



20 September 2018

Bethan Sayed
Chair of the Culture, Welsh and Communications Committee

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Dear Bethan

S4C Commercial Details for the Committee

Thank you for the opportunity to give evidence to the committee on 18 July 2018 as part of your inquiry into the review of S4C. During the session, we offered to send additional details to the members about S4C's commercial work.

As has been reported in our annual reports, over recent years, S4C implemented a commercial strategy that emphasised taking advantage of opportunities to extend and promote the S4C brand and to create additional income or long-term capital value for S4C. As Owen told the committee, a new strategy is being developed following an assessment of the previous strategy, which also considers the recommendations of the independent review of S4C that was published in March 2018, namely that the UK Government should consider amending the current approval requirements in order to give S4C more freedom to invest and generate commercial revenue.

S4C Commercial (which is separate from S4C's public funding) is responsible for a variety of commercial activities and investments that aim to generate a sustainable income stream in addition to S4C's public service. Recently, these activities have included advertisements and sponsorship on the television service and on the Clic site (working with S4C's advertising agent, Sky Media), investing in the co-production of television programmes, producing materials that promote elements of the service, such as the Cyw brand, investing in investment funds, and making financial investments, usually in the form of equity, in companies and ventures in the field of content and digital. S4C Commercial is unable to receive any subsidy from S4C and there are arms-length arrangements in place to ensure this.

Any profit generated by our commercial activities is paid as a dividend to S4C, which contributes additional income to support S4C's public service. S4C's commercial activities contribute approximately £2m per annum on average to S4C's public service fund. Although this represents a small percentage of S4C's income, this is an important financial contribution, which enables S4C to invest in content and services that would otherwise not be possible. The money that is held in S4C's commercial fund has been generated by the channel's commercial activities in the past.

S4C Commercial consists of four S4C sub-groups:

- S4C Commercial Limited
- S4C Digital Media Limited
- S4C International Limited
- S4C2 Limited

Details of S4C Commercial can be found in [S4C's Annual Report](#) and also on the Companies House website.

The Westminster Government accepted the recommendation to amend S4C's remit, and the Authority Board has already started to discuss options with the government in order to agree on a suitable framework for commercial activities in the future. This work includes considering how to incorporate S4C's commercial activities directly under the supervision of the Authority Board (and the shadow Unitary Board) in order to ensure closer links between S4C's overall strategy and accountability for the performance of commercial activities.

To reiterate the earlier point, S4C's commercial strategy is being reviewed after a recent assessment under a new Chief Executive. This includes reconsidering the purpose of the commercial fund, its relationship with the public service's activities, the types of activities and investments that are appropriate, the risk profile of the ventures and structure, and accountability for the commercial activities. We would be happy to update the committee in the future.

In the meantime, we hope that this answers the questions that were raised during the session. Furthermore, please find attached the relevant clause of the Communications Act 2003 and a historic explanation of why the existing arrangements have meant that S4C has not been able to act as quickly as it could.

Yours sincerely,



Huw Jones
Chair



Owen Evans
Chief Executive

Deddf Cyfathrebiadau 2003

[206 Other activities of Welsh Authority](#)

(1) The activities that the Welsh Authority are able to carry on include activities which appear to them—

(a) to be activities that it is appropriate for them to carry on in association with the carrying out of their function of providing S4C, S4C Digital or a service the provision of which is approved under section 205; and

(b) to be connected, otherwise than merely in financial terms, with activities undertaken by them for the carrying out of that function.

(2) The approval of the Secretary of State is required for the carrying on by the Welsh Authority of activities authorised only by subsection (1).

(3) The approval of the Secretary of State—

(a) must be contained in an order made by him; and

(b) may be a general approval in relation to a description of activities or a specific approval in relation to particular activities.

(4) The activities capable of being authorised under subsection (1)—

(a) do not include the provision of a licensable service; but

(b) do include activities for securing the provision of such a service by an S4C company and other activities connected with the provision of such a service by such a company.

(5) The activities referred to in subsection (4)(b) include—

(a) the formation of a company to provide a programme service;

(b) the taking of steps by means of which a company that is providing such a service becomes an S4C company.

(6) For sub-paragraphs (2) and (3) of paragraph 1 of Schedule 6 to the 1990 Act (power of Welsh Authority to do things incidental or conducive to the carrying out of their functions) there shall be substituted—

“(2) The Authority may do anything which appears to them to be incidental or conducive to the carrying out of their functions.

(3) The powers of the Authority under sub-paragraph (2) include power, to the extent that it appears to them incidental or conducive to the carrying out of their functions to do so—

(a) to carry on activities (other than those comprised in their duty to carry out their functions under section 204 of the Communications Act 2003) through S4C companies; and

(b) to participate with others in the carrying on of any such activities.”

(7) In this section “licensable service” means a service that would fall to be regulated under section 211 or 245 if provided by an S4C company.

(8) Section 57(1A)(b) and (1B) of the 1990 Act (power of Welsh Authority to establish, acquire an interest in or assist a qualifying company) shall cease to have effect.

Background note on S4C's commercial remit and income generation powers

S4C is often asked why it does not do more to generate income from its content and archive. The answers to this and several other questions about S4C's commercial remit and income generation powers relate in part to the Communications Act 2003. These include the transfer of programme rights to the independent sector, a remit to create television programmes rather than relevant media content as well as restrictions on S4C's income generation powers.

This is why S4C called for the updating of the remit for its Welsh language public broadcasting services and its commercial remit to provide new digital services to cater for the audience's expectations across the UK and beyond, to further develop its own commercial income generation potential.

From 1996 to 2003 the statutory provisions governing S4C and Channel 4's commercial activities were broadly similar and enabled S4C to invest in a wide range of commercial activities in order to additional income and capital value for S4C – which in turn would be invested back in to S4C's public services.

Before Digital Switchover (DSO), S4C's analogue channel carried both S4C and Channel 4 content, generating advertising income of nearly £10m per annum for S4C at its peak. Following DSO, S4C no longer carried C4 output and its gross advertising income has fallen since then to approximately £1.5m per annum. To help counter this loss in income, S4C was given new commercial powers, originally in the Broadcasting Act 1996 and as subsequently amended in the Communications Act 2003 (the "2003 Act").

The amended power in s.206 of the 2003 Act enables S4C to undertake activities which are 'connected' (otherwise than merely in financial terms) to its public service activities and which are considered 'appropriate' for S4C to enter into. However, for S4C to exercise this power requires the approval of the Secretary of State in the form of an Order. This requires a statutory instrument to be passed by both Houses of Parliament. In practice, the timescale for seizing on commercial opportunities (especially those involving disruptive technologies or first-mover advantage), together with the confidential nature of discussions on commercial transactions, are normally incompatible with the process of obtaining an Order.

S4C has only sought an Order once under s.206, back in 2007/08, a process which took nearly five months to complete. Because of the timescale and processes involved with obtaining an Order, S4C has not exercised its wider commercial powers under s.206 since then and has had to rely on the narrower powers which S4C has as a public body. These powers are limited to providing S4C as a public service and carrying out anything which is 'incidental or conducive' to its public service activities. Neither Channel 4 nor BBC Worldwide are subject to a regime where the Secretary of State and Parliament are required to approve certain types of investment made with commercially generated funds.

S4C is discussing with the UK government how the independent review recommendation on its commercial powers can be implemented but we believe this can be achieved through a negative resolution order.

Rights

Before 2004, S4C owned the rights to programmes it commissioned from the independent sector and was able to exploit them after broadcast – through sales, videos etc. In 2004, in line with industry changes derived from the Communications Act 2003, rights transferred to the independent company making the programmes, with S4C securing a package of rights for each programme. Unless there is a specific investment from S4C as with Y Gwyll/Hinterland for example, any monetisation or sales beyond the basic rights package secured by S4C lies with the independent company, with S4C entitled to a 15% revenue share under its standard Terms of Trade. S4C's situation is different to that of the BBC where programmes made by BBC Studios can be exploited commercially by BBC Worldwide.

Whilst S4C would not seek to restore the transfer of programme ownership from the independent sector, S4C has encouraged companies to exploit their content and has worked to support the sector do this. S4C and the producers are also proactive in the work of gathering funds from joint productions to make programmes in the first place. Around £20 million of co-production funding has been secured to make programming that has appeared on S4C over the past five or six years, including distribution monies raised from distributors.