

**S4C Authority  
Fair Trading Policy**

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**Consultation Draft  
July 2008**

## **1. Introduction**

- 1.1** The S4C Authority (the “Authority”) has adopted this fair trading policy (the “Policy”) to ensure that S4C’s dealings with its suppliers and stakeholders are at all times conducted in accordance with relevant legislative and regulatory requirements and also the fair trading principles outlined in this Policy.
- 1.2** This Policy outlines the statutory requirements placed upon the S4C Authority and also sets out the Authority’s interpretation of its fair trading requirements, together with the procedures the Authority shall ensure are put in place to ensure that all relevant activities comply with this Policy. The Authority shall also ensure that a compliance and complaints procedure is put in place.
- 1.3** The Authority is responsible for S4C and the provision of its public television services. The Authority has delegated to the Executive Team the day to day management of S4C. The Authority does not participate in any day-to-day decisions, in particular relating to commissioning or editorial decisions. The Executive Team is accountable to the Authority for ensuring the compliance of all relevant activities with this Policy.
- 1.4** In addition to this Policy, S4C has previously published other relevant policies and codes that in certain areas may overlap with this Policy and may be relevant to this Policy. For the avoidance of doubt this Policy does not replace any of these documents. These include:
  - (i)** The S4C Procurement Policy Statement;
  - (ii)** S4C’s Code of Practice for Commissioning Programmes, (including S4C’s Commissioning Policy); and
  - (iii)** S4C’s Terms of Trade (second edition).

The Authority acknowledges that decisions relating to commissioning content for S4C’s public services is based on numerous factors including editorial judgement. The Executive Team shall ensure that its commissioning activities support the underlying principles of fair trading stated in clause 2 below.

- 1.5** S4C shall ensure that all relevant activities shall be conducted in accordance with this Policy, however circumstances may exist from time to time where S4C may suspend the application of certain policies and codes. In such circumstances S4C shall continue to support the underlying principles of fair trading stated in clause 2 below.

## **2. What is Fair Trading?**

- 2.1** The term “Fair Trading” can be interpreted in different ways depending upon the context in which it is being used. Fair Trading requirements can also stem from legislative and other sources. For the purposes of this Policy the Authority has defined Fair Trading as follows:

- 2.1.1 To conduct S4C's affairs in a manner that is fair and reasonable at all times;
- 2.1.2 To ensure fair competition in relation to S4C's procurement activities;
- 2.1.3 Not to act in ways that impede competition or create negative impact upon competition; and
- 2.1.4 To ensure that S4C's policies and processes operate in such a way that encourages fair competition, and to ensure that such policies and processes are also fair and transparent.

### **3. Scope of the Fair Trading Policy**

The Authority considers that the principles of fair trading should apply to all activities carried out by S4C relating to the provision of its public services and funded from the Public Service Fund (as defined in section 61A of the Broadcasting Act 1990 (the "1990 Act")).

### **4. Relevant Competition Authorities**

- 4.1 The S4C Authority does not intend for, or purport that, this Policy takes the place of other relevant statutory provisions, or (domestic or European) competition law, nor to limit the statutory methods of redress available to a complainant in relation to a fair trading dispute with S4C. It is important to note that the Authority has no statutory powers to enforce competition law provisions. In relation to the exercise of this Policy, the Authority shall seek to ensure that its activities shall not prejudice any potential investigation by a competent competition authority or any investigation under any other relevant regulatory regime.
- 4.2 Where relevant, complainants who wish to seek a formal decision in respect of competition law matters may refer their complaint directly to the relevant competition authorities. These authorities include:
  - i. The Office of Fair Trading, (OFT) (which exercises competition law powers under the Competition Act 1998 and the Enterprise Act 2002);
  - ii. The Office of Communications (Ofcom) which exercises powers under the Communications Act 2003 (the "2003 Act") and concurrent powers under the Competition Act 1998 relating to broadcasting, radio spectrum and telecommunications; and
  - iii. The European Commission which is responsible for cross-border competition law matters and also matters relating to state aid law.

## **5. Relevant Statutory and Regulatory Provisions**

**5.1** The following sources of legislative and other fair trading provisions are relevant to the Authority's activities:

### **5.2 Statutory Provisions**

**5.2.1** The S4C Authority is an authority created by statute to fulfil certain specific functions. These provisions are contained within the 1990 Act), the Broadcasting Act 1996 (the "1996 Act"), the 2003 Act and other related legislation. S4C's main function is the provision of high quality Welsh language television services on both analogue and digital television platforms. The services known as S4C (on the analogue television platform) and S4C Digidol (available on digital television platforms) are designated Public Services (as defined by section 207 of the 2003 Act).

**5.2.2** The Authority receives a statutory grant from the Department of Culture Media and Sport for the provision of the television services provided by the Authority. This grant, known as the Public Service Fund (as defined in section 61A of the 1990 Act) must be kept in a separate fund and used solely for the purpose of providing the Authority's Public Services (as defined in section 207 of the 2003 Act). No S4C Company (as defined in section 202(1) of the 1990 Act) may receive any direct or indirect subsidy from the Public Service Fund. The Authority considers these restrictions to be fair trading requirements.

**5.2.3** The Public Service Fund is used to commission programming for S4C's Public Services. Programmes commissioned for the Public Services are sourced by S4C from sources including the independent television production sector, ITV Cymru and other sources. The BBC also has a statutory obligation to provide at least ten hours of programming a week to S4C free of charge. The Authority has put in place procurement and commissioning policies to ensure that programmes commissioned specifically for S4C's Public Services are contracted or acquired in a fair and reasonable manner. The Authority believes that fair trading is of paramount importance in relation to these policies and activities.

**5.2.4** Paragraph 10, Schedule 12 of the 2003 Act places an obligation upon S4C to put in place a Code of Practice for commissioning programmes from independent producers. Ofcom is also required approve any code of practice prepared by S4C.

### **5.3 Programme Standards Compliance**

The 2003 Act places a statutory duty on the S4C Authority to ensure that its public television services conform to and comply with various provisions contained within the 2003 Act and also with other regulatory requirements. These include relevant provisions contained within the 1990 Act and also the Ofcom Broadcasting Code. In addition, the S4C Authority has adopted guidelines

in relation to the use of the Welsh language within programmes. Certain elements of S4C's public services are also regulated by Ofcom.

## **5.4 Domestic and European Competition law (including State Aid law)**

5.4.1 The S4C Authority is required to comply with relevant competition law provisions. Competition law includes domestic and European legislative provisions as detailed below.

5.4.2 The competition law framework is outlined below. This is not intended to be a statement of the law, and is included for explanatory purposes only.

5.4.3 European competition law is enshrined in Article 81 (which prohibits restrictive agreements affecting trade between EU countries) and Article 82 of the EC Treaty (which prohibits dominant companies abusing their dominant position where this has an effect on trade between EU countries).

5.4.4 UK competition law mirrors the Article 81 and Article 82 provisions save that the effects of any offending practices can be within the UK, as opposed to affecting trade between EU countries. The Competition Act 1998 contains a prohibition on restrictive agreements (known as the Chapter I Prohibition) and a prohibition on abuse of dominant position (known as the Chapter II Prohibition). The UK competition law regime also includes a criminal cartel offence, contained in the Enterprise Act 2002.

5.4.5 European state aid law is enshrined in Articles 87 - 89 of the EC Treaty. These provisions prohibit any aid granted through state resources (in any form whatsoever) which distorts competition by favouring certain firms or the production of certain goods.

## **5.5 Public Procurement Requirements**

5.5.1 The S4C Authority has published a Procurement Policy which can be found on S4C's website. As a public body the S4C Authority is subject to the provisions of the EU public procurement regime. The Public Contract Regulations 2006 require S4C to comply with regulations relating to the means by which various services are procured (depending upon factors including the financial value of the contract).

5.5.2 Certain activities relating to broadcasting, in particular the production of programme material and broadcasting time are excluded from the public procurement regime. Despite this exemption, the S4C Authority has agreed to ensure that its Commissioning Policy complies with the general principles of the regulations.

**5.6 New Public Services**

Where the Authority is minded to launch or participate in the provision of new public services in accordance with the provisions of section 205 of the 2003 Act, the Authority has adopted a policy to ensure, where relevant, that it consults prior to launching any new public services that could have a material impact upon a relevant market. The Authority believes that understanding the potential market or competitive impact its services could have is a fair trading principle.

**6. Conflicts between Fair Trading Provisions**

6.1 As noted above, the Authority recognises that in certain circumstances conflicts may arise between the provisions of different policies and codes relating to fair trading matters. Where the Authority deems an overlap between fair trading and other relevant considerations to exist, the Authority will consider the matter through the route or sub-committee it determines most appropriate and take a decision which resolves the conflict.

**7. Implementation**

7.1 The S4C Authority expects S4C's Executive Team to act in accordance with this Policy at all times in relation to those matters defined in clause 3.

7.2 The S4C Authority will require S4C's Executive Team to ensure that guidelines are in place within S4C to ensure compliance with this Policy and to ensure that all relevant members of staff are aware of the contents of this Policy. The S4C Authority shall be responsible for approving the fair trading guidelines.

**8. Review of the Policy**

The S4C Authority shall review this Policy on a regular basis, and shall formally review the Policy at least once every two years. Any such review shall include:

- (i) an assessment of the operation of the Policy and any relevant guidelines;
- (ii) a review of relevant legislative developments and developments by regulatory bodies;
- (iii) an assessment of current best practice in relation to fair trading; and
- (iv) any other matter the S4C Authority believes is relevant to such a review.

**9. Reporting**

9.1 The S4C Authority has final responsibility for ensuring compliance with all relevant statutory and regulatory requirements relating to S4C's activities,

including fair trading. In its Annual Report and Statement of Accounts, the Authority shall report to Parliament on the operation of this Policy. The Authority shall also ensure that relevant audit provisions exist in relation to the requirements of this Policy.

## **10. Complaints Handling Process**

**10.1** A complaint relating to Fair Trading matters is one that alleges that S4C, in dealings with suppliers or other stakeholders has breached the provisions of this Policy or relevant legislative provisions.

**10.2** The S4C Authority believes that compliance with this Policy is of the utmost importance. Those who wish to make a complaint under this Policy should refer the matter in the first instance to the S4C officials that they may have been dealing with in relation to the relevant matter to try to resolve any issue amicably. In circumstances where this is not appropriate, or where the matter is not resolved, complainants should refer to S4C's Complaints Procedure. The S4C Authority has adopted a complaints procedure (the "Complaints Procedure") which provides complainants with a structure through which the Authority aims to be accountable and transparent in all its dealings and to deal with complaints in a fair, reasonable and consistent manner. S4C's Complaints Procedure is included at Appendix 1 to this Policy.

## **11. Sanctions**

**11.1** Where the S4C Authority Complaints and Compliance Committee finds that the Executive Team have breached the provisions of this Policy, it will recommend to the Authority the sanctions to be imposed. Details of potential sanctions are contained in the Complaints Procedure.

**APPENDIX 1**

**S4C COMPLAINTS PROCEDURE**

Please see: [http://www.s4c.co.uk/e\\_complaint\\_procedure.shtml](http://www.s4c.co.uk/e_complaint_procedure.shtml)