in favour of their own distribution routes to market</li> </ul>
<b>Codes of Practice/ Terms of Trade</b>	<ul style="list-style-type: none"> <li>Address imbalances in negotiating strength between strong broadcasters and weak suppliers (based on the fact of limited buying points representing c85% of the primary commissions market)</li> <li>Ensure transparency on programme licence fees and clarity on what rights are being bought; unless paid for, rights revert to/are retained by the supplier and warehousing is pre-empted</li> </ul>	<ul style="list-style-type: none"> <li>While PSBs continue to represent the vast majority of primary UK commissions, this revenue is becoming less important over time for very large indies</li> <li>Such large indies are increasingly focused on international markets (to offset declines in UK expenditure by PSBs, to more efficiently tap new sources of demand for global content, and to maximise returns in windows where rights are increasingly more valuable – e.g., SVOD, and non-linear more generally)</li> <li>Smaller companies are likely to remain more dependent on rules</li> </ul>	<ul style="list-style-type: none"> <li>PSBs are worried they may be offered content aimed primarily at an international rather than a UK audience</li> <li>Sectoral focus may shift to commercial genres, leaving PSB channels with smaller pool of players to deliver public service content in marginalised genres</li> <li>Engagement with new distribution technologies (search/navigation trends, personalisation, mobile devices) may occur directly, without reference to primary commissioning channel</li> <li>New business models may arise to replace the current funding models</li> </ul>

## Against this identification of the key objectives and issues raised, what are the resultant possible responses?

### Options for addressing issues arising from our review of the sector

#### Abolish the quota and Terms of Trade

- Determine that the reasons for the original interventions are no longer at issue
- Marshall evidence that the balance of power has shifted – across the whole of the sector and not just at the consolidated end of the market; allow the market to negotiate terms on a commercial basis

#### Reduce the independent supplier quota for all PSBs

- In light of the “self-correction” of big indies (becoming NQIs), reduce the quota to a lower number to reflect this change in the value chain
- It is unlikely to make sense to change the quota without considering a change to the definition at the same time but the two can be considered separately
- In any event, it is unlikely policy makers will want to posit a quantum lower than the EU level of 10%

#### Change the definition of qualifying supply

- There is a significant movement among PSBs to re-visit the definition of an indie – in particular to address concerns that bigger suppliers are able to withhold content and take programme investment risks such that they do not require the support of the indie quota and the associated protections of the Terms of Trade
- The proposals come in two forms – a revenue cap to replace the “integrated broadcaster” test or a “double lock” of both this test and a revenue cap
- The issues around execution are considerable (for instance, how would one legislate against avoidance tactics and/or address the incentivisation trap as producers grow toward the limit)?

#### Amend the Terms of Trade

- Through “guidance” from Ofcom, indicate that the Terms of Trade should reflect changes in the market such that the current benchmark splits and terms are reviewed and revised
- Through primary legislation, agree that the Terms of Trade apply subject to a revenue cap, even if the quota and definitions for the quota remain in place (this is in line with proposals from ITV)

#### Give Ofcom flexibility to change the rules as it deems necessary

- As per the BBC proposal in its response to the PSB Review, Government to use the results of the current reviews (of Independent Production and the Charter) to amend the Act (and the BBC Agreement as necessary) to give Ofcom the flexibility to set the quota, change the definition, and alter the Codes of Practice without recourse to primary legislation (although such primary legislation would be needed to put this flexibility into effect in the first instance)

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Section 1: Market development

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**Section 5: Appendix**

# Appendix 1: Categorisation of UK productions companies

- As initially defined in the Broadcasting Act of 1990, and subsequently amended, a qualifying independent production company is one that:
  - Is not employed by a broadcaster;
  - Does not have a shareholding greater than 25% in a broadcaster; or
  - One In which any UK broadcaster does not have a shareholding greater than 25% or in which any two or more UK broadcasters do not have an aggregate shareholding greater than 50%
- These categories of qualifying and non-qualifying can be further amplified by categorisation on the basis of size (in reflection of market structure but not of regulatory status): for example, small revenues, large revenues
- Combining status and size, we have provide four categories, as at right
- Category A: most vertically integrated (non-qualifying) production companies are part of groups that generate large amounts of revenue, such as Endemol Shine and All3Media, as well as UK broadcasters such as ITV. These companies are not protected by the Terms of Trade
- Category B: there are very few vertically integrated groups with small revenues; companies in this category are not protected by the Terms of Trade and lack the negotiating strength of the larger production companies when it comes to dealings with broadcasters
- Category C: The large, non-vertically integrated indies have the benefit of both the Terms of Trade and critical mass
- Category D: small, qualifying indies do have the safety net of the terms of trade, and are often the targets for acquisition by larger companies

## Categorisation of UK producers

	Vertically integrated (non-qualifying)	Non-vertically integrated (qualifying)
Large revenues	<b>A</b>	<b>C</b>
	Examples: <ul style="list-style-type: none"> <li>▪ Endemol Shine Group</li> <li>▪ All3Media</li> <li>▪ ITV</li> <li>▪ NBCUniversal</li> <li>▪ BBC</li> </ul>	Examples: <ul style="list-style-type: none"> <li>▪ Tinopolis</li> <li>▪ Zodiak Media</li> <li>▪ WME</li> <li>▪ Avalon</li> <li>▪ Thames/Talkback (Fremantle)</li> <li>▪ Argonon</li> </ul>
Small revenues	<b>B</b>	<b>D</b>
	Example: <ul style="list-style-type: none"> <li>▪ STV Productions</li> </ul>	Examples: <ul style="list-style-type: none"> <li>▪ Tuesday's Child</li> <li>▪ Nine Lives Media</li> <li>▪ Icon Films</li> <li>▪ Pilot Film</li> <li>▪ Rise Films</li> <li>▪ CTVC</li> </ul>

## Appendix 2: League tables used to inform market shares on slides 13, 19 and 39

### Top-10 external production companies, by UK revenue

2003	
Production company	UK Revenue (£m)
All3Media	129
Thames - Talk back	121
Endemol	89
RDF Media	37
Tiger Aspect	36
TV Corporation	34
Ten Alps	31
HIT	27
Complete	20
Shed	14

<b>Total top 10</b>	<b>538</b>
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<b>UK external market total</b>	<b>1,196</b>
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<b>Top 10 as % of external market</b>	<b>45%</b>
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2007	
Production company	UK Revenue (£m)
IMG	222
All3Media	203
Endemol	160
Shine	146
Hit Entertainment	143
Talkback Thames	140
RDF	99
Shed	72
Entertainment Rights	68
Tinopolis	66

<b>Total top 10</b>	<b>1,318</b>
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<b>UK external market total</b>	<b>1,620</b>
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<b>Top 10 as % of external market</b>	<b>81%</b>
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2014	
Production company	UK Revenue (£m)
Endemol Shine	358
All3Media	253
FremantleMedia	147
Tinopolis	140
Zodiak Media Group	116
NBC	102
Warner Bros Television Productions UK	85
TwoFour Group	77
William Morris	62
Avalon Entertainment	59

<b>Total top-10</b>	<b>1,398</b>
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<b>UK external market total</b>	<b>2,107</b>
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<b>Top 10 as % of external market</b>	<b>66%</b>
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Source: Mediatique, Broadcast

## Appendix 3: Summary of PSB Terms of Trade agreements (1)

	BBC	ITV	Channel 4	Channel 5	
<b>Licence Period</b>	<ul style="list-style-type: none"> <li>Five year primary licence period (with option to renew for further two years)</li> </ul>	<ul style="list-style-type: none"> <li>5 year primary licence period (with option to renew for further two years)</li> </ul>	<ul style="list-style-type: none"> <li>3 years (unless extended for returning series)</li> </ul>	<ul style="list-style-type: none"> <li>3 year primary licence period for exploitation on 5's channels (with option to extend for further 2 years)</li> </ul>	
<b>Primary window</b>	<b>What's included?</b>	<ul style="list-style-type: none"> <li>Primary linear broadcast rights (over any platform)</li> <li>Retransmission/repeats selected from BBC's list of options</li> </ul>	<ul style="list-style-type: none"> <li>Primary linear broadcast rights on ITV (over any platform)</li> <li>Number of transmissions negotiated with Producer prior to signing Agreement</li> </ul>	<ul style="list-style-type: none"> <li>Rights to exploit the programme on the Channel 4 Service and the More 4 Service, and 2 fully cleared retransmissions</li> <li>Each transmission will include a Narrative Repeat(s) or 5 +1 channel transmissions</li> </ul>	<ul style="list-style-type: none"> <li>Primary linear broadcast rights on the main linear Channel 5 service however delivered</li> <li>Primary rights permit Channel 5 three transmissions and associated Narrative Repeats on "Five" (at least two of which covered by initial fee)</li> </ul>
	<b>Window period</b>	<ul style="list-style-type: none"> <li>Exclusivity period ranges from 6 months (BBC One/Two/Three single shows) to 18 months (BBC Four singles and all series)</li> </ul>	<ul style="list-style-type: none"> <li>Minimum exclusivity period of 6 months, extendable to the entire licence period on agreement with Producer</li> <li>UK broadcast holdback of 12 months</li> </ul>	<ul style="list-style-type: none"> <li>An exclusive period of 6 months (extendable to 24 months if transmitted on More 4 or if another of Channel 4's digital channels makes an offer in line with market rates)</li> </ul>	<ul style="list-style-type: none"> <li>Exclusive to Channel 5 for a period ranging from 6-18 months</li> </ul>
	<b>Revenue split</b>	<ul style="list-style-type: none"> <li>Covered in initial payment from broadcaster (subject to additional transmission fees)</li> </ul>	<ul style="list-style-type: none"> <li>Covered in initial payment from broadcaster (subject to additional transmission fees)</li> </ul>	<ul style="list-style-type: none"> <li>Covered in initial payment from broadcaster (subject to additional transmission fees)</li> </ul>	<ul style="list-style-type: none"> <li>Covered in initial payment from broadcaster (subject to additional transmission fees)</li> </ul>
<b>Primary catch-up rights</b>	<b>What's included?</b>	<ul style="list-style-type: none"> <li>Rights to exclusively host the programme on catch-up service</li> </ul>	<ul style="list-style-type: none"> <li>Rights to exclusively host the programme on catch-up service</li> </ul>	<ul style="list-style-type: none"> <li>Rights to exclusively host the programme on catch-up service</li> </ul>	<ul style="list-style-type: none"> <li>Rights to exclusively host the programme on catch-up service</li> <li>Five retains exclusive option to acquire the Primary VoD Rights for a further 11 months</li> </ul>
	<b>Window period</b>	<ul style="list-style-type: none"> <li>Exclusive period from 7 days prior to the first linear broadcast, up to 30 days following the broadcast</li> </ul>	<ul style="list-style-type: none"> <li>Maximum duration of any episode is 3 months after first Tx of first episode, or 30 days after first Tx of last episode (whichever is earlier)</li> </ul>	<ul style="list-style-type: none"> <li>Channel 4's exclusive VOD window ends after 30 days of final episode Tx</li> </ul>	<ul style="list-style-type: none"> <li>30 days exclusive rights</li> </ul>
	<b>Revenue split</b>	<ul style="list-style-type: none"> <li>Covered in initial payment from broadcaster (subject to additional transmission fees)</li> </ul>	<ul style="list-style-type: none"> <li>50/50 split of net receipts</li> </ul>	<ul style="list-style-type: none"> <li>50/50 split of net receipts (variable if part of returning series)</li> </ul>	<ul style="list-style-type: none"> <li>Calculated from Per View Rate multiplied by the number of downloads/views of the Programme during the relevant year</li> </ul>

## Summary of PSB Terms of Trade agreements (2)

		BBC	ITV	Channel 4	Channel 5
Extended on demand rights	What's included?	<ul style="list-style-type: none"> <li>Rights to negotiate non-exclusively with commercial VoD providers</li> </ul>	<ul style="list-style-type: none"> <li>Rights to negotiate non-exclusively with commercial VoD providers, but not UK broadcasters during the Licence Period</li> </ul>	<ul style="list-style-type: none"> <li>Rights to negotiate non-exclusively with commercial VoD providers</li> </ul>	<ul style="list-style-type: none"> <li>Rights to negotiate non-exclusively with commercial VoD providers</li> </ul>
	Window period	<ul style="list-style-type: none"> <li>Window can only start within licence period once BBC has provided consent</li> </ul>	<ul style="list-style-type: none"> <li>Holdback extends to length of primary window (6-30 months depending on agreement)</li> </ul>	<ul style="list-style-type: none"> <li>Holdback period of 20 weeks, after which both parties can exploit the rights non-exclusively until the end of the licence period</li> </ul>	<ul style="list-style-type: none"> <li>5 month holdback if no extension has been agreed</li> </ul>
	Revenue split	<ul style="list-style-type: none"> <li>25% net receipts payable to BBC during licence period, 15% thereafter</li> </ul>	<ul style="list-style-type: none"> <li>50/50 split of net receipts for the Licence Period (unless otherwise agreed), and thereafter 15% payable to ITV</li> </ul>	<ul style="list-style-type: none"> <li>50/50 split of net receipts for the Term, and thereafter 15% payable to Channel 4</li> </ul>	<ul style="list-style-type: none"> <li>50/50 split of net receipts for the Term, and thereafter 15% payable to Channel 5</li> </ul>
DVD/DTO rights	What's included?	<ul style="list-style-type: none"> <li>The rights to negotiate with DTO providers on a non-exclusive bases</li> </ul>	<ul style="list-style-type: none"> <li>The rights to negotiate with DTO providers on a non-exclusive bases</li> </ul>	<ul style="list-style-type: none"> <li>The rights to negotiate with DTO providers on a non-exclusive bases</li> </ul>	<ul style="list-style-type: none"> <li>The rights to negotiate with DTO providers on a non-exclusive bases</li> </ul>
	Window period	<ul style="list-style-type: none"> <li>Day 1 following 1st BBC TX of the relevant episode, or 7 days following first BBC Public Service use, or 6 months from acceptance of Full Delivery, whichever is the earlier.</li> </ul>	<ul style="list-style-type: none"> <li>Owned by producer (on condition that all episodes available as one package, after date of last episode Tx)</li> </ul>	<ul style="list-style-type: none"> <li>For box sets, window starts after 24:00 of the date of the first Tx of the last episode of the Programme(s) in the Series</li> <li>Individual episodes from a series must be held back 6 months</li> <li>Non-series shows must be held back 30 days</li> </ul>	<ul style="list-style-type: none"> <li>Period commences immediately after first transmission of the programme (or last episode in series)</li> </ul>
	Revenue split	<ul style="list-style-type: none"> <li>25% net receipts payable to BBC during licence period, 15% thereafter</li> </ul>	<ul style="list-style-type: none"> <li>15% net receipts paid to ITV if rights owned by producer</li> </ul>	<ul style="list-style-type: none"> <li>50/50 split of net receipts for the Term, and thereafter 15% payable to Channel 4</li> </ul>	<ul style="list-style-type: none"> <li>50/50 split of net receipts for the Term, and thereafter 15% payable to Channel 5</li> </ul>

## Summary of PSB Terms of Trade agreements (3)

		BBC	ITV	Channel 4	Channel 5
UK Secondary broadcast rights	What's included?	<ul style="list-style-type: none"> <li>▪ Distribution of the finished programme to other UK broadcasters for linear transmission</li> </ul>	<ul style="list-style-type: none"> <li>▪ Distribution of the finished programme to other UK broadcasters for linear transmission</li> </ul>	<ul style="list-style-type: none"> <li>▪ Distribution of the finished programme to other UK broadcasters for linear transmission</li> </ul>	<ul style="list-style-type: none"> <li>▪ Distribution of the finished programme to other UK broadcasters for linear transmission</li> </ul>
	Window period	<ul style="list-style-type: none"> <li>▪ After the agreed exclusivity period, providing the BBC gives consent</li> </ul>	<ul style="list-style-type: none"> <li>▪ With ITV's permission, Producer can negotiate with other broadcasters after 6 month holdback period (providing no agreement made with ITV diginets)</li> </ul>	<ul style="list-style-type: none"> <li>▪ 6 months holdback (unless one of Channel 4's diginets has made an offer in line with market rates)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Channel 5 retains exclusive option to extend licence to the Secondary TV Rights window</li> <li>▪ Window opens after primary exclusivity period ends</li> </ul>
	Revenue split	<ul style="list-style-type: none"> <li>▪ 25% net receipts payable to BBC during licence period</li> </ul>	<ul style="list-style-type: none"> <li>▪ 50/50 split of net receipts during licence period, 15% paid to ITV thereafter</li> </ul>	<ul style="list-style-type: none"> <li>▪ 50/50 split of net receipts for the Term, and thereafter 15% payable to Channel 4</li> </ul>	<ul style="list-style-type: none"> <li>▪ 50/50 split of net receipts during licence period, 15% paid to Channel 5 thereafter</li> </ul>
Worldwide rights	What's included?	<ul style="list-style-type: none"> <li>▪ Rights to distribute programme to international markets</li> </ul>	<ul style="list-style-type: none"> <li>▪ Rights to distribute programme to international markets</li> </ul>	<ul style="list-style-type: none"> <li>▪ Rights to distribute programme to international markets</li> </ul>	<ul style="list-style-type: none"> <li>▪ Rights to distribute programme to international markets</li> </ul>
	Window period	<ul style="list-style-type: none"> <li>▪ Day after first BBC Tx of the relevant programme/episode</li> </ul>	<ul style="list-style-type: none"> <li>▪ Available after first Tx of programme on ITV</li> </ul>	<ul style="list-style-type: none"> <li>▪ Available after first Tx of programme on Channel 4</li> </ul>	<ul style="list-style-type: none"> <li>▪ Available after first Tx of programme on Channel 5</li> </ul>
	Revenue split	<ul style="list-style-type: none"> <li>▪ 15% net revenue paid to BBC</li> </ul>	<ul style="list-style-type: none"> <li>▪ 15% net receipts paid to ITV</li> </ul>	<ul style="list-style-type: none"> <li>▪ 15% net receipts paid to C4</li> </ul>	<ul style="list-style-type: none"> <li>▪ 15% net receipts paid to C5</li> </ul>
Backend rights	What's included?	<ul style="list-style-type: none"> <li>▪ Rights to transmit programme after licence period</li> </ul>	<ul style="list-style-type: none"> <li>▪ Rights to transmit programme after licence period</li> </ul>	<ul style="list-style-type: none"> <li>▪ Rights to transmit programme after licence period</li> </ul>	<ul style="list-style-type: none"> <li>▪ Rights to transmit programme after licence period</li> </ul>
	Window period	<ul style="list-style-type: none"> <li>▪ Ongoing after licence period</li> </ul>	<ul style="list-style-type: none"> <li>▪ Ongoing after licence period</li> </ul>	<ul style="list-style-type: none"> <li>▪ Ongoing after licence period</li> </ul>	<ul style="list-style-type: none"> <li>▪ Ongoing after licence period</li> </ul>
	Revenue split	<ul style="list-style-type: none"> <li>▪ 15% net revenue (or 20% if BBC has funded pilot) paid to BBC</li> </ul>	<ul style="list-style-type: none"> <li>▪ 15% net receipts paid to ITV</li> </ul>	<ul style="list-style-type: none"> <li>▪ 15% net receipts paid to C4</li> </ul>	<ul style="list-style-type: none"> <li>▪ 15% net receipts paid to C5</li> </ul>
Link to source		<a href="http://www.bbc.co.uk/commissioning/tv/articles/how-we-do-business">http://www.bbc.co.uk/commissioning/tv/articles/how-we-do-business</a>	<a href="http://www.itv.com/commissioning/guidelines/terms-of-trade">http://www.itv.com/commissioning/guidelines/terms-of-trade</a>	<a href="http://www.channel4.com/info/commissioning/production-information/contract-and-terms-of-trade">http://www.channel4.com/info/commissioning/production-information/contract-and-terms-of-trade</a>	<a href="http://about.channel5.com/programme-production/commercial-affairs/documentation">http://about.channel5.com/programme-production/commercial-affairs/documentation</a>

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