



Channel 4 Schedule 9 Arrangements Consultation

Consultation

Publication date: 30 November 2011

Closing Date for Responses: 4 January 2012

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Section 1

Executive Summary

- 1.1 Under Schedule 9 of the Communications Act ("The Act") 2003 Channel 4 Corporation ("C4C") has an obligation to submit to Ofcom a set of Arrangements which propose to secure, as far as reasonably possible, that all significant risks from C4C's "other activities" to the carrying out of its "primary functions" are identified, evaluated and properly managed.
- 1.2 The existing arrangements were approved by Ofcom in 2006 (the "2006 Arrangements") and in each of its annual reviews of the 2006 Arrangements since 2006, Deloitte, the external auditor, has found C4C to have complied with them in all material respects.
- 1.3 The Digital Economy Act ("DEA") in 2010 amended C4C's "primary functions". As a result the 2006 Arrangements now need to be updated in order to remain fit for purpose.
- 1.4 In accordance with our obligations under the 2003 Act, therefore, we gave C4C a notification on 23 March 2011 requiring them to submit proposals for new arrangements to secure that C4C's amended functions are appropriately safeguarded. In addition we asked C4C to provide a statement to explain how its proposals will secure compliance with the statutory requirements.
- 1.5 The 2003 Act requires Ofcom to consider C4C's proposals for revising the arrangements and, if we are satisfied with the proposals, to approve them. Alternatively Ofcom may require the proposals to be modified for the purpose of approving them or it may require C4C to submit revised proposals.
- 1.6 Having considered C4C's proposals for new arrangements ("the Proposed Arrangements") we observe that they broadly retain the format of the 2006 Arrangements and adequately make provision for C4C's revised functions. On this basis, we consider that the Proposed Arrangements are likely to be fit for purpose and that they adequately meet the Schedule 9 requirements.
- 1.7 We do not propose, therefore, to require C4C to make any modifications to the Proposed Arrangements or to require C4C to submit revised proposals. However, before reaching a final decision, we are consulting on C4C's proposals. In particular, we are seeking stakeholders' views on whether the Proposed Arrangements:
 - secure, so far as reasonably practicable, that all significant risks that C4C's other activities will have an adverse effect on the carrying out of their primary functions are identified, evaluated, and properly managed;
 - provide an appropriate financial and organisational separation between the activities of C4C that relate to the carrying out of their primary functions and their other activities; and
 - provide an appropriate degree of transparency in financial and other reporting where resources are shared between separated activities or where there is some other financial or practical connection between otherwise separated activities.
- 1.8 In light of the consultation responses we receive, we will make a final decision as to whether to approve the Proposed Arrangements as drafted, or whether to consult C4C in relation to making any necessary modifications.

Section 2

Introduction

Background

- 2.1 Channel 4 is a publicly owned and commercially funded broadcaster.
- 2.2 The key pieces of regulation relating to C4C are set out in the Broadcasting Act 1990 and the 2003 Act, as amended by the DEA 2010.
- 2.3 This consultation relates to the requirement under Schedule 9 of the 2003 Act for C4C to have in place arrangements to ensure that any risks from C4C's commercial activities (those activities that do not comprise its primary functions which are defined in section 199(2) of the 2003 Act, as amended) are properly managed so that they do not have an adverse effect on C4C's primary functions.
- 2.4 In particular Schedule 9 states that C4C must submit proposals to Ofcom for the arrangements it is required to have in place and Ofcom must consider the proposals with a view to deciding whether or not to approve them. Ofcom may require the proposals to be modified for the purpose of approving them or it may require C4C to submit revised proposals.
- 2.5 The current arrangements have been in place since 2006. Following the DEA 2010, C4C's primary functions have been amended. As a result Ofcom is required to notify C4C to submit proposals for new arrangements to secure that C4C's amended functions are appropriately safeguarded and that C4C continues to meet the requirements in Schedule 9.
- 2.6 C4C has now provided its proposals for revised arrangements along with an explanatory statement. We have published these alongside this consultation¹. Before reaching a final decision on the Proposed Arrangements we are consulting on the proposals.
- 2.7 In this consultation we present these proposals, explain why we consider that the Proposed Arrangements are likely to be fit for purpose to meet the Schedule 9 requirements and invite stakeholders' to comment on our analysis.

Structure of Document

- 2.8 Section 3 provides the statutory context to Schedule 9 and explains the changes made by the DEA 2010 and how these impact on the 2006 Arrangements.
- 2.9 Section 4 provides an overview of C4C's Proposed Arrangements and a summary of the reasons C4C has provided for believing that they meet the requirements of Schedule 9. We then explain how we have reviewed the proposals to assess their adequacy for securing the Schedule 9 requirements.
- 2.10 In Annex 5 we provide further detail of the analysis we have carried out in reviewing the Proposed Arrangements.

¹ See link: <http://stakeholders.ofcom.org.uk/consultations/c4-arrangements>

Timetable

- 2.11 Responses to the consultation and questions raised in Section 3 are due by 5pm on Wednesday 4 January 2012.
- 2.12 We aim to publish a statement following consideration of stakeholders' responses by 31 January 2012.

Section 3

Channel 4's statutory requirements

Introduction

3.1 In this section we:

- outline the statutory context to Schedule 9 of the 2003 Act in relation to C4C's primary functions and the historical background to the 2006 Arrangements;
- explain the changes made by the DEA 2010 in relation to C4C's primary functions under the 2003 Act; and
- set out the requirements of Schedule 9 and explain how C4C has complied with these requirements since 2006 and the need for C4C to have new arrangements as a result of the DEA 2010.

C4C Activities

3.2 Section 199(1) of the 2003 Act states:

The activities that C4C are able to carry on include any 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 primary functions; and*
- (b) to be connected, otherwise than merely in financial terms, with activities undertaken by them for the carrying out of those functions.*

3.3 Prior to the changes brought about by the DEA 2010, C4C's primary functions under section 199(2) required it (a) to secure the continued provision of Channel 4; and (b) to fulfil the public service remit under section 265.

3.4 C4C's "primary functions" were defined, therefore, solely by reference to its provision of the Channel 4 service ("Channel 4"), but section 199(1) has enabled C4C to engage in other activities providing they do not have an adverse effect on the performance of its primary functions.

3.5 Until the DEA 2010 came into force, these "other activities" included, for example, the provision of C4C's digital channels as well as Box Television Ltd and Taste Festivals Ltd. Many of these other activities have been carried out by 4Ventures Limited, a wholly-owned subsidiary of C4C, or by one of 4Ventures' subsidiaries or associated companies.

2010 Digital Economy Act

3.6 The DEA 2010 amended the 2003 Act regarding C4C's primary functions. Accordingly, section 199(2) was amended to include C4C's media content functions which were introduced into a new section 198A of the 2003 Act. Section 199(2) of the 2003 Act now describes C4C's primary functions as:

(za) the performance of C4C's duties under section 198A;

(a) securing the continued provision of Channel 4; and

(b) the fulfilment of the public service remit for that Channel under section 265.

- 3.7 C4C's new duties under section 198A relate to the making, broadcasting and distribution of relevant media content and films. "Relevant media content" is defined in section 198A(6) of the 2003 Act and refers to material, other than advertisements, included in services on digital platforms, in on-demand programme services or in other services provided by means of the internet where there is a person who exercises editorial control over the material included in the service.
- 3.8 Under section 198A(1), C4C's media content duties require it to participate in:
- (a) the making of a broad range of relevant media content of high quality that, taken as a whole, appeals to the tastes and interests of a culturally diverse society,*
 - (b) the making of high quality films intended to be shown to the general public at the cinema in the United Kingdom, and*
 - (c) the broadcasting and distribution of such content and films.*
- 3.9 In particular, C4C is required under section 198A(2) to invest in or otherwise procure:
- (a) the making of relevant media content that consists of news and current affairs,*
 - (b) the making of relevant media content that appeals to the tastes and interests of older children and young adults,*
 - (c) the broadcasting or distribution by means of electronic communications networks of feature films that reflect cultural activity in the United Kingdom (including third party films), and*
 - (d) the broadcasting or distribution of relevant media content by means of a range of different types of electronic communications networks.*
- 3.10 Sections 198A(3) to (5) set out the requirements C4C must comply with in performing their new duties.

Schedule 9 of the 2003 Act

- 3.11 Schedule 9 of the 2003 Act requires C4C to submit proposals to Ofcom for the arrangements under which they are proposing to secure, so far as reasonably practicable, that all significant risks that their other activities will have an adverse effect on the carrying out of their primary functions are identified, evaluated, and properly managed.
- 3.12 Under Schedule 9 C4C's proposals must be considered and approved by Ofcom. Ofcom may decide to approve the proposals without modification or to approve them with such modifications as it may notify to C4C. Ofcom may also require C4C to submit revised proposals. If Ofcom decides that modifications are required for the purpose of approving the proposals or if it requires C4C to submit revised proposals, it must consult C4C before doing so.
- 3.13 In the table below we have set out the statutory wording in the 2003 Act of these key requirements and the corresponding paragraph numbers from Schedule 9.

Table 1: The key requirements of Schedule 9 in the 2003 Act

| Requirements | Relevant sections in the 2003 Act |
|--|---|
| 1) Securing Primary Functions – paragraph 2(2) | The arrangements must “ <i>secure, so far as reasonably practicable, that all significant risks that their other activities will have an adverse effect on the carrying out, during the relevant licence period, of their primary functions are:</i> <i>(a) identified;</i> <i>(b) evaluated; and</i> <i>(c) properly managed.”</i> |
| 2) Transparency Objectives – paragraph 2(4) | The arrangements should ensure: <i>a) “an appropriate financial and organisational separation between the activities of C4C that relate to the carrying out of their primary functions and their other activities; and</i> <i>b) an appropriate degree of transparency in financial and other reporting where resources are shared between separated activities or where there is some other financial or practical connection between otherwise separated activities.”</i> |
| 3) Specific Arrangements – paragraph 2(5) | The procedures and practices in the arrangements may include: <i>(a) the initiation and management of new ventures;</i> <i>(b) the exercise of particular powers;</i> <i>(c) the assessment of risks;</i> <i>(d) the imposition of charges; and</i> <i>(e) the keeping of records.”</i> |
| 4) Compliance – paragraph 2(7) | “ <i>The arrangements proposed by C4C must contain provision for compliance with the arrangements to be checked regularly by a person appointed [in accordance with the relevant provision]”</i> |

The 2006 Arrangements

- 3.17 The existing arrangements were approved by Ofcom in January 2006. The 2006 Arrangements are set out in full on C4C’s website.²
- 3.18 Since 2006 Deloitte has performed five annual audits to review C4C’s compliance with the 2006 Arrangements. In each report Deloitte has found that C4C has complied with the arrangements under Schedule 9 of the 2003 Act, in all material respects.

² See Channel 4 website:

http://www.channel4.com/media/documents/corporate/C4_arrangements.pdf

The Proposed Arrangements

- 3.19 In light of the revised definition of “primary functions” following the DEA 2010 we notified C4C to request them to review and, where necessary update the 2006 Arrangements with a view to submitting proposals for new arrangements to secure that C4C’s amended functions are appropriately safeguarded. In addition we asked C4C to provide a statement to explain how its proposals will secure compliance with the statutory requirements.
- 3.20 C4C has now submitted the Proposed Arrangements and their explanatory statement. These are published alongside this consultation on the Ofcom website. The following section of this consultation provides an overview of the proposals and C4C’s statement and explains how we have reviewed the proposals to assess their adequacy for securing compliance with the Schedule 9 requirements.

Section 4

Channel 4's Proposed Arrangements

Background

- 4.1 In light of the relevant changes to the DEA 2010 we now deal with the Proposed Arrangements to be approved by Ofcom.
- 4.2 In this Section we:
- provide a summary of the main changes incorporated into C4C's Proposed Arrangements;
 - give an overview of the reasons C4C has given for believing that the Proposed Arrangements will meet the Schedule 9 requirements; and
 - explain how we have reviewed the proposals.
- 4.3 We then invite stakeholders to comment on the Proposed Arrangements and our analysis of them.

The Proposed Arrangements

- 4.4 Having requested C4C to review and update the 2006 Arrangements we have met with C4C on several occasions. During this process, we have discussed the changes which C4C have put forward and have provided suggestions for improvements. For example we suggested that in order to assess whether other activities would have an adverse effect on the primary functions C4C should be able to categorise its activities as being part of its primary functions or being part of its other activities. C4C has subsequently stated in the proposed Arrangements that it "shall identify which activities form part of the primary functions"³.
- 4.5 We have now received C4C's final proposed Arrangements. These have been published alongside this consultation.
- 4.6 The Proposed Arrangements broadly retain the same format as the 2006 Arrangements. Part 1 of the Proposed Arrangements deal with the Statutory Framework and Part 2 deal with areas such Corporate Governance Systems and Investment Procedures.
- 4.7 The Proposed Arrangements incorporate changes which reflect the DEA 2010. C4C has also taken the opportunity to ensure that the arrangements reflect changes that have been made to the Corporation's Board Structure and its Investment Approval procedures. The main changes are as follows:
- a) Revised Primary Functions: The statutory definition of "primary functions" in Part 1 has been updated to reflect C4C's widened primary functions set out in the DEA 2010;

³ Paragraph 9 of the proposed Arrangements.

- b) Investment Decisions: Part 2 has been updated, to specify that all investments now follow the same investment approval process, which involves ranking investments by risk category (high, medium, and low); and
 - c) Board Structure: Part 2 has been updated to incorporate changes to the Board structure and reflect the discontinuation of the Budget Committee and New Business Board.
 - d) C4C will identify which of its activities form part of the primary functions.
- 4.8 In the commentary paper C4C explains how it believes that the Proposed Arrangements would continue to meet the Schedule 9 requirements.
- 4.9 C4C believes that the risks to the primary functions are now reduced. As the DEA 2010 amended significantly C4C's primary functions, many of the activities carried out by C4C which were formerly classified by Schedule 9 as "other activities" now fall within the "primary functions". As a result, C4C believes that there is a significant reduction in the scope of those other activities and consequently in the amount of risk they pose for the primary functions.
- 4.10 Following our review of the Proposed Arrangements it is not clear to us whether the risks to the primary functions are now reduced. We do not therefore use this point to support our view on the adequacy of the Proposed Arrangements.
- 4.11 C4C also points to the following measures in the Proposed Arrangements which C4C believes will continue to secure the Transparency Objectives:
- The annual financial results of 4Ventures Limited and its trading subsidiaries will be reported separately in their own statutory financial statement.
 - Segmental financial information in the C4C Annual Report and Accounts and financial statements will highlight the performance of the main business operations of 4Ventures Limited. Where 4Ventures Limited carries out a range of activities, some of which are "primary functions" and some of which are "other activities", the segmental reporting will assist identification of the relevant information.
 - Costs and revenues will be appropriately allocated across different business areas.
 - "Other activities" (i.e. activities not forming part of the primary functions) will be accounted for as part of 4Ventures Limited.
- 4.12 C4C has not proposed any significant changes to the measures to address the requirements relating to the Specific Arrangements and Compliance. C4C believes that these continue to satisfy the Schedule 9 requirements.

Ofcom Review of the Proposed Arrangements

- 4.13 Having now received C4C's final proposals Schedule 9 of the Act states that Ofcom has a duty to consider the proposals with a view to approving the arrangements.
- 4.14 Accordingly, we have reviewed the Proposed Arrangements to consider whether they are likely to be fit for purpose and that they adequately meet the Schedule 9 requirements. We set out below the methodology of Ofcom's review and our initial findings.

Methodology of review

4.15 In considering C4C's proposals, we have assessed the Proposed Arrangements against the requirements of Schedule 9. We have used the following methodology:

- First, we have looked at the current arrangements (the 2006 Arrangements) to identify which of the Schedule 9 requirements (set out in Table 1) are impacted by the relevant changes made by the DEA 2010. Having carried out this exercise, we have identified that the "securing primary functions" requirement is the sole requirement which is impacted by the changes in the DEA 2010.
- Secondly, we have looked at the changes C4C has made to reflect its amended primary functions. We have assessed whether these appropriately reflect the new requirements; and whether the measures set out in the Proposed Arrangements provide adequate safeguards to secure against any adverse effects on the carrying out of C4C's primary functions.
- We believe that the other three requirements (Transparency objectives, Specific Arrangements and Compliance) are not impacted by amendments made by the DEA 2010. For these we have considered whether any other changes have been made by C4C and C4C's compliance with these requirements.
- We have also discussed the Proposed Arrangements with Deloitte, the auditor of compliance since 2006. We asked Deloitte for their views on the Proposed Arrangements. More specifically, we asked them whether they consider that the Proposed Arrangements could be audited appropriately.

Initial Findings of our Review

4.16 Below, we set out the results from our initial review in relation to the specific requirements, which were set out in Table 1. Further detail of the analysis we have carried out in reviewing the Proposed Arrangements is contained in Annex 5.

Securing Primary Functions

4.17 In Part 1 C4C has updated the statutory definition of "primary functions" to include the revised definition from the DEA 2010. We believe this correctly reflects the amended wording in section 199(2) of the 2003 Act.

4.18 In Part 2 C4C has updated the details of the organisational separation between Channel 4 and 4Ventures Limited to recognise that the primary functions will to some extent be fulfilled by 4Ventures Limited, in addition to Channel 4 itself. C4C has also stated that it will identify which activities form part of the primary functions. We also observe that C4C's Proposed Arrangements reflect the change in structure of the Board, the discontinuation of the New Business Board and Budget Committee, and the updated Investment Approval procedures.

4.19 On this basis, we consider that the Proposed Arrangements, incorporating the changes set out above, do appear to meet the "Securing Primary Functions" requirement.

Transparency Objectives

4.20 Although we do not consider that the relevant changes in the DEA 2010 have any direct impact on the Transparency objectives, we note from an organisational

perspective that some activities which formerly have been classified as “other activities” now come within C4C’s amended “primary functions”.

- 4.21 We consider that the measures set out in relation to securing the Transparency obligations will continue to ensure it meets those obligations. For example, the separate reporting of Channel 4 and 4Ventures Ltd in the Statutory Accounts, the separate segmental reporting of Channel 4 and 4Ventures Ltd in the Annual Report, and the appropriate cost allocation between Channel 4 and 4Ventures Ltd.
- 4.22 We also note C4C’s new accountability and reporting framework, which C4C has also revised following the changes made by the DEA 2010. This aims to increase transparency about C4C’s activities across its portfolio of channels. This includes the new “Combined Statement of Programme and Media Content Policy” where C4C is required to report investment in content and services across its portfolio.

Specific Arrangements and Compliance

- 4.23 The relevant changes in the DEA 2010 do not appear to have any impact on these requirements. C4C has explained that no significant changes from the measures set out in the 2006 Arrangements have been made in the Proposed Arrangements in relation to these requirements. We agree with C4C that these existing measures continue to meet the requirements.

View of Deloitte

- 4.24 We have consulted with Deloitte, who has informed us that it would be possible to carry out a review of the Corporation’s compliance with the 2011 Arrangements in accordance with International Standard on Assurance Engagements 3000.

Initial Conclusion

- 4.25 Following our initial review we believe that the Proposed Arrangements will meet all the Schedule 9 requirements. We now seek stakeholders’ views prior to reaching a final decision on approving the proposals.

Consultation Questions

In light of the widening of C4C’s “primary functions”, as set out in the DEA 2010, do you consider that the Proposed Arrangements can provide reasonable assurance that C4C is able to:

- 1) secure, so far as reasonably practicable, that all significant risks that their other activities will have an adverse effect on the carrying out of their primary functions are identified, evaluated, and properly managed; and
- 2) meet the Transparency Objectives. In particular do you consider that they provide:
 - (a) an appropriate financial and organisational separation between the activities of C4C that relate to the carrying out of their primary functions and their other activities; and
 - (b) an appropriate degree of transparency in financial and other reporting where resources are shared between separated activities or where there is some other financial or practical connection between otherwise separated activities.

3) If you do not consider the Proposed Arrangements will meet the Schedule 9 requirements to any extent, please explain why and how you believe the Proposed Arrangements may be strengthened?

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 4 January 2012**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeholders.ofcom.org.uk/consultations/c4-arrangements/howtorespond/form>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email david.brown@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- David Brown
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 7783 4109
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact David Brown on 020 7981 3718

Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether

all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Next steps

- A1.11 Following the end of the consultation period, we aim to publish the statement by 31 December 2011 to enable C4 to implement the new Arrangements by the start of 2012.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601

Email Graham.Howell@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

| | | | |
|----------------------|--------------------------|---|--------------------------|
| Nothing | <input type="checkbox"/> | Name/contact details/job title | <input type="checkbox"/> |
| Whole response | <input type="checkbox"/> | Organisation | <input type="checkbox"/> |
| Part of the response | <input type="checkbox"/> | If there is no separate annex, which parts? | |

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 4

Consultation questions

A4.1 In light of the widening of C4C's "primary functions", as set out in the DEA 2010, do you consider that the proposed 2011 Arrangements can provide reasonable assurance that C4C is able to:

1) Secure, so far as reasonably practicable, that all significant risks that their other activities will have an adverse effect on the carrying out, during the relevant licence period, of their primary functions are identified, evaluated, and properly managed.

2) Meet the Transparency Objectives. In particular do you consider that they provide:

(a) an appropriate financial and organisational separation between the activities of C4C that relate to the carrying out of their "primary functions" and their "other activities"; and

(b) an appropriate degree of transparency in financial and other reporting where resources are shared between separated activities or where there is some other financial or practical connection between otherwise separated activities.

3) If you not consider the Proposed Arrangements will meet the Schedule 9 Requirements to any extent, please explain why and how you believe the Proposed Arrangements may be strengthened?

Annex 5

Ofcom review of C4C's Proposed Arrangements

Further information on work performed

- A5.1 In Section 4 we explained that we have reviewed the Proposed Arrangements to consider whether they are likely to be fit for purpose and that they adequately meet the Schedule 9 requirements. We then set out our methodology and initial findings.
- A5.2 The table below provides further detail on the work we have performed. The table is split into the 6 following columns, which broadly reflects the methodology we have used:
- Schedule 9 Objective: as set out in the Act
 - Schedule 9 Requirement: as set out in the Act
 - How 2006 Arrangements achieve Schedule 9 requirements
 - Relevant aspects of DEA 2010: which impact Schedule 9
 - How C4C addresses the DEA changes in its proposed Arrangements
 - Ofcom's initial findings: on whether C4C's proposed Arrangements continue to meet the Schedule 9 requirements.

| Schedule 9 Objective | Schedule 9 Requirement | How 2006 Arrangements achieve Schedule 9 requirements | Relevant aspects of DEA 2010 | How C4C address the DEA changes in proposed Arrangements | Ofcom's initial findings |
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| <p>1) Securing Primary Functions [Sch9 2 (2)]</p> | <p>The arrangements should “secure, so far as reasonably practicable, that all significant risks that their other activities will have an adverse effect on the carrying out, during the relevant licence period, of their primary functions are identified, evaluated and properly managed.”</p> | <p><u>p1-4</u>: Statutory definition of Schedule 9 obligations from CA 2003.</p> <p><u>p5-6</u>: Statutory definition of Primary Functions from the Act and BA 1990.</p> <p><u>p9</u>: Details of organisational separation between C4 and 4 Ventures (4V), with reference to primary functions and other activities.</p> <p><u>p12-15</u>: Role of the Board, including responsibility for internal control and risks, monitoring 4V, the role of the New Business Board, and compliance with the Corporate Governance Code.</p> <p><u>p16</u>: Corporate Governance Systems to identify, evaluate and manage risks:</p> <ul style="list-style-type: none"> • Budgeting process • Strategic planning process • Compliance process • Risk management • Investment appraisal • Financial management and reporting • External Audit • Financial Controls <p><u>p17</u>: Investment procedures, including:</p> <ul style="list-style-type: none"> • Strategy and budgeting • Role of Corporate development dept • Approval • Monitoring and reporting | <p>The DEA replaces 199 (2) in the Act with a broader definition of “primary functions.”</p> <p>This new definition now encompasses “relevant media content” which is defined in the DEA.</p> <p>This now includes:</p> <p>(a) television and digital programme services, (b) on-demand programme services, or (c) other services provided by means of the internet.</p> | <p><u>p1-4</u>: Statutory definition of Schedule 9 obligations remains unchanged.</p> <p><u>p5-6</u>: Statutory definition of Primary Functions updated to include revised definition from DEA 2010.</p> <p><u>p9</u>: Updated details of organisational separation between Channel 4 (C4) and 4Ventures Ltd (4V). C4C will identify which activities form part of the primary functions.</p> <p><u>p14-17</u>: Role of Board changed to incorporate the New Business Board and Budget Committee, which have been discontinued.</p> <p><u>p18</u>: Corporate Governance Systems to identify, evaluate and manage risks remain broadly unchanged.</p> <p><u>p19</u>: Updated Investment procedures reflecting that all investments (primary or other) follow the same procedure.</p> | <p>C4C has correctly updated the Statutory Definitions to reflect C4C’s widened ‘primary functions’ in the DEA 2010.</p> <p>The 2011 Arrangements, which incorporate changes to the Board Structure and Investment Approval, appear to continue to meet the Schedule 9 requirement of “securing the primary functions.”</p> |

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| <p>2) Transparency [Sch9 2 (4)(a & b)]</p> | <p>The arrangements should ensure:</p> <ul style="list-style-type: none"> • “an appropriate financial and organisational separation between the activities of C4C that relate to the carrying out of their primary functions and their other activities.” • “an appropriate degree of transparency in financial and other reporting where resources are shared between separated activities or where there is some other financial or practical connection between otherwise separated activities.” | <p><u>p9</u>: Details of organisational separation between C4 and 4V.</p> <p><u>p9-11</u>: Specific arrangements and procedures to meet the Transparency obligations, including:</p> <ul style="list-style-type: none"> • Separate reporting of C4 and 4V in Statutory Accounts • Separate segmental reporting of C4 and 4V in the Annual Report • Cost allocation between C4 and 4V <p><u>p18 (d)</u>: further information on cost allocation between ‘primary functions’ and ‘other activities.’</p> | <p>The DEA 2010 makes no changes to the Transparency Objectives in the Act.</p> <p>However, as a result of the DEA 2010, some operations will move from ‘other activities’ to ‘primary functions’.</p> | <p><u>p11-13</u>: The specific arrangements which aim to meet the Transparency objectives remain broadly unchanged.</p> | <p>We believe the 2011 Arrangements continue to meet the “Transparency objectives”.</p> |
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| <p>Specific Arrangements [Sch9 2(5)]</p> | <p>The procedures and practices in the Arrangements may include:</p> <ul style="list-style-type: none"> (a) the initiation and management of new ventures; (b) the exercise of particular powers; (c) the assessment of risks; (d) the imposition of charges; and (e) the keeping of records. | <p><u>p18</u>: Specific procedures and practises for (a) to (e)</p> | <p>The DEA 2010 makes no changes to the Specific Arrangements in the Act.</p> | <p><u>p20 (a) to (e)</u>: The specific procedures remain broadly unchanged.</p> | <p>We believe the 2011 Arrangements continue to meet the requirements in relation to the “Specific Arrangements.”</p> |
| <p>Compliance with Arrangements [Sch9 2(7)]</p> | <p>The Arrangements proposed by C4C must contain provision for compliance with the arrangements to be checked regularly by a person appointed in accordance with that provision.</p> | <p><u>P16 and 19</u>: Details regular checks by Deloitte, or another third party.</p> | <p>The DEA 2010 makes no changes to the arrangements in relation to regular checks in the Act.</p> | <p><u>p21</u>: specific details in relation to the regular checks by Deloitte remain unchanged.</p> | <p>We believe the 2011 Arrangements continue to meet the requirements in relation to “Compliance with Arrangements.”</p> |