

**EFFECTIVE REGULATION
CASE STUDY:**

**PERU
2001**



International Telecommunication Union

Effective Regulation

Case Study: Peru



International Telecommunication Union

This study was carried out by Jorge Crom, Director, Atlantic Consulting, and Ben A. Petrazzini, ITU/SPU Policy Adviser. The authors of the study wish to express their very sincere thanks to the staff and officials of the Organismo Supervisor de la Inversión Privada en Telecomunicaciones (OSIPTEL). Special thanks go to Jorge Kunigami, Engineer, President of OSIPTEL, and Mr. Flavio Ausejo, Coordinator for International Affairs, who devoted some of their valuable time to making this study possible. Our thanks go also to all the government officials and company managers, researchers, teachers and individuals (see Annex E) who, through personal interviews, contributed valuable comments, opinions, data and information to the work. The field work and interviews were carried out in Lima, Peru, during June 2001.

The purpose of this case study is to examine in detail aspects relating to the organization, structure, operations, financing, responsibilities and legitimacy of intervention in the market of the Organismo Supervisor de la Inversión Privada en Telecomunicaciones (OSIPTEL), the telecommunications regulatory body in Peru. The study will be useful not only for regulatory authorities and government bodies but also for all players in the telecommunication sector at the national and international levels.

The opinions expressed in this document are the author's and do not necessarily reflect those of ITU, its membership or the Government of Peru.

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OSIPTEL

CASE STUDY

“We have not just been given independence; we have won it.”
Jorge Kunigami, President of OSIPTEL¹



1 Peru – Socio-economic and political aspects

Peru is situated on the western side of Latin America. It covers an area of 1.28 million square kilometres and has 2 414 kilometres of coastline on the Pacific Ocean. It borders on five countries, Bolivia, Brazil, Chile, Colombia and Ecuador, and shares with one of these (Bolivia) the highest navigable lake in the world (Lake Titicaca). The country's geography ranges from coastal plains to the west, to the snow-capped peaks of the Andes in the centre and the tropical lowlands of the Amazonian forest in the east. Three per cent of the territory is arable land, 21 per cent established pasture land, 66 per cent forests and the remaining 10 per cent a variety of different types of soil. The climate therefore varies according to the local topographical profile, ranging from drylands typical of the western deserts, to the cool, temperate climate of

the Andes, and then on down to the rainy forest wetlands in the east. This geographical and climatic variety has given Peru a large amount of natural resources, the most noteworthy of which are related to mining (the country has large reserves of copper, iron, silver, gold, coal, phosphates and others), fishing and logging.

1.1 Population and social development

Peru's population halfway through the year 2000 is estimated at over 27 million inhabitants. Of that total, some 45 per cent are estimated to be of native or mixed origin, roughly 37 per cent white, and the remaining 15 per cent made up mostly of people of African, Japanese or Chinese origin. Despite this racial diversity, however, more than 90 per cent of the population are Catholic.

Thanks to population growth of 1.75 per cent, the country has a predominantly youthful population, with 35 per cent below the age of 14 and only 4 per cent aged over 65. Life expectancy is relatively high (70 years). Infant mortality, however, is as much as 40.6 deaths for every 1 000 births.

The official languages are Spanish and Quechua, while Aymará, though not an official language, is the main one spoken by a considerable proportion of the local population. Only 11 per cent of the population are considered illiterate (i.e. persons over the age of 15 who are unable to read or write). There are considerable differences, however, between men and women in this respect, with an illiteracy rate among men over the age of 15 of only 5.5 per cent, while no less than 17 per cent of women are unable to read or write.

1.2 Economy

The Peruvian economy is dominated by the services and industrial sectors, with only a small part accounted for by agriculture. At the end of the 1990s, it was estimated that the services

sector made up 45 per cent of the country's economic activity, the industrial sector 42 per cent, and the agricultural sector 13 per cent.²

With a per capita gross domestic product of USD 2 500 a year, Peru is classified as a low-income country. Owing to a highly imbalanced income distribution – with 10 per cent of higher income households consuming almost 35 per cent of total income and the lowest 10 per cent sharing less than 2 per cent of income – more than half the population of the country lives below the poverty threshold. Although official figures indicate unemployment of less than 8 per cent at the end of the 1990s, a considerable proportion of the population is underemployed, working in very unstable and poorly paid jobs in what is known as the “informal economy”. Foreign trade in 1999 showed a deficit of USD 2 500 million, while the country's external debt came to more than USD 30 000 million.³

In the last decade, the Peruvian economy – like many others in the region – has been restructured in response to market principles. This upheaval has led to a series of large-scale privatizations in key industries of the country, such as mining, electricity and telecommunications. This process attracted a considerable amount of private capital (local and foreign) which gave a fresh impetus to the national economy. During the period 1994 to 1997, the structural reform of the State and the economy, inflation control and political stability began to bear fruit.

In 1998 and 1999, a series of external factors – including the Asian and Brazilian financial crises and the devastating effects of El Niño – combined with a high fiscal deficit and an inadequate reconversion of the production system, led to slower growth and precipitated an economic crisis in the country. This in turn had a strong impact on the political system that had prevailed until then in the country.

1.3 Politics and government

The Peruvian Government is unitary, representative and decentralized. There are three independent powers, executive, legislative and judicial. The executive power is headed by the President, assisted by two Vice-Presidents. The legislative power consists of a single-chamber 120-member parliament.

After a prolonged institutional crisis, Dr Alejandro Toledo took over the presidency of Peru on 28 July 2001. In its electoral campaign programme, the new government proposed to launch a process whose main objectives are to combat poverty and unemployment on the basis of medium and long-term, sustained high economic growth. The new government is aiming at low rates of inflation and a level of international reserves that guarantees support for the external accounts, encouraging investment and generating productive employment. President Toledo's government is planning for annual growth of the order of 5 per cent for the next three years. Some of the measures it is introducing include action against contraband, a policy of austerity in expenditure and ongoing privatization. In order to broaden his political support base, President Toledo has been trying to agree a market economy policy with the other political parties in Peru, accompanied by appropriate assistance to the neediest sectors in society.

2 The telecommunications sector

Telecommunication services in Peru are playing an increasingly important role in the local economy. Their share of gross domestic product (GDP) rose from 1.3 per cent in 1994 to 3.1 per cent in 1999. With the liberalization of the sector, its contribution to the national economy has taken the form of strong growth in private investment, which in 1999 reached USD 3 100 million, or 26.45 per cent of all foreign investment in the country.⁴

As in many countries of Latin America, the telecommunication services in Peru were run by the State until the beginning of the 1990s. In the early 1990s, the government launched a programme to reform the sector which has lasted for the whole decade. As part of this reform and as one of its first major measures, the government decided to transfer the State-run telecommunication enterprises to the private sector.⁵ Before the transfer took place, the government set up a regulatory body for the sector in the form of OSIPTEL (Supervisory Authority for Private Investment in Telecommunications). At the end of the decade, it took another major step in the process of reforming

the sector by opening up the telecommunications market fully and unrestrictedly to competition (see Table 1).

The privatization of telecommunications included the transfer of the Compañía Peruana de Teléfonos (CPT) and the Empresa Nacional de Telecomunicaciones (ENTEL Peru) to the private sector. As in the case of other privatizations in Peru, the sale of the State telecommunications enterprises was planned, managed and executed by the Commission for the Promotion of Private Investment (COPRI), a government commission set up in 1991 for the purpose of planning and implementing a large-scale privatization programme (see Box 1). In February 1994, a package was auctioned made up of 35 per cent of ENTEL Peru's shares, about 20 per cent of the State's shareholding in CPT, plus a subscription in CPT's capital to make up 35 per cent of the company's stock. The new firm was acquired by a consortium led by Telefónica Internacional de España (a subsidiary of Telefónica de España which later changed its name to Telefónica del Perú), after it offered USD 2 002 million for the two State companies, a considerably higher figure than the USD 546 million which had been established as a base price.⁶

Privatization was linked to a series of rights and obligations for the acquiring operator. In the first place, a period of five years' exclusive rights was granted to supply national and international local and long-distance services. A 20-year licence was also granted, renewable for consecutive

5-year periods, and a gradual rebalancing of tariffs was allowed. As a counterpart, the company was required to comply with a series of targets, implying a minimum investment of approximately USD 1 000 million.

At the time telecommunications were privatized in Peru, they were in a difficult situation. Teledensity was a bare 2.9 per cent of the population and short-term prospects for any increase were fairly discouraging, since a connection could cost up to USD 1 500 and the installation of a line could take up to nine years.

The entry of the private sector into telecommunications brought with it a considerable quantity of new funds, which were reflected in a strong increase in investment between 1994 and 1996 (see Graph 1). This investment in infrastructure, combined with innovative business management, generated a rapid development of new services and a marked improvement in existing services. The number of lines, for instance, grew from 670 000 in 1993 to 2 009 549 by June 2001, while the time required for the installation of a new line fell from an average of 118 months in 1993 to 15 days by June 1998. The number of faults per 100 lines also fell considerably, as the percentage of network digitization rose to 96 per cent by June 2001 (see Table 2). But despite all these improvements, Peru still has a relatively low teledensity compared with some of its neighbours in the region (see Graph 1, right-hand chart).

Box 1: On sale

Structure and functions of the Commission for the Promotion of Private Investment (COPRI).

The Commission for the Promotion of Private Investment was set up in 1991 and its first members were appointed at the end of November of that year. The first privatization moves were initiated in mid-February 1992, while licensing began at the end of 1997. COPRI is a ministerial level, multi-sectoral Commission, which supervises the privatization process and is vested with full legal powers with respect to the transfer of State holdings in all the companies and assets concerned. Until the change of government on 28 June 2001, COPRI's Governing Board was in fact made up of four Ministers: the Minister for the Economy and Finance (who presides); the President of the Council of Ministers; the Minister for Transport, Communications, Housing and Construction; and the Minister for Energy and Mines. It has an Executive Board which is responsible for managing and coordinating the whole programme. Special committees deal with individual privatizations and the related licensing requirements. Their members are executives selected for their professional skills and business experience. They organize and develop specific plans for the privatization and licensing of selected enterprises and draft licences. In addition, they contract auditors and technical, financial and legal consultants, as well as investment banks as necessary.

Table 1 – The metamorphosis of communications

Historical outline of the main events occurring in Peru's telecommunications sector in the last decade

	Summary of main events
1991	Promulgation of the Telecommunications Act allowing private investment in telecommunications and free competition. Legislative Decree No. 702 of 7 November 1991. Creation of OSIPTEL.
1992	Creation of the Ministry of Transport, Communications, Housing and Construction (MTC), Decree Law No. 25862 of 6 November 1992 according to OSIPTEL the status of a decentralized public institution of the communications subsector.
1993	Ordered Single Text of the Telecommunications Act. Supreme Decree No. 013-93-TCC of 6 May 1993, laying the basic principles of the modernization and development of the sector. Startup and operation of the Supervisory Authority for Private Investment in Telecommunications, OSIPTEL (July 1993).
1994	Act on Constitutional Development and gradual demonopolization of public telecommunication services. Act No. 26285, of 12 January 1994. General Regulation of the Telecommunications Act. Supreme Decree No. 06-94-TCC, of 18 February 1994 and amendments. Privatization of telecommunications enterprises, CPT S.A. and ENTEL PERU S.A. Issue of licences currently held by Telefónica de Perú. Approved by Supreme Decree No. 11-94-TC of 13 May 1994.
1995	Merger of CPT-ENTEL with Telefónica del Perú (January 1995).
1996	Sale of the State's remaining shareholding in Telefónica del Perú through the public participation programme (260 000 shareholders) and on the New York Stock Exchange.
1997	Entry of strategic operator: BellSouth acquires 58 per cent of Tele 2000 shares. Creation of the Specialized Telecommunications Licensing Unit. Supreme Decree No. 007-97-MTC of 7 March 1997.
1998	End of the period of limited competition for Telefónica del Perú (full opening of the market, 1 August 1998). Policy guidelines for the opening of the telecommunications market. Supreme Decree No. 020-98-MTC, (4 August 1998).
1999	Amendment of the General Regulation of the Telecommunications Act, approved by Supreme Decree No. 002-99-MTC, of 21 January 1999, adjusting existing legislation to liberalization guidelines. Within the framework of the liberalization policy, award of the first national and international long-distance carrier licences and the first local fixed telephony licence.
2000	On 31 December 2000, issue of 48 new licences for long-distance carriers and five new licences for local fixed telephony. The Technical Telecommunications Commission is set up under Supreme Resolution 121-2000-MTC for the purpose of evaluating the implementation of the principles and policies contained in the Liberalization Guidelines for the Telecommunications Market in Peru, approved by Supreme Decree 020-98-MTC.
	This Commission is to evaluate the impact of measures adopted, and propose whatever legislative amendments may be necessary, or appropriate recommendations for consolidating the national and international long-distance carrier and fixed telephony service.
2001	Supreme Decree No. 018-2001-MTC approving the regulations governing the organization and functions of the Ministry of Transport, Communications, Housing and Construction, published on 20 May 2001.

Source: MTC, OSIPTEL

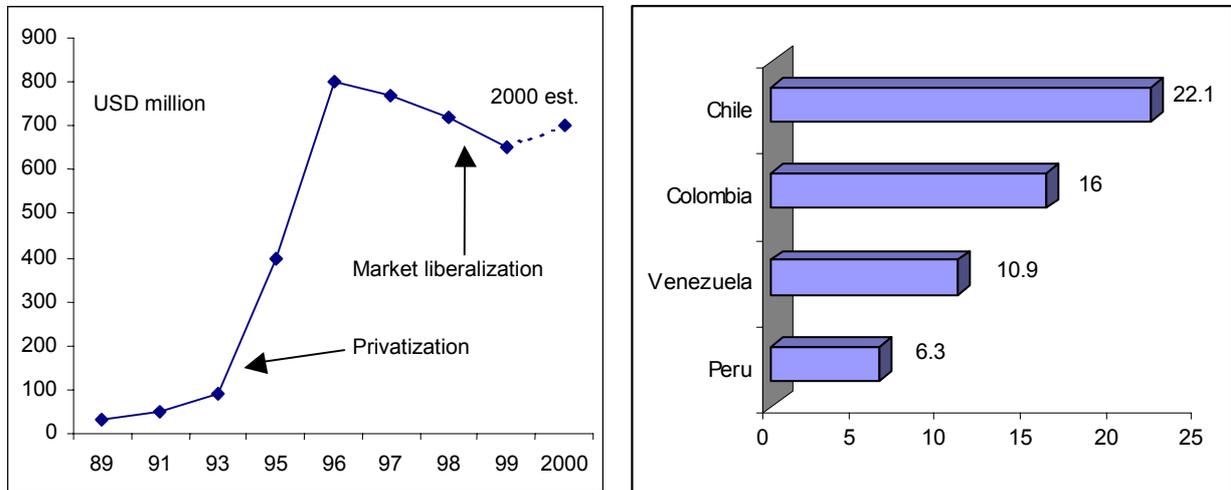
Table 2 – Performance of the telecommunications sector

	1993	08-1998	06-2001
Installed fixed lines	670 400	1 959 000	2 009 549
Fixed line installation time	118 months	45 days	15 days
Connection charges	USD 1 500	USD 170	USD 160
Fixed lines per 100 inhabitants	2.7	6.2	6.6
Localities with telephones	1 450	3 000	3 260
Public telephones	8 000	47.040	82.619*
Network digitization	33%	89%	96%
Optical fibre	200 km	3 000	414.050**
Direct and indirect employment in the sector (number of persons)	13 000	n.a.	34 000
* This is the number of public telephones installed by Telefónica del Perú and BellSouth Peru.			
** This figure refers to the optical fibre of Telefónica del Perú, BellSouth Peru and AT&T Peru.			

Source: OSIPTEL

Graph 1 – Much investment, few lines

Trend of investment in the telecommunications sector in Peru, 1989-2000; and number of fixed lines per 100 inhabitants in a selection of Latin American countries, 2000



Source: OSIPTEL and ITU

One of the most important indicators of the sector’s reform is the growth in the size of the workforce. Contrary to what was argued by those opposed to the changes, privatization and the subsequent market liberalization have increased the volume of transactions and hence the number of jobs in the industry, which rose from 13 000 direct and indirect jobs in 1994 to over 34 000 by June 2000.

With privatization, the new operator was offered exclusive rights until the middle of 1999. However, under the terms of an agreement between the government and Telefónica del Perú, the deadline was brought forward by 11 months, so that market liberalization became effective in August 1998.⁷ Since then there has been no limitation on the issue of licences, except for services subject to natural limitations on grounds of scarce resources, as in the case of the radio spectrum. When the market was liberalized, the government approved the Policy Guidelines for the Liberalization of the Telecommunications Market, setting out general future policy under a system of free competition (see Box 2).⁸

Market liberalization was undertaken subject to clear rules and strict implementation, in accordance with the commitments undertaken by Peru within the framework of multilateral

agreements in the World Trade Organization for the full opening up of telecommunication markets.

When the market was liberalized, a number of operators applied for licences to provide services and several of them have already started operations. By the end of the year 2000, 240 licences had been issued to 209 licensees. For national and international long-distance telephony, 49 licences were issued, among which more than a dozen companies were already operating by mid-2001. Owing to the presence of a considerable number of service providers in this segment of the market, long-distance and international tariffs have been steadily dropping, already by more than 40 per cent compared with the tariffs in force at the time of liberalization. In local fixed telephony, five new operators (AT&T Latin America, BellSouth, Boga Comunicaciones, Telecable Siglo 21 and Compañía Telefónica Andina) received licences to provide services in Lima and Callao, while another three (Consultora y Gestión de Telecomunicaciones, Millicom and Orbitel) received licences to provide services inland in addition to Lima and Callao.

Privatization and competition have generally been associated with a tendency among new private operators to aim their business only at

Box 2: Parameters for a competitive market

Main policy guidelines for the liberalization of the telecommunications market in Peru, 1998.

Tariffs. The tendency is to deregulate tariffs for all services subject to conditions of effective competition.⁹

Licensing. Based on the principles of simplicity, transparency, objectivity, non-discrimination, speed and reserve, leaving the market to decide the viable number of operators, except in cases of limited spectrum availability, when competitive mechanisms (auctions) are applied for purposes of assignment.

Interconnection. Seeks a balance between the need to guarantee operators' access to networks and the need to allow network maintenance and modernization, generating incentives for its expansion.

End user access to long-distance carrier. The "pre-dialling" system will be introduced for the first two years. After that period, the "pre-dialling" and "call-by-call" modes will coexist.¹⁰

Billing, collection, fraud and access to user information. Billing and collection terms for services to third parties must not be based on the amount invoiced, but on the underlying costs of the service, respecting the principles of neutrality and non-discrimination. Discount policies must be made public.

Accounting rates. So long as the International Accounting Rates System continues, operators are free to negotiate the accounting rate in conformity with the established guidelines. Accounting rates must be transparent, non-discriminatory and must tend gradually towards costs, with floor accounting rates set for each of the first three years of liberalization.

Universal access. For the period 1999-2003, the level of universal access shall include installing public telephones in 5 000 rural settlements that have no service at present, capable of transmitting voice, faxes and low-speed data. Internet access shall be provided in localities where appropriate from a cost-benefit point of view. The provision of universal access is to be promoted and financed through the Telecommunications Investment Fund (FITEL), administered by the regulatory authority, OSIPTEL.

Assignment of scarce resources: Numbering and spectrum. Spectrum assignment will not be included in the licensing title, with the supply of several services being permitted in a single band. The determination of the cost of the right to use the radio spectrum and the form of payment thereof shall be set out in a specific regulation.

Operator regulation. Operators offering more than one service which have revenues of at least USD 15 million shall be obliged to keep separate accounts for each service according to the type of operation and the relevant guidelines.

the most profitable sectors of society, disregarding the communication needs of lower-income strata. In Peru's case, however, this is not necessarily the case. At the time of privatization, only 1 per cent of households in socio-economic category D and 10 per cent in category C had a telephone. Six years later, 27 per cent of D households and 65 per cent of C households report having a telephone at home.

Mobile telephony has also undergone considerable changes and reforms in recent times. In March 2000, a third licence was issued for PCS services – on the basis of public tender – to Telecom Italia Mobile (TIM), which has started to offer services using GSM technology. Until the new licence was issued, the market was dominated by two operators: BellSouth Peru and Telefónica del Perú, through its subsidiary Telefónica Moviles. The competition pattern in mobile telephony must also take account of the challenge indirectly introduced by Nextel, which through its trunking services is invading

segments of the market traditionally reserved for mobiles.

As in other countries in the region, the introduction of the "caller pays" tariff system and the offer of the "prepaid" plan by companies, combined with the growing competition in this segment of the market, led to a marked increase in the number of subscribers to cellular telephony, from 36 000 in 1993 to 1 400 000 by the beginning of 2001 (see Table 3).

The growth of the Internet in Peru has been considerable. The 208 000 users in 1998 had swelled to over 800 000 by May 2000, which represents a penetration rate of 80.05 for every 10 000 inhabitants with online connections of almost ten hours a month. There are 13 companies offering an Internet access service in a freely competitive environment. In May 2001, INICTEL was awarded the installation and operation of the first NAP (network access point) in Peru.

Table 3 – Growing in mobility and bandwidth

	1993	08-1998	03-2001
Cellular telephone subscribers	36 000	750 000	1 400 000
Towns equipped with cellular telephony	7	117	120
Cable TV subscribers	725	350 000	430 000
Cable broadcasting companies	6	52	109
Internet users	n.a.	+ 100 000	+ 800 000

Source: OSIPTEL

Cable television has grown steadily, from 19 060 subscribers in 1995 to 430 000 subscribers by June 2000. By the latter date, cable TV penetration had reached 79.4 per cent among the higher-income sectors of society.¹¹ In the city of Lima, five companies compete in the market, offering services that include between 40 and 80 TV channels. Inland, the markets of Arequipa, Chiclayo, Cuzco and Trujillo are the most noteworthy.

On the basis of full market liberalization and the rapid growth occurring recently in the sector, the Peruvian government intends to encourage the development of telecommunications - through a policy and regulations to stimulate private investment – in order to achieve new targets set for end 2003. Starting from the liberalization of the sector, the government is aiming to achieve the following targets by end 2003 in terms of sector development:

- Teledensity of 20 lines per 100 inhabitants.
- Bringing services to 5 000 new localities or settlements.
- Substantially increasing user access to Internet.
- Modernizing telecommunication services even further.
- Implementing the introduction of ISDN (Integrated Services Digital Network).
- Ensuring that 98 per cent of requests for new connections are satisfied within not later than five days (in urban areas).

3 Regulatory function of the State

The new role played by the State in the economy as regulator and promoter of private investment, which is useful for the development of the different sectors, requires regulatory frameworks in each sphere of economic activity – such as telecommunications or electricity – aimed at encouraging free and fair competition in the market, promoting its normal development and defending user rights.

The main regulatory bodies which have been either set up or restructured in recent years in Peru include: OSIPTEL (telecommunications), SUNASS (sanitation), INDECOPI (intellectual property and protection of competition), CONAM (environment), CTE (electric power), OSINERG (energy), OSITRAN (transport) and CONASEV (capital market).

4 OSIPTEL

OSIPTEL was established by Legislative Decree No. 702 of 1991 and began its activities in 1993. It is a decentralized public body attached to the Office of the President of the Council of Ministers, enjoying internal public law status and administrative, functional, technical, economical and financial independence.

OSIPTEL began operations in August 1993, thus becoming the first regulatory body to be set up by the Peruvian State. Unlike what happened

in other Latin American countries, in Peru the regulatory body was created before the telecommunication companies Empresa Nacional de Telecomunicaciones, ENTEL Peru y Compañía Peruana de Teléfonos (CPT) were privatized. As an institution, OSIPTEL was designed by the same team of consultants who planned the privatization of Empresa Nacional de Telecomunicaciones and CPT.

The reason why the regulatory body was set up prior to privatization was – according to the views of the consultants – that most of the potential investors were more interested in getting to know the regulator than the company they were going to buy. As a result of this pressure by private investors, in subsequent years the regulatory bodies in Peru received strong political backing at the highest government level.

4.1 Mandate and functions

One of OSIPTEL's main mandates when it was established was to guarantee the quality and efficiency of the service offered to users and to regulate the tariffs of public telecommunication services. With the passage of time, and as the market further evolved, these objectives began to change and by the beginning of 2001 it was established that "OSIPTEL's general objective is to regulate, set standards for, supervise and monitor, within its sphere of jurisdiction, the development of the public telecommunication services market and the behaviour of operating companies, the relations maintained by these companies among themselves and with users; guaranteeing the quality and efficiency of the service offered to users, regulating tariff balance and ensuring efficient operation and use of public telecommunications services in the market".

A similar experience occurred with the specific objectives which were established for the body for the first time in August 1994 (Supreme Decree No. 62-94-PCM, Articles 5 and 6) and which were later amended by the Supreme Decree of February 2001 (D.S. 008-2001-PCM). According to its new regulation, OSIPTEL's specific objectives are:

- To promote competitive conditions in the supply of telecommunications services.
- To guarantee universal access to public telecommunications services.
- To ensure the quality and continuity of the supply of public telecommunications services.
- To ensure the strict fulfilment of licensing contracts.
- To safeguard impartially the interests of the State, investors and users in the telecommunications market.
- To establish suitable policies for the protection of users and ensure access to services on the basis of reasonable tariffs.
- To facilitate the development, modernization and efficient operation of telecommunications services.
- Any other objectives established under the relevant laws and regulations.

The Framework Act governing Supervisory Authorities for Investment in Public Services of July 2000 establishes six general functions for all public service regulatory bodies, including OSIPTEL, namely: supervision, regulation, standard-setting, inspection, settlement of disputes and settlement of service user complaints.¹²

The 1994 regulation is more specific, however, in this respect, as it gives details of functions which are attributed only to OSIPTEL. Among the main ones are: a) to establish standards regulating the behaviour of operating companies; b) to fix systems of tariffs and interconnection charges, to establish rules for their application and to supervise their implementation;¹³ c) to establish guidelines, criteria and/or limitations to be observed by companies holding licences for carrier services in the negotiation of international operating agreements and to supervise their implementation; d) to establish standards of quality in the supply of public telecommunication services; etc. (for more detail of these functions, see Annex A).

OSIPTEL is also assigned a series of non-exclusive functions, including: a) arbitrating disputes between operating companies; b) advising the Ministry of Transport and Communications with regard to the issue of concessions, formulating opinions prior to the signing or renewal of contracts for the concession of public bearer and end services; c) ensuring that service operating companies comply with the standards laid down by the Ministry in respect of telecommunication equipment and apparatus, with a view to ensuring their efficient use; and d) providing specialized services if needed to natural or legal persons.

With regard to exercising the above functions, OSIPTEL is given three types of powers: a) regulatory and standard setting;¹⁴ b) corrective and penalizing;¹⁵ and c) the power to settle disputes.¹⁶ In the exercise of these powers, it may obtain whatever information and facilities it requires of operating companies and may inspect equipment.

As time passed and as the regulatory authority began to exercise its functions, it became clear that there was a need not only to specify the functions attributed to it in more detail, but also to strengthen its regulatory capacity – especially its supervisory function. As a result the Act for the Development of OSIPTEL's Functions and Powers (Act No. 27336) was passed with the aim, as expressed in the law, of “defining and delimiting OSIPTEL's powers, to supervise and penalize natural or legal persons supplying public telecommunications services, within its sphere of jurisdiction”.¹⁷ A more detailed revised version of these rules is given in the section on the authority's inspectorial functions.

4.1.1 Relations with other government agencies

In the performance of its functions, OSIPTEL interacts with a series of other government agencies (Figure 1). Even though OSIPTEL is attached to the Office of the President of the Council of Ministers, there are two government bodies that hold greater responsibility in the area of telecommunications, the Ministry of Transport, Communication, Housing and Construction (MTC) and the Ministry of the Economy and Finance (MEF). This respon-

sibility is reflected, amongst others, in the fact that each of those Ministries appoints a representative to OSIPTEL's Board.

In the past, both Ministries have expressed a wish to take the regulatory authority under their wing. The functions related to the issue of licences and market access registration and the assignment of the radio spectrum for public telecommunications services remained in OSIPTEL's hands for approximately one year, after being managed by the MTC's General Directorate of Telecommunications. When the functions were returned to the Ministry of Transport and Communications, the UECT (Specialized Telecommunications Licensing Unit) was set up and has exercised these powers until now.

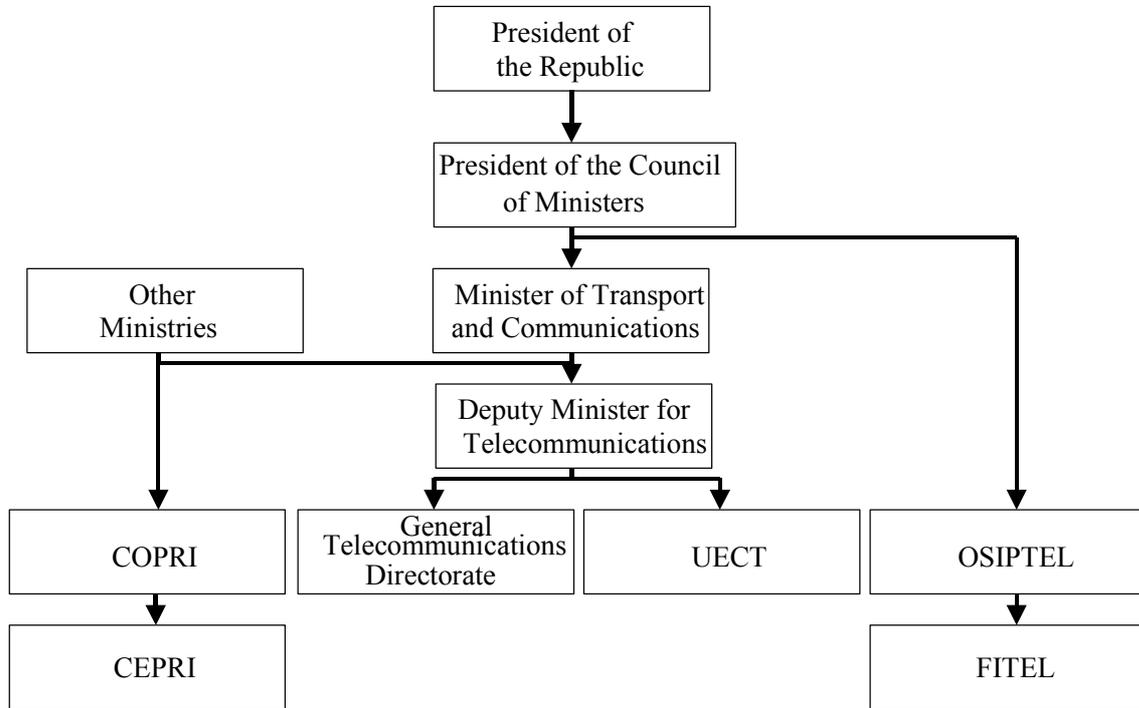
Of the two Ministries, however, it is the MTC (Ministry of Transport and Communications) which has the closest relationship with the regulatory authority, owing to the nature of its own duties and functions. The MTC's communications department is headed by the Deputy Minister for Communications.

As far as telecommunications are concerned, the Ministry is responsible for: a) establishing the telecommunication policy to be followed and monitoring its results; b) planning the expansion and development of the communications subsector; c) managing and monitoring the use made of the radio spectrum, and exercising the inspection and punitive powers foreseen under the Telecommunications Act; d) fostering, guiding, disseminating and regulating training and scientific and technological research in the area of communications; e) taking whatever steps are necessary to encourage the active participation and collaboration of the private sector in communications activities; and f) drawing up the National Telecommunication Plan and the Frequency Allocation Plan.

The Deputy Minister for Communications heads three departments – including the General Postal Services Department (see Annex C). In the area of telecommunications, the Deputy Minister heads the General Telecommunications Directorate (DGT), which is responsible for all matters concerning private services and broadcasting, and the Specialized Telecommunications Licensing Unit (UECT), which covers the public services.

Figure 1 – Organized to govern

Structure of government authorities in the telecommunications sector, 2001



Box 3: Associates in regulation

REGULATEL, the Latin American Forum of Regulatory Telecommunications Authorities, was set up by Latin American countries for the purpose of exchanging experience in the process of liberalization and modernization of the telecommunications sector. A further purpose of the Forum is to help develop cooperation and coordination between regulatory authorities in the region within the sector. REGULATEL is made up of representatives of the regulatory authorities of Argentina, Bolivia, Brazil, Colombia, Costa Rica, Cuba, El Salvador, Guatemala, Mexico, Nicaragua, Panama, Paraguay and Venezuela, in addition to observers from various regional organizations with an interest in telecommunications. The Forum’s main objectives are the following:

- to facilitate the exchange of information on the telecommunications regulatory framework and management, services and market between members;
- to promote harmonization in telecommunications services and infrastructure as a contribution to regional integration;
- to identify and safeguard regional interests by adopting common positions in international forums.

Although theoretically the responsibilities of the Ministry of Transport and Communications and OSIPTEL are clearly defined by law, in practice the borderline between the two tends to be more blurred and there is a series of activities where OSIPTEL interacts and cooperates with the Ministry (General Telecommunications Directorate and Specialized Telecommunications Licensing Unit) on a daily basis.

In the area of private services and broadcasting, the Ministry, through its General Telecommunications Directorate, is responsible for proposing policy, standard setting, directing, coordinating and controlling the development of the physical and electromagnetic media for distant communication. It also issues standards for the subsector, with the aim of ensuring the proper administration and control of radio frequencies and arriving at an integrated and highly reliable telecommunications system.

The Ministry is also responsible for officially representing Peru before international telecommunications organizations in the area of private services and broadcasting. Where public services are concerned, it performs this function through UECT. This brings it into contact with organizations such as ITU, CITEL, AHCIET, INMARSAT, CAN (Andean Community of Nations), APEC, PTC, OECD, INTELSAT and WTO. OSIPTEL also participates directly, however, in various international bodies, such as the Latin American Forum of Regulatory Telecommunications Authorities (REGULATEL) (Box 3), the International Telecommunication Union (ITU), the Inter-American Telecommunications Commission (CITEL), which is part

of the OAS (Organization of American States) system, the focal point of the telecommunications sector for APEC economies. With the Ministry of Foreign Affairs, it takes part in coordination activities in the area of telecommunications within the World Trade Organization (WTO).

The Specialized Telecommunications Licensing Unit (UECT) is responsible for administering and promoting access to the public telecommunications services market, following a policy that ensures conditions of simplicity, transparency, flexibility, objectivity, speed, reserve and equity. Under current legislation¹⁸, UECT holds the following powers, amongst others: a) to handle applications for and withdraw concessions, authorizations, permits and licences and to monitor their correct use vis-à-vis public telecommunication services; b) to administer the use of the radio spectrum vis-à-vis public telecommunication services; c) to coordinate with the General Telecommunications Directorate regarding the radio spectrum control, monitoring and investigation system and regarding public telecommunication services, etc. (for more details see Annex D). In addition, it proposes policy and standards for the public telecommunications services. It was that department which under the MTC put forward the “General Policy Guidelines for promoting mass access to Internet in Peru”. It has also taken part with the Deputy Minister of Communications and OSIPTEL in a number of technical committees for the purpose of evaluating the policies implemented in the telecommunications sector.

Table 4 – Opening up the game

Number of licences issued for the supply of services, 1994 to December 2000

	1994	1998	2000
Long distance and/or international LD	1	1	49
Local carrier	1	4	22
Local fixed telephony	1	1	6
Public telephones	0	1	5
Mobile telephony and PCS	3	3	4
Mobile satellite	0	2	3
Paging	7	32	32
Data transmission	0	1	1
Trunking	0	12	8
Cable broadcasting	4	51	110

Source: UECT – Ministry of Transport, Communication, Housing and Construction.

Box 4: Regulating tariffs

OSIPTEL's independence in question as it authorizes higher tariffs.

OSIPTEL is responsible for applying the tariff scales established in licensing contracts signed with Telefónica del Perú, approved by Supreme Decree No. 11-94-TC. In response to a request made by Telefónica del Perú on 27 September 2000, OSIPTEL, on 19 June 2001, announced new tariffs to be applied by Telefónica del Perú for calls made from public telephones. The authorized adjustment fell within the framework of tariff adjustments based on costs and standards of consumption. Having checked that the existing tariff did not cover the costs related to the provision of the local telephony service from public telephones, OSIPTEL authorized an increase in existing maximum tariffs; however, the company announced that it would not be applying that authorized tariff rise.

Telefónica del Perú had delayed its request for an increase in response to pressure by the Ministry of Transport and Communications on the grounds that Peru was coming up to a period of national elections and that in the circumstances an increase in tariffs might be considered inopportune.

In the course of its activities, by December 2000 the UECT had granted some 240 licences to some 209 licensees. These figures clearly reflect the difference between the profile of a market open to competition like the present one compared with a situation in 1994 when only 18 licences had been issued (Table 4).

For a relatively short time, OSIPTEL was in charge of granting concessions. A Licensing Unit had been set up and was later transferred to the Ministry (MTC) by Supreme Decree No. 007-97-MTC of 5 March 1997. MTC currently participates in OSIPTEL's activities through its presence on the Governing Board of the regulatory authority.

Another matter which has been open to different interpretations has been the exact structural position of the Telecommunications Investment Fund (FITEL) within OSIPTEL. Although in effect OSIPTEL was given responsibility for the administration and management of FITEL a long time ago, its control over the fund has been challenged on several occasions by the Ministry. While the MTC takes an active part in FITEL by approving projects and issuing concessions to beneficiaries of the fund, it has tried to increase its participation in and control over FITEL arguing that the fund's functions fall more in the domain of the Ministry than in that of the regulatory authority. The debate over the institutional position of FITEL within OSIPTEL and its targets, powers and functions is not a matter to be taken lightly in developing countries such as Peru, where a significant proportion of the population still has no access to any type of communication service whatever (see Box 10 in the section on Universal Service).

In addition to its relations with specific telecommunications bodies, OSIPTEL maintains a flexible contact with the National Institute for the Defence of Competition and the Protection of Intellectual Property (INDECOPI), with which it shares an interest in all matters related to anti-competitive behaviour on the part of companies in the telecommunications market.¹⁹

In some respects the two bodies also share an interest in intellectual property rights, but these are secondary compared with the challenges of protecting competition in a market so recently liberalized.

4.2 Independence

Once they have been appointed, the members of OSIPTEL's Governing Board hold independent powers of decision, even in respect of the body which has appointed them. The Governing Board reports regularly back to the higher authorities about the decisions it takes. Such reporting generally takes place prior to the publication of decisions or the implementation of standards.

Ever since its foundation, OSIPTEL has received regular and direct support from the President of the Republic in maintaining its independence from other State bodies. Its attachment to the Office of the President of the Council of Ministers is a significant factor as far as its structural and institutional independence is concerned, since depending on such a high-placed political entity, which has little reason to wish to control the regulatory authority, protects it from the sort of political vicissitudes to which the ministries are very often exposed.

Another group of institutions which has helped bolster the independence of the regulatory authority have been the multilateral financial institutions, like the Inter-American Development Bank and the World Bank, which have tied their loans to the country to a series of governmental institutional guidelines, which have insisted on the independence of regulatory authorities acting for the public services.

OSIPTTEL's independence from private interests has also been protected by the mechanisms governing the recruitment and departure of OSIPTTEL staff. Its officials must not have worked in the six months prior to their recruitment in any company regulated by OSIPTTEL; nor can they join a company in the sector for a full year after leaving OSIPTTEL.

Despite the solid belief on the part of the majority of the State's political powers regarding the benefits of keeping the regulatory authorities independent, there are still some aspects in which the latter fall under the authority of individual State bodies. In all matters concerning salaries and staff recruitment, for example, OSIPTTEL depends on the Ministry of the Economy and Finance.²⁰

In 1997 and 1998, the independence of the regulatory authorities was challenged at top government level. At that time, the Ministers for the sector and for the economy and finance were trying to increase their control over the regulatory authorities, by highlighting the potential weaknesses of a system that depended entirely on the government, without allowing for any other counterbalancing political and/or civil

power that might offset attempts by transitory governments to oppose regulatory independence. In June 2001, a rise in public telephone tariffs brought the topic of the independence of regulatory authorities, especially OSIPTTEL, onto the front pages of the country's newspapers (see Box 4).

4.3 Transparency

International experience so far has shown that, beyond whatever institutional or legal mechanisms might be put in place to safeguard the independence of a regulatory authority in its decision-making duties, the most effective antidote against any impairment of that independence undoubtedly lies in keeping daily practice as transparent as possible.

In OSIPTTEL's case, there are many mechanisms established to guarantee transparency in the authority's decision making. Some of the main ones include: advance publication of decision; public hearings; consultations of interested parties; public access to all OSIPTTEL documents; publication on the Web of the Governing Board's agenda prior to meetings; a website with plentiful statistical and regulatory information, reference documents, annual reports, etc. (for greater details, see the section on institutional practices).

Apart from these functions intended to make the decision-making process more transparent, OSIPTTEL has been the first State body to produce a transparency regulation that applies to all its officials in their daily activities and decision making (see Box 5).

Box 5: Striving for transparency

Summary of the OSIPTTEL Transparency Regulation²¹

In order to make its operations transparent and public, OSIPTTEL has undertaken to publish on the Internet the agenda of its Governing Board's meetings, a short summary of the documentation distributed to Directors during the meetings, a summary of agreements, decisions, resolutions and regulations issued by the Governing Board and reports on formal meetings with the representatives or sponsors of public telecommunication services operating companies and user associations attended by OSIPTTEL Directors or officials.

In terms of conduct, it is forbidden for OSIPTTEL Directors, officials or employees to perform their duties with a view to obtaining any advantage whatever. At the same time, they are obliged to act impartially and not to offer any preferential treatment whatever to any natural or legal person. They may not receive any emolument or retribution, financial or otherwise, for the performance of activities pertaining to their OSIPTTEL duties, or to solicit or accept any present or other form of gift. They may not spend regular hours of work on matters other than the strict performance of their duties, except for teaching or training activities authorized by the General Manager.

With regard to the confidentiality of information, officials must refrain from transmitting any item of information, in whole or in part, to third parties, which they have obtained in the practical exercise of their duties. Lastly, OSIPTTEL undertakes to publish, prior to their entry into force, whatever draft regulations it proposes to issue, together with a list of reasons. It must also arrange the convening of public hearings so as to facilitate the joint participation of interested parties and to receive their contributions, whenever it deems necessary.

4.4 OSIPTEL organization

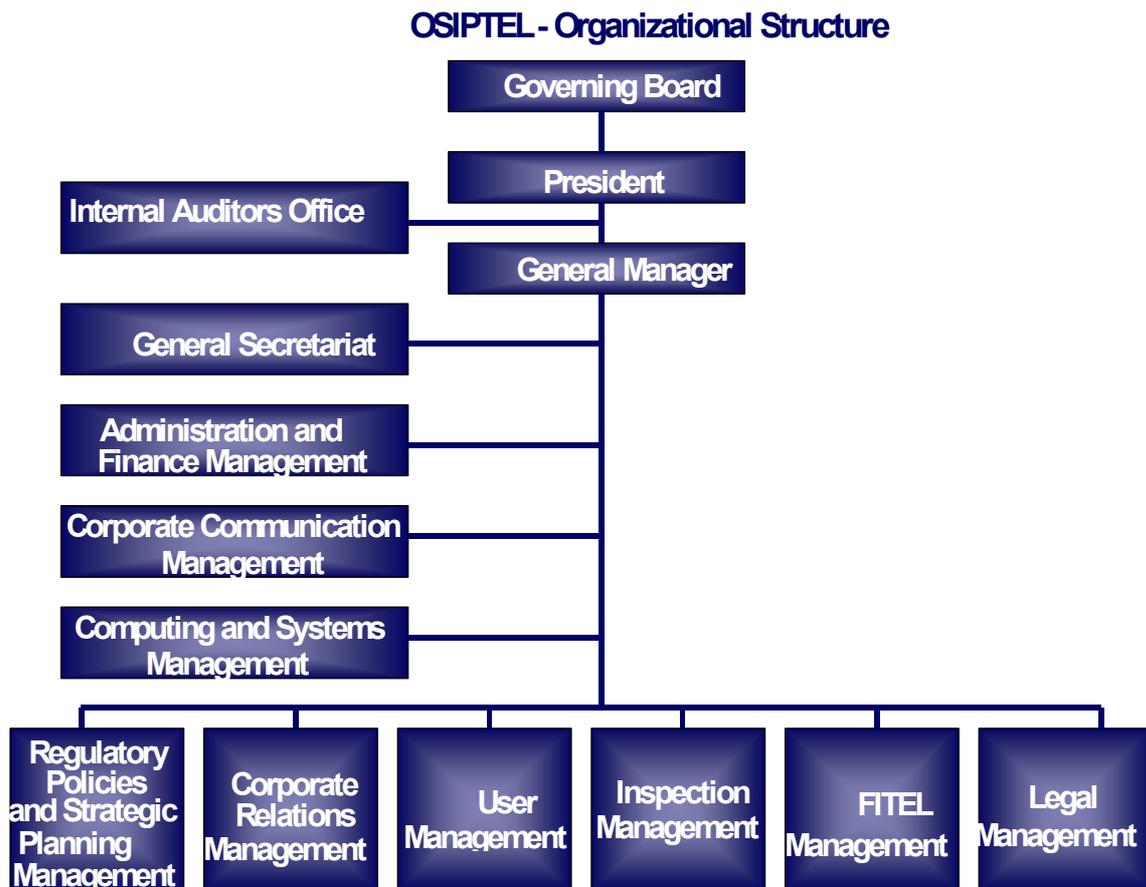
The general guidelines of the way OSIPTEL is organized are contained in the recent Framework Act on Supervisory Authorities for Investment in Public Services.²² This law covers not only the telecommunications authority, but also the regulatory bodies for electrical energy (Supervisory Authority for Investment in Energy – OSINERG); transport (Supervisory Authority for Investment in Public Transport Infrastructure – OSITRAN); and sanitation (National Supervisory Authority for Sanitation Services – SUNASS). OSIPTEL has a president, a general management and five managerial departments related to regulatory aspects (legal, users, corporate relations, regulatory policies and

strategic planning and inspection). It also has a general secretariat, an internal audit office and three managerial departments providing administrative and operational support (administration and finance, computing and systems, corporate communication) (see Figure 2).

4.4.1 Financing and budget

OSIPTEL’s budget consists mainly of compulsory contributions from regulated companies. These are obliged to pay OSIPTEL monthly amounts (known as the regulatory or supervisory contribution) equivalent to half a per cent (0.5 per cent) of their gross invoiced revenues received during the previous month.²³

Figure 2 – OSIPTEL’s organizational structure, June 2001



Source: OSIPTEL

OSIPTEL also has its own resources, such as: a) appropriations, donations, legacies, transfers and other contributions of any kind coming from national or foreign, natural or legal persons; b) transfers from public sector bodies; and c) charges, dues and revenues to which it is entitled by law. OSIPTEL is also authorized to supplement its budget from funds provided by national or international organizations offering technical or financial assistance, through either loans or donations.

The annual budget is prepared in September of the previous year on the basis of the Institutional Operational Plan – in which the objectives, targets and management plans of each managerial department are outlined according to the zero-base budget technique. The preparation of the budget is a participative process that combines existing resources with alternatives and deadlines for fulfilling targets. The consolidated plans drawn up by the Administration and Finance Management in the form of a preliminary draft, which is later seen by the General Management, establishes institutional priorities, deciding which projects are to be considered in the Operational Plan and Budget. Finally the Plan is approved by the Board. Each managerial department is then in charge of its own programmed and approved Operational Plan and Budget.

4.4.2 Management and administration

Governing Board

The Governing Board is OSIPTEL's highest authority, responsible for establishing policies and running the organization. It is made up of five members appointed by supreme decision endorsed by the President of the Council of Ministers, the Minister for the Economy and Finance and by the Minister for Transport, Communications, Housing and Construction. The Governing Board must be made up as follows:

- two members proposed by the Office of the President of the Council of Ministers (PCM);²⁴
- one member proposed by the Ministry of Transport, Communications, Housing and Construction (MTC);
- one member proposed by the Ministry of Economy and Finance (MEF); and

- one member proposed by the Institute for the Defense of Competition and Intellectual Property (INDECOPI).

The qualifications required to be a member of the Governing Board are: a) to have been professionally active for not less than five years; and b) to be known to be solvent and of good professional conduct. Furthermore, a member of the Governing Board may not: a) hold more than 1 per cent of the shares or stockholdings of companies related to activities that fall within OSIPTEL's jurisdiction. Also excluded from Board membership are any directors, legal representatives or trustees, employees, advisors or consultants of such companies or entities; b) anyone penalized by dismissal as a result of administrative proceedings or a convicted offence; c) persons incapacitated by court order; d) the directors, managers and representatives of legal persons declared bankrupt by a court of law and natural persons declared to be insolvent; and e) any other persons legally unable to assume managerial office in State entities.

The President of OSIPTEL is one of the two members put forward by the Office of the President of the Council of Ministers.²⁵ The representative of the MTC becomes the Vice-President of the Board. The President of the Board is the official head of OSIPTEL and manages the regulatory authority. His place is taken by the Vice-President in the event of absence or impediment. The main functions of the President of OSIPTEL include: a) representing OSIPTEL; b) convening and chairing meetings of the Governing Board; c) supervising implementation of the Board's agreements; and d) signing deeds, agreements and contracts (for details of these functions, see Annex A).

In its early years of operation, the Governing Board also included a representative of users and regulated companies. But this participation by representatives of non-governmental organizations did not last long. Eventually the decision to remove the business sector and users from a seat on the Governing Board was taken on grounds of representativeness. It appeared difficult, in fact, in view of the current profile of the bodies representing these interest groups, to achieve a fair and balanced representation. The government considers, on the other hand, that the interests of users are represented – albeit

indirectly – by the Institute for the Defense of Competition and Intellectual Property (INDECOPI).

The persons appointed to the Board on a proposal by State bodies (the PCM, Ministries or INDECOPI) do not necessarily belong to the body which has designated them. In many cases they are suitable candidates chosen in the sector – such as academics, officials of non-governmental bodies, etc. – who are appointed for their personal qualities and their professional qualifications and experience. Quite often they do not report regularly back to the body that proposed them, except in cases where such information is expressly requested.

The members of the Governing Board are appointed for a period of five years and, since this is not expressly forbidden in the rules, may be reappointed.²⁶ The membership is renewed at the rate of one member a year so as to ensure continuity in management and in the maintenance of an institutional memory for the authority.²⁷ Individual Board seats, however, may remain vacant for the following reasons: a) death; b) resignation; c) removal, by supreme decision giving reasons, subject to the endorsement of the President of the Council of Ministers, the Minister for Economy and Finance and the Minister for Transport, Communications, Housing and Construction.²⁸

The main functions of the Governing Board include: a) approving OSIPTEL's general policy; b) issuing rules and decisions; c) defending OSIPTEL's rights in or out of court; d) appointing or removing the General Manager and the members of the collegiate bodies, etc. (for details of the functions, see Annex A).

The Board must meet at least once a month – on condition that either the President or Vice-President is present. In practice, the Board tends to meet twice a month. At times it holds extraordinary meetings, but generally the agenda is fitted into two meetings a month.²⁹ The Board's decisions are taken by a simple majority of members present.³⁰ In the light of OSIPTEL's historical experience, however, decisions tend to be taken by consensus. In the event of a tie, the President can cast an extra vote. Members are sent the agenda of the meetings and all related documentation three days before they are due to meet. Agendas are prepared by the regular OSIPTEL staff on proposals by the President,

although all Board members are entitled to ask for items to be included on the agenda.³¹

The agenda is published on the OSIPTEL website, so as to ensure that all interested parties are aware of what will be discussed and can therefore send in comments and proposals. These might be added to the agenda if the Board thinks fit. The interested parties may be invited to give a presentation to the Board on the proposed topics or others of interest to the Board. OSIPTEL organizes meetings on a regular basis with institutions representing users in order to be directly acquainted with any complaints the latter may have and to hear more about questionable or anti-competitive practices employed by companies in the sector.

An effort has always been made to base OSIPTEL's decisions on solid, reliable information which the authority collects directly from the local market. This ability, however, has sometimes been diminished owing to an unwillingness on the part of companies to part with information – usually on the grounds of trade confidentiality. In order to overcome this bottleneck in the process of regulating the sector, OSIPTEL has begun to go ahead with decisions regardless – sometimes ignoring the companies' interests – thereby shifting the burden of proof onto the party that is refusing to deliver the required information.

4.4.3 Human resources

The quality of human resources is a key element in the ability of a regulatory body to perform the sensitive duties assigned to it efficiently. Strict selection and ongoing training and motivation of staff therefore constitute priority objectives of OSIPTEL's Governing Board.

The human resources department is subordinated to OSIPTEL's Management of Administration and Finance, which is in charge of administering the recruitment, selection, contracting and assessment of the organization's human resources. The managerial department also runs OSIPTEL's training activities, which act as a support tool aimed at ensuring that workers are more competitive in the market.

After starting out at the end of 1993 with a staff of 16, OSIPTEL by 1996 had reached a total of 120 employees, a number which has remained stable since then (see Graph 2, left-hand graph). In March 2001, OSIPTEL had 124 full-time

staff; of these, 76 were professionals, including 16 who have completed post-graduate studies. The staff is fairly evenly distributed between lawyers, engineers and accountants/economists (see Table 5).

With its multidisciplinary team, OSIPTEL is able to deal with agenda items from different points of view in its effort to arrive at the most appropriate regulation. OSIPTEL's institutional culture is also geared to promoting creativity, the exchange of ideas and teamwork as key

methods to enable all workers to reach their full potential for the benefit of the organization and for their own personal development.

At present 61 per cent of all OSIPTEL staff are university trained. This is 19 per cent less than at the end of 1995. The same has happened with regard to the percentage of postgraduate staff. While at the end of 1995 39 per cent of the total had postgraduate studies, this proportion had fallen to 13 per cent by the end of 2000 (Table 6).

Table 5 – Strength in diversity

Number of professionals in total OSIPTEL staff and distribution by qualification and by profession

Profession	Persons	Percentage	Academic qualification	Persons	Percentage
Lawyers	29	27%	PhD	1	1%
Accountants/auditors	12	10%	Masters degrees	15	12%
Economists	17	14%	Graduates	60	48%
Engineers	33	27%	End of secondary	41	33%
Other professions	7	6%	School leavers	3	3%
Secretaries	13	10%	Students	4	3%
Administrative technicians	8	6%	Total	124	100%
Total	124	100%			

Source: OSIPTEL.

Table 6 – Proportion of professional staff in OSIPTEL

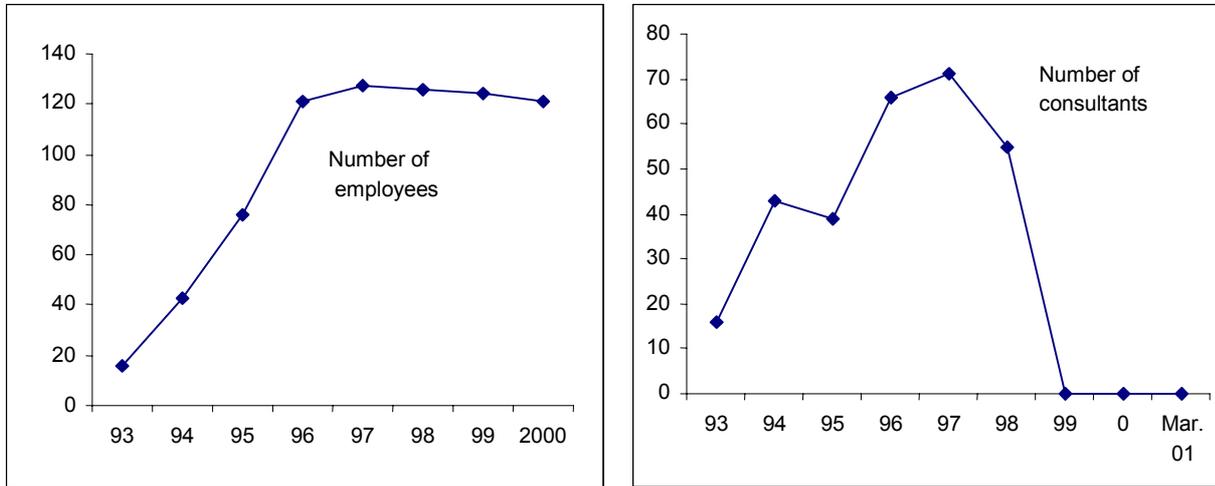
Trend in the numbers of professionals and postgraduate trainees as a proportion of total OSIPTEL staff

	Dec. 1995	Dec. 2000
Total staff	70	124
Percentage of professionals	80%	61%
Percentage of postgraduates	39%	13%

Source: OSIPTEL.

Graph 2 – Human resources

Number of persons employed by OSIPTEL from its beginnings to end 2000; and number of consultants contracted from OSIPTEL’s beginnings to 03-2001



Source: OSIPTEL.

Consultants played a very important part in the initial stages of OSIPTEL’s foundation to make up for the lack of permanent staff. Thanks to the introduction of courses on regulatory subjects in the country as a whole and in other State bodies, OSIPTEL was able to recruit permanent staff with academic training in regulatory matters, industrial organization and antitrust analysis. As a result it was able to reduce the hire of external consultants to zero in 1999, 2000 and 2001 (see Graph 2, right-hand graph). Nevertheless, it is not uncommon at present to be seek advice and to call on external consultants for specific topics.

This change in the composition of OSIPTEL’s staff occurred at the time the telecommunications sector was being opened up to competition towards the end of 1998. Owing to the introduction of a regulatory framework suited to a competitive environment, the general approach had to take account of the need to regulate the conduct and behaviour of companies, which was reflected in the substantial increase in the number of disputes that occurred on average each year in the period

1999-2001, compared with the average for the period 1993-1998 (see Table 7).

A similar trend is reflected in the number of arbitration proceedings before the Lima Chamber of Commerce initiated by Telefónica del Perú for alleged infringements of its licensing contract (Table 7). On the basis of regulations issued between 1999 and September 2001, the company initiated four arbitration proceedings, while on the basis of regulations issued between 1993 and 1998 only one arbitration proceeding was initiated. That required a significant change in the profile of OSIPTEL’s staff, with regard to technical, economic and legal capacity.

OSIPTEL’s operations are organized into five departments, which in March 2001 employed 50 per cent of the organization’s staff. The other 50 per cent were divided between FITEL (12 employees), the Office of the President, the General Management, the General Secretariat and the Divisions providing administrative and logistic support (see Figure 3).

Table 7 – Arbitrating disputes

Number of disputes between companies submitted to OSIPTEL, 1993-2001 (left table) and arbitration proceedings initiated by Telefónica del Perú S.A. for alleged infringement of its interconnection contract (right-hand table)

Period	Cumulative number of disputes	Annual average number of disputes	Topic	Year of issue of regulation submitted to arbitration	Year of submission of arbitration claim
1993-1998	11	2	Separate accounting	1995 to 1997	1999
1999-2001*	21	7	LD pre-dialling regulation and interconnection terms	2000	2000
			Regulation establishing new interconnection charges	2000	2001
			Interconnection terms	2001	2001
			Determination of productivity factor	2001	2001

* At 15 September 2001

Source: OSIPTEL.

Figure 3 – OSIPTEL’s organizational structure and number of employees per sector, March 2001

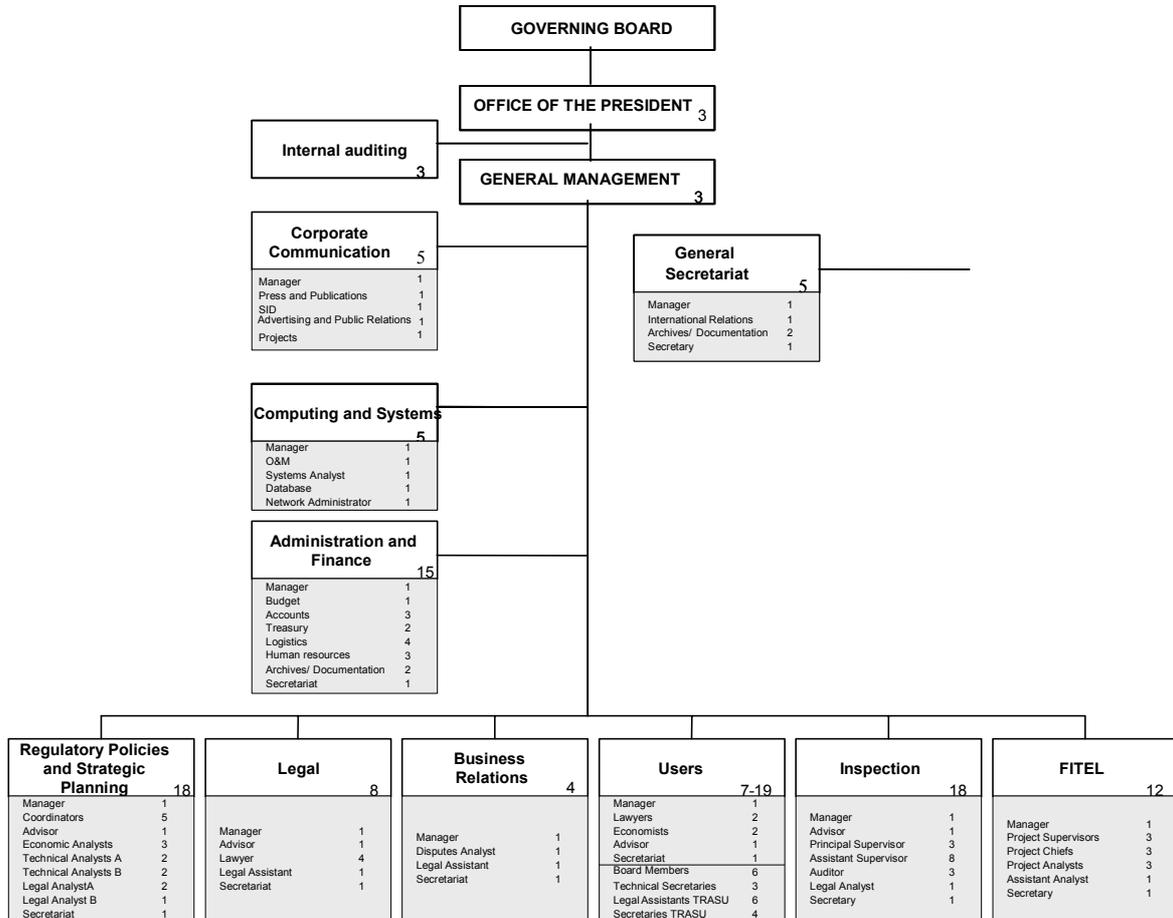


Table 8 – In search of equality

Percentage of men and women in OSIPTEL’s staff, March 2001 (left) and percentage of men and women in managerial posts, March 2001 (right)

Staff	Number	Percentage
Male	70	56%
Female	54	44%
Total	124	100%

Managerial posts	Number	Percentage
Male staff	7	58%
Female staff	5	42%
Total	12	100%

Source: OSIPTEL

As of March 2001, out of OSIPTEL’s staff of 124, 44 per cent (54) are women (Table 8, left). Among professional staff, 27.5 per cent are women, while these make up 21.7 per cent of administrative staff. In managerial posts, women are proportionally less represented than in the staff as a whole (Table 8, right).

OSIPTEL employees account for 61 per cent (USD 4 839 261) of the 2001 budget, amounting to USD 8 million.³² FITELE earmarks 2.8 per cent (USD 493 509) of its budget of USD 17 834 000 to staff expenditure.³³ OSIPTEL staff are subject to the private sector labour system. Its pay policy, however, is subject to a supreme decree approved by the President of the Council of Ministers and the Minister of Economy and Finance according to the State salary scale. This restriction on the ability to determine pay levels, combined with the prohibition affecting staff against exercising any functions – on their own account or through third parties, related to the work of companies falling with OSIPTEL’s jurisdiction until a year after they have resigned, stopped work, terminated their contract, or been dismissed – has made it difficult to attract new talent to the regulatory authority.

All persons joining the authority as employees have to make a sworn declaration of their assets, which is published in the local newspaper with the largest circulation. There is also a plan to make the salary scale of OSIPTEL staff public, once again through the most-read local newspaper. The salaries of OSIPTEL staff tend to be in a range above the public sector, but quite a way below those earned by the private telecommunications sector.

Training

Right from the start it was not easy for OSIPTEL to find the required professional specialists in the Peruvian labour market. This is

due not only to the fact that the task of regulation was new in the country, but also to the fact that technological and regulatory knowledge at a certain level of specialization is not part of the standard training of professionals leaving university.

At the same time, owing to the boom in the sector, combined with the liberalization of telecommunications, new firms have entered the market, all in search of more professionals trained in regulation, new technologies and telecommunication services. These firms are currently competing with OSIPTEL for the same pool of scarce resources, quite apart from the budgetary and contractual restrictions which hamper the regulatory authority.

In order to overcome these difficulties, OSIPTEL has adopted the “learning organization” philosophy, with a view to improving the learning processes both of individuals and of the organization itself, making the latter into a productive workplace offering maximum learning opportunities. This approach has been followed by a determined effort to increase the investment put into training, which for the 2001 budget is estimated at USD 240 000, equivalent to 3 per cent of the organization’s annual budget. This investment was made after a detailed review of the training available and of the organization’s strategic priorities.³⁴

In order to encourage the training of new professionals for the sector, OSIPTEL has invested a considerable quantity of resources and effort in the establishment of a university course in telecommunications. Through this course, the authority wishes to pass on its experience and knowledge of the telecommunications market.³⁵ OSIPTEL’s educational activity is supplemented by that of the National Institute for Telecommunications Research and

Training (INICTEL), which concentrates on research, training, studies, projects and consultancy in the telecommunications sector (Box 6).

OSIPTEL has also been organizing a cycle of training courses under the title “Telecommunications and public household services. Users rights and duties”. This programme aims to educate users by providing them with information concerning services, the way to make responsible use of those services and the legal framework in which their rights are protected. These courses are intended for local authorities, vocational colleges, university teachers, representatives of consumer protection associations and civil groups, amongst others, whose influence at local level ensures a multiplier effect for the direct training activity. These courses are also given in the interior of Peru.

4.4.4 Institutional practices

In discharging its responsibilities OSIPTEL is guided by a series of general principles, which establish guidelines and parameters for the managerial activities of the regulatory authority (see Box 7).

In practice, OSIPTEL considers that it has innovated in its institutional approach, since it is the first State body whose internal practices are governed by transparent regulations. It was also the first organization willing to give advance publication of its decisions and of the reasons underlying its decisions. While in the beginning this new attitude generated resentment on the part of some State bodies, by the middle of 2001

advance publication of decisions giving reasons had started to be regular practice in a number of State entities. With regard to user relations, OSIPTEL was the first government body to establish a phone-in service “FonoAyuda” specifically to deal with consumers’ doubts and complaints. It has also innovated in terms of personnel management, by adopting a system of productivity bonuses to encourage sound labour practices and an improvement in the institution’s productivity.

Of all the advances achieved by OSIPTEL in terms of institutional practice, the most significant without a doubt as far as the local telecommunications industry is concerned have been the mechanisms it has adopted to generate a greater level of transparency in its daily activities and, more especially, in its decision-making process. These mechanisms include advance publication, public hearings, consultations with the telecommunications industry and users and the establishment of ad hoc independent collegiate bodies.

Advance publication: OSIPTEL is under the obligation to give advance publication of any standard of general application. Advance publication has provided a means of finding out the views of the operating companies of public telecommunication services, as well as of becoming acquainted with the problems facing the actual users of those services and of foreseeing problems which might arise in the future. All input received has been duly analysed and evaluated by OSIPTEL’s managerial departments and taken into account in consideration of the proposed standards.

Box 6: Feeding the information society

Institutional profile of the National Institute for Telecommunications Research and Training (INICTEL)

The National Institute for Telecommunications Research and Training, INICTEL, was founded at the end of 1971. It is a decentralized public institution of the communications subsector of the Ministry of Transport, Communications, Housing and Construction. It has its own legal personality, its own assets and is administratively, economically and technically independent.³⁶ Its activities are concentrated chiefly on research, training, studies and projects in the telecommunications sector, although it also offers advice and specialized consultancy to public and private corporations. It promotes and develops programmes for personnel training and specialization at all technical levels responsible for managing and operating telecommunications services in both the public and the private sector. The Training Directorate runs the Institute’s educational activities, its main tasks being to advise, coordinate and provide technical and administrative management support, besides studying the application of new technologies. It is divided into three divisions: a) telecommunications³⁷; b) distant education³⁸; and c) broadcasting.³⁹

Box 7: A question of principle

Principles that guide the activity of the regulatory authority in the performance of its duties.

According to OSIPTEL's General Regulation, the authority's practices and activities must be based on the following principles:

Free access: OSIPTEL must guarantee operating companies and users free access to public telecommunications services.

Neutrality: OSIPTEL must ensure the operating neutrality of enterprises within its jurisdiction, taking care that they do not use their position, either directly or indirectly, to obtain advantages in relation to other telecommunication service operators or in relation to users.

Non-discrimination: OSIPTEL must ensure that companies operating in public telecommunication services markets are not discriminated against.

Cost-benefit analysis: The costs and benefits of OSIPTEL's activities must be evaluated before they are implemented and must be duly backed up by studies and technical evaluations vouching for their rationality and efficiency.

Transparency: Any decision taken by any functional department of OSIPTEL must be adopted in such a way that the criteria on which it is based are known to and foreseeable by users.

Promotion of competition: OSIPTEL's policy must be to encourage investments that help to extend the coverage and quality of public telecommunications services, by pursuing the objective in its activities of promoting free and fair competition.

Impartiality: OSIPTEL must, when considering the interests of service operators and users, act fairly and impartially strictly according to the relevant standards.

Independence: In the performance of its functions, OSIPTEL shall not be subject to any compulsory order of any other State body or entity.

Subsidiarity: OSIPTEL's activity is subsidiary and arises only in so far as freely competitive markets and mechanisms do not adequately meet the interests of users and competitors.

Supplementarity: The standards of free competition are supplementary to whatever standards and/or regulations are issued by OSIPTEL in the performance of its duties.

Analysis of functional decisions: This must take account of the effects of such decisions from the point of view of tariffs, quality, incentives for innovation, contractual conditions and any other aspect that is relevant to the development of markets and the satisfaction of users' interests.

Efficiency and effectiveness: OSIPTEL's activities shall be guided by the search for efficiency in the assignment of resources and the achievement of objectives for the lowest cost to society as a whole.

Celerity: In its administrative management, OSIPTEL must endeavour to resolve problems and disputes opportunely and as rapidly as possible.

Public hearings: Public hearings are another device OSIPTEL uses to enable the interested parties and the public in general to interact and to express views on any standards affecting the public interest. This mechanism is a means of creating a direct relationship between OSIPTEL and other interested parties through an exchange of points of view on specific topics, while it lets the other parties know that their contributions will be considered at the time decisions are taken.

Consultations: Consultations with interested parties are also employed to solve disputes between public telecommunication service operators or between an operating company and

users. OSIPTEL's top management considers that this is an efficient mechanism for bringing parties in a dispute closer together, since it allows for consultations regarding incidents arising during the process. Thanks to this mechanism of conciliation and open, very fluid exchange of views, it has been possible for disputes submitted to OSIPTEL's administrative management to be resolved by agreement between the parties through conciliation.

Establishment of collegiate bodies: Establishing ad hoc collegiate bodies to resolve disputes between public telecommunication service providers is yet another mechanism aimed at adding transparency to the regulatory process.

Using its ability to subcontract experts, OSIPTEL tries to ensure that these collegiate bodies – which are independent – consist of a multidisciplinary mix of professionals specializing in the matters under dispute.

Other activities aimed at adding transparency to OSIPTEL's regulatory decisions include the holding of seminars, the preparation of publications and allowing access to the general public to OSIPTEL's Information and Documentation Services, which hold the technical studies underlying OSIPTEL's regulatory decisions, as well as the regulatory policies applied in other countries.

4.5 OSIPTEL and users

OSIPTEL's purpose is to secure access to public telecommunications services for as many people as possible, subject to certain standards of quality and efficiency, within a system of free and fair competition. In this sense, it has two basic objectives: a) protecting the market from practices that restrict free and fair competition and b) protecting users and public telecommunication service providers from any other practices which might affect them.

In order to achieve this second objective, OSIPTEL has prepared its User Policy Document, containing the guidelines of policies designed to protect and disseminate users' rights. OSIPTEL performs a series of activities in this area:

- Establishment of a normative framework, defining the rights and obligations of users and the procedures to be followed whenever their rights are not respected.
- Settlement in last administrative instance by OSIPTEL of user complaints, through the Administrative Tribunal for the Settlement of User Claims (TRASU).
- Dissemination of information to offer users the possibility of receiving information concerning public telecommunication services. This activity is carried out through OSIPTEL's Response and Guidance Service (SAO) and FonoAyuda. In addition, OSIPTEL regularly publishes bulletins and leaflets promoting the best use of services and provides information on the rights and new measures affecting users.
- Consumer education and promotion of responsible use of the service. OSIPTEL achieves this through social projection programmes, which include seminars and training courses at national level. It also concludes agreements with other institutions related to the protection of user rights.
- Research, serving to determine the needs and problems of users, as well as the impact of regulatory measures on society.

4.5.1 Services offered to users

OSIPTEL has a clear policy of providing users with guidance concerning their rights and obligations. In this respect it supplies information on complaints procedures before corporations and before the regulatory authority's own tribunal. In order to find out the users' opinions on current sector topics and future decisions, OSIPTEL runs a web page where it is constantly receiving user comments through its Opinion Forum. It also runs an updated service of news and publications.

Procedure for the receipt of claims

For problems related to invoicing, installation, transfer, cuts or withdrawal of service, users are allowed a delay of up to 15 working days – after the expiry date of the receipt or the occurrence of the problem – in order to submit a claim. Users are entitled not to pay the item they are claiming, although they are obliged to pay whatever part they are not claiming for.

The company has 30 working days in which to assess the claim and then 10 working days at most to notify the user of the outcome of his claim. If no reply is received within that deadline (of 40 working days), users may apply for the procedure known as Positive Administrative Silence through a Complaints Appeal, as a result of which, owing to the fact that the company has not responded within the deadline, the claim should be settled to the user's advantage.

If the user receives a reply from the company and does not agree with it, he may send in an appeal to the local Commercial Office, giving the reasons why he does not agree with the reply received and asking for the claim to be brought before OSIPTEL's own Administrative Tribunal

for the Settlement of User Claims, which will issue a ruling on the matter in second and last instance. The maximum delay for submitting an appeal is 15 working days from receipt of the reply to the first letter. The OSIPTEL Tribunal then has 30 working days to assess the claim and a further ten working days at most to notify the user of the outcome of the appeal procedure.

Ever since it was founded, OSIPTEL has considered it necessary and important to inform users about the characteristics of the public telecommunication services they contract, about current tariffs, and about their rights and obligations in relation to the companies. To this effect, it has set up several information services which provide users with suitable guidance upon consultation. These include the Response and Guidance Service (SAO) and FonoAyuda (Box 8).

In order to ensure that all users in the country are increasingly well informed about public telecommunication services and about the rights and obligations they assume when they acquire those services, OSIPTEL has organized seminars and training courses in a number of towns and has started installing modules to attend to queries of users of public telecommunications services in the main towns across the country, in an effort to reduce the cost of access to information and response to user queries. In the first instance, actions are targeted

at the representatives and officials of organizations that are in close contact with the public, to whom they can pass on all the information they receive. This decentralized method allows for extensive dissemination of the necessary information.⁴⁰

4.6 Supervision and monitoring

With regard to supervision, OSIPTEL's policy has been to develop a culture of respect for and fulfilment of telecommunication standards. To give effect to this policy, it has developed a programme of supervisory measures ranging from preventive measures (aimed at helping companies to observe legislation) to definitive measures (by which it ensures that public service operators abide by established norms). Most of the measures are aimed at supervising the following areas: minimum expansion plan; mobile telephony service; legal framework for users; auditing and public telephones (Table 9).

Supervision of Minimum Expansion Plan: Companies holding carrier service and end service licences have signed licensing contracts with the State, in which they undertake minimum expansion commitments, which in many cases constitute one of the key terms of the contract. OSIPTEL then supervises the fulfilment of these minimum expansion plans, as well as the quality of the service provided by new fixed telephony operating companies (local, national and international long distance).⁴¹

Box 8: SAO and FonoAyuda

The Response and Guidance Service (SAO) is geared to respond to specific requests for information on public telephone services. The service does this in two ways: a) either by personal contact, when users call at OSIPTEL's headquarters from Mondays to Fridays between 8.30 a.m. and 4.30 p.m. continuous; or b) in writing, by sending a letter to OSIPTEL's User Management or by e-mail to usuarios@osiptel.gob.pe.

FonoAyuda is a guidance service by telephone available on a special number (0 801 121 21). Users in any part of the country can put their queries for the cost of a local call. This service was launched in July 1998 with a view to attending a greater number of user consultations. It is provided by a team of specialists who are on duty from Mondays to Saturdays between 8 a.m. and 8 p.m. At present, on the basis of an inter-institutional agreement between the Supervisory Authority for Investment in Energy (OSINAG), the National Supervisory Authority for Sanitation Services (SUNASS) and the Supervisory Authority for Private Investment in Telecommunications (OSIPTEL), the FonoAyuda service offers information about light, water and telephone services. The system allows users to select the type of service they wish to enquire about. Users may also consult their rights and obligations, current tariffs, claims procedures and the characteristics of the service they have chosen.

Table 9 – Monitoring good conduct

Number of supervisions carried out by OSIPTEL in operating companies – 1995-2001

Activities	1995	1996	1997	1998	1999	2000	2001 *
Expansion and modernization	16	566	697	395	112	20	192
Fixed line quality	4	67	83	51	37	34	17
Continuity of public telephone service			24	1 479	1 916	3 275	1 423
Inputs to FITELE and OSIPTEL			2	150	2	89	53
Legal framework of user rights		1	39	75	239	189	143
Traffic auditing		3	4	2	1	2	1
Miscellaneous (charges, billing, mobile quality, etc.)		5	32	24	136	409	99
Total	20	642	881	2 077	2 443	4 018	1 928

* Estimated at June 2001.

Source: OSIPTEL, Inspection Management

Supervision of mobile telephony service: In order to ensure that operators offer users a service of minimum acceptable quality, OSIPTEL approved the Public Mobile Telephony Service Quality Regulation and the Procedure for the Supervision and Control of Public Mobile Telephony Service Quality.⁴² These rules lay down the mechanisms that have to be used by operating companies to provide a minimum acceptable quality of service. Three indicators have been defined for the purpose: 1) rate of unsuccessful attempts; 2) radio coverage; and 3) rate of interrupted calls. OSIPTEL has its own supervisory procedure which it applies to ensure observance of the established quality standards.

Traffic auditing: The purpose of traffic audits is to check information reported by Telefónica del Perú based on its billing for basic telephone calls.

Public telephones: Checks are carried out on the state of public telephones. These checks, which take place in some of the main cities of the country, are applied to various aspects of the public telephone service, such as the acceptance of legal tender coins, access to free services and the correct charging for calls. Checks are also made on the state of public telephones installed in rural villages, which according to the licensing contracts signed by Telefónica del Perú have to be maintained continuously operational. This is in fact one of the most important obligations of the company since in

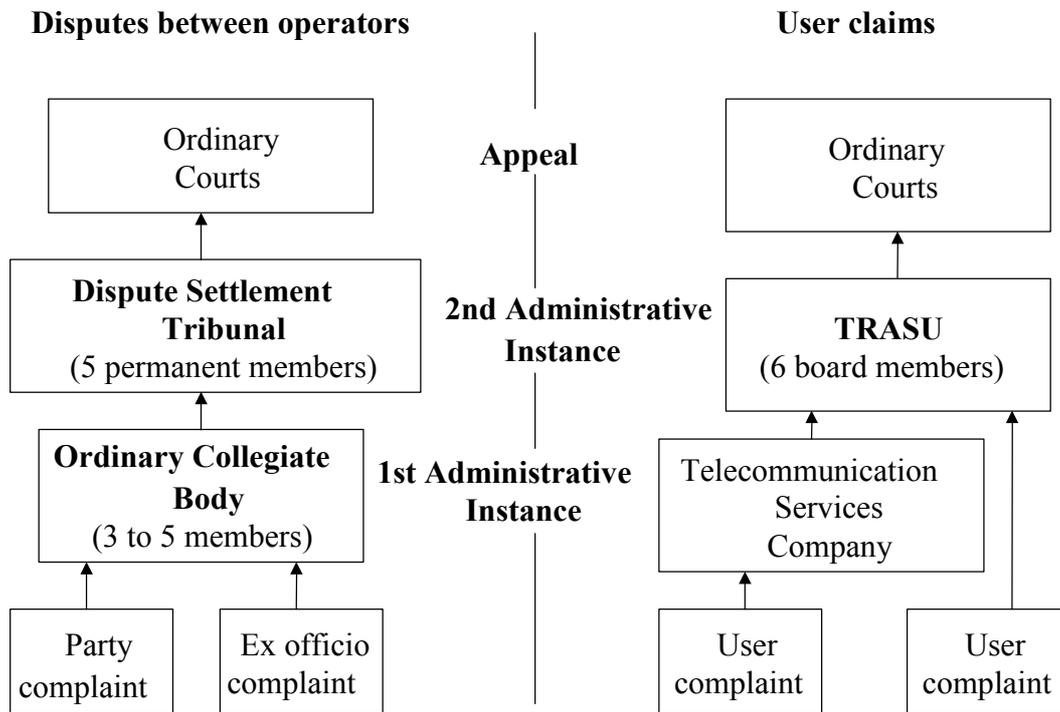
many villages the public telephone is the only means of communication with the rest of the country and the world at large.

Supervision of the legal framework for users: Supervisory activities in this area concentrate on checking that operating companies abide by the Directive⁴³ which lays down the rules for user claims procedures. The Directive establishes the minimum information companies have to provide to users, the obligation they have to receive complaints, access by users to their complaints office whenever required, and the fact that the company's willingness to consider a claim must not depend on the amount payable.

It also checks compliance with the Conditions of Fixed Telephony Use and the Conditions of Mobile Telephony Use. These rules lay down, amongst others: the obligation to deliver telephone receipts to subscribers' homes, the need to block access to 808 series services within five working days of the company receiving a request, the obligation to reconnect a service within two days of suspension for non-payment, etc.⁴⁴

OSIPTEL's supervisory activities have made it possible for users to reclaim compensation for charging and/or invoicing errors by the telecommunication companies. In the last six years more than 225 000 subscribers have benefited from the service and to date companies have had to return amounts in excess of USD 7 million.

Figure 4: Procedures for the settlement of disputes arising between companies or in connection with user claims



4.7 Settlement of disputes and arbitration

By law, OSIPTEL has the power to intervene and settle disputes that may arise either between companies or as a result of user claims (see Figure 4 for a diagram of procedures for the settlement of company and user claim disputes).

4.7.1 Disputes between companies

OSIPTEL holds the power – through administrative procedures – to settle disagreements or disputes that arise between companies, on matters such as: infringements of free and fair competition, compensation payments, technical, legal or economic aspects arising from an interconnection relation, etc. Proceedings may be initiated free of charge on a complaint by a party, or ex officio if the matter concerns the public interest.

The cases are analysed in the first instance by an ad hoc Ordinary Collegiate Body (CCO) and in the second and last administrative instance by the Dispute Settlement Tribunal. These bodies are authorized to take corrective measures and to apply appropriate sanctions in each case.

Dispute settlement procedures are set out in the Dispute Settlement Regulation, with which the parties must comply when a dispute arises.⁴⁵

In the first instance, disputes are brought before an Ordinary Collegiate Body made up of persons appointed by OSIPTEL’s General Management. The CCO is made up of between three and five permanent members, who may be members of OSIPTEL’s staff, and other officials or independent professionals who specialize in the matters under dispute. Decisions are taken by the collegiate bodies by simple majority.

Following proceedings which include the complaint, response, conciliation and submission of evidence, a ruling is issued in the form of a Final Decision. As this Decision may be appealed against, the Dispute Settlement Tribunal (TSC) will then consider the case in second instance. A technical secretariat will act as the link between the Ordinary Collegiate Body and OSIPTEL, providing logistical and technical support, and will take charge of the organization and completion of the second instance proceedings. Appeals brought against

decisions of the Dispute Settlement Tribunal are brought before the appeal courts (Upper Chamber) of the ordinary judicial system, as laid down in the Act governing General Rules of Administrative Proceedings. As the Dispute Settlement Tribunal has only just been set up, OSIPTEL still needs to appoint its members.

In the event that the parties concerned should query some aspects of the proceedings (though not regarding the substance of the decision) in the case of a ruling issued by OSIPTEL, the matter will be reviewed by the Office of the President of the Council of Ministers (which is in other words the body which will assess and decide whether OSIPTEL complied with the rules of proceedings required by the case).⁴⁶

4.7.2 Arbitration tribunal

Under current legislation, one of OSIPTEL's functions is to conduct arbitrations between public telecommunication service providers. In order to enable it to fulfil this function, OSIPTEL's Arbitration Regulation was approved in July 1999, setting up a centre for the administration of arbitration proceedings submitted to the regulatory authority.⁴⁷ This regulation also establishes rules or guidelines for access to OSIPTEL arbitrations and the procedure to be followed until a ruling is issued putting an end to that particular dispute.⁴⁸

In addition, considering that modern practice in similar matters has been successfully developing ways of dealing with conflicts other than arbitration or conciliation proceedings, the Regulation allows the possibility that the Centre should administer or assist in the development of alternative means of resolving conflicts.

4.7.3 User claims

User claims are brought initially before the company providing the service concerned. If the problem is not resolved by the company, it is then taken to TRASU.

Administrative Tribunal for the Settlement of User Claims (TRASU)

The Administrative Tribunal for the Settlement of User Claims was set up in October 1995. Representing OSIPTEL, but fully independent in its rulings, it deals with claims made by users of public telecommunication services at national level.⁴⁹ TRASU acts as the last administrative

instance for user claims and is made up of six board members, which include lawyers and secretaries who prepare the appeals proceedings brought before the Tribunal.⁵⁰

The criteria on the basis of which TRASU judges the appeals that are brought before it are contained in the Guidelines for the Decisions of the Administrative Tribunal for the Settlement of Claims by OSIPTEL Users.⁵¹ The Tribunal hears and settles:

- appeals proceedings (a request in writing deposited by the user expressing disagreement with a decision taken in the first instance, in the company, and requesting that TRASU review the case);
- complaints appeals (a request in writing by the user at any stage of the proceedings, in cases of: a) infringement of delays; b) non-compliance with the terms of a decision; c) a request for positive administrative silence; and d) any other infringement of the rules).

Generally speaking, claims that fall under the Tribunal's jurisdiction are related to: service billing; service installation or start-up; transfer; service suspension or interruption; quality; non-delivery or late delivery of receipts to users' addresses; failure by the operating company to provide detailed invoicing; any other matter deemed appropriate by OSIPTEL's Governing Board.⁵² Appeals against the Tribunal's decisions are considered by the Upper Chamber of the ordinary courts.⁵³ Since TRASU's new directive has come into effect, the number of cases submitted to the Tribunal and the speed with which they are processed have increased considerably (Table 10).

4.8 Power of coercion and sanction

Under the terms of Act No. 27336 of 27 July 2000, OSIPTEL is authorized to identify facts or omissions that constitute administrative breaches and to impose sanctions in the sector of public telecommunication services. Sanctions may be very heavy, heavy or light and each of these categories is subject to maximum and minimum limits of fines, which cannot exceed 10 per cent of the gross revenues collected by the offender in the year prior to the supervisory proceedings (see Table 11). The imposition of sanctions does

Table 10 – Claiming rights*Claims lodged with TRASU under former Directive 032-97/CD-OSIPTTEL*

Appeals	
Invalid	12
Admissible, valid, part. admissible, withdrawal, compliance, conciliation	114
Inadmissible	124
Other	35
Total	285

Complaints appeal	
Invalid	106
Admissible, valid, part. admissible, withdrawal, compliance, conciliation	139
Inadmissible	40
Other	25
Total	310

Claims lodged with TRASU under current Directive 015-99/CD-OSIPTTEL

Appeals	
Invalid	1 889
Admissible, valid, part. admissible, withdrawal, compliance, conciliation	4 428
Inadmissible	4 068
Other	655
Total	11 040

Complaints proceedings	
Invalid	334
Admissible, valid, part. admissible, withdrawal, compliance, conciliation	1 094
Inadmissible	543
Other	85
Total	2 056

Source: OSIPTTEL

not relieve fulfilment of obligations by the penalized entity. The sums collected in the form of administrative fines are paid into the Telecommunications Investment Fund (FITEL).

Despite the fact that the size of the fine takes into account the social effect of the infringement and the number of infringements committed, the amount payable by companies in some cases is very small and easy to settle.

4.9 Specific regulatory powers

OSIPTTEL holds exclusive powers with regard to:

- the monitoring of operating company compliance with concession contracts in areas including quality of service, tariffs and adherence to the rules of free and fair competition;
- the fixing of tariff systems and interconnection charges for public telecommunication services;
- the establishment of guidelines and/or limits to be observed by carrier service licensee companies in the negotiation of international operating agreements, especially with respect to accounting rates between companies;

- the issue of technical, economic and legal rules governing interconnection contracts and service quality standards.

With regard to supervision, it is responsible for standards of quality and efficiency in the provision of services, for the observance of technical standards of interconnection and network access, for competition between operating companies, for the fulfilment of obligations contracted under licensing contracts and for other matters falling under its jurisdiction.

It is likewise responsible for issuing a prior report for every licensing contract approved by the Ministry of Transport and Communications on technical, economic and legal aspects of interconnection, service quality, relations with users and customer protection, free and fair competition and mechanisms for settling disputes between operating companies.

It also issues evaluation reports on the fulfilment by operating companies of their obligations under licensing contracts, and is in charge of settling disputes between companies, issuing procedural rules for the settlement of user claims, administering the Telecommunications Investment Fund (FITEL), setting out rules and regulations for the operation of the fund,

establishing accounting plans and/or systems where appropriate for compulsory application by the operating companies, applying sanctions as provided in the legislation against licensees, independent operators and users, performing any duties delegated by the Ministry of Transport and Communications, administering arbitrations in the event of disputes between operators, ensuring the correct application of provisions governing the standardization and approval of telecommunications equipment and apparatus enacted by the Ministry and providing specialized services on an exceptional basis for any natural or legal persons as necessary.

OSIPTEL is not responsible for issuing concessions, authorizations, permits or licences, for approving equipment and apparatus, or for the administration and licensing of radio spectrum frequencies, which are all the

responsibility of the Ministry of Transport and communications.

4.9.1 Interconnection

The Telecommunications Act establishes that the interconnection of public telecommunications services and networks is of public and social interest, so that OSIPTEL accordingly sets out the rules with which company interconnection agreements must comply.⁵⁴ OSIPTEL is also empowered to settle disputes arising between telecommunication service providers in cases related to the interconnection of services and the right of access to networks, including technical aspects and economic conditions. Such rules are obligatory and compliance is a matter of public order.

Table 11 – Infringements of the law

Detailed description of the types of infringements recognized under Peruvian law

Type of infringement	Description of infringement
Very serious	<ul style="list-style-type: none"> • Engaging in telecommunications activities without due authorization or licence. • Using the radio spectrum without authorization or licence. • Deliberately producing interference. • Intercepting services destined for the free use of the public in general. • Revealing the existence of or publishing any type of information obtained by intercepting or interfering with telecommunications services. • Denying, obstructing or resisting administrative inspection. • Failing to comply with the terms of authorizations or licences and committing two or more serious infringements within one year.⁵⁵
Serious	<ul style="list-style-type: none"> • Importing, manufacturing, marketing and/or installing terminals or equipment without certificate of approval or without prior authorization by the MTC for radio equipment. • Tampering with the technical characteristics, trademarks or labels of equipment and apparatuses. • Changing the location or technical characteristics of radio stations without authorization. • Producing harmful interference. • Failing to pay dues, rates and charges arising. • Emitting misleading or false identification signals. • Making undue use of telecommunications services. • Refusing to provide service-related information to the telecommunications authority and committing two or more light offences within one year.⁵⁶
Light	<ul style="list-style-type: none"> • Causing interference that is inadmissible under ITU Radio Regulations. • Any undue use of telecommunications services which is not considered as a serious offence.

Source: OSIPTEL

Public telecommunication service networks must be interconnected in accordance with the principle of equal access, with which the operators of public telecommunications services must comply in their interconnections, by granting technical, economic, tariff, service supply and other aspects on equal terms to any operator of the same type of service requesting it.⁵⁷ In order to facilitate interconnection between operators, licensees providing public telecommunication services must apply open network architecture designs aimed at the establishment of an integrated service digital network free of interconnection impediments.

Interconnection contracts have to be subject to the terms of current legislation (the Act, the Regulation, specific regulations, the basic technical plans contained in the National Telecommunications Plan, and any provisions laid down by OSIPTEL). They must cover aspects such as:

- interconnection capacity and forecasts for the future, ensuring that signal traffic between networks is of reasonable quality;
- network connection points;
- dates and periods when the interconnection will be effective;
- characteristics of signals transmitted or received including arrangements for routing, transmission, synchronization, signalling, numbering, tariffs and quality of service and telecommunications security;
- guarantees by both parties to maintain the quality of services provided while networks are interconnected;

- tariff and economic terms of the interconnection, taking into account costs and a reasonable profit margin, amongst other aspects;
- dates or periods for revision of contract terms. At the request of either party, OSIPTEL may take part in the negotiations in order to help arrive at an understanding and agreement;
- measures needed to ensure that the parties meet the agreed delays.

The negotiation period for establishing the terms and conditions of an interconnection contract may not exceed 60 calendar days, unless either of the parties for justified reasons requests OSIPTEL for an extension. Once the agreement has been reached, the parties will sign the interconnection contract and either of them may submit it to OSIPTEL for approval, not later than 35 working days prior to the date of entry into force of the contract. Before the date of entry into force of the contract, OSIPTEL must issue an opinion, either giving its approval or stipulating technical conditions which have to be incorporated in the contract.

Interconnection charges will be the outcome of negotiation between the parties. If there is no agreement between the parties, OSIPTEL is expressly authorized to determine the appropriate charges. OSIPTEL has established a timetable for reducing interconnection charges, establishing an average charge from mid-2002 of USD 0.0096 per minute (Table 12). The contracts must also take into consideration a series of elements to be incorporated in the interconnection agreement (see Box 9).

Table 12 – Interconnection charges

Plan for interconnection charges from 1 August 2000 to 1 July 2002, in USD

Effective from	Effective to	Average charge	Day-time charge	Night-time charge
01-08-2000	30-06-2001	0.0168	0.01732	0.00866
01-07-2001	31-12-2001	0.0144	0.01443	0.00722
01-01-2002	30-06-2002	0.0115	0.01186	0.00593
01-07-2002	onwards	0.0096	0.00990	0.00495

Source: OSIPTEL

Box 9: Recipe for a successful agreement

General points that must be included in interconnection agreements between parties in Peru.

Established operators must define at least one interconnection point in every local area, including in local to local, long distance to local and long distance to long distance interconnection. Additional interconnection points would be subject to negotiation. Interconnection charges will only apply where each of the service providers to be interconnected is operating. Long-distance operators must accept calls from other long-distance operators for termination in a local area in cases where the latter have no local interconnection points. The corresponding tariffs shall be negotiated between the parties, and the cost of the transport of the call shall be negotiated on the basis of the current applicable tariff. Any discounts for traffic volume applied shall be public and shall not be discriminatory between operators. The Interconnection Regulation in effect establishes that interconnection charges are equal to the sum of: i) interconnection costs, ii) contributions to total costs of the local service provider, and iii) a reasonable profit margin. The interconnection cost is defined as the difference between total costs including the installation concerned and total costs excluding that installation, divided by installation capacity, i.e. average costs.⁵⁸

The law allows OSIPTEL powers to implement corrective measures, with the possibility of resorting to law enforcement in extreme cases. In practice, in a competitive scenario and for cases where problems have arisen with establishing the interconnection, this power has proved more effective than sanctions.

4.9.2 Tariffs

It is OSIPTEL’s responsibility to design, approve and supervise the system of tariffs for public telecommunication services, setting up tariff conditions that are compatible with a competitive environment. Public telecommunication services are classified according to the law (under licensing contracts with Telefónica del Perú) in two categories, associated with different regulatory systems. Category I includes local (fixed and residential) telephony and national and international long-distance telephony. Category II includes the fixed service in rural areas, public and mobile telephony, paging, line leasing, cable television, telex, data transmission and supplementary services (Table 13). For Category I, OSIPTEL fixes average weighted capped tariffs. In Category II, on the other hand, prices are fixed on the basis of fixed maximum tariffs that reflect the real costs of services.

In addition to these two categories, there is another which is not subject to licensing contracts that includes telecommunication services whose tariffs are not regulated by OSIPTEL. Tariffs in this group of services are established by the competitive mechanisms of the marketplace.

OSIPTEL considers that an informed user can take consumption decisions suited to his needs, preferences and possibilities. For this reason, the regulatory authority regularly informs users about the tariffs of the main public telecommunications services. It publishes the tariffs established by the companies or suggests consulting these to obtain information on tariff promotions.

4.9.3 Universal service/access

Owing to Peru’s socio-geographic diversity, besides the low income levels of many of the rural inhabitants, the provision of telecommunication services requires high costs of investment and maintenance. The populations in those areas are unable in the first place to put up the necessary investment, so that a State contribution is necessary to attract additional private investment. For this reason, OSIPTEL finances telecommunication services in rural areas and places declared to be of special social interest through explicit subsidies. The mechanism developed to obtain universal access to telecommunication services has been a specially constituted investment fund, known as the Telecommunications Investment Fund (FITEL). The fund’s main objectives are:

- Promoting maximum access to telecommunications services for the population in rural areas and places of special social interest.
- Promoting the participation of the private sector in the provision of telecommunications services in rural areas and places of special social interest.

Table 13 – Telecommunication services from a tariff perspective

Classification of telecommunication services in Peru

Regulated services – Category I	Regulated services – Category II (capped tariffs)	Unregulated services
Residential and commercial monthly rental Local calls and installation National long distance International long distance	Submarine cable Asymmetric circuits Local leased circuits National leased circuits International leased circuits Frame relay circuits Infovia tariffs Unired tariffs ISDN tariffs Telex service Telegraph service Additional services Terms of use Public telephones	Fixed-mobile Mobile-mobile Fixed-personal communication service (PCS) Fixed-digital trunk service Personal communications service (PCS) Trunk service (tariffs not yet available)

Source: OSIPTEL

- Encouraging the beneficiary population in rural areas and places of special social interest to identify their requirements.
- Promoting the social and economic development of rural areas and places of special social interest through access to Internet and the integration of such areas within the information society.
- To assign its resources efficiently.

Under the terms of the Regulated Single Text of the Telecommunications Act, OSIPTEL administers the fund and selects projects to be implemented. The functions related to the fund are split and the Ministry for Transport and Communications is responsible for approving projects. The fund’s assets come from a levy of 1 per cent on the amounts invoiced to companies regulated by OSIPTEL. FITEL itself is responsible for defining the most efficient policies for administering and investing its assets.

In order to define FITEL’s scope – since its objective is to expand telecommunications services in rural areas – the first step is to consider the definition of a rural area as given by the National Institute of Statistics and

Computing (INEI). A rural area is thus defined as a territory enclosing rural settlements of less than 100 housing units together or more than 100 dispersed or scattered units. The following characteristics are also taken into account: a) low population density (generally less than 3 000 inhabitants); b) non-existent or precarious basic services and infrastructure, linked to energy deficiency; c) adverse geography for the installation of a telecommunications service; and d) population with low purchasing power located in areas far removed from urban centres, whose prime activity is agriculture, stockbreeding, fishing or mining.

Among projects, preference is given to those considered to be of social interest. The relevant selection criteria are given in the FITEL Regulation, where projects of social interest are defined as being those of high social profitability, in deprived areas, and special projects contributing added value to communication and information networks related to the provision of public services. Through the Ministry of Transport and Communications, the government has to declare such projects to be of social interest for them to qualify for FITEL’s assistance.

Box 10: The need for infrastructure development

The MTC, FITELE and the development of telecommunications infrastructure.

While FITELE focuses its action on the development of projects aimed at providing an immediate solution to the problem of providing access to basic telephone services and the Internet to a large very undeveloped population in the interior of Peru, the Ministry of Transport and Communications (MTC) has been preparing plans for developing a high capacity transport backbone.

According to MTC officials, the development of telecommunications infrastructure works is the responsibility of the State, since the private sector – according to its usual policy – does not invest in infrastructure and is only interested in exploiting high-profitability urban markets. The MTC considers that it would be possible with State investment to build an optical fibre backbone grid across the country using Peru's high tension power lines, which are still in State hands. In this way, they argue, FITELE's funds could be used to develop infrastructure on the basis of very long-term technology, compared with the satellite technology used at present as a support for connecting projects currently financed by FITELE. The backbone infrastructure developed in this way would then be handed over for operation to the private sector on the basis of licences, according to the MTC.

For its part, OSIPTEL considers that one of the strategic objectives of the telecommunications sector is to apply a policy of universal access, whereby the State can use FITELE as an instrument of social justice. The State would play its subsidiary role by facilitating private investment in areas which are unattractive to such investment because they are not commercially profitable. The government mechanisms for the competitive allocation of subsidies to the private sector are already having the effect of facilitating the provision of basic telephone services and Internet in Peru's rural areas, to such an extent that the present rural operators have extended their services beyond the populations identified by FITELE. With regard to the possibility of developing a backbone infrastructure, OSIPTEL officials point out that the main problem with providing telephone services and Internet to Peru's rural areas is access, the so-called "last mile", so that having a backbone to carry large volumes of traffic between intermediate towns would not actually solve the problem of access for the rural population.

FITELE's strategy

According to FITELE's strategy for implementing projects, the first stage was to consist in providing basic access to public telecommunications services and low speed data transmission. That led to the selection of villages that would maximize social benefits derived from investment in telecommunications. It is worth noting that a basic element in the methodology applied in the selection of villages was the participation of district authorities all over the country in the determination of requirements. The results of this first stage may be seen in the Frontera Norte (north frontier) pilot project and the Rural Projects Programme (PPR). Taken together, these projects would benefit some 4 million rural inhabitants in approximately 5 000 villages in the country (Box 11).

The second stage of the strategy consists in increasing the teledensity of access to public

telephones in provinces and villages with inadequate services (approximately 1 500 villages with between 1 000 and 5 000 inhabitants). There is also a plan to provide mass access to the Internet through public telephones (Telecentres) in all rural district capitals in the country, in conjunction with programmes for the training and promotion of the development of local contents. This stage has taken the form of the CABINET-FITELE and public telephone projects. A further possibility in this stage is to allow users in general, operators or investors, to put forward initiatives for the development of Pilot Telecommunications Projects.

A later stage would consist in providing mass access to telecommunications services, for instance by increasing the teledensity of public telephones and Internet access booths, and the development of small local exchanges using modern technology in the provinces and populated centres with between 5 000 and 10 000 inhabitants.

Box 11: Learning with the public telephone

Description of a pilot project on FITEL's northern frontier.

The northern frontier pilot project is a limited scale public telephone project, whose main objective was to accumulate knowledge of possible drawbacks that might arise with the launch of larger scale projects. The company Gilat To Home Perú S.A. (GTH) won the tender to offer the service in the 213 populated centres selected for the project. The licensing and financing contracts for the project were signed at the end of 1998, which opened the way to the full network installation by end 1999, i.e. the agreed delivery date. By mid-2001, the operator was providing a normal service. The implementation of this project has produced a highly positive impact on the populations in rural and remote areas of the country, bringing closer services which were either non-existent or of difficult access for the local population (see Table 14). The project has also been a success with regard to the use of public funds for the development of rural telephony. In the northern frontier pilot project, public investment or subsidy per inhabitant came to USD 11, covering a total population of 144 522 inhabitants on the basis of an average investment per populated centre of USD 8 609.

In mid-2000, the first assessment took place, in which 76 of the 213 populated centres of the project were evaluated. The report of this first assessment exercise highlights in particular the problems related to difficult access for local people. For example, the fact that pre-paid cards are not available in the villages, nor are people able to use them. In addition, there is no awareness of tariffs and local populations have to put up with long periods without service whenever some equipment breaks down. The second inspection was carried out between November 2000 and January 2001 (on a sample of 78 settlements), after which the follow-up report commended the improvements carried out by GTH in response to comments made in the first report.

Table 14 – Impact of the northern frontier pilot project

	Amazonas	Cajamarca	Piura	Tumbes	Total
Geographical scope of project (districts)	4	4	7	Dept.	Northern frontier
Number of selected population centres	57	54	54	28	193
Number of direct beneficiaries ¹	14 769	20 605	15 660	7 838	58 872
Number of indirect beneficiaries ²	24 317	24 754	30 710	5 869	85 650
Distance (km) to nearest telephone prior to project	251.4	26.1	26.1	9.0	
Distance (km) to nearest telephone after project	6.2	4.9	4.2	3.0	
Population impact prior to project ³	10%	20%	16%	91%	48.3%
Population impact after project ⁴	90%	85%	71%	99%	88.5%
¹ Population of selected centres. ² Neighbouring population within a radius of 5 km of the selected population centre. ^{3,4} Percentage of total population within the geographical area of the project with access to telephone.					

Source: OSIPTEL.

5 Areas not under OSIPTEL's jurisdiction

There are some management and monitoring functions related to the telecommunications market which are not in OSIPTEL's hands. These include in particular the licensing and management of the radio spectrum.

5.1 Concessions

Under Peruvian law, the provision of public telecommunications services requires a licence, which is issued by decision of the MTC. Applications have to be submitted to the Specialized Telecommunications Licensing Unit (UECT), which is responsible for evaluating and processing requests pertaining to public telecommunication services.

The aim with this licensing policy is to promote market access for new operators, to increase private investment (whether national or foreign), to encourage the development of new services and to maximize efficient use of the radio spectrum. Concessions have to be issued subject to a guarantee of conditions of simplicity, transparency, flexibility, objectivity, celerity, reserve and equity.⁵⁹ Licences may be issued in two ways: either on party request or by public tender.

Licences on party request are issued without restrictions for services using physical means, or for services which are not restricted with respect to spectrum availability or which do not affect the National Frequency Plan. Although there are no restrictions on the number of licences issued for this type of service, however, applicants must fulfil certain requirements in order to obtain a licence: a) technical and economic project profile; b) minimum expansion plan; c) planned investment; d) payment for items related to the issue of the licence; e) not being barred from State contracts, nor being subject to limitations established by law; and f) having the relevant legal documentation.⁶⁰ A set of additional conditions are applied in the case of national and international long-distance fixed telephony licences.⁶¹

The policy concerning the assignment of a scarce resource like the radio spectrum is not included in the licensing arrangements, with several services being allowed in a single band. The charges made for the right to use the

spectrum and the form of payment of the charges are set out in specific regulations.

Licences by public tender are issued whenever there is excess demand for spectrum for a particular service (owing to technical restrictions) or if they are specifically called for in the National Frequency Allocation Plan.⁶² Through a public tender procedure, spectrum is allocated to the most efficient company, meaning the company that will give most value to the resource under competitive conditions, because it intends to make the most efficient use possible of the resource in order to obtain the greatest profitability.

Licences are awarded for a maximum period of 20 years, and the attached rights are non-transferrable, either totally or in part, unless express, prior authorization is obtained from the MTC, which can be denied without justification. Failure to observe this clause will lead to the termination in full right of the licensing contract. If the transfer is approved, then the transferee must assume all the obligations of the holder in full right.⁶³

Several services may be provided on a single frequency band and efficient use is ensured through appropriate guidelines. The assigned frequencies may revert to the State, if efficient use has not been made of the assigned spectrum, or if the guidelines for the established frequencies have been disregarded without justification. Licensee companies may apply for an extension of the assigned spectrum, provided that their request is founded on existing and projected demand.

5.2 Radio spectrum management

The main objective of the UECT, acting as spectrum administrator with respect to public services, is to achieve appropriate management and control of radio spectrum frequencies, in conformity with international telecommunication agreements and the country's own interests. It also aims to develop an integrated and highly reliable telecommunications system, which will make a contribution to socio-economic activities, regional development, international links and the defense of sovereignty and national security.

The UECT also chairs joint committees of the National Frequency Allocation Plan (PNAF)

Channelling and Radio Spectrum Utilization Targets, also attended by representatives of the DGT and OSIPTEL.

The DGT is also in charge of the Radio Spectrum Control and Monitoring System Project, as well as of private and broadcasting services, but not public services.

The Ministry's action follows general guidelines, which include technological neutrality (operators have flexibility to use alternative technologies) and service neutrality (the provision of different services is allowed in a single band, since the assignment will be for a specific portion of the spectrum and will not be tied to a specific service). Licensee companies may also request an extension of the assigned spectrum, provided that their request is backed up by existing effective demand and projected demand. Efficient use of the spectrum will be ensured through the establishment of frequency utilization targets. Moreover, assigned frequencies may revert to the State, in cases where efficient use is not being made of the assigned spectrum, or if the established frequency utilization targets are not being met without justification.

6 Conclusions

Telecommunications are a sector which is subject to constant, far-reaching change. National governments in their role as regulators find themselves obliged to adjust to technological innovation and the evolving business environment, while at the same time they have to find an adequate response to the social and political needs of the country and its population. This means that the institutional profile of a telecommunications regulatory authority will be as variable as the socio-political and economic environment in which it operates.

Their legally established functions and powers, as well as their mode of operation, are being constantly changed in the light of prevailing conditions and the new challenges that emerge and with which the authority has to cope. Owing to the occurrence of premature obsolescence and the need to provide answers to new problems, flexible institutional capacities and design have to be developed to adjust to prevailing conditions in an environment which is constantly changing.

In this kind of situation, it is important that the regulator should exercise authority with impartiality and independence. Thus the ability to act independently has to be won on a daily basis, in the light of past experience, building on results achieved and providing answers to new challenges.

The appreciable work performed by OSIPTEL in Peru has been based chiefly on its operating principles and the continuity of its management. Nevertheless, competition cannot be effectively promoted without the timely establishment of rules designed to update the regulatory framework proactively and bringing about the necessary changes in the various areas of government. Recently some of the rules and standards have achieved the status of law, which adds greater legal security to the regulatory framework, although much still remains to be done in this respect.

Workforce and budgetary restrictions have had a significant impact on OSIPTEL's highly qualified staff, as reflected in the falling number of employees holding postgraduate qualifications.

Ever since it was founded, OSIPTEL has always been steadily and directly supported by the President of the Nation to preserve its independence in relation to other State bodies. OSIPTEL's attachment to the Office of the President of the Council of Ministers has been a significant factor in securing its structural and institutional independence, although it is still to some extent exposed to the same political vicissitudes as the Ministries.

The experience gained by OSIPTEL, as the regulatory authority for telecommunications in Peru, clearly reflects the type of challenges that confront the new regulators which have been emerging in recent years in developing countries. The experience OSIPTEL has accumulated since it was founded in February 1993 now constitutes a rich source of extremely valuable experience for countries which have embarked only recently on the task of establishing an independent and highly professional regulatory authority in highly volatile political, social and economic environments, such as those frequently faced by developing countries.

ANNEX A

OSIPTTEL's functions

According to OSIPTTEL's General Regulation (D.S. 008-2001-PCM of February 2001), OSIPTTEL is defined as a decentralized public body attached to the Office of the President of the Council of Ministers, with public law status, its own assets and enjoying technical, administrative, economic and financial independence. Its objective is to regulate, set standards, supervise and monitor, within its powers, the development of the public telecommunication services market and the behaviour of operating companies, and the relations maintained by these companies among themselves and with users; also to guarantee the quality and efficiency of the service offered to users, to regulate the tariff balance and ensure efficient operation and use of public telecommunication services in the market.

OSIPTTEL's specific objectives are:

- a) To promote competitive conditions in the offer of telecommunication services.
- b) To guarantee universal access to public telecommunication services.
- c) To guarantee the quality and continuity of the supply of public telecommunication services.
- d) To ensure the strict fulfilment of licensing contracts.
- e) To safeguard impartially the interests of the State, investors and users in the telecommunications market.
- f) To establish suitable policies for the protection of users and ensure access to services on the basis of reasonable tariffs.
- g) To facilitate the development, modernization and efficient operation of telecommunication services.
- h) Any other purposes established under the relevant laws and regulations.

OSIPTTEL's principles of action

Principle of free access: OSIPTTEL's action should be aimed at guaranteeing operating companies and users free access to public telecommunication services, provided that the

legal requirements and corresponding contract obligations are complied with.

Principle of neutrality: OSIPTTEL must ensure the operating neutrality of enterprises within its jurisdiction, taking care that they do not use their position, either directly or indirectly, to obtain advantages in relation to other telecommunication service operators or in relation to users. OSIPTTEL should take care to ensure, however, that its action does not unnecessarily restrict incentives to compete for investment, innovation or prices.

Principle of non-discrimination: OSIPTTEL's decisions and actions must ensure that companies operating in public telecommunication services markets are not discriminated against.

Principle of action based on cost-benefit analysis: The costs and benefits of the regular and programmed activities undertaken by OSIPTTEL must be evaluated before they are implemented and must be duly backed up by studies and technical evaluations vouching for their rationality and efficiency. This evaluation must take account of both short-term and long-term projections, as well as of direct and indirect, financial and non-financial costs and benefits.

Principle of transparency: Any decision by any functional department of OSIPTTEL must be adopted in such a way that the criteria on which it is based are known to and foreseeable by users. Reasons must be given for OSIPTTEL's decisions and draft standard-setting and/or regulatory decisions must be given advance notice in order to give the public the opportunity to express opinions. This obligation shall not be taken to include decisions which owing to questions of urgency or necessity the Governing Board decides shall not be subject to the prior publication procedure. If appropriate, public hearings shall be held in order to receive opinions from parties concerned.

Principle of promoting competition: OSIPTEL's policy must be to encourage investments that help to extend the coverage and quality of public telecommunication services, by pursuing the objective in its activities of promoting free and fair competition, within the scope of its functions.

Principle of impartiality: OSIPTEL must, when considering the interests of service operators and users, act fairly and impartially strictly according to the relevant standards. Similar cases or situations must be treated in like manner.

Principle of independence: In the performance of its functions, OSIPTEL shall not be subject to any compulsory order by any other State body or entity. It shall act strictly in compliance with applicable legal standards and soundly conducted technical studies.

Principle of subsidiarity: OSIPTEL's activity is subsidiary and arises only in so far as freely competitive markets and mechanisms do not adequately meet the interests of users and competitors. In case of doubt regarding the need to approve regulatory and/or standard setting provisions, preference will be given to not approving them and, in the event that several similarly effective options are available, the one that least affects private independence shall be preferred.

Principle of supplementarity: The standards of free competition are supplementary to whatever standards and/or regulations are issued by OSIPTEL in the performance of its duties. In the event of conflict, OSIPTEL's provisions shall prevail.

Principle of analysis of functional decisions: OSIPTEL's analysis of functional decisions must take account of the effects of such decisions from the point of view of tariffs, quality, incentives for innovation, contractual conditions and any other aspect that is relevant to the development of markets and the satisfaction of users' interests. In that respect, the impact of each of these aspects on other matters involved will need to be evaluated.

Principle of efficiency and effectiveness: OSIPTEL's activities shall be guided by the search for efficiency in the assignment of resources and the achievement of objectives for the lowest cost to society as a whole.

Principle of celerity: In its administrative management, OSIPTEL must endeavour to resolve problems and disputes opportunely and as rapidly as possible.

OSIPTEL's functions

OSIPTEL exercises the functions of standard setting, regulating, supervising, inspecting and penalizing, and settling disputes.

Standard setting function: This authorizes OSIPTEL – on an exclusive basis within its powers – to issue regulations and standards of a general nature, applicable to all users who are in the same circumstances. The standard setting function is exercised exclusively by the Governing Board, which issues decisions to that effect founded on reasons. In the exercise of its standard setting function, OSIPTEL may issue regulations or provisions of a general nature on the following subjects:

- a) tariff or regulatory systems and mechanisms for their application;
- b) rules governing the procedures followed before any of OSIPTEL's functional departments, including regulations applying to infringements and sanctions, user claims, settlement of disputes and in general whatever other rules are needed under the relevant standards;
- c) OSIPTEL's internal organization, including the creation of managerial departments;
- d) participation by the parties concerned in the process of approving regulations, general standards and rules, including those applying to advance publication or the holding of public hearings for that purpose;
- e) guidelines, procedures and criteria governing the separate accounts of operating companies, in cases referred to in the Regulation of the Act;
- f) guidelines for the interconnection of telecommunication services and networks;
- g) administration and running of the Telecommunications Investment Fund, in conjunction with the Ministry and in accordance with the latter's rural telecommunications development policy;

- h) quality standards and conditions of use of services within OSIPTEL's jurisdiction. This includes the fixing of technical measurement indicators and the use of those indicators as reflecting user satisfaction;
- i) conditions of access to services and networks and interconnection between these, including the suitability, continuity and in general the terms and conditions of contracts, with the possibility exceptionally of approving contract formats, where necessary;
- j) establishing requirements and compulsory rules for the provision of supplies and information to users;
- k) separate accounting mechanisms for services, where necessary;
- l) relations between commercial companies and operating companies, and between these and end users; in aspects related to the marketing of telecommunications traffic;
- m) general contract clauses applicable to the provision of public telecommunication services;
- n) establishing interconnection instructions, which may include tariffs, charges and other terms and conditions of interconnection;
- o) functions delegated to it by the Licensor through Ministerial Decisions or licensing contracts, for the better fulfilment of its objectives;
- p) any other such function which, in the light of OSIPTEL's responsibilities, is necessary to accomplish its purposes. The standard setting function of the Governing Board cannot be delegated.

A prior requirement for the approval of regulations, standards and general rules issued by OSIPTEL is that drafts thereof should have been published in the official bulletin *El Peruano*, with a view to receiving the suggestions or comments of interested parties. This requirement does not cover what are considered to be emergency regulations, for which reasons must be given.

It is at the discretion of OSIPTEL whether to incorporate the suggestions received. The submission of suggestions is not binding, nor does it give rise to an administrative procedure.

The above-mentioned publication must contain the following items:

- a) The full text of the regulation, standard and/or rule which is to be issued.
- b) The grounds for issuing them.
- c) The time-limit available for written suggestions or comments and, if necessary, the date of the public hearing held to receive the oral comments of participants. The delay allowed for the receipt of comments and any related hearing must not be less than 15 calendar days starting from the date of publication or notice on the hearing.

Regulatory function: This concerns OSIPTEL's power to fix the tariffs of public telecommunication services. The regulatory function pertains to OSIPTEL's Governing Board and is exercised by means of Decisions.

Under this function, OSIPTEL fixes tariffs, establishes tariff systems in different forms and issues whatever provisions are necessary for this purpose.

The General Management is in charge of preparing technical studies required by the Governing Board. If appropriate, public or private entities of good reputation may be called upon to this effect.

The tariffs of public telecommunications services are established freely by each operating company according to the conditions of supply and demand in the market.

Without prejudice to the preceding clause, OSIPTEL may set up different tariff cap arrangements for specific public telecommunications services provided by operating companies. The tariff caps establish ceilings for the tariffs set by the licensee companies.

OSIPTEL may deregulate tariffs if it finds that conditions of effective competition prevail between operating companies, ensuring reasonable tariffs for the users.

Whatever tariff provisions and criteria have been established in the licensing contracts shall be applicable to companies holding those contracts.

By means of a tariff decision, OSIPTEL may:

- a) fix tariff caps for carrier, end or public broadcast services, as well as rules for their application;
- b) revise such tariffs or introduce adjustments as appropriate;
- c) establish tariff systems that include a set of tariff rules and provisions to which operating companies shall be subjected for the application of tariffs, tariff plans, offers, discounts and promotions.

Tariffs for the provision of added value services may be fixed freely in accordance with supply and demand conditions. OSIPTEL may not establish tariff caps for added value services.

In the event of any disagreement between the interpretation or application given by OSIPTEL to a regulation and/or standard, in a particular case, on the part of an operating company, the latter may challenge the interpretation before the Governing Board. This procedure may not be used to challenge the actual content of the regulation and/or standard, but only its application or interpretation.

Supervisory function: Under its supervisory function, OSIPTEL may verify compliance with legal, contractual or technical obligations by operating companies and other companies or persons conducting activities within its jurisdiction. It also allows OSIPTEL to verify compliance with any instructions or decision issued by OSIPTEL itself or any other obligation incurred by the supervised entity.

The supervisory function is exercised in the first instance by OSIPTEL's Governing Board. For this purpose, the Governing Board shall be supported by one or more of the line managements, which shall be responsible for conducting any necessary investigation or analysis activities.

In order to retain compatibility between its regulatory and/or standard setting functions, that fall within its jurisdiction, and its task of supervising the corresponding licensing contracts, OSIPTEL, through its Governing Board, must issue an opinion prior to the approval of any licensing contract concerning the provision of public carrier services or end services.

OSIPTEL's notice, as appropriate, shall include material referring to the tariff conditions of the contract, terms of competition and inter-connection, technical, economic and legal aspects relating to the quality and timely provision of services, and to procedures for the settlement of disputes arising from the interpretation and execution of licensing contracts, or any other matters within OSIPTEL's jurisdiction.

Similarly, OSIPTEL must issue a prior opinion in favour of renegotiation whenever a licensing contract comes up for renewal or needs to be revised. For this purpose, OSIPTEL must issue an evaluation report concerning the licensee company's fulfilment of the obligations contained in the licensing contract and the standards and provisions applying in the sector.

Amongst other aspects, OSIPTEL is responsible for supervising:

- a) standards of quality and efficiency in the provision of public telecommunication services, including the operating companies' relations with users and fulfilment of obligations to expand the service;
- b) the application of normative and/or regulatory provisions, which it has issued in the course of its duties;
- c) fulfilment of technical interconnection standards and operating companies' right of access to the network;
- d) competition in the public telecommunication services market;
- e) compliance by service providers with the standards laid down by the Ministry for telecommunications equipment and apparatuses, with a view to ensuring efficient use of the latter;
- f) fulfilment of obligations undertaken in the licensing contracts;
- g) compliance with other provisions related to matters under its jurisdiction.

Inspection and penalizing function: This function allows OSIPTEL to impose sanctions and corrective measures on operating companies and other companies or persons conducting activities within its jurisdiction for failure to comply with applicable standards, regulations and obligations contained in licensing contracts.

The inspection and penalizing function may be exercised either ex officio or on complaint by a party. In the first instance it is exercised by OSIPTEL's General Management and in the second instance, on appeal, by its Governing Board.

In exercising its responsibilities in this respect, the General Management may call upon the services of one or more of its managerial departments, which may conduct investigation and analysis activities where necessary.

The General Management may also delegate these duties, by means of a delegation agreement, to public or private entities, of established reputation, provided that the agreement clearly establishes the independence and technical proficiency of the body responsible for resolving the case concerned. The act of delegating does not detract from OSIPTEL's own responsibility. Appeals may be brought directly to the Governing Board against decisions by the delegated entity.

If in the performance of its duties any of OSIPTEL's functional departments should detect that an infringement has been committed, in relation to the provision of telecommunication services or in other related markets, against applicable rules under the exclusive jurisdiction of the National Institute for the Defence of Competition and the Protection of Intellectual Property (INDECOPI), OSIPTEL may lodge whatever complaint it deems relevant. It may exercise the same power in relation to infringements where the decision lies with other authorities.

Without prejudice to the Regime of Infringements and Sanctions provided under the Act, the Regulation of the Act and licensing contracts, OSIPTEL may, in matters under its exclusive jurisdiction, identify infringements which are not covered by the Telecommunications Act and decide the corresponding sanctions, within the categories provided in that Act.

In the event of non-compliance with legal or contractual obligations or obligations issued by OSIPTEL in the course of its duties, the latter may impose sanctions as provided in Articles 25 and 26 of Act No. 27336.

OSIPTEL shall keep a register of the sanctions applied, with a view to monitoring, preparing

statistics and informing the public, as well as detecting cases of repeated infringements.

OSIPTEL is authorized to collect duties, charges, fines, penalties and generally any sum payable by operating companies or persons under its jurisdiction, in conformity with the Act, the corresponding licensing contracts and any other applicable standards and decisions. For this purpose, OSIPTEL may employ the coercive powers it is allowed by law.

Settlement of disputes function: According to this function, OSIPTEL's competent bodies are authorized to settle administratively any conflicts or disputes arising, within its jurisdiction, between operating companies or between an operating company and a user.

Disputes falling under the exclusive jurisdiction of INDECOPI are excluded.

OSIPTEL is empowered to deal with and settle any disputes arising as a consequence of any acts or omissions which affect or may affect the public telecommunication services market, even though only one of the parties is an actual operating company.

This function also covers the conciliation of opposing interests. If a successful conciliation is arrived at and has been approved by OSIPTEL, then the original dispute shall be considered ended.

Without prejudice to the foregoing provision, OSIPTEL may institute arbitration proceedings to resolve such disputes or any related to assets which may arise between the State and the operating companies.

Operating companies may submit their disputes to arbitration, except in the case of non-arbitrable matters. Because they relate to the exercise of powers or functions pertaining to the State's authority, non-arbitrable matters are deemed to be those related to the exercise of functions that fall within OSIPTEL's domain. In the case of arbitrable matters, arbitration proceedings are an alternative to and exclude administrative proceedings, the General Act on Arbitration being additionally applicable. If arbitration proceedings are chosen, the parties may submit their disputes to OSIPTEL, who shall act as administrator of the proceedings. The function of administering arbitrations does not pertain exclusively to OSIPTEL.

If two or more unequivocal expressions of the unilateral wish of operating companies, under their respective licensing contracts, to submit their disputes with other operating companies to arbitration are addressed to OSIPTEL or conveyed by some other means or mechanism, this will have the effect of an arbitration agreement, under the terms of Act No. 26572 – The General Act on Arbitration – and additional rules and amendments thereto.

The Collegiate Bodies shall in the first instance deal with disputes that fall within OSIPTEL's jurisdiction. Appeals shall be submitted to the Tribunal, whereby administrative proceedings will be exhausted.

The Collegiate Bodies' task of settling disputes may be delegated, by means of a delegation agreement, to public or private entities of sound reputation, including specialized companies, provided that the agreement ensures the independence and technical character of the body responsible for settling the case in dispute. The Tribunal shall then admit and settle any appeals arising from decisions by the delegated entity.

OSIPTEL is authorized to deal with the following disputes between companies by administrative proceedings:

- a) Those related to non-fulfilment of obligations relating to free and fair competition. In such cases, before the dispute is settled in first instance, the OSIPTEL body in charge must request from INDECOPI a technical report, which is not binding, on guidelines, precedents and interpretative criteria which it applies for the purposes of free and fair competition to markets and economic agents in general.
- b) Disputes related to the technical, economic or legal aspects of interconnection, including those relating to charges and other forms of compensation or retribution, payable by companies in relation to an interconnection, as well as those related to the settlements of such charges, compensation or retribution payments.
- c) Those related to the right of access to the network, including technical, legal and economic aspects.
- d) Disputes related to tariffs and charges other than those referred to in b) above.

- e) Disputes related to technical aspects of public telecommunication services.

OSIPTEL is authorized to deal with and settle the following disputes:

- a) those related to non-performance of a subscriber contract and the conditions of use of the service referred to in that contract;
- b) disputes related to the fulfilment of offers, promotions and products of public telecommunication services; and
- c) those related to the observance of the regulatory framework applicable to users of public telecommunication services.

OSIPTEL's jurisdiction is optional for users in the disputes referred to in this article, as they may bring their disputes directly before the courts.

The settlement of disputes function does not cover cases concerning user claims.

Prior administrative proceedings are compulsory and fall exclusively under OSIPTEL's jurisdiction, according to the rules established in this Regulation.

Administrative proceedings for the settlement of disputes described in this Regulation are initiated on request by the parties concerned. Exceptionally, OSIPTEL may initiate proceedings ex officio if it finds that conflicts between operating companies are affecting users' interests and those of other companies, in accordance with OSIPTEL's mandated responsibilities.

OSIPTEL shall settle disputes referred to in this chapter through procedures approved by its Governing Board.

Settlement of user claims function: OSIPTEL holds exclusive authority to deal with and settle claims lodged by users against operating companies, in second instance, concerning the following matters:

- a) invoicing or collection for the service, which expressly includes disputes related to the application of Article 14 of Legislative Decree No. 716;
- b) service installation or start-up;
- c) service transfer;

- d) service suspension or interruption;
- e) quality and suitability of service provided, including the accuracy of information supplied to the user;
- f) non-delivery of receipts or the copy of receipts requested by users;
- g) failure by the operating company to activate or deactivate supplementary or additional services requested by the user.

Claims may only be submitted after prior approaches to the operating company have been exhausted.

OSIPTTEL shall settle claims referred to in the previous article through the TRASU, in conformity with the rules contained in the Directive for the Treatment of User Claims issued by OSIPTTEL and other relevant rules.

The TRASU is authorized to order the submission of evidence in second instance.

FITEL administration: The Telecommunications Investment Fund (FITEL) shall be used exclusively to finance telecommunications services in rural areas or in places considered to be of special social interest. The FITEL Regulation shall decide the cases where financing may be considered non-reimbursable.

OSIPTTEL shall administer FITEL independently of the other activities that fall within its jurisdiction.

Projects for which FITEL funds are used shall be selected by OSIPTTEL and approved by the Ministry, taking into account the services planned and given priority in the National Telecommunications Plan. FITEL's accounting system shall be separate from that of OSIPTTEL.

FITEL's financial assets consist of:

- a) the special due payable to FITEL by operators of carrier services in general and public end services;
- b) other dues, charges, taxes or duties established by law;
- c) fines imposed by OSIPTTEL;
- d) appropriations channelled through the Public Treasury;
- e) financial revenues generated by FITEL's own assets;
- f) loans from internal or external sources;

- g) contributions, appropriations, donations, legacies or transfers of any kind made by national or foreign, natural or legal persons.

FITEL's revenues shall be paid in to whatever account or accounts OSIPTTEL's Governing Board judges convenient, in either national or foreign currency.

With the consent of its Governing Board, OSIPTTEL may carry out the following operations using FITEL financing, provided that the purpose of such operations is the development of telecommunications in rural areas or in places considered to be of priority social interest, in line with the telecommunications development policy established by the Ministry, acting within its powers and in accordance with the law:

- a) Extending loans by itself or through institutions of the financial system at short-term, medium-term or long-term market or preferential rates.
- b) Obtaining loans or lines of credit at short-term, medium-term or long-term market or preferential rates.
- c) Facilitating assets for the promotion of private investment in telecommunications in different forms.
- d) Engaging in asset transactions with national or foreign, private or public organizations.
- e) Constituting funds for specific purposes, provided that they are designed to ensure greater efficiency in the assignment of resources.
- f) Making deposits in national or foreign currency in any institution of the national or foreign financial system, in current accounts, deposit accounts or term accounts or in any other form authorized by law; setting up trusts with national institutions or abroad; granting or requesting sureties or other forms of guarantee.
- g) Performing all other economic and financial acts agreed by its Governing Board, unrestrictedly, provided that they are intended to favour the development of telecommunications in rural areas or places of special social interest.

The use of FITEL's resources is subject to the regulations and rules governing its operation.

In addition, using FIDEL's assets and in line with the telecommunications development policy established by the Ministry, OSIPTEL may:

- a) Commission studies, consultancies or expertise strictly related to the development of telecommunications in rural areas or places considered to be of special social interest.
- b) Acquire, encumber or dispose of any type of movable or immovable property related to the development of telecommunications in rural areas or places considered to be of special social interest. OSIPTEL may not use FIDEL's resources for its own expenditure or as a source of financing for itself, except to cover FIDEL's administrative costs, if necessary. Other provisions in this respect are contained in the Regulation for the administration and operation of FIDEL.

As payment on account of the final sums payable as special dues for FIDEL, operating companies shall pay directly to OSIPTEL monthly amounts equivalent to one per cent of their gross revenues as invoiced and collected in the previous month, such payments being made within ten calendar days of the month following the one in which the payment on account is due.

Functions of OSIPTEL's Governing Board

Governing Board: The Governing Board is OSIPTEL's highest authority. It is responsible for establishing policies and for managing the organization.

It is made up of five members appointed by Supreme Decision approved by the President of the Council of Ministers, the Minister for Economy and Finance and the Minister for Transport, Communications, Housing and Construction.

The Governing Board is made up in accordance with the terms of Article 6 of Act No. 27332, the Framework Act on Regulatory Authorities for Private Investment in Public Services.

The Governing Board's functions are:

- a) To approve OSIPTEL general policy.
- b) To issue standards and decisions of a general or specific nature in matters within its jurisdiction.

- c) To propose the issue of standards that further the fulfilment of its objectives.
- d) To approve the disposal, exchange, purchase, issue of purchase or sale commitments, guarantees, loans or award of OSIPTEL property in settlement of debts.
- e) To defend OSIPTEL's rights in or out of court, with the power of approving discontinuance, agreeing to claims, settling in or out of court and submitting outstanding or impending contentious matters to arbitration.
- f) To approve the Annual Report.
- g) To approve whatever inter-institutional agreements and measures are required for the fulfilment of its objectives.
- h) To appoint and remove the General Manager and members of the collegiate bodies.
- i) To appoint and remove members of the TRASU.
- j) To appoint and remove the Secretary of the Governing Board, on a proposal by the President.
- k) To confer whatever powers it deems necessary.
- l) To approve the membership of advisory committees, whose rulings shall not be binding.
- m) To approve OSIPTEL's organizational structure at levels below General Management.
- n) To appoint the Vice-President of the Governing Board.

The office of member of the Governing Board may not be delegated.

Members of the Governing Board are eligible for daily allowances for attending meetings.

The Governing Board shall hold ordinary sessions at least once a month and extraordinary sessions as the President or the majority of its members shall decide.

The quorum for meetings is a half plus one of certified members. If there is an odd number of certified members, the quorum shall be the whole number immediately above half that

number. Meetings shall be valid only if either the President or Vice-President is present. Agreements shall be reached by a majority of members present.

Meetings shall be chaired by the President of the Governing Board, who shall have a casting vote. In the event of the absence or impediment of the President, meetings shall be chaired by the Vice-President.

A record shall be made of the Governing Board's meetings. It shall be signed by participants, who, if they so wish, may note the reasons for their vote. Records must contain the date of the meeting, the names of participants, the matters dealt with, the number of votes cast in each case, the resolutions adopted and any comments members of the Governing Board wish to make. Every member of the Governing Board is entitled to obtain a copy of the records authenticated by the Governing Board Secretary.

Any member of the Governing Board who, on a particular item, holds an interest which conflicts with the matter under discussion must declare that interest and abstain from taking part in the discussion and decision concerning the item. Other members of the Governing Board may request that any member holding an interest that conflicts with the matter under discussion abstain. In the event of non-abstention, the matter shall be put to the vote.

The members of the Governing Board shall perform their duties with diligence, independence and free judgement.

A member's seat on the Governing Board may fall vacant for any of the following reasons:

- a) death;
- b) resignation;
- c) removal, by Supreme Decision giving reasons, endorsed by the President of the Council of Ministers, the Minister for Economy and Finance and the Minister for Transport, Communications, Housing and Construction.

Functions of OSIPTEL's President

OSIPTEL's President is responsible for:

- a) Representing OSIPTEL before public authorities, institutions in the country or abroad, and company boards of directors.

- b) Convening and chairing meetings of the Governing Board and deciding items to be included on the agenda.
- c) Supervising due implementation of the Governing Board agreements.
- d) In conformity with general guidelines established by the Governing Board, undertaking temporary investments or other operations with OSIPTEL funds; with regard to FITEL, placing deposits on savings accounts or certificates in national or foreign currencies, with the aim of safeguarding the assets concerned.
- e) Concluding deeds, agreements or contracts with national or foreign public entities.
- f) Approving the Institutional Management Plan and the policy regarding administration, personnel, finance, image and international relations in accordance with the general policies established by the Governing Board.
- g) Approving the acquisition of property and the contracting of services charged to the Institutional Budget.
- h) On a proposal by the General Manager, approving the hire of line managers and officials at managerial level, as well as their promotion, suspension or removal.
- i) Approving the Institutional Budget, general balance and financial statements.
- j) In the event that the Governing Board is prevented from holding a valid session, adopting emergency measures on matters of concern to the Governing Board, subject to reporting subsequently on the adoption of appropriate measures at the earliest meeting of the Governing Board.
- k) Exercising whatever other functions may be delegated or mandated by the Governing Board. The President may confer whatever powers are deemed necessary, within the limits established by the Governing Board.

In the event of the absence or impediment of the President, his functions shall be exercised by the Vice-President.

Functions of the General Manager

The General Management is the executive body responsible for the administrative running of the institution and for the execution of agreements undertaken by the Governing Board and the

President of OSIPTEL. It also performs whatever duties are prescribed in the relevant laws and regulations. The General Manager shall attend the meetings of the Governing Board, but is not entitled to vote. If an appeal is discussed against a decision adopted by the General Manager acting in first instance, the latter shall refrain from participating and shall withdraw from the meeting.

The General Manager shall be responsible for:

- a) Exercising OSIPTEL's legal, administrative and judicial representation.
- b) Planning, organizing, managing, implementing and supervising OSIPTEL's administrative, operational, economic and financial activities in accordance with the guidelines established by the Governing Board and the President.
- c) Proposing policies and strategies for the development of OSIPTEL to the President.
- d) Preparing the draft Annual Report for approval by the Governing Board, as well as drafts of the budget, the general balance and financial statements for approval by the President of the Governing Board.
- e) Executing agreements of the Governing Board and the President's directives or ensuring that they are executed.
- f) Undertaking whatever acts are necessary for the ordinary running of OSIPTEL.
- g) Approving the acquisition of property and the contracting of services charged to the Institutional Budget, subject to the ceilings established by the President of the Governing Board.
- h) Proposing to the President the contracting, promotion, suspension or removal of line managers and officials at managerial level.
- i) Contracting, promoting, suspending and dismissing OSIPTEL workers, except for line managers and officials of managerial level.
- j) Providing the Governing Board and the President with whatever information is necessary for effective decision making.
- k) Settling cases and disputes in first instance in accordance with the laws and regulations.
- l) Conferring powers within the limits established by the Governing Board or the President.

- m) Any other functions entrusted to him by the Governing Board and the President or those pertaining to his office.

OSIPTEL's Managerial Departments

The Managerial Departments are technical bodies that specialize in matters for which they have a responsibility or bodies responsible for the administrative running of OSIPTEL. The Managerial Departments are headed by a Manager, who is responsible for performing whatever duties are assigned to him. He is provided with support staff according to requirements.

Function of the Disputes Settlement Tribunal: The Disputes Settlement Tribunal is responsible for settling the disputes referred to in this Regulation in the second and last administrative instance.

The members of the Tribunal are appointed in accordance with the terms of Article 9 of Act No. 27332.

The Tribunal decides by simple majority of its members. The President holds a casting vote in addition to his own vote. The quorum for meetings is a half plus one of certified members. In the event that the number of certified members is odd, the quorum shall be the whole number immediately above half that number.

Administrative Tribunal for the Settlement of User Claims (TRASU): OSIPTEL admits and settles the claims referred to in this Regulation, through the TRASU, in conformity with Act No. 27336, the rules contained in the Directive for the Settlement of User Claims issued by OSIPTEL and any rules additional thereto.

TRASU members shall be appointed by the Governing Board, but may decide the number of its members and the arrangement of chambers in accordance with its requirements.

Collegiate Bodies: The Collegiate Bodies are responsible for receiving and settling the disputes referred to in this Regulation in first instance. The Collegiate Bodies are made up of not less than three and not more than five members, appointed by the Governing Board.

The Collegiate Bodies shall be appointed by the Governing Board to settle specific disputes. Once the corresponding dispute has been settled, the Collegiate Body concerned shall be dissolved.

Collegiate Bodies shall meet with a majority of members present and shall adopt decisions subject to the affirmative vote of the majority of those present. In the event of a tied vote, the President shall have a casting vote.

Labour regime: OSIPTEL's staff shall be subject to the labour regime governing private activity.

Economic and financial regime: OSIPTEL's own assets consist of:

- a) the statutory due payable by the operating companies of public telecommunication services, in conformity with the terms of Article 10 of Act No. 27332;
- b) appropriations, donations, legacies, transfers or other contributions of any kind from national or foreign, natural or legal persons;
- c) transfers from public sector entities;
- d) charges, dues and revenues payable to it by law; and
- e) any other income it receives.

The above-mentioned resources constitute OSIPTEL's own assets and shall be paid to it directly in whatever form is deemed appropriate by its Governing Board.

Every half year OSIPTEL shall transfer to FITEC the difference between assets received and financial commitments in that half year, except for the reserve it needs to maintain its operations and whatever surplus may be generated from the resources referred to in this Regulation.

OSIPTEL may arrange for the coercive collection of outstanding credits, in conformity with current legislation. To that effect, OSIPTEL may conclude agreements with the Banco de la Nación for the latter to undertake the coercive collection of amounts owed to OSIPTEL.

OSIPTEL is authorized to obtain funds from national or international, technical and financial cooperation organizations, in the form of loans or donations.

Publication of OSIPTEL's decisions and administrative case-law: Any rulings given by OSIPTEL departments which, in the settlement of specific cases, offer an express and general interpretation of the meaning of rules and regulations, shall constitute binding precedents in administrative matters, so long as such interpretation is not overturned by a subsequent decision giving reasons. Once the ruling concerned has become confirmed, it shall be published in the Official Bulletin El Peruano.

All regulations, general standards, regulatory provisions, rulings as described in the foregoing paragraph and those considered significant from the point of view of protecting the interest of both service providers and users shall be published in the Official Bulletin El Peruano.

Prohibitions, incompatibilities and responsibilities affecting staff: Any information received by a department of OSIPTEL of a secret nature must be declared confidential. If so, the department concerned shall take whatever steps are necessary to safeguard the confidentiality of the information, for which it will be responsible.

Only the members of the body dealing with the proceedings or action required of OSIPTEL shall have access to documents and information which have been declared confidential. Any officials infringing the confidentiality of that information or in any way contravening the terms of this article shall be penalized in accordance with the relevant legal ordinance.

Any of OSIPTEL's departments wishing, in the performance of their duties, either ex officio or at the request of a party, to hold a meeting with executives of the operating companies, must give advance notice to the General Management of their intention giving reasons, and the day and time of the meeting, which must take into account the guidelines and criteria approved by the Governing Board for that purpose.

The functions of member of the Governing Board, General Manager, member of the Tribunal, member of a Collegiate Body or manager, are incompatible with holding the offices of President of the Republic, Minister of

State, Member of the National Council of the Magistrature, Deputy Comptroller General of the Republic, Deputy Minister and Director General of a Ministry, while in office and up to six months after leaving the office for any motive.

The aforementioned posts may not be held either by the holders of shares or stockholdings greater than one per cent of operating companies or companies related thereto, directors, legal representatives or proxy holders, officials or employees of companies in the telecommunications sector, or who have performed services for such companies within a year prior to their appointment.

The offices may not be held either by anyone dismissed from public office or convicted of wilful wrongdoing.

Neither the members of the Governing Board nor those of other OSIPTEL managerial bodies, nor any officials or employees thereof, regardless of their labour regime, may:

- a) Defend or act as advisors for cases, whether publicly or in private, before OSIPTEL, or any delegated entity, except on their own behalf or that of their spouse or concubine. This prohibition shall hold until one year after they have left their office for any matters in which they have taken a part directly as officials of OSIPTEL or in the event of a delegated entity.
- b) Accept from users or their lawyers or on their behalf any donations, presents, favours, entertainment or legacy for themselves or for their spouses or concubines, ascendant, descendant or sibling, for the performance of their duties.

- c) Admit or formulate recommendations in proceedings conducted before OSIPTEL or any delegated entity, except those in which they are expected to take part in the performance of their duties.

- d) Perform on their own account or through third parties any duties related to entities falling under OSIPTEL's jurisdiction, or which the latter may have contracted with third parties. This prohibition shall remain until one year after the person's resignation, retirement, termination of contract, redundancy or dismissal.

In addition to the prohibitions specified in this article, the rules of Supreme Decree No. 023-99-PCM, listing prohibitions and incompatibilities affecting State officials and employees, shall apply where relevant.

OSIPTEL shall assume civil liability for all the actions of its officials, provided that such actions have been performed in the exercise of their office or in the performance of their duties.

In the event of any claim or complaint against the persons referred to in the foregoing paragraph, even when they have left their office, OSIPTEL must bear all the expenses of their defence, and, if they are sentenced to pay damages, compensate them with an amount equivalent to what they have had to pay.

The compensation and payment of expenses referred to in the foregoing paragraph shall not apply in cases where members of the Governing Board, the General Manager and/or officials have acted fraudulently or with inexcusable negligence.

ANNEX B

LEGAL FRAMEWORK OF TELECOMMUNICATIONS IN PERU

General legislation

- Basic Law on the Ministry of Transport, Communication, Housing and Construction (MTC), Decree Law No. 25862 (06.11.92).
- Gradual demonopolization of public telecommunication services. Act No. 26285 (14-01-94).
- Policy guidelines for the liberalization the telecommunications market. Supreme Decree No. 020-98-MTC (05-08-2000). Amended by Supreme Decree No. 040-99-MTC (19-10-1999).

Telecommunications Act

- Regulated single text. Supreme Decree No. 013-93-TCC (06-05-1993). Amended by Supreme Decree No. 021-93-TCC (07-08-1993).
- Act No. 27.010 (08-12-1998). Amended by Act No. 27.336 (05-12-2000).
- General Regulation. Supreme Decree No. 06-94-TCC (18-02-1994) and amendments 015-97-MTC, 005-98-MTC, 022-98-MTC, 024-98-MTC, 002-98-MTC, 003-99-MTC, 020-98-MTC.

Regulatory authority – OSIPTEL

- Framework legislation for regulatory authorities. Act No. 27.332 (29-07-2000). Supplemented by Supreme Decree No. 032-2001-PCM (29-03-2001).
- OSIPTEL Regulation. Supreme Decree No. 062-94-PCM (09-08-94). Amended by Act No. 27336 and Decree No. 008-2001-PCM (02-02-2001).
- Development of OSIPTEL's operations and powers. Act No. 27.336 (05-12-2000).

Arbitration, disputes

- Arbitration Regulation. Governing Board Decision No. 011-99-CD/OSIPTEL (09-07-1999).
- Rules governing arbitration matters between operating companies. Governing Board Decision No. 012-99-CD/OSIPTEL (09-07-1999).
- General Regulation for the Settlement of Disputes. Governing Board Decision No. 027-99-CD/OSIPTEL (12-10-1999).
- Guidelines with respect to free competition. Governing Board Decision No. 003-2000-CD/OSIPTEL (08-02-2000).

Infringements and sanctions

- General Regulation on infringements and sanctions. Governing Board Decision No. 002-99-CD/OSIPTEL (14-02-1999).

Universal access

- Policy guidelines on universal access. Governing Board Decision No. 017-98-CD/OSIPTEL (07-10-1999).

Interconnection

- Interconnection Regulation. Decision No. 0001-9821D/OSIPTEL (17-01-1998). Amended by Decision No. 038-99-PD/OSIPTEL (13-05-1999). Supplemented by Decisions Nos 018-99-CD/OSIPTEL, 021-99-CD/OSIPTEL, 032-99-CD/OSIPTEL, 038-99-CD/OSIPTEL, 098-99-PD/OSIPTEL, 006-2000-CD/OSIPTEL, 009-2000-CD/OSIPTEL, 017-2000-CD/OSIPTEL.

- Interconnection contracts. Governing Board Decision No. 018-98-CD/OSIPTTEL (15-10-1999).
- Rules for interconnection in rural areas. Governing Board Decision No. 023-99-CD/OSIPTTEL (23-09-1999).

Pre-selection

- Pre-selection Regulation. Governing Board Decision No. 006-99-CD/OSIPTTEL (15-04-1999). Modified by Decision No. 020-99-CD/OSIPTTEL (21-08-1999).
- Rules governing the processing of pre-selection information. Governing Board Decision No. 031-99-CD/OSIPTTEL (06-11-1999).
- Local network access cost. Governing Board Decision No. 037-99-CD/OSIPTTEL (15-12-1999). Amended by Governing Board Decision No. 004-2000-CD/OSIPTTEL (12-02-2000).

REGULATORY FRAMEWORK RELATING TO USERS

General framework	
General Regulation on Infringements and Sanctions (No. 02-99-CD/OSIPTTEL)	Establishes infringements and sanctions applicable to public telecommunication services operating companies.
Procedure followed by companies operating a telephone or carrier service on a leased circuit basis for the suspension or precautionary disconnection of network users (No. 024-1999-CD/OSIPTTEL)	Establishes the procedure for the suspension or precautionary disconnection from the network of any apparatus, equipment, device or system used by companies in cases where the operating companies of the telephone service or carrier service on a leased circuit basis detect a situation that falls within the scope of paragraph 4 of Article 128 of the Regulation of the Telecommunications Act.
Acceptance procedures for contracting in public telecommunications services (No. 14-2000-CD/OSIPTTEL)	Establishes that where any additional or supplementary service is contracted, this fact must be recorded in such a way as to provide evidence of acceptance by the user.
General Tariff Regulation (No. 060-2000-CD/OSIPTTEL)	Establishes general rules and principles for the application of tariffs, tariff plans, offers, discounts and promotions in general, with a view to promoting the development of telecommunications under suitable tariff conditions for companies and for the benefit of users.
Fixed telephony	
Users originating calls to fixed telephony allowed to opt whether they reach a voice mailbox (R. No. 16-2000-CD/OSIPTTEL)	Establishes that the voice mailbox of fixed telephony users must contain a prior message warning that the call is being transferred to that mailbox
Acceptance procedures for contracting in public telecommunications services (R. No. 14-2000-CD/OSIPTTEL)	Establishes that any additional or supplementary service that is contracted must be registered in a manner that can serve as evidence of the user's acceptance.
General contracting provisions applicable to the long-distance service (R. No. 035-99-CD/OSIPTTEL)	Establishes minimum rights and obligations in relations between users of the fixed telephony long-distance service and companies providing the service.
Conditions of use and general contracting provisions (R. No. 012-98-CD/OSIPTTEL)	Establishes the minimum rights and obligations in relations between the users of fixed telephony services, whether subscribers or not, and service providers.
General contracting provisions for the fixed telephony service (abrogated) (R. No. 007-97-CD/OSIPTTEL)	
Approval of tariffs for not publishing the name and number of a subscriber in the telephone directory (R. No. 009-96-CD/OSIPTTEL)	Establishes the suspension of payment for the service of not publishing the name and number of a subscriber in the telephone directory until a tariff is approved for the service.
Payment suspended for not publishing the name of a subscriber in the telephone directory (R. No. 001-96-PD/OSIPTTEL)	
Possibility for users to block or unblock the IDD (R. No. 009-95-CD/OSIPTTEL)	Establishes the possibility for subscribers to request blocking or unblocking of the International Direct Dialling service
Mobile telephony	
Conditions of use and general contracting provisions (R. No. 002-2000-CD/OSIPTTEL)	Establishes basic rights and obligations in relations between companies providing mobile public services and their subscribers.
Possibility for users originating calls to mobile telephones to decide whether they access a voice mailbox (R. No. 018-99-CD/OSIPTTEL)	Establishes that the voice mailboxes of mobile telephony users must give a prior message warning that the call is being transferred to the mailbox.
Regulation concerning the quality of the public mobile telephone service (No. 40-99-CD/OSIPTTEL)	Rules governing the quality of the public mobile telephone service provided by operating companies aimed at enhancing user satisfaction.
Procedure for the supervision and monitoring of the quality of the public mobile telephone service (No. 041-99-CD/OSIPTTEL)	Instrument used to monitor the standards of quality established in the Regulation of the quality of the public mobile telephone service.

Effective regulation – Case study: Peru

Complaints procedure	
Directive concerning the claims settlement procedure* (R. No. 015-99-CD/OSIPTEL) * Effective for claims submitted from 23 October 1999	This new directive reduces the number of administrative instances (from three to two) and consolidates existing rules concerning the settlement of claims.
Regulation for the settlement of claims before OSIPTEL* (R. No. 032-97-CD/OSIPTEL) * Effective for claims submitted until 22 October 1999	These rules regulate the claims procedure in the various administrative instances, the services and types of claims which may be submitted and the delays within which they must be completed.
Directive on the procedure for the settlement of quality claims * (R. No. 036-97-PD/OSIPTEL) * Effective for claims submitted up to 22 October 1999	
Replacement of articles of the claims settlement regulation (R. No. 010-97-CD/OSIPTEL)	
Additional directive on proceedings before the TRASU (abrogated) (R. No. 014-95-CD/OSIPTEL)	
Regulation for the settlement of claims (abrogated) (R. No. 013-95-CD/OSIPTEL)	
TRASU relations	
Evidence required by operating companies in claims proceedings (R. No. 01-99-MP/TRASU-OSIPTEL)	Establishes the evidence to be assessed by operating companies and submitted to the TRASU according to the matter of the claims.
Guidelines for deciding claims in national and international long-distance fixed telephony (R. No. 01-99-LIN/TRASU-OSIPTEL)	These guidelines lay down the criteria used by TRASU to settle claims brought before it.
Guidelines to decide claims for measured local service (R. No. 01-98-LIN/TRASU-OSIPTEL)	
Long-distance carrier pre-selection	
Regulation concerning the long-distance carrier pre-selection system (R. No. 006-99-CD/OSIPTEL)	Establishes the mechanism through which users select the company that will transmit their long-distance calls.
Amendment to regulation concerning the system of pre-selection for long-distance carrier service licensees (No. 020-99-CD/OSIPTEL)	Amends Articles 15 and 48 of the Regulation concerning the system of pre-selection for long-distance carrier licensees, establishing that: long-distance licensees must keep a register of all calls concerned with the submission of claims, in a format to be approved by OSIPTEL in due course, and that such registries must be made available to OSIPTEL on request.
Basic rules concerning the processing of information arising from the pre-selection procedure (No. 031-99-CD/OSIPTEL)	Establishes the basic rules that OSIPTEL and operating companies must take into account when processing the information required for monitoring the long-distance carrier service licensee pre-selection system.
Establishes the fixed maximum tariff for changing the long-distance carrier service licensee company in a pre-selection system (No. 036-99-CD/OSIPTEL)	According to this rule, users requesting a change of long-distance service operator must pay the public fixed telephony service company the sum of 17 new soles (S 17.00) for the change of operator.
Determination of the costs incurred by Telefónica del Perú S.A.A. to allow long-distance licensees access to its local network and provisions for recovery of those costs (No. 037-99-CD/OSIPTEL)	
Rules additional to the Regulation of the long-distance carrier service licensee pre-selection system (No. 051-2000-CD/OSIPTEL)	These stipulate that long-distance calls can be made in the pre-selection system either by direct dialling or by an operator or by any numbering code established by the Ministry of Transport, Housing and Construction. It establishes that the claims registry must be in conformity with the Directive for dealing with user claims, and defines what is meant by collectable debt, local network programming, etc.

Circuit leasing	
Conditions of use for the circuit leasing service and the procedure for dealing with and settling faults and quality problems in the provision of the circuit leasing service (No. 019-98-CD/OSIPTEL)	Establishes the conditions that apply to the request for, contracting, installation and provision of the leased circuit or dedicated lines service.
Amendment of the decision approving conditions of use and procedure for dealing with and settling quality problems in the provision of the circuit leasing service (No. 001-2000-CD/OSIPTEL)	Changes several aspects of the conditions of use such as compensation in the event of a break and the procedure for dealing with service quality claims.

Definition and classification of public telecommunications services

Technically, telecommunications in Peru are oriented towards the establishment of an Integrated Services and Systems Digital Network. Telecommunications services may therefore be classified into:

Carrier services: These use the carrier system infrastructure, with the ability to provide the necessary capacity for the transport and routing of signals for the provision of end, broadcasting and value-added services. These provide the main means of interconnection between telecommunication services and networks.

Teleservices or end services: These provide the full capacity for facilitating communication between users. According to their operating mode they may be fixed or mobile and are classified into public and private.

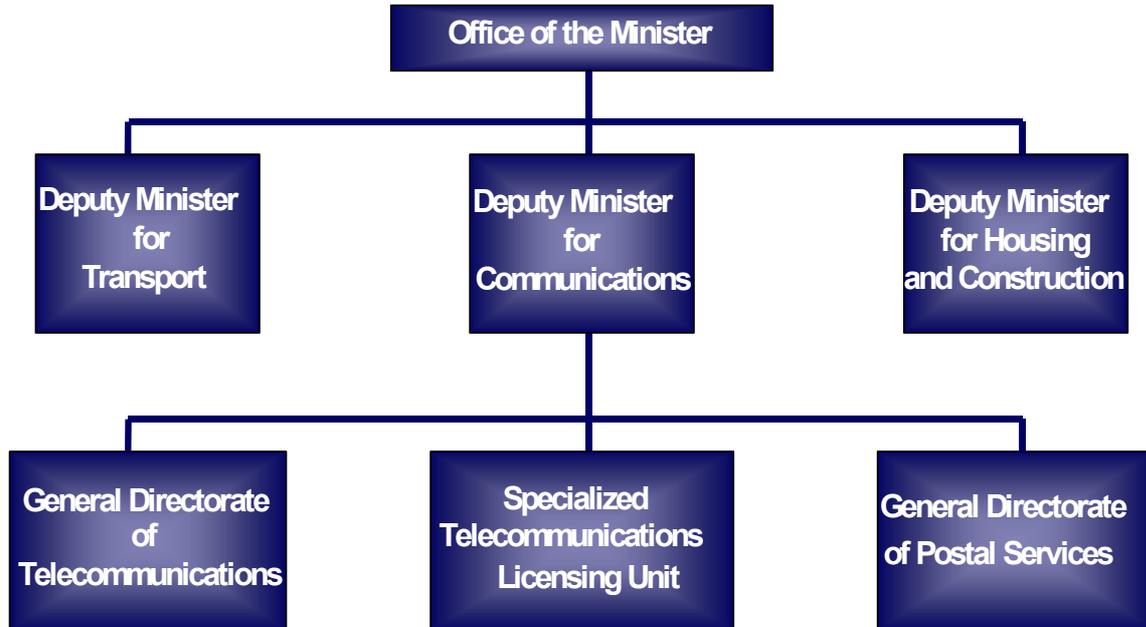
Broadcast services: These provide communication in one direction only, from one or more transmission points to several reception points. Whoever receives the communication does so free of charge, according to choice. Broadcast services are classified as: public broadcasting, private broadcasting and private services of public interest.

Added value services: These use carrier, end or broadcast services while adding some characteristic or facility to the basic service.

Carrier services	Local, national long-distance, international long-distance.
End services (fixed or mobile)	Telephone service (subscribers/public telephones), fixed and mobile (cellular); telex service; telegraph service (telegrams); paging service (beepers); automatic dialling (trunked) multiple channel mobile service; data transmission switching service; multimedia services; personal communications service (PCS); mobile-satellite service.
Broadcast services	Cable; mood music; radio; television.
Added value services	Facsimile in the form of store-and-forward fax; videotex; teletex; teletext; teleaction; telecommand; tele-alarm; store-and-forward data; data teleprocessing and processing; interpersonal messaging (e-mail); electronic voice mail; voice messaging; look-up service; data packet switching service.

ANNEX C

Structural organization chart of the Ministry of Transport, Communications, Housing and Construction (MTC)



FUNCTIONS OF THE MINISTRY OF TRANSPORT, COMMUNICATION, HOUSING AND CONSTRUCTION

- To formulate, evaluate, supervise and in the event implement policies and standards for communications.
- To administer and monitor the use made of the radio-frequency spectrum and exercise the inspection and punitive powers conferred upon it under the Telecommunications Act.
- To plan the expansion and development of the communications subsector.
- To encourage, guide, disseminate and regulate training and scientific and technological research in the area of communications.
- To take the necessary steps to encourage the participation and active collaboration of the private sector in communications activities.

ANNEX D

Structural organization chart of the UECT



NOTE: This structural organization chart is subject to approval

FUNCTIONS OF THE SPECIALIZED TELECOMMUNICATIONS LICENSING UNIT

(in conformity with Supreme Decree No. 018-2001-MTC)

PURPOSE:

To promote and administer access to the public telecommunication services market and ancillary value-added services, on the basis of technological development, with a view to ensuring appropriate provision of those services, in conditions of simplicity, transparency, flexibility, speed and non-discrimination.

FUNCTIONS:

The Specialized Telecommunications Licensing Unit, which is attached to the Office of the Deputy Minister for Communications, is headed by a Chief with the rank of Director General. It has the following functions:

- a) To formulate and evaluate the implementation of its Institutional Operational Plan.
- b) To propose policies and strategies for the sector, in the area of public telecommunication services.
- c) To deal with requests for granting or withdrawing concessions, authorizations, permits and licences, and to check that they are used correctly with respect to public telecommunication services, as well as with all procedures referring to facilities and resources for their development.
- d) To administer the use of the radio spectrum, in matters related to public telecommunication services.
- e) To administer and keep the National Frequency Register in matters relating to public telecommunication services.
- f) To coordinate with the General Telecommunications Directorate the system of radio spectrum control, monitoring and investigation in matters relating to public telecommunication services.
- g) To keep the register of added value companies and commercial operators.
- h) To initiate suspension of added value services whenever their operation is harmful to the telecommunications network.
- i) To deal with and assess requests for the renewal, adaptation, extension or transfer of licensing rights as well as the modification of the technical characteristics of licensing contracts.
- j) To manage requests for radio links between public telecommunication service stations.
- k) To supervise the contractual commitments of licensee companies, within the MTC's competitive environment.
- l) To participate in the evaluation of projects for public communications services.
- m) To prepare technical specifications and conduct public calls for tender for the subsector, in the case of public telecommunication services.
- n) To determine, verify, assess and penalize infringements related to public telecommunication services.
- o) To coordinate representation before international organizations in matters relating to public telecommunication services.
- p) To keep a register of and to assess companies marketing traffic and/or public services.
- q) To prepare and submit to the Deputy Minister for Communications his Annual Management Report.
- r) Whatever other functions are assigned by the Office of the Deputy Minister for Communications, in matters under his jurisdiction.

ANNEX E

LIST OF PERSONS AND ORGANIZATIONS INTERVIEWED

In the preparation of this report, the following organizations, companies and persons were interviewed in the city of Lima during the mission from 18 to 22 June 2001.

GOVERNMENT

<p>Office of the President of the Council of Ministers Graciela Fernández Baca de Valdez Head of the Cabinet of Advisors gfernandezb@pcm.gob.pe</p>	<p>Department of Communications Jorge Menacho Ramos Deputy Minister for Communications jmenacho@mtc.gob.pe</p>
<p>J Martinez Advisor jmartinez@pcm.gob.pe</p>	<p>Directorate General of Telecommunications Luis H. Ames Sora Director General of Telecommunications lames@mtc.gob.pe</p>
<p>UETC (Specialized Telecommunications Licensing Unit) Carlos Valdez Velásquez-Lopez Chief cavaldez@mtc.gob.pe</p>	<p>Ombudsman José Ignacio Távara First Deputy Ombudsman jtavara@ombudsman.gob.pe</p>
	<p>Jaime Cárdenas Tovar Advisor Public Services Attachment jcardenas@ombudsman.gob.pe</p>

OSIPTEL

<p>Jorge Kunigami President jkunigam@osiptel.gob.pe</p>	<p>Paul Phumpiu Chang General Manager pphumpiu@osiptel.gob.pe</p>
<p>Clara Ogata Inspection Manager cogata@osiptel.gob.pe</p>	<p>Juan Aguayo Legal Manager jaguayo@osiptel.gob.pe</p>
<p>Gerardo Soto Carrillo Legal Manager gsoto@osiptel.gob.pe</p>	<p>Ana Rosa Martinelli Business Relations Manager amartine@osiptel.gob.pe</p>
<p>Flavio Ausejo International Relations Coordinator fausejo@osiptel.gob.pe</p>	<p>Roger Siccha Administration and Finance Manager rsicchao@osiptel.gob.pe</p>
<p>Miguel Torres C. Human Resources Consultant mtorres@osiptel.gob.pe</p>	<p>David Villavicencio National Consultant dvallavi@osiptel.gob.pe</p>
<p>Luis Bonifaz Fernández FITEL Manager ibonifaz@osiptel.gob.pe</p>	

COMPANIES

<p>Telefónica</p> <p>Jorge Melo-Vega Castro Regulation and Strategic Planning Manager jmelo@tp.com.pe</p>	<p>BellSouth</p> <p>Rafael Muenta Schwarz Legal Vice-President, Regulatory Matters rmuenta@bellsouth.com.pe</p>
<p>Hortensia Rozas Olivera Regulation Manager hrozas@tp.com.pe</p>	<p>AT&T Latin America</p> <p>Virginia Nakagawa Morales Legal, Civil and Regulation Vice-President Virginia.nakagawa@attla.com</p>
<p>TIM</p> <p>Guiseppe Cecci Regulation, Traffic and Interconnection Manager gceci@mial.tim.com.pe</p>	<p>RCP</p> <p>Rolando Toledo General Manager rt@rcp.net.pe</p>
<p>Juan Rivadeneyra Sánchez Regulatory Framework Manager jnrivadeneyra@mial.tim.com.pe</p>	<p>Gilat To Home Perú S.A. - GTH</p> <p>Alvaro Silva Rudat Legal Manager alvaro@gth.com.pe</p>

NGOS AND CONSULTANTS

<p>ASPEC</p> <p>Jaime Delgado Zegarra President aspecperu@terra.com.pe</p>	<p>ACYU</p> <p>Herly Llerena García President con-abo@terra.com.pe</p>
<p>Communications support</p> <p>Augusto Alvarez Rodrich General Manager a3r@apoyo7.com.pe</p>	<p>GRADE</p> <p>Ena Garland Hilbck egarland@grade.org.pe</p>
<p>Consultancy support</p> <p>Geoffrey Cannock Project Director Public Management gct@apoyo1.com.pe</p>	<p>Máximo Torero Cullen Chief Investigator mtorero@grade.org.pe</p> <p>Alberto Pascó-Font Q. alberto@grade.org.pe</p>

ANNEX F

References and bibliography

- **General Legislation**
 - Gradual demonopolization of public telecommunication services. Act No. 26285 (14-01-94)
 - Policy guidelines for the liberalization of the telecommunications market. Supreme Decree No. 020-98-MTC (05-08-2000). Amending Supreme Decree No. 040-99-MTC (19-10-1999)
- **Telecommunications Act**
 - Regulated single text. Supreme Decree No. 013-93-TCC (06-05-1993). Amended by Supreme Decree No. 021-93-TCC (07-08-1993)
 - Act No. 27.010 (08-12-1998). Amended by Act No. 27.336 (05-12-2000)
 - General Regulation. Supreme Decree No. 06-94-TCC (18-02-1994) and amendments 015-97-MTC, 005-98-MTC, 022-98-MTC, 024-98-MTC, 002-98-MTC, 003-99-MTC, 020-98-MTC
- **Regulatory authority - OSIPTEL**
 - Regulatory Authorities Framework Act No. 27.332 (29-07-2000). Further specified in Supreme Decree No. 032-2001-PCM (29-03-2001)
 - OSIPTEL Regulation. Supreme Decree No. 062-94-PCM (09-08-94). Amended by Act No. 27336 and Decree No. 008-2001-PCM (02-02-2001)
 - Establishment of OSIPTEL's functions and powers. Act No. 27.336 (05-12-2000)
- **Arbitration, disputes**
 - Arbitration Regulation. Governing Board Decision No. 011-99-CD/OSIPTEL (09-07-1999)
 - Rules governing arbitration matters between operating companies. Governing Board Decision No. 012-99-CD/OSIPTEL (09-07-1999)
- General Regulation for the settlement of disputes. Governing Board Decision No. 027-99-CD/OSIPTEL (12-10-1999)
- Free competition guidelines. Governing Board Decision No. 003-2000-CD/OSIPTEL (08-02-2000)
- **Infringements and sanctions**
 - General Regulation on infringements and sanctions. Governing Board Decision No. 002-99-CD/OSIPTEL (14-02-1999)
- **Universal Access**
 - Policy guidelines on universal access. Governing Board Resolution No. 017-98-CD/OSIPTEL (07-10-1999)
- **Interconnection**
 - Interconnection Regulation. Decision No. 0001-9821D/OSIPTEL (17-01-1998). Amended by Decision No. 038-99-PD/OSIPTEL (13-05-1999). Supplementary rules Decisions Nos 018-99-CD/OSIPTEL, 021-99-CD/OSIPTEL, 032-99-CD/OSIPTEL 038-99-CD/OSIPTEL, 098-99-PD/OSIPTEL, 006-2000-CD/OSIPTEL, 009-2000-CD/OSIPTEL, 017-2000-CD/OSIPTEL
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 - Rules governing interconnection in rural areas. Governing Board Decision No. 023-99-CD/OSIPTEL (23-09-1999)
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 - **Other documentation**
 - Report April 1999 - March 2000. OSIPTEL
 - Legal framework for telecommunications. Vol. I and II (Tema en Telecomunicaciones No. 12). OSIPTEL
 - Guidelines on telecommunications market liberalization. Peruvian model. OSIPTEL
 - Agendatel XXI. Study of the telecommunications Act and agenda for the new millennium. Herly Llerena García. ACYU
 - Framework Act governing regulatory authorities for private investment in public services. Act No. 27332
 - Act on the establishment of OSIPTEL's functions and powers. Act No. 27336
 - OSIPTEL General Regulation. Supreme Decree No. 008-2001-PCM
 - General Regulation on the administrative settlement of disputes. Governing Board Decision No. 027-99-CD/OSIPTEL
 - General guidelines on the implementation of free competition rules in the telecommunications sector
 - Act No. 27336: Act on the establishment of OSIPTEL's functions and powers
 - Act No. 27332: Framework Act on supervisory authorities for private investment in public services
 - Supreme Decree No. 008-2001-PCM: OSIPTEL General Regulation
- A considerable quantity of documents and bibliography on OSIPTEL's websites (<http://www.osiptel.gob.pe/>) and those of the Ministry of Transport and Communications (<http://www.mtc.gob.pe/>).

Notes

¹ Interview, 18 June 2001, Lima, Peru.

² Some of the main industries are mining, oil, fishing, textiles, food and cement. The main agricultural products are coffee, cotton, sugar cane, rice, wheat, potatoes, beef and poultry, dairy products, fishing and wool.

³ Exports worth USD 5 900 million and imports of USD 8 400 million (f.o.b., 1999 est.). Exports mainly go to the United States (25 per cent), China (8 per cent), Japan (7 per cent), Switzerland, Germany, United Kingdom and Brazil.

⁴ Many of the data in this section are based on the OSIPTEL 1999-2000 Report and draft 2000-2001 Report. For more details see www.osiptel.gob.pe.

⁵ Altogether, Peru has so far completed over 220 privatizations. The total income from privatization has amounted to USD 9 232 million, in addition to USD 11 430 million obtained in the form of planned investments. These figures represent approximately 17 per cent and 22 per cent respectively of the country's annual GDP.

⁶ The other two privatization bidders were Peruvian Telecommunications Holding Ltd., which offered USD 857 million, and Telecomunicaciones Peruanas, which offered USD 803 million.

⁷ Market liberalization was brought forward by almost a year because the objectives for which the period of exclusive rights had been established had already been achieved. The arrangements included a programme for the rebalancing of tariffs – aimed at preparing the market for competition by aligning tariffs with real operating costs and eliminating existing cross-subsidies – and for the modernization of the telecommunications network on the basis of a series of expansion and quality targets.

⁸ See Supreme Decree No. 020-98-MTC. These political guidelines for the sector were incorporated in the amendment to the General Regulation of the Telecommunications Act, approved by Supreme Decree No. 002-99-MTC, of 21 January 1999.

⁹ In markets with dominant operators, tariffs are to be regulated by means of price caps, which also apply to competitors' tariffs.

¹⁰ The incumbent must facilitate interconnection with at least three new long-distance operators under the pre-dialling system for at least 85 per cent of telephone lines

¹¹ Penetration was 40.5 per cent in middle-income sectors, 12.2 per cent in low-income sectors and 1.1 per cent in very low-income sectors.

¹² Some of the functions of the regulatory authority were established in the Act on the gradual demonopolization of public telecommunication services (Act No. 26 285).

¹³ OSIPTEL may abstain from establishing tariffs whenever – as an effect of competition between operating companies – tariffs which are reasonable for the user prevail.

¹⁴ The regulatory and standard-setting power includes OSIPTEL's exclusive authority, within its sphere of jurisdiction, either ex officio or at the request of a party, to issue: a) independent regulations; b) other standards of a general nature; and c) terms of reference or other rules of a special nature, relating to the interests, obligations or rights of operating companies and users.

¹⁵ OSIPTEL's corrective power includes the authority to apply precautionary and/or corrective measures to ensure the implementation of future OSIPTEL decisions or to correct a conduct which is not in accordance with the standards, purposes, objectives or principles governing the supply and use of public telecommunications services.

¹⁶ The power to settle disputes allows OSIPTEL to reconcile opposing interests, by either recognizing or rejecting a claimed right.

¹⁷ See www.osiptel.gov.pe

¹⁸ See Supreme Decrees Nos 007-97-MTC, 005-98-MTC and 022-98-MTC.

¹⁹ INDECOPI was established in November 1992 to promote a culture of fair, honest competition and to protect all forms of intellectual property, ranging from trademarks and authors' rights to patents and biotechnology. In this respect, it is the body responsible for applying legal rules that protect the marketplace from unfair competition and practices generally affecting market agents and consumers, as well as all aspects of intellectual

property rights.

²⁰ It would appear, according to a government official, that some of the regulatory authorities (other than OSIPTEL) may have exceeded their powers, granting salaries to their staff well in excess of the average paid to public sector employees. This led to an intervention by the Council of Ministers and to a reform of the institutional structure of those authorities, which is reflected in the Framework Act governing supervisory authorities for private investment in public services (Act No. 27332).

²¹ CD 013-99-CD/OSIPTEL of 08-07-99.

²² Act No. 27 332 published on 26 July 2000.

²³ OSIPTEL may initiate forced collection proceedings on outstanding debts, in accordance with current legislation.

²⁴ Until July 2000, one of the members was proposed by the Ministry of Industry, Tourism, Integration and International Trade Negotiations (MITINCI). After that date the MITINCI representative was replaced by a PCM appointee.

²⁵ The President of the Nation can reverse a decision by the Council of Ministers.

²⁶ Until July 2000 appointments were only for three years, but renewable any number of times.

²⁷ According to the present system, the term of office of the OSIPTEL President ends in January 2002, that of the representative of the Ministry of Economy and Finance in 2003, that of the representative of the Institute for the Defense of Competition and Intellectual Property in 2004 and that of the representative of the Ministry of Transport, Communications, Housing and Construction in 2005, and in 2006 that of the second representative of the Office of the President of the Council of Ministers.

²⁸ Until July 2000, the reasons for a seat remaining vacant were: death, negligence or corruption. The new rule whereby a Board member may be removed “by Supreme Decision giving reasons” opens up a degree of discretion in the removal of Council members which did not exist under the old rules.

²⁹ One of the reasons for the frequency of meetings is that Board members are paid on a daily allowance basis and are not allowed more than two per diems a month.

³⁰ The quorum is one-half of certified members plus one. If the number of certified members is odd, the quorum will be the whole number immediately above half that number.

³¹ Although the President is the only permanent member of OSIPTEL staff, the other Board members have the right to seek support as necessary for Board meetings.

³² From projected revenues generated by 0.5 per cent of telecommunications company billing.

³³ FITEL's budget is generated by 1 per cent of telecommunications company billing.

³⁴ According to its training policy, OSIPTEL evaluates demand in relation to supply, considering the priorities of each of its managerial departments and the main subjects of interest to the institution. Both aspects are evaluated and placed in order of priority by the General Management and the Office of the President before being submitted to the Governing Board for approval.

³⁵ Candidates for the course are proposed by the various universities in Lima and the interior. A total of 45 full-time fellowships have been set aside for six weeks in the city of Lima for a cost of USD 100 000 per year. Half the teaching staff come from OSIPTEL, and the remainder from various universities and corporations. The three best-placed students in each special subject are hired by OSIPTEL. Experience has shown that more than 30 per cent of participants end up working in the telecommunications sector. To date, five of these courses have been held over five consecutive summers. Thanks to the results obtained, the course has become a real breeding ground for some public and private corporations in the sector. A number of the course's graduates are working in the Ministry of Transport and Communications, UECT-MTC, Telefónica del Perú, BellSouth Peru, IBM Peru, Telefónica subsidiaries and lawyers' offices, amongst others.

³⁶ Under the current Telecommunications Act, INICTEL has been declared of national interest and strategic importance, to be governed by its own rules.

³⁷ The objective of this division is to promote, develop, supervise and monitor training activities in the telecommunications sector for the purpose of providing training, special training and further training to staff at all levels, in charge of managing or implementing telecommunications services, through postgraduate, specialized and

technical upgrading programmes.

³⁸ This division has the task of promoting distant training activities aimed at satisfying the requirements in terms of access to information for persons unable to attend activities, using Internet tools.

³⁹ The objective of this division is to regulate, promote, develop, supervise and monitor training activities in the area of television broadcasting, programme production and related fields, through postgraduate, specialized and technical upgrading programmes.

⁴⁰ According to the inter-institutional agreement signed in 1999 between OSINERG, SUNASS and OSIPTEL, the three organizations have undertaken to develop and implement training programmes in coordination with local governments, consumer associations and other similar public organizations (in Lima and in the provinces) in order to enable them to contribute to the effort of information and guidance concerning household public services provided to users in their local areas.

⁴¹ The supervision exercised by Telefónica del Perú is based on the Procedure for the Supervision and Monitoring of the Expansion and Modernization Plan (Governing Board Decision No. 015-96-CD/OSIPTEL), and the Procedure for the Supervision and Monitoring of the Connection Delay Indicator (Presidency Resolution No. 050-98-PD/OSIPTEL). For the other companies, supervision is based on the provisions of the Procedure for the Supervision of the Minimum Expansion Plan of Public Telecommunication Service Companies (Governing Board Decision No. 050-CD-2000/OSIPTEL). The supervision of fixed telephony quality indicators is based on the Service Quality and Control Procedure (Governing Board Decision No. 006-CD-95).

⁴² See Decision [040-99-CD/OSIPTEL](#) and Decision [041-99-CD/OSIPTEL](#).

⁴³ Decision [015-99-CD/OSIPTEL](#).

⁴⁴ Decision [012-98-CD/OSIPTEL](#) and Decision [002-2000-CD/OSIPTEL](#).

⁴⁵ See Decision [027-99-CD/OSIPTEL](#).

⁴⁶ There has been at least one case in which an operator appealed against a decision by OSIPTEL on the grounds that it was not in accordance with established procedures. The Office of the President of the Council of Ministers, however, ruled that in the case of OSIPTEL's decision there had been no infringement of the rules of procedure established for such cases.

⁴⁷ See Decision [011-99-CD/OSIPTEL](#).

⁴⁸ It should be made clear that this rule applies only in a case suitable for submission to arbitration and on the proviso that the parties, by an arbitration agreement or any other document with a similar effect, have agreed to submit their disagreements to OSIPTEL's arbitration.

⁴⁹ Governing Board Decision [013-95-CD/OSIPTEL](#).

⁵⁰ The Technical Secretariat is a department of OSIPTEL responsible for a) processing cases brought to the notice of the Tribunal; b) keeping a register of incoming resources; c) certifying votes held at meetings and recording the results; d) undertaking whatever research, studies or works the Tribunal considers appropriate; e) issuing certified copies of office documents; f) providing the Governing Board with quarterly reports of the use of the Tribunal's resources; g) proposing to the Tribunal the adoption of provisional measures or sanctions; h) any other task requested by the Tribunal.

⁵¹ Each section gives the appreciation and criterion adopted with regard to particular situations or evidence. This provides an open view of the criteria used by the Tribunal to settle claims, while reducing the likelihood of conflicts and providing guidelines for the settlement of future claims.

⁵² In order to enable users to be informed of the progress of their claims under consideration by the Tribunal, OSIPTEL has instituted a system for consulting files on the Internet. This allows users to have access to information concerning their claims through the Web.

⁵³ Decisions taken by collegiate bodies like TRASU are referred directly to collegiate appeals bodies of the ordinary courts (such as the Upper Chamber) without going to courts of first instance with single judges (Civil Judge of First Instance in these cases).

⁵⁴ These powers of OSIPTEL are confirmed by Act No. 26285 and in the General Regulation of the Telecommunications Act (D.S. 06-94-TCC).

⁵⁵ The following very serious offences were added subsequently: offering international callback services and

entering into contracts with national or foreign entities to channel international telephone calls without the knowledge of licensees of the local fixed or mobile public telephone service.

⁵⁶ The following serious offences were added subsequently: contracting for the transmission of broadcast commercial messages without the proper authorization, permit or licence, acquiring a telecommunication service from a natural or legal person that is not authorized to provide that service, failing to meet the deadlines for entering value-added services in the Registry and violating the rules of ethical conduct that have been issued, engaging in broadcasting activities and private telecommunications services or using the radio spectrum without due authorization, operating stations with a transmitting power of between 100 and 500 watts and failing to pay the commercial service operating charge or annual due for two consecutive years.

⁵⁷ The public telecommunication services network does not necessarily have to be interconnected with private telecommunications networks. Interconnection between private services, however, is forbidden.

⁵⁸ The following principles govern the calculation: a) purchase value shall be considered using efficient technologies; and b) depreciation shall be determined considering the working life of assets in accordance with the Generally Accepted Principles of Accountancy in Peru.

⁵⁹ The maximum delay for issuing a licence is 50 days, and the administration is held responsible for any unjustified delay or negligence in the processing of applications.

⁶⁰ For the issue of a licence, it is not essential to have specific technical regulations for the requested service.

⁶¹ Long-distance providers must be able to provide the service in at least five towns of the country with their own infrastructure and at least one switching centre, within not more than 24 months. For fixed telephony providers, the minimum area for the issue of a licence is the department. Within a maximum period of five years, new operators must install at least 5 per cent of the number of lines in service of the main operator established at the time the licence is applied for. Of the new lines installed, at least 10 per cent must be outside the town with the highest density. These obligations are subject to the existence of sufficient demand. The requirements do not apply, however, when only public telephony is involved.

⁶² Examples of licences to be offered in the near future for public tender are trunk services in Lima, MMDS services in 10 provinces, PCS at national level and wireless fixed access.

⁶³ Any transfer of voting shares or stock holdings amounting to 10 per cent or more of the capital of the licensee must be notified to the Ministry within not later than 10 days of the completed transfer.