



Oliver & Ohlbaum

The impact of Terms of Trade on the UK's television content production sector

A report for the Canadian Media Producers Association (CMPA)

by Oliver & Ohlbaum

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Summary

This report examines the performance of the UK independent television production sector and, in particular, the impact of the industry's formal codes of practice, known as Terms of Trade, that were introduced in 2004

- Prior to Terms of Trade, the sector was highly fragmented and dependent on the main public service broadcaster (PSB) network groups. There was little scope to negotiate on production fees or take strong positions in rights against which to build an asset base
- Terms of Trade set out the rights available to UK broadcasters under their primary commissioning license and the revenue sharing arrangements relating to the subsequent use of their commissioned IP
- Essentially, Terms of Trade give independent producers control over the 'secondary rights' to their content, and thus the ability to monetise content they have produced in international markets
- These arrangements apply to external commissions made by the main UK PSB channels and the digital channels operated by the BBC and Channel 4 of programming from independent producers (companies that are wholly independent of, or up to 25 per cent owned by, broadcasters)
- Since the introduction of Terms of Trade in 2004, the UK independent production sector has grown to become a global leader in TV production, in particular:
 - TV related revenues have increased from around £1.5 billion in 2004 to more than £2.6 billion in 2017
 - International UK TV rights income grew at an average annual rate of 22 per cent between 2004 and 2008 and continues to grow at approximately 7 per cent
- While there has been significant consolidation in the sector, small independent producers still account for a significant share of revenue, with those outside of the £70m+ income bracket accounting for around 65 per cent of revenues in 2017
- Smaller companies also make up the majority of the sector; those making between £1m and £10m per year account for 66 per cent of the sector – this has been broadly stable since 2011, contributing to the sector's diversity. There are also approximately 250 producers making less than £1m per year
- Despite the competitive nature of the sector, barriers to entry are low, and new entrants typically make up between a quarter and a third of producers winning commissions for the five main PSB broadcasters in a given year, while UK indies have also fared well – maintaining the volume of hours commissioned from them since 2005

1. An introduction to Terms of Trade
2. The evolution of UK TV production revenues
3. The companies active in the sector
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Introduction

This report examines the performance of the UK independent production sector and, in particular, the impact of Terms of Trade since they were introduced in 2004

What are Terms of Trade?

- A statutory framework set out within the Communications Act 2003 established the requirement for codes of practice governing how the UK's public service broadcasters commission programmes from independent producers
- This led to agreed trading principles setting out the rights available to broadcasters under their primary commissioning license and the revenue sharing arrangements between broadcasters and producers relating to the subsequent use of their commissioned IP

Who do they apply to?

- 'Qualifying' independents – i.e. those not wholly or partly owned (to a 25 per cent threshold) by another broadcaster operating in the UK sector

What content do they apply to?

- The main PSB networks (BBC1, ITV, Channel 4 and Channel 5)
- Digital channels of the BBC and Channel 4

Methodology note:

The data on the UK indie production sector include data for non-qualifying independents, i.e. previously independent production groups who are now owned by broadcasters (such as Shed, Shine and Carnival). This is to maintain consistency between data sources over time.

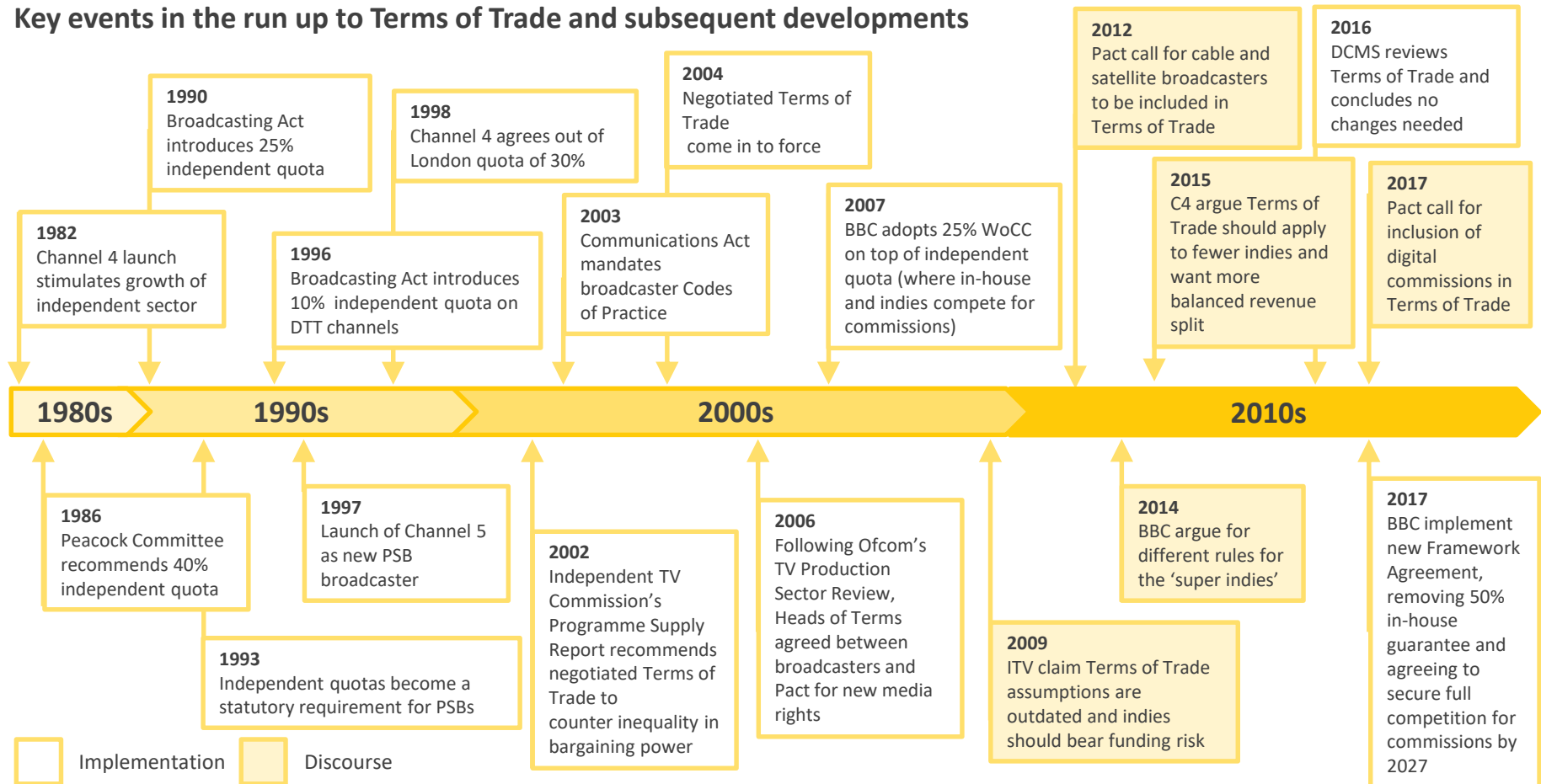
The indie data do not include external production by traditional broadcaster production units for other broadcasters (such as ITV Studios, BBC Production)

While the PSB broadcasters are not obliged to offer Terms of Trade to non-qualifying independent producers, they are typically the starting point for negotiations with all external producers – and have thus set expectations for the whole sector

Terms of Trade came into force in 2004 and have been subject to debate

Following a period of increasing intervention in the UK TV broadcast sector, Terms of Trade were introduced in 2004. The government reviewed Terms of Trade in 2016 and concluded that they remain fit for purpose

Key events in the run up to Terms of Trade and subsequent developments



Note: 'Super indies' are groups of independent producers with over £70m revenue per year
 Source: Multiple sources, see Appendix for full details

What were the original aims of intervention?

Intervention at a European level first led to the introduction of independent production quotas as part of the UK Broadcasting Act, prior to Terms of Trade in 2004. There are three stated aims of intervention

INTERVENTIONS IN THE TV PRODUCTION MARKET

AUDIOVISUAL MEDIA SERVICES DIRECTIVE (AVMS)

- Television without Frontiers Directive adopted by EU in 1989
- Set minimum thresholds for broadcasting for EEA markets:
 - 50% European works
 - 10% independent producer
- EC rename this the Audiovisual Media Services Directive in 2007
- Adopted and published by the European Council in 2010

UK responses to AVMS

INDIE PRODUCER QUOTAS

- UK Broadcasting Act 1990 builds on the EU directive
- 25% of PSB output must be qualifying independent producers
- Qualifying producers defined as those not owned by broadcasters

TERMS OF TRADE

- UK Communications Act 2003 updates the Broadcasting Act
- Sets out Codes of Practice for PSBs and stipulates that PSBs must agree to Terms of Trade with Pact
- This included an agreed revenue split / rights retention for independent producers
- Implementation begins in 2004; this was voluntarily agreed, rather than imposed

STATED AIMS OF INTERVENTIONS IN THE UK*

1

Promote cultural diversity and open up the production system to new energies and voices

2

Stimulate the growth of small and medium-sized enterprises, promoting creativity and fostering new talent

3

Tackle combined forces of buyer concentration and vertical integration within the UK programme supply market

*Note: stated aims are from the Secretary of State for Culture, Media, and Sport in discussions in 2000, ahead of the 2003 Communications Act being drafted

What further benefits have come from intervention?

Several reasons for intervention have been argued by market participants since the implementation of Terms of Trade – these include both economic and creative benefits

ECONOMIC	CREATIVE
<p>Efficiency</p>	<p>Creativity</p>
<p>Without legacy costs and with an incentive to monitor expenditure, the independent sector is more efficient</p>	<p>The independent production sector can be more creative – or at least provide more ideas to choose from</p>
<p>Industrial Policy</p>	<p>Diversity</p>
<p>The UK has become the world’s second largest TV exporter, driven by the independent sector</p>	<p>The range of content available from the independent sector is much more than that available in-house, no matter how well intentioned</p>
<p>Avoiding abuse of market power</p>	<p>“Let a thousand flowers bloom”</p>
<p>Integrated producer-broadcasters favour their in house operations (even if more expensive / less creative)</p>	<p>Most independents are start up businesses; most of the sector are SMEs</p>
<p>Sustaining the PSB ecosystem</p>	
<p>The UK ecology is fragile; independents have taken some of the funding burden from PSBs with deficits etc.</p>	

Note: These are not meant as definitive statements, but arguments that have been raised
 Source: Multiple sources, see Appendix for full details

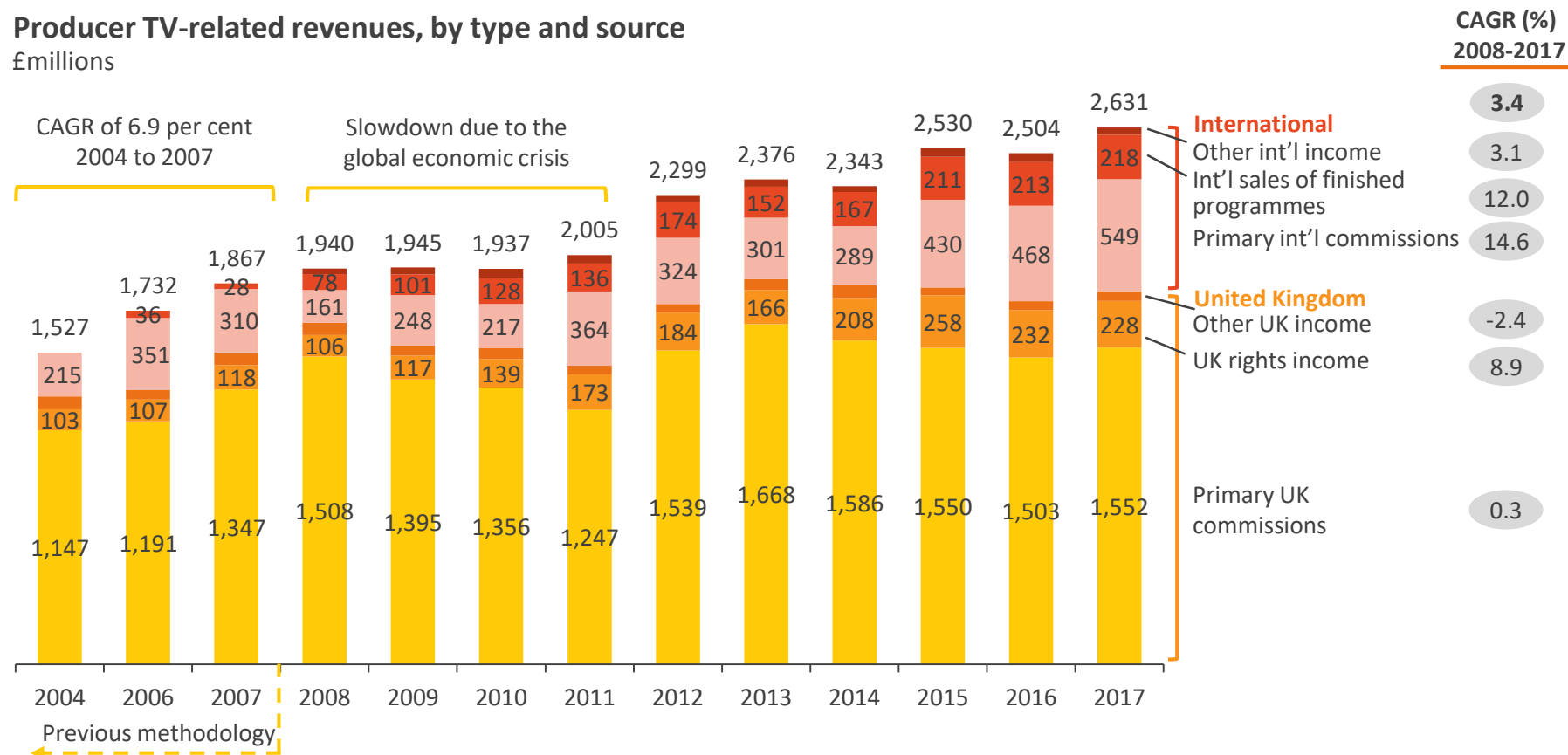
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The sector has experienced significant and sustained increases in revenue

The UK indie sector showed strong growth until 2008 when the recession put pressure on UK commissioning budgets, this bounced back in 2012 – international income has been a strong growth driver throughout

Producer TV-related revenues, by type and source

£millions



Note: 'UK rights income' – UK secondary sales, merchandising, formats, home entertainment etc.; 'Other UK income' – pre-production and other TV-related revenue; 'Other int'l income' – international rights (excluding finished programme sales), pre-production and other TV-related revenue
 For 2004, 2006 and 2007, 'Other int'l income' is included in 'Primary int'l commissions'

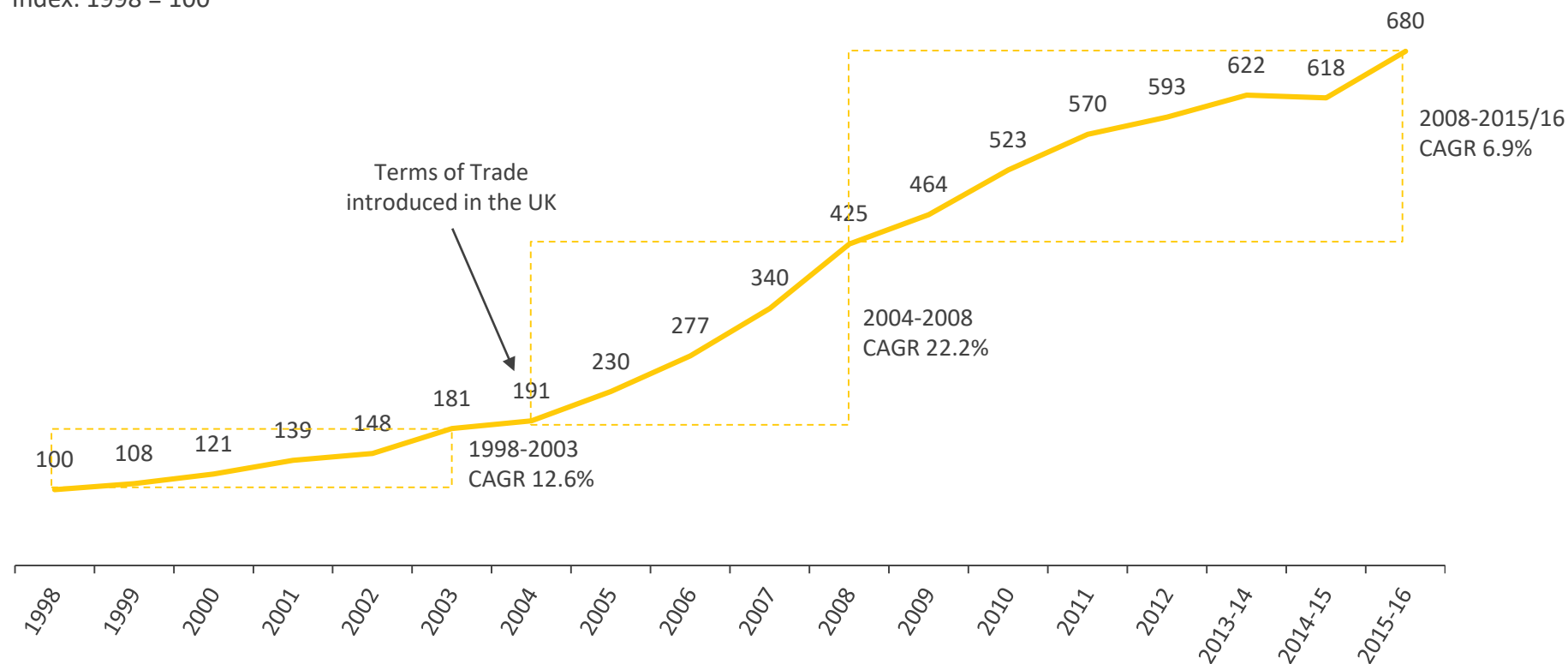
Source: Pact UK Television Production Censuses, Oliver & Ohlbaum analysis

UK TV export growth accelerated after the introduction of Terms of Trade

Following the introduction of Terms of Trade there was an initial significant boost to TV exports between 2004 and 2008, followed by continued healthy growth in more recent years

Income growth in UK TV rights and production exports, 1998 – 2015

Index: 1998 = 100



Note: The reported periods in the source data changed from calendar to financial years after 2012 – the growth rate between 2012 and 2013-14 is therefore based on the restated 2012-13 equivalent

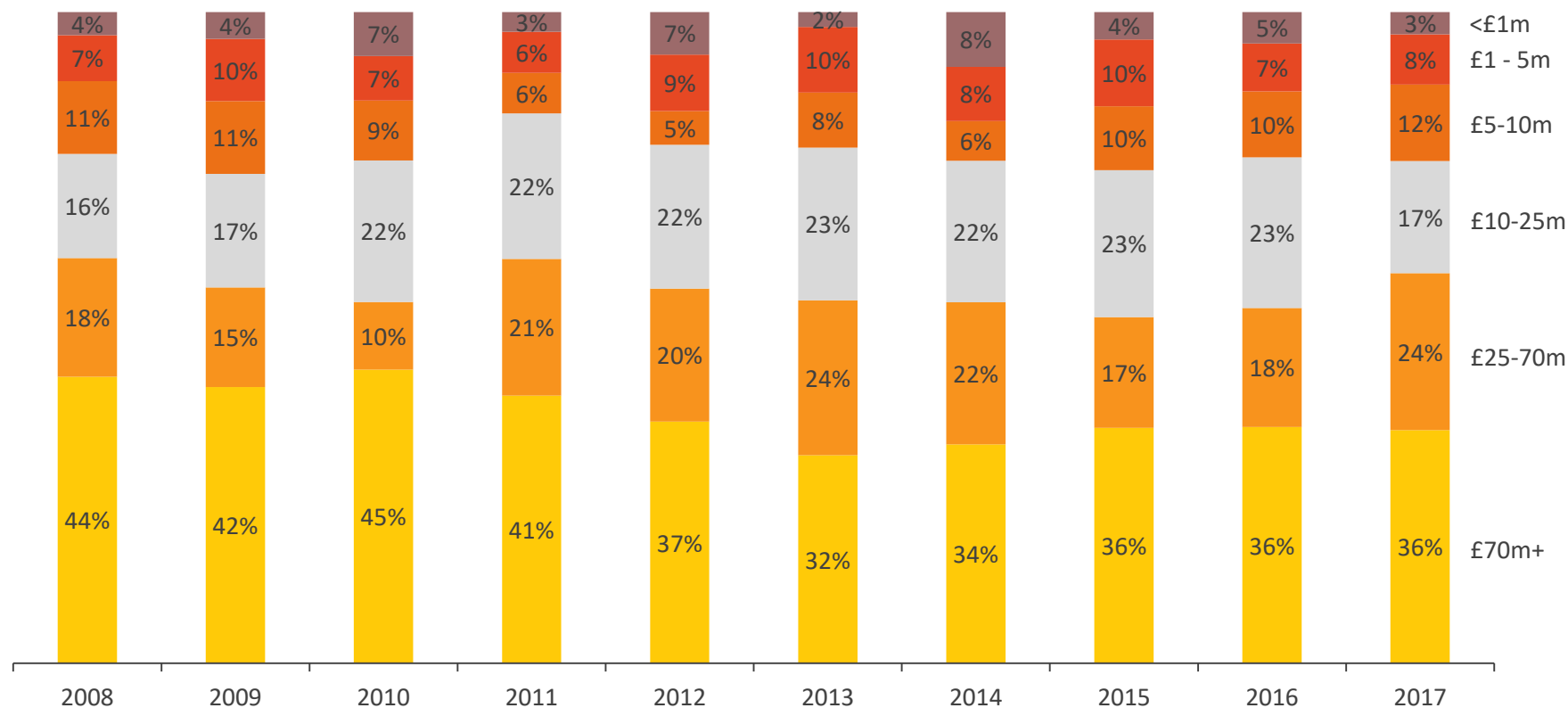
More recent data are not available due to a change in methodology for 2016-17 used by Pact; the refined approach includes no prior year comparison

Source: BTDA, Pact, Oliver & Ohlbaum analysis

Smaller producers continue to grow amidst healthy competition in the sector

The long term trend shows the £70m+ revenue band taking a smaller share of revenues, despite consolidation in the sector. Recent growth in the £25-70m band is likely driven by the growth of those previously in the £10-25m band

Share of total spend on independently produced UK primary commissions, by producer revenue bracket, 2008-2017
Percent



Note: Results are calculated at market size, based on Census returns, and are subject to sample change effects in each year

Source: Pact UK Television Production Census 2018, Oliver & Ohlbaum analysis

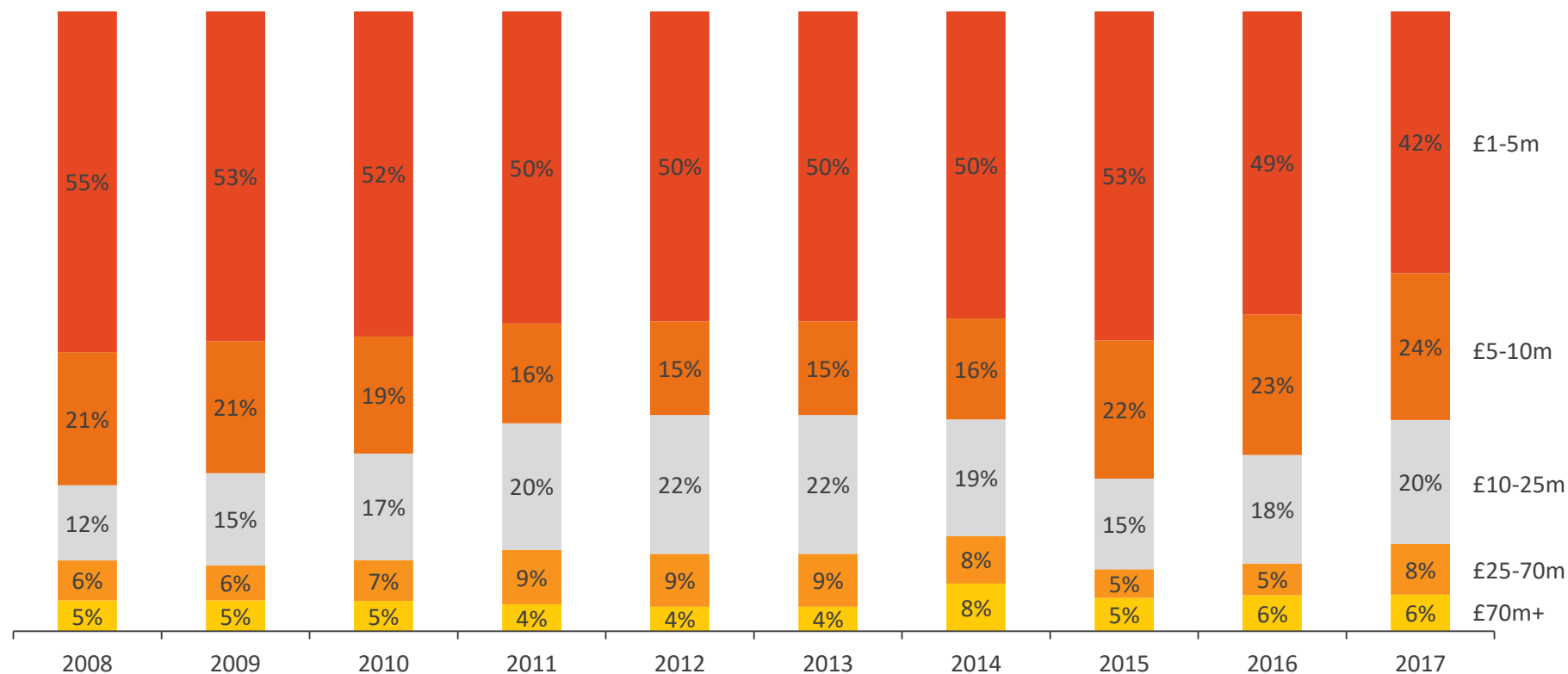
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The sector continues to host a broad range of company sizes, mostly SMEs

There was some consolidation into mid-tier indies up until 2010-11. Since then, the distribution of companies has remained stable and the sector remains diverse, with a large number of smaller producers

Distribution of independent production companies by revenue bracket in the UK, 2008 – 2017

Percent



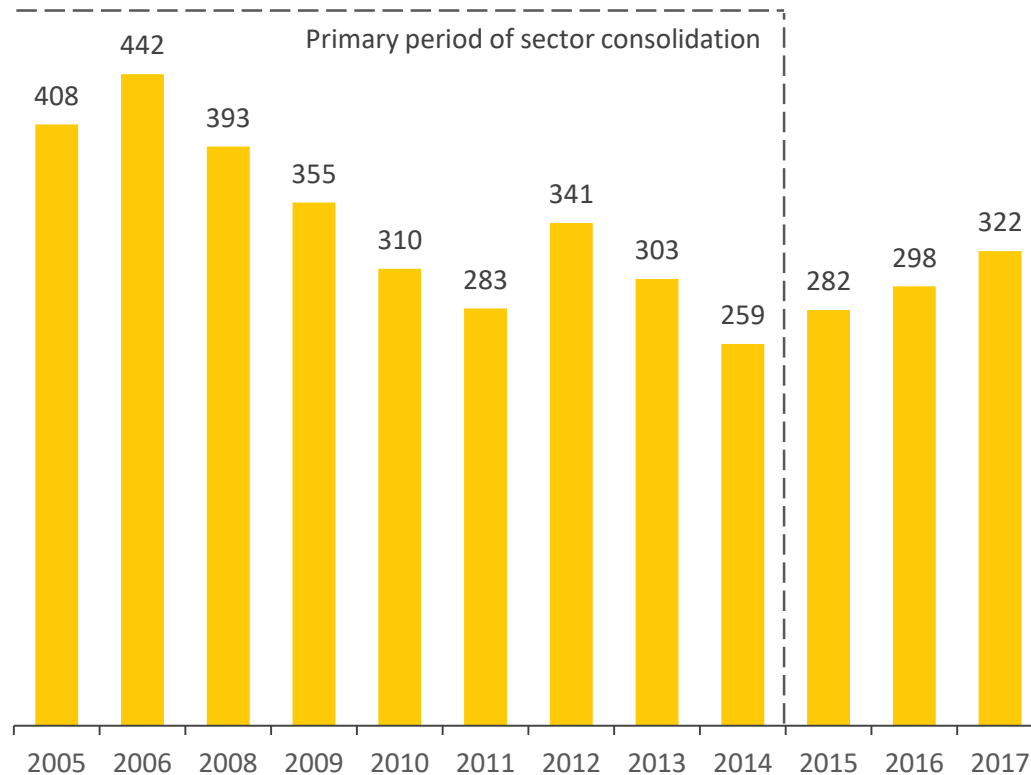
Note: Individual companies belonging to a larger group are only counted as part of the group. In addition to the companies above, based on analysis from Broadcast there are currently an estimated 250 producers with an annual revenue of less than £1m which are excluded here as their volume would distort the chart

Source: Broadcast, Pact UK Television Production Censuses, Oliver & Ohlbaum analysis

Following a period of consolidation, the number of producers is on the rise

Sector consolidation meant the number of individual indie producers supplying the five main PSB channels declined to 2014. This appears to have changed recently and there has been growth in the number of active producers

Number of UK producers commissioned by the five main UK PSBs



Methodology note:

- The O&O Programme Database includes the five main PSB channels in the UK (BBC1, BBC2, ITV1, Channel 4 and Channel 5)
- These broadcasters are the biggest commissioners in the UK and provide a good indication of the trends in the external production market
- Producers consolidated within groups are only counted once. BBC portfolio channels are excluded, and commissions of all genres are covered (excluding news, sport and film)
- The database does not capture all active companies but it does include those that have had a commission from these channels during the years covered

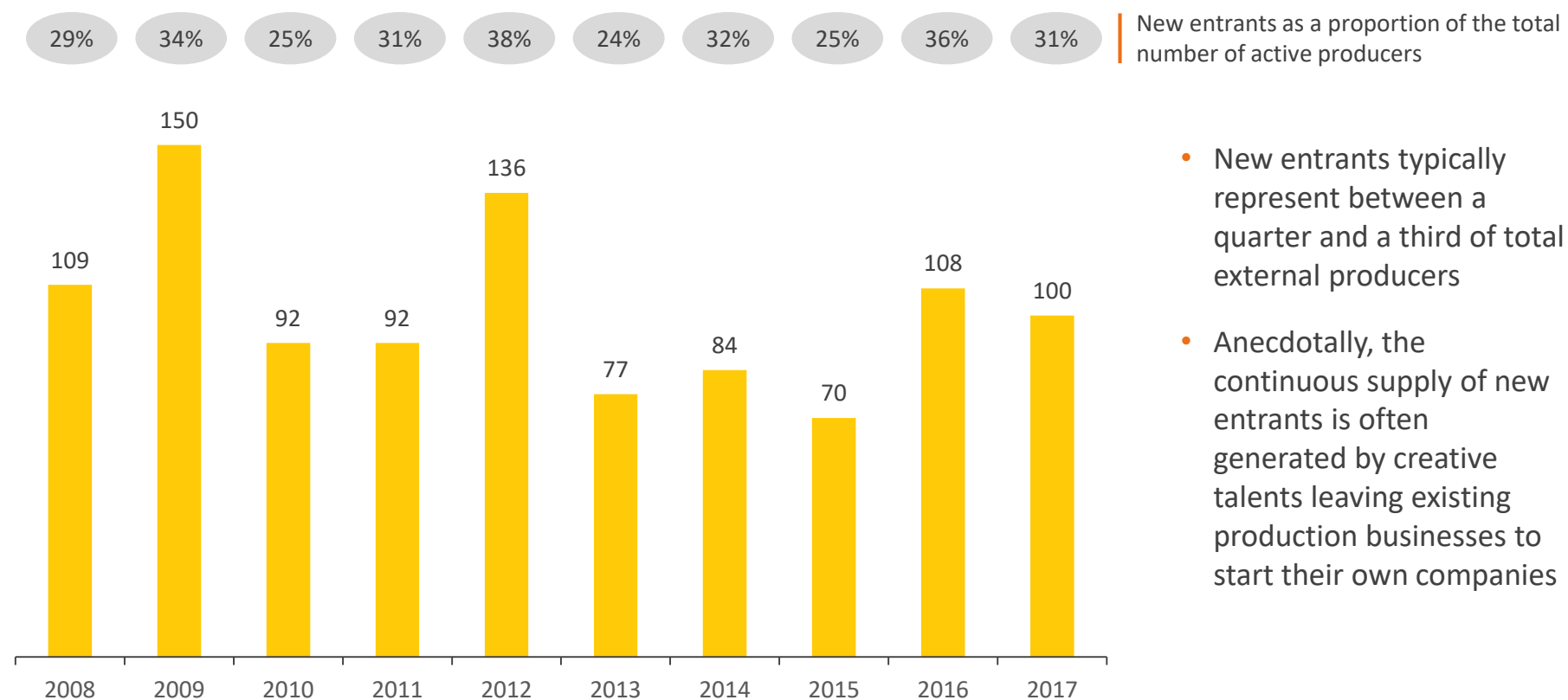
Note: Data are not available for 2007

Source: Attentional, BARB, O&O Programme Database, Oliver & Ohlbaum analysis

The consistent arrival of new entrants suggests a highly competitive market

The annual level of new entrants shows that there are no significant barriers to entering the UK television production sector – and that they can gain access to opportunities with the main PSB channels

Number of new entrants serving the five main PSB channels, 2008-2017



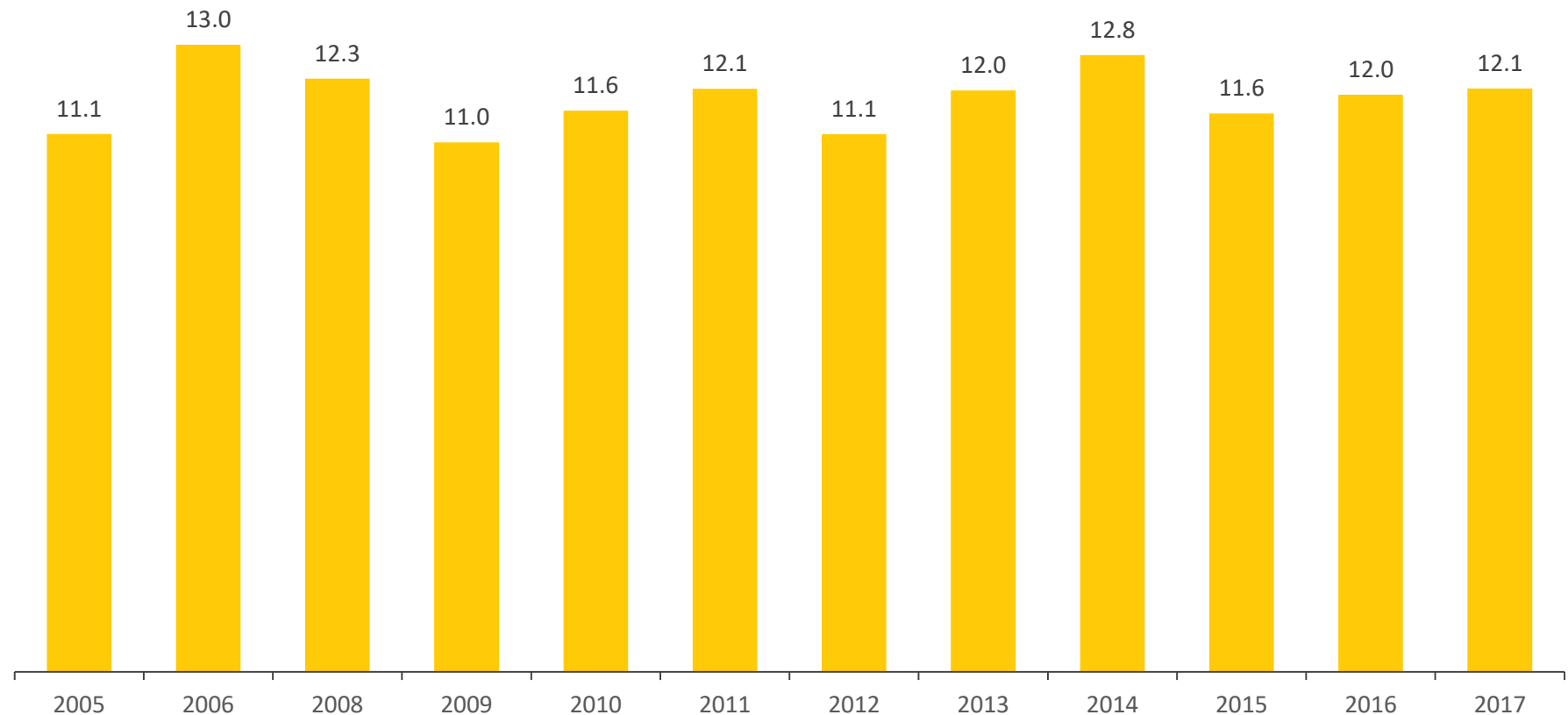
Note: 'New' refers to any production company that has not been active in any of the previous years covered – including prior years to 2005
 Source: Attentional, BARB, O&O Programme Database, Oliver & Ohlbaum analysis

The volume of hours commissioned from UK indies has remained stable

The majority of commissions made by the five main PSB networks from independent producers come from UK indies, and the volume of hours commissioned from them has remained broadly stable since 2005

Total hours of UK produced content commissioned by the five main UK PSB networks

000s of hours



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Appendix: Sources used in literature review

The following sources were consulted in addition to the statutory/regulatory documents

- BBC Commissioning Process Framework (Sep. 2017)
- BBC Press Office (02/08/2004), 'BBC agrees Terms of Trade with Pact'
- Channel 4 Response to Ofcom's Third PSB Review (Feb. 2015)
- Channel Four Television Corporation Report and Financial Statements 1998 (Apr. 1999)
- Culture, Media and Sport Committee, Oral Evidence: Future of the BBC, HC 315 (15 Jul. 2014)
- D'Arma, A., 'The Hollowing Out of Public Service Media: A Constructivist Institutional Analysis of the Commercialisation of BBC's In-house Production, *Media, Culture and Society* (2017)
- DCMS/DoTI White Paper: A New Future for Communications (Dec. 2000)
- Doyle, G. and R. Paterson, 'Public Policy and Independent Television Production in the U.K.', *Journal of Media Business Studies*.
- Farber, A., 'Pact kicks off digital terms of trade fight', *Broadcast* (11 May 2017)
- House of Lords Communications Committee - Minutes of Evidence, The British Film and Television Industries (14 Jan. 2010), Memorandum by ITV
- Independent Television Commission, Programme Supply Report (Sep. 2002)
- IRIS Legal Observations of the European Audiovisual Observatory, (Oct. 1995), 14/25, 'ITC Awards Channel 5 Licence'
- Ofcom, 'Review of the Operation of the Television Production Sector: A Report for the Secretary of State for Culture, Media & Sport (Dec. 2015)
- Ofcom 'Review of the Television Production Sector: Statement' (Oct. 2006)
- Parliament written questions, 'Ofcom: Trade Competitiveness': Written question - 38331 (24 May 2016)
- Mediatique, From the Cottage to the City: the Evolution of the UK Independent Production Sector (Sep. 2005)
- Steemers, J. *Selling Television: British Television in the Global Marketplace* (2004), p.43
- Whittock, J., *C21Media*, 'Sky's the Limit' (6 Nov. 2012)

Oliver & Ohlbaum



www.oando.co.uk



@OliverOhlbaum



346 Kensington High Street, London, W14 8NS



+44 (0)20 7313 5900

