



Banc Ceannais na hÉireann
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Information on the Charge Approval Process for Bureaux de Change and Others (Section 149A)



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Introduction

The purpose of this document is to assist regulated entities¹ when making a notification under section 149A of the Consumer Credit Act 1995 ("section 149A" of the "Act"), by providing information on the process employed by the Central Bank of Ireland ("Central Bank") when assessing these notifications. This document builds on best practice seen by the Central Bank in the notifications received from regulated entities to date. It also provides regulated entities with information on the scope of section 149A, together with the timelines and the process employed by the Central Bank when considering section 149A notifications. This document also seeks to inform regulated entities about the type of information the Central Bank requires from regulated entities in order to consider notifications made under section 149A.

This document does not constitute legal advice nor does it seek to interpret relevant legislation. It does not provide guidance on any codes of conduct or legislation that may be applicable to charges imposed by regulated entities. This document relates to the text of section 149A in place at the time of publication of this note. Section 149A may be changed over time, so affected regulated entities should have on-going regard to the legislation in force at the time in question and seek legal advice on its application to them, where appropriate.

For the purposes of this document, bureaux de change and money transmission businesses providing services to which section 149A applies¹ are referred to as '**regulated entities**'.

Regulated entities should feel free to contact the Central Bank at section149@centralbank.ie in respect of any intended notification or any notification which is currently under consideration by the Central Bank.

The Obligation to Notify the Central Bank of Charges

Regulated entities to whom section 149A applies must notify the Central Bank if they wish to introduce any new customer charges or increase any existing customer charges in respect of certain services. There is also a facility in section 149A for the Central Bank to grant an exemption from the obligation to make a notification under section 149A for individually negotiated charges. It is the responsibility of each regulated entity to determine whether a charge is to be notified to the Central Bank under section 149A. If, having sought the necessary legal advice a regulated entity determines notification is required, a notification (or in an appropriate case, an application for an exemption) must be submitted to the Central Bank.

¹ See pages 5 and 6 for a full definition.

It should be noted that section 149A applies to relevant charges to all customers, not just retail consumers. Therefore, as well as personal consumer charges it also applies to charges to business customers such as large corporate customers and SMEs.

Contravention of Section 149A

Under section 12 of the Act it is an offence for a person to impose a charge that has not been previously notified to the Central Bank, as required by section 149A (2).

The Central Bank has the power to administer sanctions in relation to prescribed contraventions, under Part IIIC of the Central Bank Act 1942. This can include fines and other penalties.

The Cost of Making a Section 149A Notification

The Central Bank may request that a notification made under section 149A be accompanied by a fee up to a maximum amount of €31,750. This fee is generally not imposed by the Central Bank except in circumstances where the notification contains a large number of charges or is very complex in nature. A fee may be imposed for Section 149A notifications and should a fee be imposed at any stage by the Central Bank, this will be communicated to the regulated entity at the earliest opportunity during the Consideration Phase. Further information on the Consideration Phase is contained below in The Notification Process.

What Firms Section 149A Applies to

- (a) Bureaux de Change firms granted an authorisation by the Central Bank under Part V of the Central Bank Act 1997; and
- (b) Money Transmission Businesses granted an authorisation by the Central Bank under Part V of the Central Bank Act 1997²

For the purposes of this document the term regulated entity refers to all regulated entities listed in (a) and (b) above.

² E.g. if they are providing money transmission services that do not fall within the European Communities (Payment Services) Regulations. For example, non-electronic payments such as cheques.

Examples of Services to which Section 149A Applies

Bureaux de Change	Money Transmission Businesses
Foreign currency	Money transmission services
Travellers cheques	

Definition of a Service

'Service' means any service provided by a regulated entity to a customer in relation to a bureau de change business or relevant money transmission business carried out by that regulated entity.

Examples of Charges to which Section 149A Applies

- Currency notes and cheques – spreads and margins; and
- Charges associated with using a card to purchase foreign currency.

Bureaux de Change	Money Transmission Businesses
Foreign Currency margins, spreads and commissions	Transaction fees
Charges charged for using a card to purchase foreign currency	

The Notification Process

Each notification received by the Central Bank is assessed according to the criteria set out in section 149A. The Central Bank may request additional information or clarification in respect of a notification.

A notification is not deemed to be a complete notification made to the Central Bank under section 149A until the Central Bank is satisfied that sufficient information has been received from the regulated entity in order for the Central Bank to commence considering that notification under the criteria set out in section 149A. Once a complete notification has been received, the Central Bank will notify the regulated entity to this effect.

This document provides general guidance on the information to be submitted, however, regulated entities may also contact the Central Bank if they have any queries in advance of submitting a notification.

The notification process itself can be broken down into three distinct phases:

- Pre-notification Phase;
- Consideration Phase; and
- Completion Phase.

Information on the regulatory timelines (referred to as “the clock” in this document) is contained below in the ‘Timelines’ section and in the ‘Section 149A Notification Process Flow Chart’.

1. Pre-notification Phase

During this phase a regulated entity prepares a notification to the Central Bank. At this stage the regulated entity should:

- a) seek legal advice on the application of section 149A to the proposed charge(s);
- b) refer to this process information document;
- c) gather the information relevant to its notification;
- d) contact the Section 149 Team in the Central Bank for further information on the process, if required;
- e) complete the checklist attached to this information note; and
- f) submit a notification to the Central Bank.

The Central Bank will conduct a preliminary assessment of the completeness of the notification as quickly as possible upon receipt. If it is not considered that a complete notification has been made, this will be communicated to the regulated entity in writing, stating the further information required by the Central Bank to be provided by the regulated entity for the performance of the Central Bank’s functions. No further consideration will be given to the notification until the regulated entity submits all of the further information sought, at which point the process will begin again.

2. Consideration Phase

This phase commences once the Central Bank has received sufficient information to commence its consideration of a notification. This means that the Central Bank is satisfied that it has received a complete notification and has sufficient information to commence its consideration of the substance of the notification by reference to the criteria in section 149A (see below). However, in the course of such consideration the Central Bank may identify that further information is required to be provided by the regulated entity for the performance of the Central Bank’s functions under section 149A, in which case such information will be sought in writing. During this phase the Central Bank may also challenge the

assumptions provided by the regulated entity as part of its notification and request that further clarifying or corroborative information be provided.

During this phase therefore the Central Bank will:

- a) communicate with the regulated entity that a full notification has now been received;
- b) carry out analysis of the notification under the criteria in section 149A; and
- c) revert to the regulated entity seeking further information or clarification of information received, if required.

During this phase the regulated entity should reply to any requests from the Central Bank in relation to the notification.

3. Completion Phase

Once the Central Bank has completed its assessment of the notification against the criteria in section 149A, the Central Bank will direct the regulated entity to refrain from imposing a new charge or changing an existing charge above a certain limit (which may be lower than that requested by the credit institution in its notification) in relation to the provision of a service to a customer or group of customers. This letter may also direct the regulated entity to publish, in such manner as may be specified by the Central Bank from time to time, information on any charge in relation to the provision of a service to a customer or group of customers.

A diagram of the process is available below under [Section 149A Process Flow Chart](#).

Queries may be sent to the Central Bank at section149@centralbank.ie.

Timelines

The timeline for the Central Bank to decide upon notifications differs according to whether the notification refers to charges for new services or charges for existing services and increases in existing charges. These timelines are:

- Proposal to impose a charge for a new service that was not previously offered to the regulated entity's customers or is being offered as a choice to and in a way materially different from existing services: 3 weeks
- Other proposal to impose a charge or increases to existing charges: 4 months.

This means that the Central Bank may, on receipt of a complete notification under section 149A, direct a regulated entity to refrain from imposing or changing a charge in relation to the provision of a service to a customer or to a

group of customers, within the timelines set out above. There is no statutory timeline set out for exemptions to be considered by the Central Bank, but the Central Bank will make every effort to consider exemptions within a reasonable timeframe.

The Four Assessment Criteria

Each notification received by the Central Bank is assessed according to the criteria set out in section 149A, and the contents of that particular notification. The criteria set out in section 149A are:

- (a) the promotion of fair competition between-
 - (i) regulated entities; and
 - (ii) credit institutions carrying on a particular type of regulated business;
- (b) the statement of commercial justification referred to in subsection (3)(b); and
- (c) a regulated entity passing any costs on to its customers, or a group of its customers, in proposing to impose or change any charge for providing a service to a customer or a group of its customers; and
- (d) the effect on customers or a group of customers of any proposal to impose or change any charge in relation to the provision of such service.

The Central Bank's Section 149A Process and Information Requirements

The Central Bank recognises that section 149A covers a number of different charges across a range of services, so no two notifications will contain the same research/analysis and information. This information note seeks to cover most types of notifications, however if the information is not appropriate to a particular notification or is not available, the regulated entity should state this in its notification, giving reasons where relevant. Similarly, if relevant information or analysis is available to a regulated entity and not referred to in this document, it should be submitted to the Central Bank as part of the notification.

Peer Research/Analysis

Where appropriate, the Central Bank conducts a peer analysis of similar charges in the Irish market. This is a review of the current charges imposed by regulated entities for similar services in the market. In addition to this peer analysis, the Central Bank also carries out a review of the effect on customers of the proposed charges for new services or charge increases, in order to assist in its

consideration of a notification. This is a review of the number and type of customers affected by the notification.

A regulated entity should provide the Central Bank with any research/analysis it has undertaken on the service provided by market competitors. This may take the form of research/analysis of charges imposed by other regulated entities for a similar service.

A customer's ability to choose an alternative regulated entity for the provision of a particular service will be taken into account by the Central Bank in its consideration of a notification under the criteria in section 149A. To this end, any analysis or information the regulated entity may have on the ability to choose an alternative regulated entity for a particular service should be included in a section 149A notification to the Central Bank.

Financial Information

In its assessment of proposed new charges and charge increases; the Central Bank considers the commercial justification of the new charges or charge increases submitted by the credit institution in its notification, which should include:

- historic and forecasted profit and loss data;
- projected changes in customer behaviour and how this may impact charges in the future; and
- the cost of providing a service as well as the income earned and any other impact the changes will have on overall profit, in order to understand the commercial justification. The Central Bank also looks at the impact the notification will have on overall profit in order to fully understand the commercial justification. Therefore, the commercial justification should include all income from the service;

The table below illustrates a sample commercial justification. This table is for illustration purposes only and does not provide a full list of income and costs. A regulated entity should provide all information deemed necessary for the consideration of a particular notification.

Sample Commercial Justification

Service Name	XXXXXX		
	<i>Launch of Service to end of first calendar year</i>	<i>Second calendar year</i>	<i>Third calendar year</i>
Expected no. of customers:	X	X	X
Expected no. of instances incurred by customer	X	X	X
Expected income from service (other than from charges): ¹ All other income streams (Please specify):	€X	€X	€X
Expected unit income from service (other than from charges)	€X	€X	€X
Expected income from service per charges: ¹ X Charge (value of proposed charge * no of instances incurred by customer) Y Charge (value of proposed charge * no of instances incurred by customer)	€X €X	€X €X	€X €X
Expected fixed costs (To provide service): Staff IT Etc.	€X €X €X	€X €X €X	€X €X €X
Expected variable costs (To provide service): Cash handling Fraud Etc.	€X €X €X	€X €X €X	€X €X €X
Expected Total Income from Service:	€X	€X	€X
Expected total Costs (To provide service): Staff IT Etc.	€X €X €X	€X €X €X	€X €X €X
Expected Total Cost from Service:	€X	€X	€X
Total expected Profit/Loss	€X	€X	€X

1. Alternatively, details of the forecasted **Average Margin Earned** for this service may be provided.

As part of any notification made under section 149A to the Central Bank, the regulated entity should address at least the following questions:

1	How many customers does this proposal effect? What percentage of the service's total number of customers does this number represent?
2	What type(s) of customers would this proposal affect? For example, large corporates, SMEs, personal customers etc.? Will the proposal affect some customer segments more than others? If so, what are these effects?
4	What is the ability of customers to choose an alternative service provider for this service?

Should a regulated entity wish to submit a notification proposing charges designed to incentivise particular customer behaviour, it should be clearly demonstrated that this is to be done fairly and that costs are being passed on to customers in an equitable manner. This will include the extent to which a customer can avoid or limit the charge by changing his/her own behaviour or usage of a service. It will also include consideration of the reasonableness of customers changing their behaviour or usage in this manner, including having regard to the service they have contracted to receive from their regulated entity and behavioural norms as to service usage and cost.

Pricing Strategy

It is the responsibility of each regulated entity to justify any new charges or charge increases under the criteria set out in section 149A and the Central Bank must assess the notification under those criteria. However, it is of assistance to the Central Bank in this regard to understand in as much detail as possible where the charge notification sits within the overall strategy of the regulated entity, including when and how the regulated entity proposes to impose charges under the approved limit. A regulated entity may therefore reference relevant initiatives, for example the National Payments Plan³, or any other strategy or plan as part of its notification of charges and we encourage regulated entities to do so where it would provide the Central Bank with a better understanding of the issues arising under the statutory criteria in section 149A.

It will be for each regulated entity to explain its strategy in its own words of course. However, the following information will be relevant to the Central Bank's considerations:

³ The National Payments Plan, which was launched in April 2013, aims to make savings of €1bn annually to the Irish economy by increasing the use of electronic forms of payment such as debit cards and electronic banking. Further information on the National Payments Plan is available [here](#).

- if a regulated entity proposes to use pricing affected by the notification to incentivise customers to favour automated transactions rather than paper-based transactions, the regulated entity should provide analysis or research of the effect of the proposed changes on customers and groups of customers, particularly customers at risk of being financially excluded;
- customer profiles showing the effect of any proposed charge changes on different groups of customers;
- the behavioural assumptions underlying the strategy and the justification for these assumptions; and
- any reduction in costs/savings to be made by the regulated entity over time, as a result of the notification.

Letter of Direction

On completing its consideration of a notification, the Central Bank will issue a 'Letter of Direction' to the regulated entity within the timeframe set down in section 149A. The letter will direct a regulated entity to:

- refrain from imposing or changing a charge in relation to the provision of a service to a customer or to a group of customers, without prior approval of the Central Bank; and/or
- publish, in such manner as may be specified by the Central Bank from time to time, information on any charge in relation to the provision of a service to a customer or to a group of customers.

The Letter of Direction sets out the maximum approved charges that may be imposed by a regulated entity. In this Letter of Direction therefore, the Central Bank approves maximum charges and regulated entities are free to impose a charge at any level up to this maximum. They are also free to waive charges at their discretion.

The Letter of Direction may also require the regulated entity to publish the charges at the level to be imposed (e.g. on notices, leaflets, promotional material and/or on the regulated entity's website).

A direction under section 149A pertains only to the subject of Central Bank approval under section 149A and should not be taken to constitute approval by the Central Bank of any matter or for any purpose outside of section 149A.

Other Disclosure Obligations

Each regulated entity is required to comply with the terms as set out in the Letter of Direction issued by the Central Bank as well as all other requirements of Irish financial services legislation and other applicable laws, including disclosure requirements.

The Exemption Process

A regulated entity can request an exemption if it wishes to be exempt from the requirement to notify specific charges that are individually negotiated bona fide with the regulated entity by a customer, or by or on behalf of a group of customers. An application for an exemption should include confirmation that:

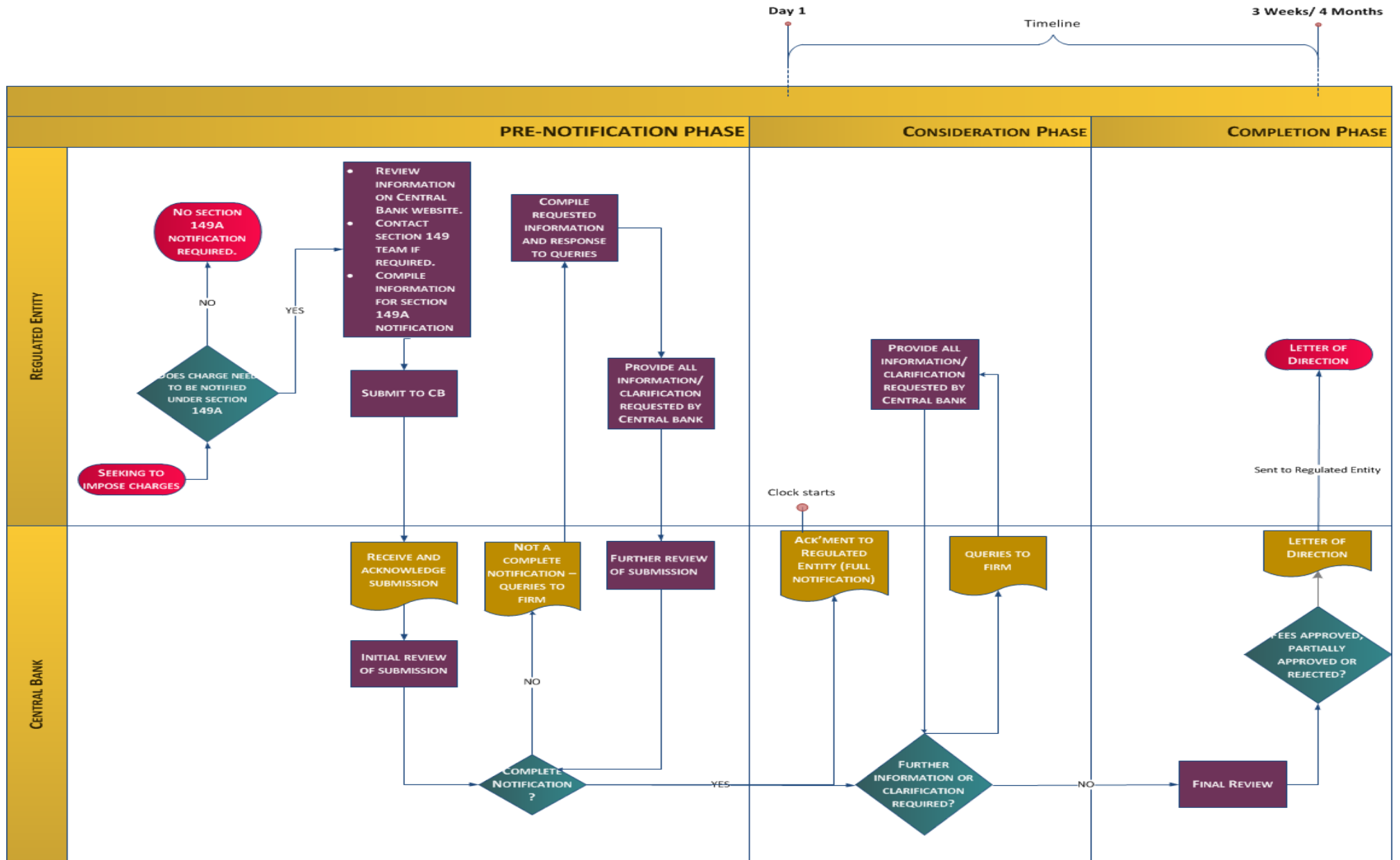
- (a) the charge has been individually negotiated in good faith;
- (b) the negotiations and outcome of the negotiations are documented by the regulated entity and a written record of these negotiations will be maintained for inspection, if required, by the Central Bank; and
- (c) the charge(s) do not appear on any of regulated entity's standard tariff documents.

Exemptions are approved or rejected by a Letter of Exemption issued by the Central Bank to the regulated entity under section 149A (12) of the Act.

Contact

This document provides general information on the process employed by the Central Bank when considering notifications made under section 149A. Should you have any questions or queries in relation to the content of this document or in relation to a particular section 149A notification, please feel free to contact the Central Bank at section149@centralbank.ie.

Section 149A Process Flow Chart



Section 149A Notification Checklist

If the answer to any of the questions contained in this checklist is 'No' or 'Not Required' the reason why certain information is not included in the notification made to the Central Bank should be included in the comments box.

Section 149A Notification Checklist				
Checklist Items	Yes	No	Not Required	Comments
Has the overall rationale behind the notification and how the proposed charge(s) fit with current strategy been included in the notification?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Has a full statement of commercial justification been provided?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Has all information relevant to the notification been included in the notification?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Does the notification include an overview of the service to be provided and the justification of the costs incurred by the regulated entity when providing a particular service or any other costs it may be seeking to pass on to customers?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Has fair competition research/analysis undertaken by the regulated entity been included in the notification? Note: This may take the form of an analysis of charges imposed by other regulated entities for a similar service.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Has this checklist been completed and included in the notification?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

End of Information Note.