

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
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More documentation related to this discussion can be found at [www.oecd.org/daf/competition/consumer-facing-remedies.htm](http://www.oecd.org/daf/competition/consumer-facing-remedies.htm)

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## Peru

### 1. Importance of the Peruvian Telecommunication markets

1. Since the privatization of the national telephony company, in 1994, the contribution of the Peruvian telecommunication sector to the national GDP has increased in 152%, the highest growth among any other public utility sector. Additionally, investments in the telecom markets have experienced a positive tendency over the last 15 years.
2. The mobile market is particularly important; it is the fastest growing and most dynamic telecommunication market. By the end of 2017, there were 38.9 million of mobile users and mobile penetration had reached 127%. Therefore, competition policy applied to this sector will have a wide impact on a significant part of citizens. However, although it has constantly increased, mobile coverage per district is still 40%.

### 2. OSIPTEL's role in promoting competition in telecom markets

3. Telecom markets present certain structural features that lead to relatively low levels of competition and high market power. First of all, high levels of specific investment are required, which lead to the existence of entry and exit barriers.
4. Furthermore, it is very common to have both vertical and horizontal integration in telecom markets. Although vertical integration minimizes the double marginalization problem, it may also foster anticompetitive behavior such as margin squeeze towards non-integrated firms (usually, entrants). Horizontal integration translates in multiproduct firms offering bundled products. Also, it is worth to mention that, with the exception of the electrical sector, there is no merger control in Peru<sup>1</sup>.
5. In this context, OSIPTEL is both the regulatory Agency and the Competition Agency for telecommunication markets. On its Regulatory Agency role, it is in charge of promoting competition where feasible, price regulation where not; it is also in charge of quality regulation, and user's empowerment. On its Competition Agency role, OSIPTEL is in charge of applying Competition Law to the telecommunication markets<sup>2</sup>.
6. On its regulatory role, during the last years OSIPTEL has focused on promoting competition in the mobile market. The mobile market has been the fastest growing telecommunication market in Peru and, although technological evolution has

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<sup>1</sup> In the telecommunications sector there is no Merger Control. However, mergers between telecom operators usually involve the transfer of Spectrum concessions and of Concessions titles, which have to be authorized by the MTC. In these cases, the MTC asks OSIPTEL for a non-binding opinion regarding the possible effects that the market concentration may have on competition, prices and consumer welfare. However, the ultimate decision is taken by the MTC, for it is the entity in charge of allocating the Spectrum and granting Concession Titles in the first place.

<sup>2</sup> Peru has a particular competition system, because INDECOPI and OSIPTEL share responsibility for developing and applying competition policy, but each entity is independent. Their competences are delimited according to which market is affected by the effects of the acts under analysis. Thus, OSIPTEL is competent only when a conduct affects telecommunication markets; for all the other markets, INDECOPI is the authority in charge.

progressively allowed the existence of strong competition in it, there were still some barriers to be lifted on consumer's side, for effective competition to exist.

### 3. Regulatory remedies applied to the Peruvian mobile market

7. Although technological development has allowed to reduce entry/exit barriers in the mobile markets, concentration levels in the Peruvian mobile market remained high, which translated in a relatively slow dynamic of the commercial plans and deals offered by service operators and prices that remained stagnated.

8. In this context, OSIPTEL approached its intervention in the application of a pack of regulatory measures, one focusing on the supply side and the rest designed to address demand side challenges related to the existence of high switching costs.

#### 3.1. Level the playing field: regulatory design of mobile termination charges

9. A mobile termination charge is the price that mobile operator A has to pay mobile operator B for terminating a call within the later operator's network. If operator A needs to finish one of its user's call on operator B, it has no other alternative than paying operator B for this service.

10. Thus, termination services are an upstream service that enables operator A's client to establish communications with operator B's client ("off-net" calls). Each operator has a natural monopoly in the call termination service in its own network.

11. Therefore, termination charges are usually regulated in order to prevent exclusionary practices in the upstream market –operator B setting a prohibitive high termination charge for calls coming from operator A- as well as to prevent collusive behavior in the downstream market –all operators agreeing on high termination charges, which will translate in high final prices. Also, they are an important cost component of final off-net prices.

12. Termination charges have been regulated by OSIPTEL since 2005 and are set every 4 years on a cost basis<sup>3</sup>. Besides of setting the termination charge level, the Regulatory Design of the charge is an important competition policy tool, for it can be used to level the playing field for new entrants.

13. Regulatory design entails deciding on Symmetry, Reciprocity and on the eventual application of a Glide path to reach the target level<sup>4</sup>. On this respect, since it first started regulating mobile termination charges, in order to promote competition, OSIPTEL has applied symmetric non reciprocal mobile termination charges, allowing entrants to receive higher charges than the incumbents.

14. After confirming that there is effective competition in the market, the new regulatory design for 2018 on entails symmetric and reciprocal charges of immediate application. Although this is not a demand-side regulation, the progressive reduction in

<sup>3</sup> Due to scale economies, larger networks tend to have lower termination costs per user. Thus, the incumbent's termination costs would be lower than that of an entrant mobile operator with fewer users.

<sup>4</sup> Symmetry implies applying regulation to all operators. Reciprocity entails applying the same termination charge for all networks. The application of a glide path implies progressive reduction of charges to new target level instead of applying the new charge immediately.

termination charges has allowed operators to start offering unlimited calls and to improve the characteristics of their mobile plans. Nowadays, for example, even the lowest subscription plans provide unlimited calls to any other operator.

### 3.2. Mobile number portability (relaunched)

15. Mobile number portability (MNP) allows users to change mobile operator while keeping their mobile number. Given the importance users attach to their mobile number, MNP reduces one of the most important cost of switching to another mobile operator: the fear or losing their mobile number. Without it, users stay with their mobile operator even if they are not satisfied with the service they receive.

16. While MNP was initially launched on January 2010, it did not have the expected effects at first. Besides the launching of some special deals targeted to attract users through this mechanism, the level of ported numbers stayed low<sup>5</sup>. The main reason is that the process could take up to 7 days, period during which the user would have no mobile service, which made MNP little attractive.

17. MNP was relaunched on July 2014 and the main change was the reduction of the period for the portability to be effective from 7 days to just 24 hours. As a result, the use of number portability gradually increased and reached record figures. Evidently, this has had quite a positive impact in reducing switching costs and boosting competition in the mobile market.

### 3.3. Complementary demand-oriented measures:

18. For MNP to be really effective as a pro-competitive measure, other related regulations oriented at reducing switching costs had to be established.

#### 3.3.1. SIM Unlocking

19. When selling mobile subscription plans along with a subsidized mobile handsets, mobile operators locked this handset to the SIM-card, to prevent the handset from being used with another operator's SIM card. In Peru, locking lasted for 1 year period after which the user had to expressly request his operator to unblock the handset; that is, the unlocking was not automatic but performed only upon request.

20. Thus, if during the period during which the SIM was locked the user wanted to use MNP and migrate to a new mobile operator, he needed to buy another handset because the SIM card provided by the recipient operator would not be compatible with the blocked handset he had. Given the extended use of smartphones and their higher price, SIM locking notably increased switching costs and refrain the use of MNP.

21. Therefore, OSIPTEL modified a regulation known as the *User's Conditions of Telecommunication Services* and forbid the selling of locked handsets from January 2015.

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<sup>5</sup> After the first 12 months of MNP, less than 0.5% of total mobile lines had been ported, the lowest percentage of the region when compared with other countries that had also implemented MNP such as Brasil, Mexico and Ecuador.

### 3.3.2. *Transparency with the reference price of mobile handsets*

22. Once again, in the case of subscription mobile contracts that came with a subsidized mobile handset, users had a commitment period during which they payed monthly quotas until paying off the handset; commitments periods went up to 24 months. If the user wanted to cancel his subscription contract before the end of the commitment period, he had to pay off the remainder amount of the handset value as a lump-sum.

23. However, OSIPTEL identified that the reference handset price upon which the remainder payment was calculated exorbitant; in fact, no handset was actually sold at this so called “reference price” but it was only used to refrain the user from cancelling his service. Therefore, the use of this reference price increased switching costs and refrained competition.

24. Since January 2015, OSIPTEL established that the reference price of the handset had to be equivalent to the price at which that handset was sold in a prepaid plan at the moment when the user’s subscription contract was signed, and this reference price should be included in the service contract. Additionally, for more transparency, a formula to calculate the remainder payment was included in OSIPTEL’s regulation.

## 4. Effects of regulatory measures

25. The number of ported lines has exponentially grown since the relaunching of MNP. In fact, only during march 2018, half a million mobile lines ported (1.5% of total mobile lines). This figure is huge if one takes into account that, as stated before, during its first 12 months, less than 0.5% of the total mobile lines used this mechanism.

26. The level of concentration in the mobile market, measured with the Herfindahl-Hirschman Index, has significantly and systematically decreased, with a stronger tendency since 2015. By the end of 2017, the HHI was 2913, its lowest ever recorded value. The main reason for this is that the market share of entrants has significantly grown, mainly gaining users thanks to MNP. In fact, the incumbent constantly registers losses on net ported lines.

27. The higher level of competition is also reflected in the attributes of mobile plans and special deals that are being offered. The implicit price per minute has constantly reduced and even the lowest subscription plans are constantly increasing the data caps.

## 5. Conclusion

28. All these regulations mentioned in section 3 were intended to reduce switching costs and increase competition in the mobile market. Along with the regulation of mobile termination charges (supply side), this regulatory package ended up enhancing consumers’ welfare who now receive better service attributes at lower effective prices and are empowered to use their right to free number portability if unsatisfied with their mobile service provider.

29. Indicators reflect that the use of mobile number portability is constantly increasing and users are switching to new entrants; the mobile market is in general more dynamic and much less concentrated than 4 years ago, before these measures were put in place.