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Negotiating Group on Basic Telecommunications

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Response to Questionnaire on Basic Telecommunications

The following communication is circulated at the request of Peru to Members of the Negotiating Group on Basic Telecommunications.

PERU

Part I

Definition and Market Structure

1. What are considered to be basic telecommunications under your regulatory regime? How are they defined? How does your regulatory regime define that which is not considered basic telecommunications?

The legal framework regulating the exploitation of telecommunications services in Peru does not define the expression "basic telecommunications".

From a technical point of view, telecommunications in Peru focus on the establishment of an integrated digital network of services and systems. For this purpose, telecommunications services are classified as follows:

(a) Carrier services

These telecommunications services provide the capacity required to transport signals that allow the supply of end, diffusion and value-added services. These services may be provided by any type of enterprise subject to a special concession.

Carrier services may include the following:

- Local carriers;
- domestic long-distance carriers;
- international long-distance carriers.

The methods carrier services may use are:

- Switched telecommunications networks (e.g. packet-switched data transmission, circuit-switched services, voice telephone or telex services);
- non-switched telecommunications networks (e.g. point-to-point and point-to-multipoint circuit-leasing services).

(b) End services or teleservices

These telecommunications services provide all the capacity required for communication among users. A special concession must be obtained for supply of the following public end services:

- Voice telephone services (fixed and mobile);
- telex services;
- telegraph services;
- paging services;
- mobile automatic multiple channel selection services (trunked);
- data transmission switching service (including packet-switched and circuit-switched), using own network.

(c) Diffusion services

The characteristic of these services is that communication is in one direction from one or more transmission points to a number of reception points. The recipient is free to receive the communication, picking up anything of interest. Diffusion services can be classified as follows:

- Public diffusion;
- private diffusion;
- broadcasting: private services providing a public service.

(d) Value-added services

Value-added services use carrier, end or diffusion services as a medium and add a particular characteristic of facility to the basic service. The following are value-added services:

- Facsimile, storage and retransmission of facsimiles;
- videotext;
- teletex;
- teletext;
- teleaction;

- remote control;
- tele-alarm;
- storage and retrieval of data;
- teleprocessing and data processing;
- interpersonal messaging (all forms of electronic mail);
- voice mail;
- advice services;
- packet-switched data services, not using own network.

In addition, the Law classifies telecommunication services according to use and type as follows:

- (a) Public: These are services defined as public in the Law's Regulations; they are available to the public at large and can be used in exchange for some form of compensation. Their supply is governed by the Law and may be regulated when the needs of the service so require. Carrier services are necessarily deemed to be public services.
- (b) Private: These are services set up by a natural or legal person in order to meet his own communication needs within Peru. They are not available to third parties unless they are value-added services supplied to meet the company's purpose.
- (c) Private services of public interest: These are broadcasting services and include sound and television broadcasts.

2. Does your regulatory regime distinguish between networks (facilities) and services in defining basic telecommunications? If so, how is this distinction made?

The objective of the Peruvian regulatory regime is to regulate telecommunications services. The basis for these services is a material infrastructure called the telecommunications network or system.

The General Regulations of the Telecommunications Law, Supreme Decree No. 06-94-TCC published on 18 February 1994, contain the following definitions:

- (a) Telecommunications network or system

This is the infrastructure or facility that establishes a network of channels or circuits to conduct voice signals, sound, data, texts, images or any other type of signal between two or more points defined by a series of physical lines, radio, optical or other types of link, as well as the switching devices or equipment used for this purpose.

- (b) Telecommunications service

This activity is carried out under the responsibility of a natural or legal person in order to make available and provide a special form of telecommunications.

3. Are there any networks or services which would be considered to be basic telecommunications within the scope of the GATS definition which would not be so considered by your national definition? If so, what are they?

The following services defined in the GATS are not classified in the Peruvian legal framework:

- Facsimile services: The General Regulations of the Telecommunications Law state that facsimile services in the form of storage or retransmission of facsimiles are value-added services. Communication of fax circulars in real time is considered to be part of the telephone service.
- Private circuit leasing services: The leasing of private circuits is a form of exploitation of carrier services, as mentioned above in connection with the response to question 1.

Market structure

4. List any basic telecommunication subsectors or categories which are reserved to supply by monopoly or exclusive supplier(s).

Local fixed-voice telephone services and domestic and international long-distance carrier services are subject to limited competition (conurrencia limitada) until June 1999, in accordance with Law 26285, published on 12 January 1994. This Law states that the Ministry of Transport, Communications, Housing and Building will refrain from granting concessions for such services during the said period. Currently the supplier in possession of the relevant concession for such services is Telefónica del Perú S.A.

The following constitute exceptions to the preceding paragraph:

(a) Local fixed-voice telephone services

In areas where the holder of the concession (Telefónica del Perú) did not provide local fixed-voice telephone services, had not included such services in its expansion plan and had not exercised its preferential right on the date on which the law took effect (26 June 1994).

In areas where the holder of the concession (Telefónica del Perú) supplies local fixed-voice telephone services using manual exchanges, provided that these areas are not included in its modernization programme.

(b) Domestic carrier service

The supply of carrier services when it is intended to connect a populated area that has no access to the public telephone network provided that the populated area is not listed in Annex 1 of the Concession Agreement (of Telefónica del Perú), is not covered by the network expansion requirement and is not listed among the populated areas in which Telefónica del Perú has exercised its preferential right.

The concession agreements of the former ENTEL PERÚ SA and the former CPT SA, merged on 31 December 1994 under the name of Telefónica del Perú S.A. were drawn up before the international public auction and were brought to the attention of the enterprises pre-selected for the auction. These contracts included the following provisions:

- The exclusive right to supply local fixed-voice telephone services and domestic and international carrier services for a period of five years (period of limited competition) in areas where, on the date of privatization, these enterprises were operating or undertook to expand their services; after these five years of exclusive rights, a free-competition regime would prevail. Other telecommunications services are subject to free competition (*libre competencia*);
- The implementation of a tariff readjustment programme until 1998, comprising a progressive adjustment to a fixed rate for local services so as to eliminate the cross-subsidies for international, local and long distance tariffs. The programme includes a system of weighted average price caps for access to the network, private and commercial monthly rental services, local, domestic and international long-distance telephone calls;
- Meeting the expansion and modernization goals of the telephone service with approximately 1,100,000 new telephone lines up to the year 1999, ensuring geographical distribution, as well as completion of the programme to improve the quality of the service;
- Commitment to provide telecommunications services with the installation of at least one public telephone in 1,500 populated rural areas in Peru with over 500 inhabitants.

The aim of these measures is to prevent inefficient allocation of resources, eliminate tariff distortions (cross subsidies) in order to open up the market to free competition (*libre competencia*) subsequently.

Other telecommunications services such as telex, telegraphy, data transmission, cellular mobile telephones, the functioning of public pay telephones, rural telephony, cable television, pagers and local carriers *inter alia* are subject to free competition (*libre competencia*). Model contracts for this purpose are agreed between the Ministry of Transport, Communications, Housing and Building and the supervisory body for private investment in telecommunications (OSIPTEL), presenting a technical project for the service and a minimum expansion plan for the first few years. They also envisage the possibility that, if the market does not meet the expectations of the supplier of the service, he may request modifications to the expansion plan, giving the grounds for his request.

Value-added services do not require any concession, but must be registered for information purposes with the Ministry of Transport, Communications, Housing and Building, and the suppliers of such services are free to fix their rates.

5. Does your regime designate one or a limited number of monopoly/exclusive suppliers to supply any basic telecommunications nationally, on a geographical basis, or for particular market segments? How is it (or they) constituted (e.g. government ministry or agency, wholly government-owned corporate entity, company partly owned by the government, privately owned)?

In accordance with Article 70 of the Telecommunications Law, Supreme Decree No. 013-93-TCC published on 28 April 1993, by Supreme Decree the number of holders of concessions for a particular service may be restricted. The restrictions adopted may be included in the concession agreements. In the cases referred to above, concessions must be granted by means of a public competition. In Peru, the former Peruvian Telephone Company (CPT SA) provides local fixed-voice telephone, local mobile telephone, pager, cable TV, switched data transmission and local carrier services in the form of circuit leasing in the provinces of Lima and Callao of the Department of Lima (capital of Peru). The Peruvian State holds 20 per cent of the shares in this company, the remaining 80 per cent being held by the

private sector. The former National Telecommunications Enterprise of Peru (ENTEL PERU SA) provides local fixed-voice telephone services in the rest of the country (excluding Lima and Callao), and domestic and international long-distance telephone, telex, telegraph, mobile telephone, switched data transmission and local carrier services, domestic and international long distance in the form of circuit leasing, *inter alia*, all over Peru (including Lima and Callao) and the State owns 100 per cent of the shares.

The privatization programme in the telecommunications sector envisaged the sale of 35 per cent of the shares in ENTEL PERU SA and 35 per cent of the shares in CPT SA (20 per cent belonging to it and the remaining 15 per cent as new capital at the time of the international public auction). Two concession agreements were concluded for this purpose, one for each enterprise. The contract of sale for ENTEL PERU SA's shares provided for the possible merger of the two enterprises. The international public auction was held on 28 February 1994 and the winning consortium, CPT Telefónica del Perú, decided to merge ENTEL PERU SA and CPT SA as from 31 December 1994.

Following the merger, approximately 71 per cent of Telefónica del Perú's shares belong to the private sector, of the remaining 29 per cent, some were sold to the employees of ENTEL PERU SA, and the rest, which are owned by the State, will be sold over the next two years in the so-called "citizens' participation" programme, which encourages participation by the population as a whole.

In this connection, as can be seen from this and the preceding replies, the local fixed-voice telephone service and domestic and international carrier services in the whole of Peru are subject to limited competition until June 1999.

For cellular mobile telephony, which uses the AMPS analog technology, two companies hold concessions in the provinces of Lima and Callao (cities that form part of the capital of Peru), in the rest of Peru only one concession has been granted and a second is pending (B Band). Following the merger of CPT SA and ENTEL PERU SA, one supplier has all the A Band concessions for the whole of Peru.

6. Is foreign equity participation or ownership of monopoly or exclusive suppliers permitted? If so, what is the maximum percentage share allowed and what is the current level of identifiable foreign participation?

Yes, up to 100 per cent. At present, private participation in the major supplier is 71 per cent, for the other operators, private participation may be up to 100 per cent. Legislative Decree No. 662 published on 2 September 1991, approved the regime that provides legal stability for foreign investment and provides that foreign investors and enterprises in which they participate have the same rights and obligations as domestic investors and enterprises, the only exceptions being those laid down in Peru's Political Constitution and in the aforementioned Legislative Decree

Legislative Decree No. 757, published on 13 November 1991, approved the Framework Law for growth in private investment and laid down rights, guarantees and obligations applicable to all national or foreign natural or legal persons owning investments in Peru, so as to guarantee freedom of initiative and present or future private investment in all sectors in any of the business or contractual forms allowed by the Constitution and the legislation.

7. If your regime is generally characterized as not permitting competition, please indicate:

As mentioned in the response to question 4, only local fixed-voice telephone services and domestic and international long-distance carrier services, with the exceptions mentioned, are subject to limited competition until June 1999. The other services are subject to free competition (*libre competencia*).

- (a) if certain activities or categories of what could be considered basic telecommunications are not reserved to the monopoly, e.g. facsimile, telex, data transmission, mobile, satellite services;

As stated in the responses to questions 3 and 4 in Part I, using the classification list on page 3 of document MTN.GNS/W/120, the following telecommunications services are not reserved:

- Mobile telephone services (response to question 4);
- switched data transmission services (response to question 4);
- telex services (response to question 4);
- telegraph services (response to question 4);
- local carrier services (in accordance with the definitions given in the response to question 3);
- facsimile services (in accordance with the definition given in the response to question 3).

Local fixed-voice telephone services and domestic and international long-distance carrier services are subject to limited competition, with the corresponding exceptions.

- (b) Are there any other means through which foreign suppliers of basic telecommunications are or may participate in the supply of basic telecommunications, e.g. subcontract or build-operate-transfer arrangements with the monopoly suppliers?

Suppliers are free to decide on the use of subcontracting or other participation mechanisms.

8. Please list and briefly describe any intergovernmental agreements, bilateral or otherwise, that your government has entered into relating to the supply of basic telecommunications networks and services.

Peru is a member of the International Telecommunications Satellite Organization (INTELSAT), the International Maritime Satellite Telecommunications Organization (INMARSAT) and the Andean Subregional Agreement, and has concluded bilateral interconnection agreements with neighbouring countries.

Part II

Competition

For the subsector and category headings in sections A and B, the five questions listed below should be addressed for each subsector and category that you describe. Recognizing that subsectors and categories may overlap, please keep in mind that it is the introduction of competition and the way it has been introduced that should determine how to select the subsectors and categories covered in your responses.

- (i) Overview

What are the main government policies and regulations regarding the competition in this subsector or category? Can foreign suppliers participate in the supply of basic telecommunications in this subsector or category?

The relevant regulatory framework is shown below:

Law	Year	Comments
Legislative Decree No. 702	1991	Law on the Promotion of Private Investment in Telecommunications
Decree Laws Nos. 26095 and 26096	1992	The State's role in the telecommunications sector
Supreme Decree No. 013-93-TCC	1993	Single Decree implementing the Telecommunications Law
Law No. 26285	1994	Constitutional Development Law for the gradual elimination of the telecommunications monopoly
Supreme Decree No. 006-94-TCC	1994	General Regulations of the Telecommunications Law
Supreme Decree No. 062-94-PCM	1994	Regulations of the supervisory body for private investment in telecommunications (OSIPTEL)

The Peruvian regulatory framework states that it is in the national interest to modernize the sector within a framework of free competition (*libre competencia*). This has two fundamental objectives: to promote private investment and guarantee the economic efficiency of the supply and use of services. Clear rules have been laid down for this purpose and they are widely acknowledged to be equitable. They guarantee a reasonable return on investment and offer legal stability to investors so that they can develop their business in a way that provides modern telecommunications services with the quality, coverage and variety needed to make a positive contribution to national development.

The introductory provision of the Telecommunications Law therefore declares that the development of telecommunications is a public necessity and implies attracting private investment, both domestic and foreign.

Article 6 of the Law provides that the State promote free competition in the supply of telecommunications services, regulate the market so that it functions satisfactorily, control the effects of monopolies, prevent restrictive practices and agreements derived from a dominant market position on the part of a particular enterprise or enterprises. The State also promotes participation by users of telecommunications services in the fixing of charges and in the supply and control of the services.

Foreign suppliers may participate in the supply of telecommunications. In the case of local fixed-voice telephone services and domestic and international long-distance carrier services, it should be noted that there is a period of limited competition until June 1999.

(ii) Modes of supply

In your view, how do the GATS modes of supply (cross-border, consumption abroad, commercial presence and presence of natural persons) apply to this subsector or category? What kinds of requirement, conditions or limitations are applied in this subsector or category which relate to each mode of supply?

The supply of any public telecommunications service requires a concession or authorization from the Ministry of Transport, Communications, Housing and Building, with the exception of value-added services, which must be registered in the Register of Enterprises Supplying Value-Added Services, kept by the Ministry. Any foreign supplier wishing to provide telecommunications services

directly to users without going through the existing networks of suppliers must therefore request the relevant concession or authorization from the Ministry.

The consumption abroad mode of supply would be applicable, for example, to the case of the "roaming" facility in cellular mobile telephone services.

There are no restrictions on the commercial presence mode of supply.

With regard to the presence of natural persons mode of supply, Peru permits entry of natural persons supplying services and employed by enterprises supplying services, if they are citizens of member countries of the General Agreement on Trade in Services (GATS), for a period of not more than three years, which may be extended for successive periods of not more than three years. Such persons may not comprise more than 20 per cent of the total number of staff employed by the enterprise and their remuneration may not exceed 30 per cent of the total payroll. These conditions do not apply in the following cases:

- If the foreign supplier of services is the spouse, parent, child or sibling of a Peruvian citizen;
- in the case of personnel of foreign enterprises providing international land, air or water transport under a foreign flag and foreign registration;
- in the case of foreign personnel working in multinational service enterprises or multinational banks subject to the legal regulations applicable to these specific cases;
- in the case of foreign investors who keep a minimum number of tax units (Unidades Impositivas Tributarias) in Peru during the term of the contract;
- in the case of artists, sportsmen or sportswomen or other suppliers of services taking part in public performances in Peru for a maximum of three months each year.

Employers may request exemption from the percentages concerning the number of foreign workers and their proportion in the company's payroll for specialized professional or technical personnel, managerial or administrative personnel involved in new business activities or in reconversion, specialized personnel recruited for teaching, personnel of public or private enterprises with a State contract, and in any other case provided for in a Supreme Decree as a result of special expertise.

Note: Responses on modes of supply should not necessarily be limited to measures which might relate to market access or national treatment as defined by the GATS. Information provided may help advance discussions on how the modes of supply, particularly cross-border and consumption abroad, relate to basic telecommunications.

(iii) Market access

What kind of limitations on market access are applied? (I.e., are there any quantitative limitations on, or economic needs tests applied to, the number of suppliers? Are there any limits on the total value of transactions, total number of operations, quantity of output, or the total number of persons that may supply basic telecommunications or be employed by a supplier? Are there any restrictions or requirements regarding type of legal entity that may supply basic telecommunications? Are there any limits on foreign ownership or equity participation?)

Article 124 of the General Regulations of the Telecommunications Law provides that the granting of a concession for the supply of a particular public telecommunications service must be the subject of a public auction when there are restrictions on the availability of frequencies or on the frequency bands available in a particular zone or service area.

Local fixed-voice telephone services and domestic and international long-distance carrier services are subject to limited competition, with the corresponding exceptions, the other services are not subject to any type of restriction (see responses to questions 4 and 5 in Part I).

(iv) National treatment

What kind of limitations on national treatment are in place extending to foreign suppliers treatment less favourable than that for domestic suppliers? (E.g. are preferences given to domestic suppliers or restrictions or obligations imposed on foreign suppliers with respect to any procedures or regulations, including licensing? Are there any limitations on the nationality or residency of managers, directors, or board members? Are there any restrictions on foreign ownership of land or facilities?)

In accordance with Article 15 of the Telecommunications Law, Supreme Decree No. 013-93-TCC, published on 28 April 1993, foreign participation in the share capital of companies operating telecommunications end-services must comply with the provisions of the Foreign Investment Law (Legislative Decree No. 662, published in August 1991, which provides a regime of legal stability for foreign investment by establishing certain guarantees).

When the foreign investment has been made, it must be registered with the competent national authority. In connection with property, Peru's Political Constitution provides that within 50 kms. of the frontier foreigners may not under any circumstances directly or indirectly purchase or own mines, land, woodland, water resources, fuel or energy sources, whether individually or as a company, on penalty of transfer of the rights thus acquired to the State.

See the response under (ii) in Part II.

(v) Licensing

If licensing is required in this subsector or category, briefly describe the procedures concerned and explain the main requirements, criteria and fees applied. What are some of the principal terms and conditions on licensees, once a licence is obtained?

Note: Licensing is intended to be understood in a broad sense, to include processes such as approval, authorization, registration or certification, as applicable.

In order to supply public telecommunications services, a concession agreement with the State, must be signed through the Ministry of Transport, Communications, Housing and Building, subject to a favourable opinion on the part of OSIPTEL. The contract shows the following:

- The subject of the concession and the services authorized to be supplied;
- the term of the concession;
- maximum duration and the services included during the limited competition period, as appropriate, in accordance with the provisions of Law No. 26285;
- the rights and duties of the holder of the concession;

- the minimum expansion plan for the service;
- an undertaking to comply with the technical specifications for the installations laid down in the basic technical plans;
- an undertaking not to install used equipment, except for internal transfers, and to contract out the supply of goods and services using procedures that guarantee competitive tenders. The contract sets the quantitative limits applicable;
- special cases in which subcontracting is allowed;
- area covered by the service;
- compatibility of the various generations of terminal equipment which, once they have been approved, may be connected;
- time-limits and calendar for the installation of equipment and the commencement of the service;
- characteristics and procedures to be followed in order to connect approved terminals to the service;
- requirement to keep separate accounts in accordance with the principle of impartiality if a number of services are supplied in the concession area;
- tariff mechanisms; criteria and compliance with the objectives of quality for the service; regulations on the interconnection of services and obligations, which must be approved by OSIPTEL;
- guarantees provided by the holder of the concession to ensure compliance with the undertakings given in the concession agreement;
- grounds for terminating the concession agreement;
- penalties.

Value-added services only need to be registered with the Ministry.

Concession fees are a percentage of the initial investment envisaged by the operator and may vary if the concession is granted as a result of public auction.

Operators of carrier services and public end-services pay 1 per cent of the amount of their annual turnover to the Telecommunications Investment Fund (FITEI), to be used exclusively for financing telecommunications services in rural areas or in areas deemed to be of priority social interest. In addition, fees must be paid for the commercial exploitation of the services (annual taxes) to the Ministry of Transport, Communications, Housing and Building, together with the charges made for the supervisory services of OSIPTEL.

A. Subsectors

For any subsector in which competition is permitted in your regime (i.e. which are not reserved to monopoly or exclusive suppliers) answer questions (i) through (v) above, as applicable. The following

list of subsectors is considered illustrative and should be supplemented with any other subsectors or subactivities which you may wish to describe.

This document uses the expression "*Limited Competition (Concurrencia Limitada)*" for local fixed-voice telephone services and domestic and international carrier services, for which the Ministry of Transport, Communications, Housing and Building will not grant any new concessions until July 1999, in accordance with Law No. 26285, subject to the exceptions described in the response to question 4 in Part I.

The Peruvian regulatory framework does not define *free competition* in the sense of *libre concurrencia*, however, in economic terms the concept means that there are no barriers to the entry of new telecommunications service suppliers and that there is a tariff system with a price cap below which suppliers may freely fix their prices, unlike the concept of *free competition* in the sense of *Libre Competencia* according to which suppliers are free to enter and leave the market and fix their prices.

In connection with the preceding paragraphs, attention is drawn to the following:

(a) Voice telephone services

Local fixed-voice telephone services are subject to limited competition;
Mobile telephone services are subject to free competition (*libre concurrencia*).

(b) Packet-switched data transmission services

Free competition (*libre concurrencia*) for local services, limited competition for domestic and international long-distance services.

(c) Circuit-switched data transmission services

Free competition (*libre concurrencia*) for local services, limited competition for domestic and international long-distance services.

(d) Telex services

Free competition (*libre concurrencia*).

(e) Telegraph services

Free competition (*libre concurrencia*).

(f) Value-added services in the form of storage and retransmission of facsimiles

Service subject to free competition (*libre competencia*)

(g) Carrier services in the form of private leased circuit services

Free competition (*libre concurrencia*) only at the local level. Limited competition for domestic and international long-distance services.

(o) Other

The following are some additional examples of basic telecommunications networks or services not explicitly listed in (a)-(g) and (o) above, for which responses may be relevant: voice/non-voice services using domestic/international private leased circuits; cable-TV-related voice telephone networks and services; domestic/international satellite services and satellite links/capacity; analog/digital cellular mobile networks and services; PC networks and services; paging services; mobile data services; fixed lines/wireless local access; local/long-distance line links; local/long-distance switching; international switching and other international gateway facilities. Whereas some of these might be considered to fall under (o), above some might also be considered to be activities falling within subsectors (a)-(g).

- Cable-TV-related voice telephone networks and services

Cable-TV services are subject to free competition (*libre concurrencia*). At present, the two services utilize separate networks.

- Networks and services for personal communications systems

There are not yet any regulations relating to these services.

- Paging services

Free competition (*libre concurrencia*).

For aspects related to networks, see the response to question 2 in Part I.

B. Categories

For each of the categories that follow in which competition is permitted, answer questions (i) through (v) above, as applicable as well as the specific questions listed under a given category.

Local/long distance/international

1. How are local and domestic long distance distinguished or defined?

A local service is supplied within the same local telephone charge area. A domestic long-distance service covers two local telephone charge areas within Peru.

2. Are there any regulatory or other distinctions between domestic (local and long distance) and international networks and services and between the suppliers of basic telecommunications in these market segments? If so, what are they?

For basic telecommunications, domestic and international long-distance communications must utilize the domestic and international long-distance carrier services respectively.

As already mentioned, in accordance with Law No. 26285, domestic and international long-distance carrier services are subject to limited competition until June 1999, whereas the local carrier service is subject to free competition (*libre concurrencia*).

Wire-based

Radio-based

Note: Please address all types of relevant radio-based telecommunications including satellite links, access to satellite capacity, VSAT, mobile cellular communications, paging, mobile data services and other radio-communication systems. Recognizing that wire-based or "fixed" networks can be radio-based in part, responses under this category should relate to any requirements specifically related to radio-based elements of networks or services.

Carrier services may use radio-based systems, satellite links, access to satellite capacity and VSAT technology *inter alia* and the preceding paragraph regarding limited competition is applicable.

Cellular mobile telephone services, paging and trunking services, *inter alia* are subject to free competition (libre concurrencia).

Resale basis

3. Do your regulations permit international resale of private leased circuit capacity if connected to the public network? If so, at one end? At both ends? Under what conditions? Is resale of switched voice capacity permitted?

The Law does not generally allow the resale of private leased circuit capacity.

According to the General Regulations of the Telecommunications Law, Article 234, paragraphs (a) and (b), the following are serious offences:

- (a) Offering telephone services for making telephone call intents within Peru for the purpose of obtaining a return call with dial tone coming from a basic telecommunications network situated outside Peru;
- (b) transactions with Peruvian or foreign entities to channel their telephone communications to other countries without the intervention of the holders of concessions for the local fixed or mobile public telephone service.

Article 236, paragraph (b), of the Regulations provides that it is a serious offence for a natural or legal person to acquire a telecommunications service if he is not authorized to do so in accordance with the Regulations.

4. Is resale of private leased circuit access capacity permitted? If so, under what conditions? May basic telecommunications be resold to make them available to third parties? For which basic telecommunications is this permitted?

No.

Facilities-based

5. May basic telecommunications suppliers (foreign and domestic) construct and operate their own networks or invest in consortia to construct and operate such facilities? If not, what organizations are permitted to construct and operate basic telecommunications network infrastructures?

Foreign and domestic basic telecommunications suppliers may construct and operate their own networks.

Article 33 of the Telecommunications Law provides that value-added services that require their own telecommunications networks, as distinct from carrier services or teleservices, require a special authorization from the Ministry of Transport, Communications, Housing and Building.

To implement Article 33 of the Telecommunications Law, Article 104 of the General Regulations states that, where strictly necessary and only as an addition to the public network, the installation and operation of one's own network to be used as the basic medium for the exclusive supply of value-added services require the same special prior authorization as for a private radiocommunication service, issued by the Directorate-General of Telecommunications. The authorization will not be granted if, in the place where the own network is to be set up, there are already public carrier services or teleservices that meet the requirements for the supply of the value-added service.

For local carrier, cable TV, cellular mobile telephone, paging and other services subject to free competition (*libre concurrencia*), any domestic or foreign supplier may construct and operate his own network or invest in consortia to construct and operate such facilities.

Local fixed-voice telephone services and domestic and international long-distance carriers are subject to limited competition.

Public/non-public supply

6. Does your regime make distinctions between suppliers of public switched and non-public basic telecommunications? If so, how?

A distinction is made between public telecommunications services, which are regulated, and private services, which are not regulated. Private services may not be offered to third persons.

7. What basic telecommunications do your regulations require, explicitly or in effect, to be made available to the public generally?

As mentioned in the response to question 1 in Part I, the term "basic telecommunications" is not defined legal framework in Peru.

All services deemed to be public telecommunications services must be made available to the public generally.

8. What basic telecommunications do your regulations permit to be supplied on a non-public basis (i.e., not required to be made available to the public generally)?

According to Article 20 of the General Regulations of the Telecommunications Law, teleservices, diffusion and value-added services (see the response to question 1 in Part I) may be public. Carrier services must be public.

9. What obligations or responsibilities are incurred by status as a public basic telecommunications supplier and under what conditions? E.g., what kinds of "common carrier" - like obligations are imposed (e.g. with regard to universal service), and on whom?

See the responses to question 4 in Part I and a (v) in Part II.

10. What, if any, restrictions are there on organizing and offering a private network by a telecommunications supplier?

It may only be offered within the area of the supplier's concession.

Limited competition for local fixed-voice telephone services and domestic and international long-distance carriers is in effect until June 1999.

11. Is the operation of public pay-phones reserved to monopoly or exclusive suppliers?

The public pay-phone service is subject to free competition (*libre concurrencia*) and, as mentioned above, the service may be provided by "independent operators, who may request a concession or come to an agreement with the supplier holding the concession for the local fixed-voice telephone service.

Part III

Regulatory Issues

In responding to the questions in this section, participants are asked to provide specific references to the source or status of the measures concerned (e.g., where possible, a citation of the law, regulation, rule, guideline, decision or decree).

Relationship between regulatory and operational functions

1. Do any basic telecommunications suppliers become involved, directly or indirectly, in making regulatory policy enforcement of regulations? In formulating standards or enforcing standards?

Suppliers of basic telecommunications are involved in making regulatory policy through the public hearings provided for in Articles 5, 17, 24 and 137 of the General Regulations of the Telecommunications Law.

According to Article 75 of the Telecommunications Law, Supreme Decree No. 013-93-TCC, published on 28 April 1993, the Ministry of Transport, Communications, Housing and Building is responsible for granting concessions and deciding upon policy in the sector *inter alia*, and Article 77 specifies the functions of OSIPTEL related to controlling the market for public telecommunications services, establishing tariff systems, promoting private investment in the sector, monitoring the quality of the service, compliance with the concession agreements, regulating interconnection, resolving disputes among suppliers and dealing with complaints by users that have been rejected by operators, administering the telecommunications investment fund in rural areas and areas of priority social interest *inter alia*.

Article 83 of the Telecommunications Law provides that the Board of Governors of OSIPTEL should be composed of six members, three appointed by the Government, the other three represent suppliers of carrier services, suppliers of end-services and users of telecommunication services respectively.

2. Is your regulatory authority (or authorities) also responsible for formulating standards? For enforcing standards?

According to Article 75 of the Telecommunications Law, the Ministry of Transport, Communications, Housing and Building is responsible for the following:

- Deciding upon telecommunications policy, following-up and monitoring its results.

- Drawing up and putting forward for approval the regulations and plans of the various services provided for in the Law and taking the relevant decisions relating to them.
- Granting and annulling concessions, authorizations, permits and licences, and overseeing their appropriate utilization.
- Deciding upon the policy to be followed in relation to international telecommunications relations.
- Representing the State during negotiations on telecommunications treaties or agreements.
- Proposing the National Telecommunications Plan for Government approval and monitoring compliance with it.
- Promoting the development of telecommunications industries and computer services based on telecommunications services in accordance with Peru's technological development.
- Controlling use of the radio spectrum and drawing up and approving the National Frequency Allocation Plan.
- Managing the system for the control and monitoring of and research into the radio spectrum.
- Drawing up and approving technical specifications for approval of telecommunications equipment and apparatus and issuing the corresponding certificates of approval. It may delegate authority for the necessary measurements and tests to specialized bodies or laboratories.
- Compiling the National Telecommunications Services register.
- Carrying out the inspection and sanctions responsibilities laid down in the Law.
- Proposing for approval the percentages for radio fees, taxes and charges laid down in the Law.
- Automatically annulling concessions or authorizations granted for telecommunications services when the owners of these rights do not operate the said services on an ongoing basis or within the time-limits provided in the regulations.
- Applying and ensuring compliance with the Telecommunications Law, its regulations and other related provisions.
- Delegating its responsibilities and authority to OSIPTEL.

According to the Telecommunications Law and the OSIPTEL Regulations, Supreme Decree No. 62-94-PCM published on 5 August 1994, OSIPTEL has the authority to regulate, control, remedy, punish and settle disputes within its sphere of competence.

OSIPTEL is solely responsible for the following :

- Establishing regulations governing the conduct of operators on the basis of equity, non-discrimination, impartiality and free and fair competition.
- Fixing rates and interconnection charges for public telecommunications services, establishing rules for their application and monitoring compliance with them.
- When it deems appropriate, establishing the guidelines, criteria and/or restrictions for enterprises holding concessions for carrier services when negotiating international operational agreements, in particular with regard to accounting rates among enterprises, and to ensure compliance with them.
- Specifying the technical, economic and legal standards for interconnection contracts, approving such contracts and amendments thereto and, where appropriate, automatically or at the request of a party issuing orders for interconnection.
- Within its competence, laying down the standards for quality in the supply of public telecommunications services.
- Monitoring: (i) levels of quality and efficiency in the supply of public telecommunications services, including relations between enterprises and users; (ii) compliance with the technical standards for interconnection and the right of operators to have access to the network; (iii) the areas of responsibility among the operators; (iv) fulfilment of the commitments undertaken in concession agreements; (v) compliance with other provisions related to matters under its responsibility.
- Giving a preliminary opinion on model concession agreements.
- Assessing whether or not the operator is fulfilling his obligations under the concession agreement.
- Approving the conditions of use for the supply of public services.
- Settling disputes among operators at the administrative level.
- Establishing procedural rules to be applied by operators in order to meet the claims of users.
- Establishing general rules under which OSIPTTEL can deal with complaints by users if they have been rejected by the operators.
- Managing the Telecommunications Investment Fund (FITEL). Establishing the regulations and rules governing its functioning in coordination with the Ministry of Transport, Communications, Housing and Building, in accordance with the rural telecommunications development policy established by the Ministry.
- Where appropriate, establishing plans, guidelines, criteria and/or accounting systems that must be applied by the operators in conformity with their respective concession agreements where appropriate, obliging the operator to provide certain telecommunications services through one or more divisions, branches or subsidiaries.
- Applying against the holders of concessions and independent operators of public telecommunications services, as well as the users of such services where necessary,

the penalties laid down in the law for violation of legal or contractual regulations within the area of competence of OSIPTEL.

Its non-exclusive functions include arbitration of disputes among operators, advice to the Ministry of Transport, Communications, Housing and Building with regard to the granting of authorizations, permits or licences, when so requested by the Ministry, and ensuring the satisfactory standardization and approval of telecommunications equipment and apparatus, in coordination with the Ministry of Transport, Communications, Housing and Building.

3. How many levels of government (e.g., national, regional, state, local) have responsibility for regulation affecting basic telecommunications? Please identify and describe relevant levels of government authority. Are there any procedures enabling suppliers to resolve questions or disputes they may have or to appeal a decision with the regulatory body concerned? If so, please describe.

The area of jurisdiction of the Ministry of Transport, Communications, Housing and Building and OSIPTEL covers the whole of Peru.

As mentioned above, OSIPTEL is responsible for settling disputes among suppliers and for this purpose it issues regulations on the settlement of disputes, which allow for the establishment of ordinary associate bodies for the settlement of such disputes and provide procedures for the conciliation, administrative and possible judicial stages.

Frequency allotment or assignment

4. What are the procedures, requirements and criteria applied for the allotment or assignment of radio frequencies?

The Ministry of Transport, Communications, Housing and Building is responsible for administering, assigning and controlling the radio frequency spectrum and, in general, for every aspect concerning the radio spectrum.

The Ministry administers the radio frequency spectrum according to the National Frequency Assignment Plan, which is the regulatory technical document showing the tables for the allotment of frequencies to telecommunications services, together with the general technical rules governing use of the radio spectrum.

The National Frequency Assignment Plan is drawn up and approved by the Ministry of Transport, Communications, Housing and Building.

Use of the radio spectrum is subject to a concession or special authorization for the corresponding telecommunications service, after the requirements laid down in the General Regulations of the Telecommunications Law have been complied with.

Holders of concessions or authorizations must pay an annual fee for the commercial exploitation of telecommunications services amounting to one-half per cent (0.5%) of gross turnover invoiced and earned annually.

5. Do foreign telecommunications suppliers receive national treatment under these procedures and criteria?

Yes, foreign suppliers receive the same treatment as domestic suppliers.

Numbering and identification codes

6. What are the procedures, requirements and criteria used to assign numbering and identification codes?

In its National Telecommunications Plan, the Ministry of Transport, Communications, Housing and Building provides for all the basic technical plans such as the Routing Plan, the Transmission Plan, the Synchronization Plan, the Signalling Plan, the Numbering Plan, the Tariff Plan and the Telecommunications Service Quality and Safety Plan.

The main criteria are to simplify the routing principles, to keep digital analysis at manageable levels, to achieve a more comprehensive and powerful system of codes so as to simplify their use.

7. Do foreign telecommunications suppliers receive national treatment under these procedures and criteria?

Yes, foreign suppliers receive the same treatment as domestic suppliers.

Standards, type approval and equipment attachment

8. What types of mandatory standards are in place?

It is the responsibility of the Ministry of Transport, Communications, Housing and Building to fix and approve the technical specifications for the type approval of telecommunications equipment and apparatus, taking into consideration the technical standards of the International Telecommunication Union (ITU), and also to issue the relevant approval certificates.

9. When a standard is under review or a new standard is being developed by your standards authority, is there an opportunity for public review and comment prior to its adoption? May foreigners participate in this process? May the private sector participate in the development of standards? If so, how?

Under the General Telecommunications Law, telecommunications standards are published in the Official Journal for comments and remarks by interested persons and the public generally. Mechanisms also exist for the possible holding of public hearings to review published standards.

There are no restrictions on the participation of foreigners in the procedures mentioned in the preceding paragraph.

10. What equipment is subject to type approval? Is self-certification allowed? Has your government concluded mutual recognition agreements for telecommunications equipment certification? Are they required for foreign-produced equipment?

Article 63 of the Telecommunications Law provides that all equipment or apparatus to be connected to a network in order to supply any type of service must have the corresponding type approval certificate granted by the Ministry of Transport, Communications, Housing and Building.

The Peruvian Government has not concluded any agreement on the certification of telecommunications equipment.

According to Article 35 of the Telecommunications Law, private individuals have the right to propose the regulation of new services.

11. How is the ability to attach terminal equipment to the network regulated? What restrictions are there on terminal equipment that may be attached to the network?

In accordance with Article 16 of the Telecommunications Law, Supreme Decree No. 013-93-TCC, published on 28 April 1993, terminal equipment to be used in telecommunications end-services may be acquired freely by users from the entity supplying the service or any other entity provided that the optimal conditions for connection to the network are met.

The definition of equipment that constitutes part of carrier services and of terminal equipment is pending.

12. May basic telecommunications suppliers connected to the public network use their own switches?

The policy is that interconnection of networks and services is effected among suppliers who hold the relevant concession. If this is not the case, it is termed connection. A supplier of local carrier services basically provides the means of interconnection.

Basic telecommunications suppliers may use their own switches.

13. Does the government require network-based suppliers to permit the attachment of customer-supplied terminal equipment?

As already mentioned, Article 16 of the Telecommunications Law specifies that terminal equipment to be utilized may be freely acquired by users from the entity providing the service or from any other entity, provided that the conditions for optimal connection to the network are met.

Interconnection

14. In general, how is interconnection regulated in your regime? What are the regulations applied?

In accordance with Article 7 of the Telecommunications Law, the interconnection of telecommunications networks and public telecommunications services is of public and social interest.

OSIPTEL is responsible for regulating all aspects of interconnection.

Suppliers interested in interconnection may freely negotiate the conditions of their interconnection technical project, taking into account technical aspects, the location of the interconnection point, the quality of the interconnection, access charges, sanctions and penalties *inter alia*.

If the suppliers do not reach agreement, at the request of the parties or *ex officio* OSIPTEL may decide upon the aspects that were not agreed, the provision of the interconnection infrastructure may be given to the supplier who offers the best financial terms, availability of supply and quality of service.

The regulations applicable in Peru are the Telecommunications Law, the General Regulations of the Telecommunications Law and the regulations issued by OSIPTEL in this area.

15. Do your regulations require network-based suppliers to provide interconnection for other basic telecommunications network or services suppliers? If so, please describe.

Article 106 of the General Regulations of the Telecommunications Law states that interconnection among public telecommunications networks is of public and social interest and is thus mandatory. Interconnection is an essential pre-condition for a concession.

Article 108 of the Regulations states that interconnection of public telecommunication services must be made in accordance with the principle of equal access, according to which operators of public telecommunications services must be interconnected, after reaching agreement on the technical, financial, tariff, market services and other aspects, subject to the same criteria for all operators of services of the same type who make a request. The public telecommunications network does not necessarily have to be interconnected with the private telecommunications networks. Interconnection among private networks is not allowed.

Article 109 of the Regulations states that interconnection agreements must be in writing and must be compatible with the principles of impartiality, non-discrimination and equal access. They must be implemented according to the terms and conditions negotiated in good faith between the parties. Interconnection contracts are subject to the provisions of the Telecommunications Law, its Regulations, special regulations, the basic technical plans in the National Telecommunications Plan, and the requirements laid down by OSIPTEL.

Interconnection contracts should include the following details:

1. Interconnection capacity and estimates for the future so that signals traffic among the networks is of reasonable quality;
2. The networks' connection points;
3. Dates and duration of the interconnection;
4. Characteristics of the signals transmitted or received, including the arrangements for routing, transmission, synchronization, signalling, numbering, tariffs, quality of service and safety of telecommunications;
5. Guarantees by both parties on maintaining the quality of services supplied through interconnected networks;
6. Tariffs and financial terms for the interconnection, taking into account costs and a reasonable margin of profit;
7. Date or time-limit for revision of the terms of the contract.

At the request of either of the parties, OSIPTEL may take part in the negotiations in order to assist in reaching an understanding and agreement. The measures necessary to ensure that the parties meet the time-limits laid down must also be adopted.

As mentioned above, local, domestic or international carrier service suppliers provide the major part of the interconnection infrastructure. Carrier services may use switched or non-switched networks.

16. Is interconnection between leased circuits and public data networks permitted?

According to Peruvian legislation, interconnection is the joining of two or more networks that are technically and operationally compatible and belong to one or more holders of concessions for public telecommunications services with the objective of carrying communications signals among them.

Leased circuits are not deemed to be public telecommunications services but a form of exploitation of carrier services.

17. What are the rules and regulations regarding the pricing of interconnection? Are interconnection charges set in relation to any principles (e.g. cost-oriented)? Is there a requirement to submit interconnection charges to a regulatory body for approval? Are these charges in the public domain? Are the same interconnection charges applied to all suppliers requesting interconnection or are they negotiated on a case-by-case basis? What requirements or obligations exist to publish, make publicly available, or to supply details of interconnection agreements to regulatory authorities?

The policy is that suppliers wishing to conclude an interconnection agreement freely negotiate the technical and financial terms relevant to their interconnection technical project and transmit it to OSIPTEL for approval.

Access charges must be based on costs plus a margin of profit.

Access charges may include the following:

- One-off access charges;
- monthly maintenance charges; these may be paid by the supplier of the local carrier service;
- traffic charges for use of each network belonging to each of the suppliers that are interconnected.

Regarding supply of the interconnection infrastructure, suppliers may submit their terms to auction with a view to deciding upon the interconnection infrastructure that offers the best financial terms, the most satisfactory delivery time and the best quality.

If the suppliers cannot reach agreement, OSIPTEL may fix the access charges at the request of a party or *ex officio*.

It is also provided that, if a supplier concludes an interconnection contract with access charges that are more favourable than those fixed in previous contracts, the more favourable charges will automatically be extended to suppliers who had already signed interconnection contracts.

Interested persons may request information on interconnection from existing suppliers and from OSIPTEL.

Competitive safeguards

What kinds of safeguards does your regime have against anti-competitive practices of monopolies or dominant suppliers in situations where they may compete with other firms to supply certain basic telecommunications in the domestic market? - in the international market?

Article 6 of the Telecommunications Law provides that the State shall promote free competition (*libre competencia*) in the supply of telecommunications services, regulate the market in a way that ensures its normal operation, monitor the effects of monopoly situations, prevent restrictive practices and agreements due to the dominant position of a particular enterprise or enterprises in the market. The State also promotes the involvement of users of telecommunications services in fixing charges and in the supply and monitoring of the services.

OSIPTEL is responsible for ensuring fair competition in the telecommunications market and for this purpose it lays down regulations governing the conduct of the operators on the basis of the principles of equity, non-discrimination, impartiality and free and fair competition.

19. Do your regulations distinguish between dominant and non-dominant supplier? If so, what are the details and how are "dominant" and "non-dominant" defined? Are there any safeguards concerning suppliers who have monopoly or dominant control of access to certain market or network segments?

The term "abuse of a dominant position" is under study and the definition of criteria for its identification is pending.

As already mentioned in connection with Law No. 26285, local fixed-voice telephone services and domestic and international long-distance carriers are subject to limited competition until June 1999.

20. Is there an industry-wide anti-trust policy and/or any telecommunications-specific anti-trust policy? What are the rules and regulations regarding mergers and acquisitions?

Law No. 26285, published on 12 January 1994, provides for gradual termination of the monopoly of local fixed-voice telephone public telecommunications services and domestic and international long-distance carrier services by establishing a period of limited competition during which these services will be adapted to a free competition (libre competencia) regime. Diffusion services, various forms of mobile telephone services, pagers, public pay-phones, value-added services and local carrier services are not included within the scope of this Law.

Peruvian legislation does not contain any regulations on free competition (libre competencia) in relation to amalgamations or mergers of enterprises. There are regulations, however, on collusion practices or abusive practices on the part of an enterprise with a dominant position.

21. Are there any safeguards concerning basic telecommunications suppliers also engaged in the manufacturing of telecommunications equipment? If so, please describe the content and working of these safeguards.

No.

Pricing-related measures

22. What is the role of the government or any related agency with regard to establishing prices (e.g., tariffs, access charges, accounting rates) or pricing policy? For example, does the government set prices or accounting rates, directly or indirectly (e.g., price cuts or rate of return controls), or do basic telecommunications suppliers determine these themselves? What requirements or obligations does the government set regarding prices charged by monopoly/dominant suppliers? - or other suppliers?

According to Article 67 of the Telecommunications Law, Supreme Decree No. 013-93-TCC published on 28 April 1993, enterprises holding public telecommunications service concessions may freely fix their tariffs provided that they do not exceed the price caps set by OSIPTEL. The latter is responsible for drawing-up and approving the applicable system of price caps.

OSIPTEL may decide not to set price caps when competition among enterprises results in fair prices to the user's benefit. Article 68 of the Law states that the fixing of prices for the supply of value-added services is free and is regulated by supply and demand.

23. Does the Government require tariff approval or notification and, if so, what are the procedures? What requirements regarding cost-accounting are put in place to ensure transparency?

OSIPTEL sets price caps and, provided that they do not exceed the caps set, suppliers of services are free to fix tariffs.

For fixed local voice telephone services and domestic and international long-distance telephone calls the price caps are weighted averages and, in accordance with the tariff readjustment programme, there are quarterly revisions. The supplier must publish the new tariffs to be applied before they enter into effect in a widely read national newspaper.

The tariff readjustment programme is taken into account in the corresponding concession agreements and is expressed in soles (Peru's national currency) at February 1994 rates in the month of December each year until 1998. The model is a form of price cap and takes into account an annual productivity figure of 2 per cent; it is indexed to the consumer price index for metropolitan Lima and is expressed in the current rate of soles. The readjustment programme permits the progressive elimination of cross-subsidies.

Article 37 of the Telecommunications Law provides that, in accordance with the principle of impartiality, companies supplying telecommunications and holding concessions or authorizations to supply two or more telecommunication services simultaneously are obliged to keep separate accounts for their activities.

24. To what extent is the principle of non-discrimination applied in pricing policy? E.g., is a tariff package such as a volume discount targeted for a specific group allowed and, if so, what are the terms and conditions applied? What are the criteria used to arrive at different accounting rates? Are some of these criteria required or defined by the government?

Article 8 of the General Regulations of the Telecommunications Law, Supreme Decree No. 06-94-TCC published on 18 February 1994, specifies that access to the use and supply of telecommunications services is subject to the principle of non-discrimination, therefore, enterprises supplying such services, according to available supply, may not deny the service to any natural or legal person who meets the conditions laid down for the service.

Yes, there is price flexibility and the possibility of giving volume discounts to a specific group.

In addition, Article 6 of OSIPTEL's Regulations, Supreme Decree No. 62-94-PCM published on 5 August 1994, establishes that the following are some of the exclusive responsibilities of OSIPTEL:

- (a) To establish regulations governing the conduct of operators on the basis of principles of equity, non-discrimination, impartiality and free and fair competition;
- (c) where appropriate, to establish guidelines, criteria and/or restrictions for enterprises holding concessions for carrier services when negotiating international operational agreements, in particular with regard to accounting rates among enterprises, and to ensure compliance with them.

According to ITU regulations, accounting rates are based on costs. Annex C to ITU recommendation D.140 on guidelines for the bilateral negotiation of accounting rates and international telephone rates was therefore approved this year. The Latin American Tarification Group (TAL) does not yet have an applicable cost model.

Nevertheless, under the tariff readjustment programme, the average weighted charge per minute for international telephone calls in soles at the February 1994 rate shows a progressive decrease from 3.934 to 2.035 for December 1998, representing a decrease of 48 per cent.

At present, the dominant supplier has freely negotiated accounting rates for telephone traffic with various countries.

25. Do any basic telecommunications suppliers get involved in setting industry-wide tariffs?

As mentioned above, OSIPTEL's Board of Governors is composed of six members, three of whom are appointed by the Government and the other three represent suppliers of carrier services, suppliers of end-services and users respectively.

26. On what basis are prices (e.g. tariffs, access charges, accounting rates) determined? What concepts are applied regarding costs? Is there a general principle applied regarding allocation of costs? Is cost-oriented pricing of basic telecommunications used or required by the government? If not, do basic telecommunications suppliers use cost-oriented pricing?

Tariffs are based on a price cap model. The tariff readjustment programme for local, domestic and international fixed-voice telephone services includes an annual productivity factor of 2 per cent, deducted from the percentage variation in the consumer price index for metropolitan Lima.

Access charges for interconnection are based on costs plus a reasonable margin of profit.

27. Are there any rules specific to the pricing of a new service?

See the response to question 22.

Rights of way for the construction of infrastructure

28. Are basic telecommunications services suppliers permitted to build their own infrastructure or facilities? If so, what are the procedures and criteria for authorization to build infrastructure or facilities? What are the procedures, criteria, limitations or qualifications applied with respect to the granting of or the availability of rights of way for the construction of infrastructure or facilities?

Article 18 of the Telecommunications Law states that the supply of carrier services or teleservices, when they are of a public nature, implies the possibility of occupying or utilizing public property. For reasons of necessity or public or social interest, the State may, on its own behalf or on that of the holder of a concession who so requests, impose mandatory obligations or expropriate in order to install services, in accordance with the relevant legislation.

According to Article 19 of the Telecommunications Law, Supreme Decree No. 013-93-TCC published on 28 April 1993, when networks for the conduction of telecommunications services have to go through an urban area or areas of historical, artistic or cultural interest, they must be placed in conduits that are not visible, preferably underground.

29. Is national treatment extended to foreign basic telecommunication suppliers under these procedures and criteria?

Yes.

In connection with property, Peru's Political Constitution provides that within 50 kms. of the frontier foreigners may not in any circumstances directly or indirectly purchase or own mines, land, woodland, water resources, fuel or energy sources whether individually or as a company, on penalty of transfer of the rights thus acquired to the State.

New telecommunications services

30. Please describe any general regulatory processes or procedures that apply to dealing with the introduction of "new" telecommunications services. Prior to any relevant regulatory procedure having been completed, is it not possible for such new services to be supplied?

The Ministry of Transport, Communications, Housing and Building draws up the draft regulations on a new telecommunications service, taking into account the comments of OSIPTEL, and subject to the latter's approval transmits them to the Executive for approval in the form of a Supreme Decree.

The Executive issues a declaration stating that there is a new telecommunications service for incorporation in the General Regulations of the Telecommunications Law. Subsequently the Ministry draws up the model concession agreement for the new service and transmits it to OSIPTEL for an opinion, following which the Ministry, representing the Peruvian State, signs the corresponding concession agreement with the supplier applying for the concession.

It is not possible to supply a new service if it has not been regulated and given a concession, authorized or registered in advance, whichever is appropriate.

31. When a new service becomes possible or available, who determines the status of the new service, (whether it is basic or value-added) and under what procedure and time-frame?

The Ministry of Transport, Communications, Housing and Building is responsible for this.

As already mentioned, value-added services do not require a concession and their tariffs are free. The only requirement is registration by the operator in the relevant register of the Ministry of Transport, Communications, Housing and Building.

It is possible to propose a new service to the Ministry of Transport, Communications, Housing and Building. In this connection, Article 4 of the General Regulations of the Telecommunications Law provides that the Ministry may lay down the procedure for public hearings provided for in Articles 5, 17, 24 and 137 of the said Regulations.