



Telecommunications Regulation

PERU Estudio Olaechea

CONTACT INFORMATION

Maria Luisa Gubbins
Estudio Olaechea
Bernardo Monteagudo 201
San Isidro, Lima 27, Peru
51 (1) 219-0400
marialuisagubbins@esola.com.pe

**1. What is the name and nature of the regulatory body(ies) in your jurisdiction?
To which bodies (if any) are decisions appealed?**

Supervisory Agency for Private Investment in Telecommunications (OSIPTEL).
Also, the Ministry of Transport and Communications grants concessions,
authorizations, permits and licenses. Both entities have processes whereby decisions
can be appealed.

**2. Has your jurisdiction adopted the WTO Basic Telecommunications Agreement?
If yes, with what exceptions, if any?**

No answer provided.

3. Are operators in your jurisdiction privately or publicly/state owned?

Privately owned since 1994 when State company Compañía Peruana de Teléfonos
S.A. (CPT) and Entel Perú were auctioned to Telefónica de España. In December
1994, Entel Perú was merged into CPT. In 1995, CPT changed its name to Telefónica
del Perú S.A.

4. What are the primary differences between the regulation of wire line, wireless, satellite, cable and VoIP providers?

Wireline, wireless and cable telecommunications need a concession to operate. Satellite providers need to be registered at the Registry of Providers of Satellite Capacity.

VoIP may need a concession or a registry depending on the type of service provided. If VoIP is provided from a computer to a telephone number within Peru, it requires a concession. If provided from a computer to a telephone number outside Peru, only needs a registry as value added service.

5. Are broadcasters regulated separately from telecoms?

Yes. As from June 2004, the operation of broadcasting companies is governed by Law N° 28278, Law of Radio and Television.

6. How are satellite earth stations and submarine cable landings regulated?

By authorization granted by the State for providing a telecom service that does not require a concession for the installation and operation of radiocommunication equipment.

By permit granted by the State for the installation of radiocommunication equipment at a given place.

By license granted by the State for the provision of an authorized radiocommunication service.

7. How is the radio spectrum generally regulated?

The frequency spectrum is managed and controlled by the Ministry of Transport and Communications (MTC). The MTC allocates frequencies and keeps a national frequency record. Allocation of frequencies is granted by the State within a specific segment of the radioelectric spectrum, in a given geographical area. The use of the radioelectric spectrum has to be in accord with the terms of the National Frequency Allocation Plan. A canon is paid in exchange for the allocation.

8. Are any operators granted exclusivity?

No. Telecommunication services are rendered under a free competition regime.

9. Are anti-competitive practices subject to regulation or general competition (e.g., antitrust) laws?

Yes. The prohibition against monopolistic practices is contained in the Peruvian Constitution. In 1991, the Antitrust Law was issued and later replaced by Legislative Decree N° 1034 of June 2008.

10. What services have been liberalized or designated as competitive services?

All telecommunication services have been liberalized and are rendered under a free competition regime according to the Telecommunications Law.

11. Are there regulated tariffs or price lists? If so, for what types of services?

Yes.

12. Are there restrictions on foreign investment in any types of communications companies? If so, what are the restrictions?

No restrictions to foreign investment in the telecommunications sector. In Broadcasting services, only persons with Peruvian nationality and entities incorporated and domiciled in Peru could be holders of authorizations and licenses. Participation of foreigners in entities that have authorizations and licenses could not exceed 40% of the total participations or the shares of capital.

13. What are the approval processes for mergers and acquisitions? Do these vary by type of operator?

There are no control laws to approve M&A with some exceptions. The National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI) must previously approve cases of M&A between companies rendering electricity services within the same interconnected system. M&A pre- control does also exist in other activities such as for openly held corporations, mutual funds, securities' brokers, banking and insurance.

14. Is interconnection between carriers mandatory?

Yes.

15. Are interconnection fees/rates regulated?

Yes.

16. Must carriers make available network components to competitors? If so, what are fees/prices based on cost, or market rates?

Yes.

17. Is there an obligation to serve all customers? If yes, is there a fund to subsidize eligible carriers? Which carriers contribute to the fund? Which carriers are eligible to receive these funds? Are broadband services subsidized or otherwise promoted through tax or other incentives?

Yes. The State promotes the integration of the most isolated regions, including rural areas and zones that are of social interest, through the universal access service, which is promoted by the State through the Telecommunications Investment Fund (FITEL). Operators of carrier services in general and public final services contribute to FITEL (1% of gross income). The Fund is used to finance telecom services in rural areas or places that are considered to be in the social interest. The FITEL funds are managed by OSIPTEL.

18. Are there mandatory requirements to customer agreements (subscriptions, etc.)?

Customer agreements must comply with Conditions of Use of the Public Services of Telecommunications which are imperative (Resolución de Consejo Directivo N° 116-2003-CD-OSIPTEL).

19. Are there any general or telecommunication specific requirements as to data retention?

There are some restrictions to data retention: The Constitution establishes that every individual has the right to maintain in secret their communications and private documents. The non compliance to safeguard the inviolability and secrecy of telecommunications constitutes a very serious infringement.

20. Is number portability mandatory? If so, for which types of carriers (e.g., wireline, wireless, voice over internet protocol)?

No.

21. Is “equal access” dialing selection mandatory? If yes, for which types of carriers?

No

22. Is access or other contributions (“ADCs”) required of new entrants?

Yes. MTC requests an entrance fee in order to render telecom services.

23. Is VoIP regulated? If yes, to what extent?

Not expressly regulated.

24. Are any major changes to telecommunications laws expected in the near future?

No. The Single Text of the Rules of Telecommunications was updated on June 2007.

25. Is resale of telecom services permitted? If yes, is this activity regulated? What is the process to become a reseller? Are foreign companies permitted to be resellers?

Yes. This activity is regulated. To become a reseller, the interested party must be registered at the Reseller Registry of the MTC. Foreign companies are permitted to be resellers.

However, one of the requisites is to present a Tax Payer Registry Number (RUC), which is obtained by incorporating a company in Peru, establishing a branch or subsidiary, or other legal form permitted by the law to obtain the RUC.