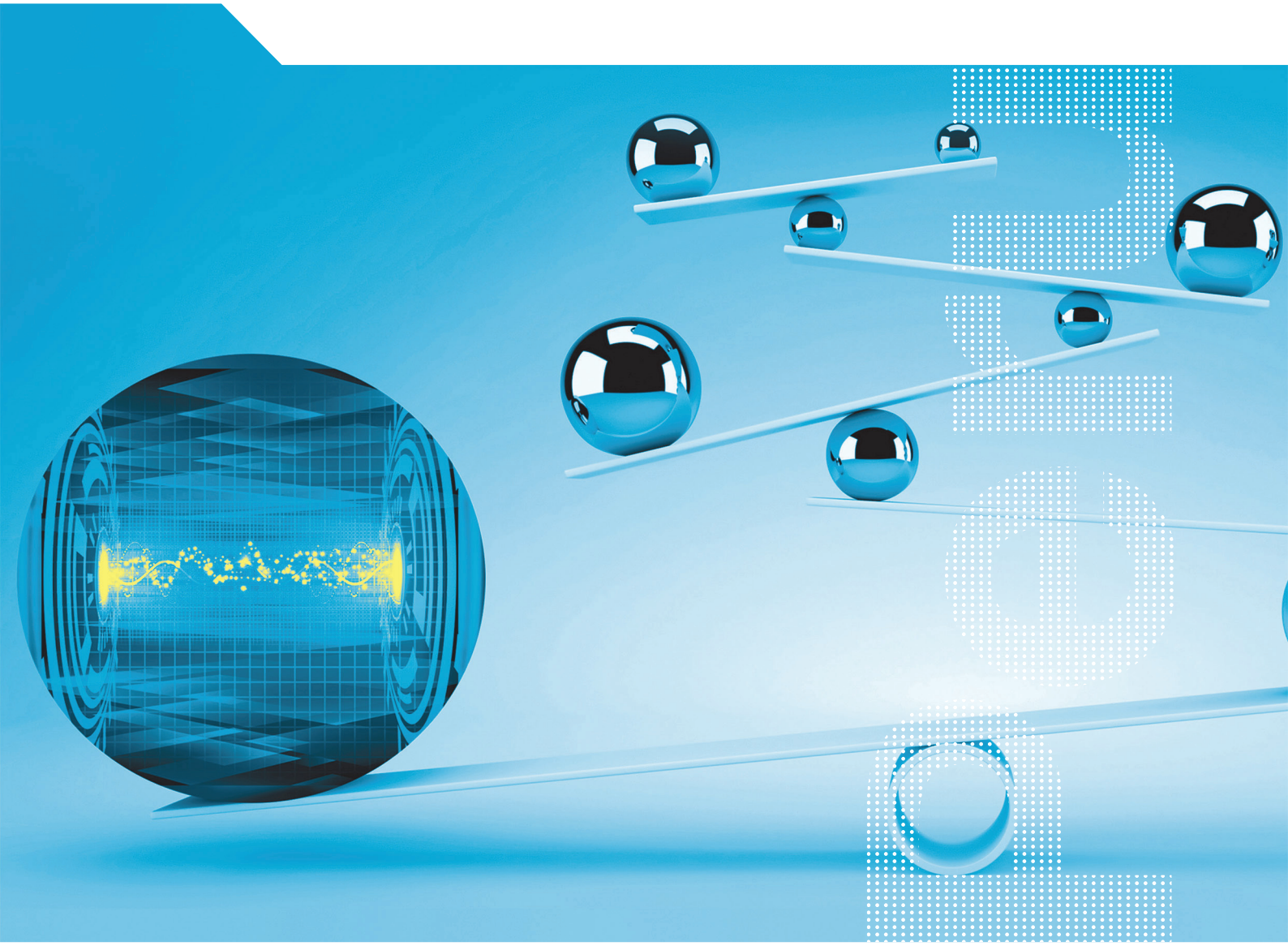
The Governance of Regulators

Progress Review of Peru's Telecommunications Regulator

DRIVING PERFORMANCE



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Foreword

Economic regulators play an important role in the functioning of markets and ensuring the delivery of essential services in sectors such as energy, transportation, e-communications and water. As impartial referees, they balance functions to promote competition and protect consumers. They are expected to support regulatory frameworks that allow for stability, predictability and fairness, with the ultimate aim of improving sector outcomes.

To ensure regulators can achieve these complex and vital objectives, it is important to continuously assess their effectiveness and performance. This can lead to improvements to regulatory practices, frameworks and governance. It can also build confidence and trust in not just the regulator, but the system of public administration as a whole. To support regulators in this process, the OECD has developed the Performance Assessment Framework for Economic Regulators (PAFER) to assess organisational performance and governance structures, based on the *OECD Best Practice Principles on the Governance of Regulators*. The framework analyses regulators' internal and external governance, including their organisational structures, behaviour, accountability, processes, reporting and performance management, as well as role clarity, relationships and distribution of powers and responsibilities with other government and non-government stakeholders.

In 2019, the OECD published the report *Driving Performance at Peru's Telecommunications Regulator,* based on the PAFER review of Peru's Supervisory Agency for Private Investment in Telecommunications (*Organismo Supervisor de Inversión Privada en Telecomunicaciones*, OSIPTEL) carried out in 2018. In 2022, OSIPTEL invited the OECD to conduct a progress review to track and comment on their efforts to implement the recommendations covering the period from 2019 to 2022.

The review highlights that OSIPTEL has made good progress in key areas including improving the regulatory fee setting process, resolving consumer complaints, implementing a framework for regulatory impact assessments (RIAs) and reinstating a users' council. A number of areas of opportunity for improvement still exist. To continue to drive progress in the Peruvian telecommunications sector, OSIPTEL should aim to further clarify its role as a regulator, promote diversity in its decision-making processes, and seek innovative approaches to delivering on its mandate.

This report is part of the OECD work programme on the governance of regulators and regulatory policy, led by the OECD Network of Economic Regulators (NER) and the OECD Regulatory Policy Committee (RPC), with the support of the Regulatory Policy Division of the OECD Directorate of Public Governance. The Directorate's mission is to help government at all levels design and implement strategic, evidence-based and innovative policies that support sustainable economic and social development. The report was presented to the NER for comments at its 19th meeting in December 2022.

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Abbreviations and acronyms

ACR	Regulatory Quality Analysis (*Análisis de Calidad Regulatoria*)
CAS	Administrative Services Contract (*Contrato Administrativo de Servicios*)
CDU	User Conditions (*Condiciones de Uso*)
CEPLAN	National Centre for Strategic Planning (*Centro Nacional de Planeamiento estratégico*)
CODECO	Commission for Consumer Defence and Regulators of Public Utilities (*Comisión Defensa del Consumidor y Organismos Reguladores de los Servicios Públicos*)
CPT	Peruvian Telephone Company (*Compañía Peruana de Teléfonos*)
DAPU	Directorate of User Attention and Protection (*Dirección de Atención y Protección del Usuario*)
DFI	Directorate of Inspection and Enforcement (*Dirección de Fiscalización e Instrucción*)
DPRC	Directorate of Regulatory Policies and Competition (*Dirección de Políticas Regulatorias y Competencia*)
DSLDR	Senior Directors of Free Appointment and Dismissal (*Directivos Superiores y aquellos de Libre Designación y Remoción*)
ENTEL	National Telecommunications Enterprise (*Empresa Nacional de Telecomunicaciones*)
ERESTEL	Residential Survey of Telecommunications *(Encuesta Residencial de Servicios de Telecomunicaciones*)
ERSE	Energy Services Regulatory Authority (*Entidade Reguladora dos Serviços Energéticos*)
FITEL	Telecommunications Investment Fund (*Fondo de Inversión en Telecomunicaciones*)
HHI	Herfindahl-Hirschman Index
HR	Human Resources
IMEI	International Mobile Equipment Identity
INDECOPI	National Institute for the Defense of Competition and Intellectual Property (*Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual*)
MEF	Ministry of Economy and Finance (*Ministerio de Economía y Finanzas*)
MTC	Ministry of Transport and Communications (*Ministerio de Transportes y Comunicaciones*)
NAO	National Audit Office
NER	Network of Economic Regulators
NRIP	Periodic Information Requirement Rule (*Norma de Requerimientos de Información Periódica*)

OCRI	Communications and Institutional Relations Office (*Oficina de Comunicaciones y Relaciones Institucionales*)
OEI	Strategic institutional objectives (*Objectivos Estratégicos Institucionales*)
OSIPTEL	Supervisory Agency for Private Investment in Telecommunications (*Organismo Supervisor de Inversión Privada en Telecomunicaciones*)
OSITRAN	Supervisory Agency for Investment in Public Transport Infrastructure (*Organismo Supervisor de la Inversión en Infraestructura de Transporte de Uso Público*)
PAFER	Performance Assessment Framework for Economic Regulators
PEI	Institutional Strategic Plan (*Plan estratégico institucional*)
PCM	Presidency of the Council of Ministers (*Presidencia del Consejo de Ministros*)
POI	Institutional Operational Plan (*Plan Operativo Institucional*)
PPP	Public-private partnership
PRONATEL	National Telecommunications Programme (*Programa Nacional de Telecomunicaciones*)
RDNFO	National Fiber-optic Backbone Network (*Red Dorsal Nacional de Fibra Optica*)
RENAMV	National Registry of Monitoring and Surveillance of the Internet Service (*Registro Nacional de Monitoreo y Vigilancia del Servicio de Internet*)
RENTESEG	National Registry of Mobile Terminal Equipment for Security (*Registro Nacional de Equipos Terminales Móviles para la Seguridad*)
RIA	Regulatory impact assessment
ROF	Regulation of Organisation and Functions (*Reglamento de Organizaciones y Funciones*)
SERVIR	National Authority of Civil Service (*Autoridad Nacional del Servicio Civil*)
SIM	Subscriber Identity Module
SIRT	Tariff Information and Registration System (*Sistema de Información y Registro de Tarifas*)
SOL	Peruvian sol
TRASU	Administrative Court for the Resolution of User Complaints (*Tribunal Administrativo de Solución de Reclamos de Usuarios*)
TUO	Sorted Single Text (*Texto Único Ordenado*)

Executive summary

The Supervisory Agency for Private Investment in Telecommunications (*Organismo Supervisor de Inversión Privada en Telecomunicaciones*, OSIPTEL) is Peru's independent economic regulator for the telecommunications sector. It was established in 1994, following structural reforms in Peru to liberalise the telecommunications sector, and oversees sector activities and the development of new services and technologies.

Following an in-depth review of its governance and performance by the OECD in 2018, OSIPTEL invited the OECD to review progress made in implementing recommendations that were put forward.

This review finds that OSIPTEL has made significant progress in a number of areas. These include i) improving the fee-setting process by successfully advocating to the executive for an increase in the regulatory fee and introducing three-yearly revision, ii) resolving the large backlog of consumer complaints, iii) implementing a regulatory impact assessment (RIA) framework, and iv) reinstating a users' council that acts as an important outreach mechanism.

At the same time, the implementation of other recommendations requires additional efforts from the regulator, while some have proven more difficult to implement due to the challenging political and institutional context. Political instability and high turnover at senior levels of the executive branch hindered more structural co-ordination with public actors. The review identifies some areas of focus that can help OSIPTEL ensure continuous progress and build on its achievements. This includes clarifying its role and mandate, promoting diversity in its decision making, and increasing the use of early-stage stakeholder consultation and risk-based inspection and enforcement approaches.

Role and objectives of OSIPTEL

Previous recommendations focused on the need for OSIPTEL to build on its mandate and strong reputation as a technically competent body, by establishing a clear narrative on its role in the telecommunications sector and assessing its powers and functions.

Assessment of progress on key recommendations and suggestions for way forward

- OSIPTEL has made some progress by appointing a parliamentary co-ordinator to liaise with Congress but has not yet developed a robust external relations strategy for all key stakeholders that establishes a stable narrative on its role as a neutral arbiter and the results of its regulatory activities.
- OSIPTEL continues to be given new functions and responsibilities by the executive or by congress without an assessment of its existing functions, which may cause additional confusion about the role of the regulator and potential overlap with other public entities.

- OSIPTEL has eliminated the backlog of 250 000 consumer complaints, setting up an effective system that has helped reduce the volume of new complaints from 40 000 per month at its peak to 6 000 per month in 2021.
- OSIPTEL has started publishing a yearly regulatory agenda on its website, which can now be used as a tool for stakeholder engagement to improve predictability and stability for all stakeholders.

Input

Previous recommendations focused on the regulator's fee-setting process, budgetary stability and its human resources framework.

Assessment of progress on key recommendations and suggestions for way forward

- OSIPTEL has secured a more adequate budget through an increase in the regulatory fee that can be revised every three years, although a lack of criteria or procedures for this review defined in law could reintroduce budgetary uncertainty. Furthermore, there is still no structured mechanism to carry forward unspent funds between financial cycles.
- OSIPTEL improved its human resources management, but restrictions and a slow transition to the new uniform employment regime at the administration-wide level in Peru creates difficulties for its capacity to attract technical talent.

Process

Previous recommendations focused on assessing the Board's role and resources, adding moments for scrutiny within decision-making processes, and increasing the use of early stage and proactive stakeholder engagement.

Assessment of progress on key recommendations and suggestions for way forward

- OSIPTEL submitted two unsuccessful requests to the executive to increase the Board's resources; in the absence of these, the Board has requested more informal meetings with OSIPTEL's technical specialists. The regulator should prioritise the involvement of its Board towards setting the organisation's strategic direction and in the adoption of strategically significant regulatory decisions.
- OSIPTEL carried out an internal reorganisation to improve operational efficiency and made improvements to its quality control mechanisms, for example by involving legal advisors in the early stages of developing regulatory proposals. At the same time, decision making has become more centralised. The regulator could benefit from additional challenge functions within its regulatory decision-making processes.
- Stakeholder engagement has been improved with the reinstatement of a users' council that serves an important outreach function. This council could be further integrated into regulatory decision making and complemented by other mechanisms for earlier consultation with stakeholders, such as an advisory committee.
- OSIPTEL has modified its inspections regulations and introduced digital tools to collect data on compliance. The regulator should now focus on more risk-based and behaviourally informed approaches to ensure that its enforcement strategy leads to the desired behaviour change by operators and contributes to a constructive relationship.

Output and outcome

Previous recommendations focused on using the well-constructed five-year strategic framework to communicate on OSIPTEL's achievements and exploring opportunities to streamline data reporting requirements.

Assessment of progress on key recommendations and suggestions for way forward

- OSIPTEL has improved its strategic plan by introducing multi-annual targets linked to its different strategic objectives. It has invested in streamlining its performance indicators, though reporting on indicators remains complex. Further efforts can be made to use its strategic plan as a tool to communicate the role of the regulator and report on its impact on outcomes.
- OSIPTEL has invested in reducing the burden of its regular data requests to operators, though an apparent rise in ad hoc requests may be re-introducing burdens and reducing predictability in the regulatory process.

1 Implementation of the PAFER recommendations

This chapter provides an extensive analysis of the progress made by OSIPTEL in implementing the OECD recommendations from the 2018 Performance Assessment Framework for Economic Regulators (PAFER) review. It starts with an overview of the main changes to Peru's telecommunications sector and the institutional context since the initial review. In addition, it outlines the main lessons learnt in the process of implementing the OECD recommendations, including the wide-ranging co-operation with internal and external stakeholders.

Introduction

The Supervisory Agency for Private Investment in Telecommunications (*Organismo Supervisor de Inversión Privada en Telecomunicaciones*, OSIPTEL) is Peru's independent economic regulator for the telecommunications sector. Established in 1994, it oversaw the liberalisation of the market for telecommunications services and the development of new services and technologies in the sector. In 2018, the OECD Network of Economic Regulators (NER) undertook a review of OSIPTEL's governance and performance at the invitation of the regulator. This review made use of the OECD Performance Assessment Framework for Economic Regulators (PAFER), with the report *Driving Performance at Peru's Telecommunications Regulator* published in 2019 (OECD, 2019[1]).

Since the review of OSIPTEL, the three other Peruvian economic regulators have also undergone a PAFER review. OSIPTEL is the first to invite the OECD back to conduct a progress review. This progress review of OSIPTEL assesses the regulator's progress on each of the recommendations of the initial review. It covers the four-year period from the initial assessment for the PAFER review, conducted in 2018, until the fact-finding mission carried out by the OECD Secretariat in June 2022.

The review finds that OSIPTEL has made significant progress in several areas since 2018. At the same time, other recommendations will still require additional efforts from the regulator, while some have proven more difficult to implement due to the political and institutional context. The main advances achieved by the regulator are:

- **Improving the fee-setting process**: OSIPTEL successfully advocated for a legislative change to increase the regulatory fee as of 2022 and introduce a three-yearly revision, supporting the sufficiency of the regulator's budget;
- **Resolving consumer complaints**: OSIPTEL adjusted its regulations and issued guidance to remove loopholes and perverse incentives in the complaints process, decreasing the number of complaints and treatment times, and introducing organisational changes to reduce the significant backlog of complaints;
- **Implementing the Regulatory Impact Assessment (RIA) framework**: Following the approval of the RIA guidelines and manual in 2018, OSIPTEL has conducted regulatory impact analyses for nearly all new regulations;
- **Reinstating a user council**: OSIPTEL reactivated its use of a user council, which acts as an important consumer outreach mechanism and can now be integrated further into the regulatory decision-making process.

OSIPTEL made use of multiple approaches to implement recommendations, depending on whether it could implement the recommendation autonomously or in co-ordination with other sector actors. Internally, OSIPTEL discussed recommendations and their follow-up within its Leaders Committee, comprising of senior management, to define its course of action. Externally, OSIPTEL advocated for several legislative changes based on analytical reports by the regulator, some of which were successful.

This progress review is structured into three sections. The first section provides an overview of the sector and institutional context and any changes to this context since 2018. The second section provides an overall assessment of the progress in implementing the OECD recommendations and makes suggestions to the regulator for further improvement. The third section concludes the report with a discussion of lessons learnt and the way forward.

Overview of sector and institutional context

OSIPTEL is one of four economic regulators[1] established in Peru in the 1990s as part of a broader policy built on the pillars of economic liberalisation, private investment promotion and regulated competition. The Telecommunications Law of 1991 created OSIPTEL as the economic regulator to lead the transformation and modernisation of the telecommunications sector. In 1994, it replaced the Committee of the Regulation of Telecommunications Tariffs. The privatisation of two state telephone companies (*Compañía Peruana de Teléfonos*, CPT, and *Empresa Nacional de Telecomunicaciones,* ENTEL), also in 1994, set forth the modernisation of the Peruvian telecommunications sector.

OSIPTEL has passed through four phases in its evolution. In its first decade of existence, it supported the transition of the sector towards a liberalised telecommunications market through promoting competition and facilitating new entrants into the market. Its objectives were to increase investment, geographic coverage and quality of services. It also set the first consumer protection frameworks for the sector, including information relating to the design of user service platforms as well as maximum timelines for service claims solutions. Second, from 2005 to 2014, its focus shifted towards the expansion of services, especially in the mobile sector. During this period, the quantity of districts with coverage went from less than 500 to more than 1 500. Third, focus of OSIPTEL's mandate shifted towards a regulatory policy that concentrated on strengthening competition through access conditions and setting prices of essential facilities to promote rapid and efficient entry to the market. Most recently, this mandate has focused on promoting competition in the mobile markets and reducing barriers to entry, namely regarding reducing costs for consumers to switch providers. This mandate is reflected in the regulator's current slogan: *promovemos la competencia y empoderamos al usuario* (we promote competition and empower the user).

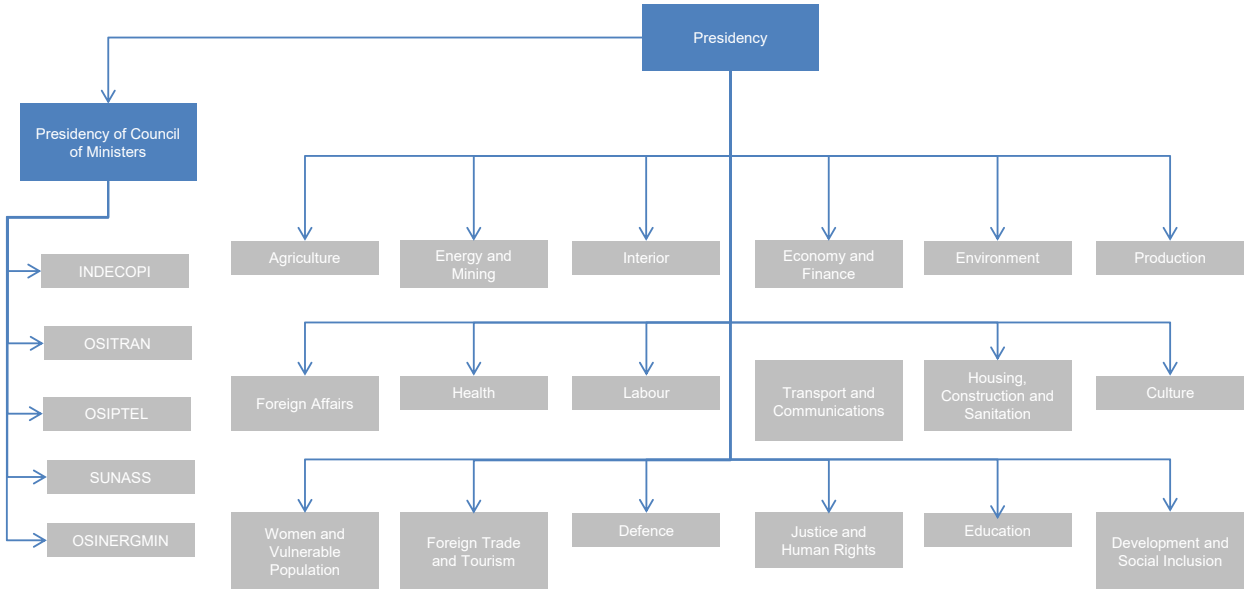
OSIPTEL is primarily responsible for overseeing the telecommunications sector in Peru. However, a large area of Peru remained uncovered by telecommunications, which led to the adoption of the 2012 broadband policy via the establishment of the national fibre optic backbone network (*Red Dorsal Nacional de Fibra Optica*, RDNFO) and promotion of broadband connections. This is supported with the creation of the Telecommunications Fund (*Fondo de inversion en telecomunicaciones*, FITEL), which is now operating as part of the National Telecommunications Programme (*Programa Nacional de Telecomunicaciones,* PRONATEL).

Institutional and sectoral changes since 2018

Institutions

There has been relatively little change in the system of governance for economic regulators in Peru since 2018 (Figure 1.1). OSIPTEL, along with the other three economic regulators, is attached to the Presidency of the Council of Ministers (*Presidencia del Consejo de Ministros*, PCM), with administrative, functional, technical, economic, and financial autonomy. The PCM is responsible for co-ordinating national and sector policies within the executive, including line ministries and public agencies. The PCM co-ordinates the general administrative processes within Peru's public institutions, including OSIPTEL. It plays a key role in the process of appointing and nominating the President and members of the Board of Directors of OSIPTEL, approves OSIPTEL's organisational structure, sets the regulatory fee that funds the regulator and defines certain arrangements for OSIPTEL's board (such as the allowance for board members and the number of paid board sessions per month).

Figure 1.1. Structure of the executive branch of the Peruvian government



Note: The PCM also houses a large number of public entities, secretariats and commissions, which are not included in this figure.
Source: OECD (2016), *Regulatory Policy in Peru: Assembling the Framework for Regulatory Quality*, OECD Reviews of Regulatory Reform, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264260054-en.

The Ministry of Transport and Communications (*Ministerio de Transportes y Comunicaciones*, MTC) is responsible for defining and developing policies for Peru's transport and telecommunications sectors. It is charged with designing, leading, promoting, and implementing actions aimed at providing efficient transportation and telecommunication systems and overseeing concession programmes within its sectors. This is done in conjunction with control bodies and sectoral institutions that supervise the proper operation of telecommunications and transport activities, namely two of the country's four economic regulators: OSIPTEL and the Supervisory Agency for Investment in Public Transport Infrastructure (*Organismo Supervisor de la Inversión en Infraestructura de Transporte de Uso Público*, OSITRAN).

The main institutional change since 2018 has been to the agency responsible for overseeing the national fibre optic backbone network. Formerly FITEL, it was renamed to PRONATEL in 2018 (Supreme Decree No. 018-2018-MTC) which saw it take over the role of FITEL and gain additional functions including the operation and maintenance of the network. However, the role of OSIPTEL with regard to the RDNFO has not changed. PRONATEL projects can be implemented under public-private partnership (PPP) schemes, or "Projects in Assets" (*Proyectos en Activos*) schemes that allow ministries, regional governments, and local governments to promote private investments of assets. For projects under this latter scheme, OSIPTEL can issue non-binding opinions (i.e., on concession contracts, tariffs, quality of service, essential facilities, and competition). OSIPTEL can only be tasked with creating ad hoc regulations in accordance with specific projects. Responsibility for supervising projects implemented under this scheme, including quality of service, is assigned to PRONATEL. Recently, some discussions have taken place to transfer supervisory responsibility to OSIPTEL after PRONATEL issues a private concession contract, which means OSIPTEL would take over supervisory responsibility for rules decided originally by PRONATEL.

Main sectoral reforms

The main change affecting the telecommunications sector has been a new mergers and acquisitions law, whose scope affects all economic activities in Peru. The rule came into force in January 2021 with the passing of Law No. 31112, which applies to all mergers and acquisitions above a certain threshold. It

assigns the National Institute for the Defense of Competition and Intellectual Property (*Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual*, INDECOPI) with responsibility for evaluating proposed mergers and acquisitions, with the possibility to request information from other bodies in the public administration. Regulatory bodies are required to issue a non-binding report about the level of market concentration and a technical opinion on the possible effects on the market that would derive from the merger or acquisition. OSIPTEL reports that each of the main telecommunications operators are above the threshold currently, so any merger or acquisition in the telecommunications sector would be decided by INDECOPI with a mandatory non-binding opinion from OSIPTEL.

Law No. 31112 also affects the radioelectric spectrum transfer procedures, led by the MTC. These procedures can be suspended by the MTC in cases where mergers and acquisitions are pending, and the concentration of spectrum because of the merger or acquisition is evaluated and approved by INDECOPI. A bylaw to Law No. 31112 was passed in March 2021 (Supreme Decree No. 039-2021-PCM), which established the possibility for INDECOPI to consult and request information from public and private entities, whose opinion may be considered useful in the procedures for the prior authorisation of mergers and acquisitions, and for review of the conditions imposed on such operations.

In June 2021, Congress passed a law that guarantees a minimum speed of internet connection and monitoring of internet services with the intention to benefit users (Law No. 31207). OSIPTEL issued an opinion on the draft law, noting the likely negative impacts on the market. However, the regulator's concerns were not reflected in the final law. The law instructed OSIPTEL to adopt a corresponding General Regulation of Quality of Public Telecommunications Services, which now includes the following provisions (Resolution No. 138-2021-CD/OSIPTEL):

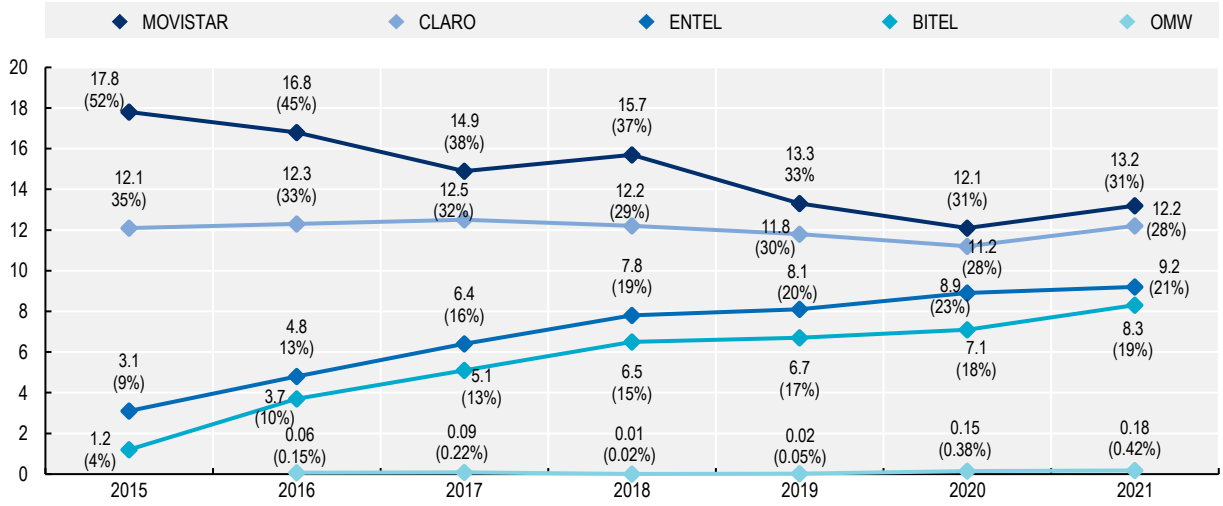
- Increased the minimum guaranteed speed to 70% of the contracted speed, for fixed internet access or mobile broadband services.
- Established that the ratio of the maximum contracted upload and download speeds offered by the operators of the fixed or mobile Internet access service must not be less than 1:3 or 33.33%.
- Established that the verification of the quality indicators of the Internet access service will be carried out in accordance with Law No. 31207 and the National Registry of Monitoring and Surveillance of the Internet Service (*Registro Nacional de Monitoreo y Vigilancia del Servicio de Internet*, RENAMV).

Market evolution

As noted in the 2018 review, the Peruvian telecommunications sector has undergone a dynamic modernisation process linked to the advent and growth of new services (mobile telephony and Internet) and arrival of new providers. Similar to 2018, there are four major operators and hundreds of small- and medium-sized enterprises providing telecommunications services in Peru. The four major operators are América Móvil (Claro), ENTEL, Telefónica (Movistar) and Viettel (Bitel). Movistar is the largest operator, followed by Claro.

The market has been continuing its trend towards increased competition, especially in the mobile telephony sector. The number of mobile lines by operator has been converging, with the two largest operators seeing a reduction in their market share and the two smaller operators gaining market share (Figure 1.2). This has led to a sustained reduction of the Herfindahl-Hirschman market concentration index (HHI) as calculated by OSIPTEL over the period December 2018 to December 2021.

Figure 1.2. Mobile lines by company (in millions) and market share



Source: Information provided by OSIPTEL (2022).

Similarly, with fixed internet connections, Movistar's market share remains the largest but has been decreasing since the review in 2018, from 74.8% share of the market to 59.5% in 2021. In comparison, Claro's market share has grown from 19.1% to 27.6% over this same period and other operators share the remaining market (among them, Entel has 3.74% and Win/Optical Technologies has 4.5%). The overall market size also continues to grow, with the total number of connections increasing by 18.5% between 2018 and 2021. Fibre networks have also grown substantially, from 90 595 connections in 2018 to over 600 000 in 2021. The deployment of optical fibre through the RDNFO continues to grow, but at a decreasing rate. From 2012 (the inception of the RDNFO), the length of the RDNFO network was around 15 000 kilometres, which grew to 75 694 kilometres as of 2020 distributed between RDNFO, networks laid by private operators, and regional projects. OSIPTEL expects growth to increase in the coming years, mainly in the fibre network segment due to new companies that have recently entered or are expected to enter the market, as well as through the 21 new projects under PRONATEL.

Overall assessment of the implementation of the recommendations

Role and objectives

The role and objectives dimension within the PAFER framework focuses on: i) the mandate, functions and powers of the regulator, ii) the interaction of the regulator with other public bodies and the executive; iii) the strategic objectives and targets; and iv) the regulator's independence. OSIPTEL made important progress on recommendations in this area by developing a regulatory agenda and reducing the number of user complaints. To continue progress, OSIPTEL should establish a stable narrative on its role in the telecommunications sector as a neutral arbiter that strives to balance competing interests, and also invest in additional co-ordination mechanisms with other sector actors.

Mandate

Recommendation: Develop a robust external relations strategy

The 2018 review recommended that OSIPTEL develop a robust external relations strategy that communicates the core objectives, raison d'être and results of the regulator, and, when relevant, do so jointly with Peru's other economic regulators. This external relations strategy would provide a stable narrative on the work of OSIPTEL by focusing on a limited number of key indicators / results and could be communicated by all members of the board and senior management. This strategy and the resources for its implementation would be differentiated from communication activities aiming at implementing OSIPTEL function of customer protection and sharing information relative to user rights.

Assessment of progress

OSIPTEL made some progress by appointing a parliamentary co-ordinator, but has not yet developed a robust external relations strategy – differentiated from its communications activities – that establishes a stable narrative on its role as a neutral arbiter and on its results to all stakeholders.

The strategy for external relations is housed within the regulator's communications strategy, which includes a stakeholder map and strategies aimed to communicate with each. The communication strategy cascades from the 2020-24 Institutional Strategic Plan (*Plan estratégico institucional,* PEI), where a strategic priority is to "Consolidate OSIPTEL's reputation as a transparent and highly specialised institution," with a strategic action attached to create a "differentiated communication strategy for each stakeholder". Implementation of this strategic action is assigned to the Communications and Institutional Relations Office (*Oficina de Comunicaciones y Relaciones Institucionales,* OCRI). The strategy notes OSIPTEL's mission, being to promote competition in the telecommunications market, quality of telecommunications services, and the empowerment of users. It also elaborates a narrative of the role of the regulator pre and post COVID-19 pandemic, supported by data from their Reputation Study in 2021. It uses this data to build a strategy for targeting 13 groups of stakeholders,[2] with strategies for communicating with each.

The stakeholder mapping and related strategies for communication cover all 13 identified stakeholder groups but are much more developed for certain groups, notably operators and Congress. Furthermore, the actions defined in the strategy are mostly aimed at promoting OSIPTEL's user protection mandate (see section on Communications). For instance, actions for users focus on strengthening data collected on user satisfaction and launching informational campaigns on social media; actions geared to operators focus on activities that communicate user issues to operators and joint projects that show users how services are improving. Actions related to its mandate on improving competition in the market are relatively underdeveloped. This may result in difficulty communicating a stable narrative to stakeholders more broadly on the core objectives and raison d'être of an economic regulator as being a neutral arbiter.

External relations with the executive are still implemented via an informal approach that is affected by continued political instability. OSIPTEL meets on an ad hoc basis with senior officials from the Presidency of the Council of Ministers, Ministry of Transportation and Communications and other bodies to keep them informed of actions and changes to the regulatory environment or normative actions of the regulator. However, OSIPTEL reports that this approach has been hampered in recent years by ongoing political instability and frequent changes at senior executive levels in the Peruvian administration, which create continuity issues for the regulator.

Relations with Congress have become more institutionalised with the hiring of a Parliamentary Co-ordinator in 2020, though there remain issues with Congress understanding the role of the regulator. The Parliamentary Co-ordinator, who sits within the OCRI, is assigned responsibility to promote and consolidate inter-institutional relationships with various government entities, with an emphasis on

congress. The co-ordinator works to strengthen the flow of information between OSIPTEL and congress and its committees relating to the regulator's work, namely the Commission for Consumer Defence and Regulators of Public Utilities (*Comisión Defensa del Consumidor y Organismos Reguladores de los Servicios Públicos*, CODECO). This includes being tasked with creating a strategic approach to engaging with congress, as well as following up proposals by the regulator to congress to help make the case for their consideration. Furthermore, OSIPTEL has proposed to increase accountability to congress by presenting its annual report to CODECO, which occurred once so far in October 2020. There are still opportunities to strengthen understanding within congress of OSIPTEL's role as economic regulator in the telecommunications sector, in particular the limits to its functions and duties.

To continue progress on this recommendation, OSIPTEL should leverage its knowledge of stakeholders to develop an external relations strategy that is separate from institutional communications. This external relations strategy could use the existing stakeholder mapping as a baseline and take into consideration all strategic objectives and functions of the regulator. The core goal should be to develop and communicate a concise and stable narrative to each group of what OSIPTEL is, what its ultimate purpose is and how it contributes to sector outcomes as a neutral arbiter. It can then use this as a tool to support a stable and consistent perception of the regulator that would endure even in a context of political instability and frequent changes in senior official positions.

Recommendation: Set up a forum for economic regulators in Peru

The 2018 review recommended setting up a forum where economic regulators of Peru can come together with the objective of harmonising messages on the role of economic regulators and jointly advocating for governance-related topics as relevant. The forum would not minimise the need for sectoral focus in the technical work of the regulators and it could, as relevant, also be open to other public agencies in charge of competition, customer or environmental protection, safety, etc. The chairmanship of the group could rotate between the regulatory authorities and the group should aim to focus on concrete deliverable and activities, rather than setting up a bureaucratic system of collaboration.

Assessment of progress

High-level co-ordination between economic regulators on strategic matters of joint concern continues to take place through informal channels and is complemented by increasing knowledge exchange at the technical level.

Consistent with the 2018 review, co-ordination between the presidents of the four economic regulators continues to be primarily conducted through informal channels as OSIPTEL asserts that an official forum would not be feasible. Still, high-level informal co-ordination between the presidents tends to be regular, often leveraging the personal relationships between them. Moves to formalise this group have been avoided due to the current political climate and a determination that it would not be possible. When a president changes, it is incumbent upon the current presidents to reach out and welcome the new member into the informal communication channels, which can result in a regulator being outside these informal channels for a period of time.

Channels of communication at the technical level are more formalised, offering a way forward for the regulator. The four regulators meet formally at least once a year to discuss cross-cutting issues related to their Legal Advisory Offices, Human Resources Offices and Regulatory Affairs Offices, the latter of which is focused on regulatory processes that are cross cutting, RIA and regulatory quality analysis (*Análisis de Calidad Regulatoria*, ACR). More broadly, co-operation includes discussions regarding legislative proposals by Congress that would affect the regulators, proposals they want to make to change the rules governing regulators, participation in OECD meetings and committees, requests for access to information, sanctioning procedures and staff incentives. Informal exchanges also tend to be a regular occurrence at the technical level, often bilaterally. The regulators reportedly co-ordinate to better align their individual

positions on legislative proposals related to the governance and role of Peru's regulatory bodies, in defence of economic regulators. This technical level co-operation can be helpful in co-ordinating the work of the economic regulators and exchanging good practices.

To further implement this recommendation, OSIPTEL should continue deepening and strengthening the formal technical level co-ordination channels. This could include extending the number of formal meetings at the technical level to more than once a year and increasing the number of offices taking part in these meetings. Once political conditions allow, OSIPTEL could consider revisiting the original recommendation of establishing a high-level forum between regulators. Depending on legal considerations, this could be a formal or informal forum.

Recommendation: Develop stable yearly regulatory planning

The 2018 review recommended to develop stable yearly regulatory planning linked to a strong strategic framework and a vision that promotes the mandate of the regulator. This regulatory plan should be transparently and predictably shared with all stakeholders to favour inclusive and effective participation in stakeholder engagement.

Assessment of progress

OSIPTEL has taken a positive step forward by establishing a yearly regulatory agenda published on their website, which can now be further improved to foster greater predictability and stability for all stakeholders.

Since 2020, the regulator has published a yearly Standards and Regulation Agenda (*Agenda de Normas y Regulaciones)* online, though there is a low level of awareness of the existence of this agenda. The development of an agenda aligns with requirements in Supreme Decree 063-2021-PCM, which requires the production of a regulatory agenda no later than 31 January of the respective year. The regulatory agenda for 2022 presents around 15 regulations that will be developed or reviewed with a brief explanation of the problem and general timeline for the process (Table 1.1). A majority of user representatives and regulated entities consulted in the course of the review did not know that the regulatory agenda existed or where to find it. This may be in part be due to it being difficult to find on the OSIPTEL website. Users and operators alike welcomed a more proactive use of the regulatory agenda as an opportunity to foster formal early-stage co-ordination and collaboration (see more in the section Recommendation: Annual regulatory programme).

Increasing the amount of detailed, actionable information in the agenda could help foster meaningful stakeholder inputs. The plan is generally composed of a short description of the problem identified, along with a sentence on the regulatory action being considered and a timeline noting the quarter or trimester during which OSIPTEL intends to accept comments and finalise their decision. This seems to be in line with the minimum requirements for the agenda set forth by Supreme Decree 063-2021-PCM. For those who were aware of the agenda, a common feedback was that the information presented was not enough to foster meaningful early stage input or the ability to prepare for forthcoming changes. For example, the entry on reviewing the quality regulation (see Table 1.1) refers to a general regulation that has 14 clauses that would each have different effects for users and operators if changed.

Too many ad hoc changes to the agenda throughout the year risks reducing the predictability afforded by publishing an agenda. The Supreme Decree permits changes to the agenda during the year, provided that they relate to the existence of "relevant, exceptional or urgent public problems" and a justification for the changes must be made (El Peruano, 2021[2]). Concerns were raised that new initiatives are being added throughout the year on an ad hoc basis, though data was not collected on how often or due to what reasons. While the motivation for changes provided by the Supreme Decree is quite broad, too many changes would run counter to one of the stated intents of the agenda to promote predictability.

Table 1.1. OSIPTEL's Standards and Regulation Agenda 2022

Schedule	Problem identified	Regulatory actions adopted
First quarter (final)	The Condition of Use Regulation (*Condiciones De Uso* – CDUs) have had multiple modifications. Over time, OSIPTEL has approved various regulations that are related to it and in other cases, topics that should be included in other regulatory bodies have been included in the User Conditions (*Condiciones de Uso*, CDU). In addition, technological change may imply that certain obligations are outdated, and in turn, new services have appeared that have not been included. So, the CDU are a dense and voluminous regulatory body that does not allow the citizen to fully understand rights and obligations.	Comprehensive review of the Sorted Single Text (*Texto Único Ordenado*, TUO) of the Conditions of Use of Public Telecommunications Services
Third trimester (comments)	It is necessary to evaluate the relevance of modifying the quality regulation to the new market context in different aspects.	Review of the Quality Regulation
First quarter (comments) III quarter (final)	The Modification of the Regulation of the Tariff Information and Registration System (*Sistema de Información y Registro de Tarifas*, SIRT), is required to have a revised and flexible regulatory framework, considering the technological, commercial, and competitive dynamics observed in the telecommunications market.	Modification of the Regulations of the SIRT
Third quarter (comments) Fourth quarter (final)	Scheduled review, according to the Framework Document and Methodology for the definition of important suppliers	Revision of the norm that determines Important Provider in the market N° 25: Wholesale access for Internet and data transmission
Second quarter (comments) Third quarter (final)	Based on the experience and casuistry in the attention to requests for the issuance of mandates (the requirements for a telecommunications company to have its right to access and share infrastructure expedited do not consider the fulfillment of prior administrative or contractual obligations by the of the applicant), it is considered opportune to evaluate the incorporation, at a normative level, of minimum origin requirements to process said applications.	Complementary Norms for the Issuance of Mandates
Second quarter (comments) Third quarter (final)	Three years after the Guidelines were issued (Resolution No. 069-2018-CD/OSIPTEL), it is considered pertinent to review them, considering experience.	Modification of Regulatory Impact Analysis Guidelines
First quarter (final)	During the application of the Periodic Information Requirements Standard, some aspects have been identified that must be reviewed considering the current situation and perspective of the telecommunications market (grading/simplifying/reordering the information requirements including new information; differentiated obligations according to company size; centralise the periodic information requirements of OSIPTEL; and make precisions to the formats of periodic information requirements).	Modification of the Periodic Information Requirements Standard (*Norma de Requerimientos de Información Periódica*, NRIP)
Second trimester (end)	Scheduled review of the maximum interconnection charges in accordance with the provisions established in the MTC Guidelines (Supreme Decree 003-2007-MTC)	Review of the maximum interconnection charges for termination in the mobile network
First quarter (comments) Third quarter (final)	Scheduled review of the maximum interconnection charges in accordance with the provisions established in the MTC Guidelines (Supreme Decree 003-2007-MTC)	Review of maximum interconnection charges related to fixed networks
Second quarter (comments) Third quarter (final)	According to the current regulatory framework, it is necessary to review and determine a new productivity factor every 3 years; therefore, it is appropriate to establish the new productivity factor in the year 2022.	Establishment of the Productivity Factor for the period 2022-2025
Fourth quarter (comments)	Review of current regulations considering the experience of recent years.	Modification of the Portability Regulation
Second trimester (end)	Various clarifications are necessary in the Complementary Norms for the Implementation of the National Registry of Mobile Terminal Equipment for Security, in view of the experience in its application to date	Modification of Complementary Norms for the Implementation of the National Registry of Mobile Terminal Equipment for Security (*Registro Nacional de Equipos Terminales Móviles para la Seguridad*,, RENTESEG)
Third trimester (end)	It is considered necessary to improve the current candidate selection process, in the light of experience.	Regulation of the Procedure for the Selection of candidates for members of the Collegiate

Schedule	Problem identified	Regulatory actions adopted
		Bodies
Second trimester (end)	It is necessary to review and update the indicators that allow us to evaluate the different service channels of the operating companies to users.	Modification of the Regulation of Quality of Attention to Users by the Operating Companies
First trimester (end)	It has been identified that the sim card contracting, and replacement processes are not being carried out properly, which exposes the user to registering uncontracted services under their ownership and/or carrying out unsolicited procedures. This is due, among others, to the fact that the operating companies market their services on public roads, without greater control or supervision.	Modification of the TUO of the Conditions of use of public telecommunications services

Note: Translated from Spanish using a machine translator.
Source: Standards and Regulation Agenda 2022.

To further implement this recommendation, OSIPTEL should take this good practice of preparing a regulatory agenda and iterate it to:

- Go beyond the minimum requirements set by the Supreme Decree by providing additional information, including linking the regulatory agenda to the PEI, and including the necessary details on envisaged activities to provide actionable information for stakeholders to plan for potential changes and information requests. Consider ways to use the agenda to drive effective stakeholder engagement in the regulatory process, including a formal launch with different stakeholders' groups (see section Recommendation: Annual regulatory programme).
- Ensure predictability and stability by adopting a risk-based approach to adding new initiatives during the year by triaging problems and evaluating their urgency, supported by early stage consultation with stakeholders.

Functions

Recommendation: Reassess the functions and powers of the regulator

The 2018 review recommended that OSIPTEL reassess if the functions and powers of the regulator are aligned with its roles and objectives, benchmarking internationally and taking into account the evolution of sector. This exercise should in particular look at the division of responsibilities and functions between the regulator, the Ministry and Indecopi, and its aim should be to ensure a modernised role for the regulator to match current organisational, market and societal needs to effectively regulate the telecommunications sector. Given its expertise, a more authoritative role in important decisions taken by the other public entities involved in the telecommunications sector should be considered. Given the dynamism of the sector, this assessment may need to be updated regularly.

Assessment of progress

OSIPTEL continues to be given new functions and responsibilities by the executive or by congress that may create confusion about the role of the regulator in relation to other public entities.

A reassessment of OSIPTEL's powers and functions has not taken place with the MTC and there continues to be discussions about adding functions to the regulator. The lack of review is at least partly driven by continued political instability that affects interactions between the regulator and the ministry at a strategic level. While OSIPTEL managed to secure additional funding for new functions gained since 2013 (see section on Financial resources and management), there are ongoing proposals to add new functions to OSIPTEL in response to evolutions in the telecommunications sector.

There continues to be many public entities with responsibilities in overseeing the telecommunications sector, making the division of roles between OSIPTEL and other government entities difficult to manage. For example, as the competition regulator for Peru, INDECOPI has a broad mandate to oversee competition issues in Peru. While OSIPTEL has responsibility for promoting competition in the telecommunications sector, INDECOPI has the power to review OSIPTEL's decisions to assess whether they add administrative burdens. Stakeholders have attempted to leverage this power to challenge decisions taken by OSIPTEL 13 times in recent years. While all have been decided in favour of the regulator, this demonstrates broader issues with role clarity of entities.

Moreover, OSIPTEL continues to be given additional functions to manage as part of its mandate. For example, in 2021, OSIPTEL was tasked via Law 31207 to guarantee minimum speeds of internet connections and monitor the provision of internet services in favour of the users. This law created the RENAMV and tasks OSIPTEL with measuring, monitoring and reporting monthly on the speed of internet services. There have also been instances where Congress has asked the regulator to act outside of its remit, such as policing the sale of SIM (Subscriber Identity Module) cards for illicit purposes.

OSIPTEL notes that it makes technical comments on draft versions of these laws and holds discussions with the various entities involved in their drafting, such as MTC. However, ultimately the regulator does not have the power to issue binding opinions on its functions, and broader issues persist amongst entities in the executive and congress about understanding what the regulator can or cannot do.

To further implement this recommendation, OSIPTEL should continue to consider ways to advocate for the role of the regulator – in particular to establish a strong narrative of what the regulator can and cannot do (i.e. the functions that should fall within the mandate of an independent economic regulator). This would focus on assuring that the roles, functions and powers of the regulator are well understood by external stakeholders and ensuring OSIPTEL's functions are appropriately relied upon for sound decision making. When a more stable political situation arises, consideration can return to the initial recommendation.

Recommendation: Continue monitoring trends of consumer complaints

The 2018 review recommended that OSIPTEL continue to monitor trends of customer complaints and assesses whether relevant regulation continues to contain loopholes that facilitate or allow for a gaming of the system in the area of complaints regarding billing. This assessment could make use of behavioural insights to consider why complaints have risen and how the issue could be resolved, based on an understanding of the actual behaviour of users and operators.

Assessment of progress

OSIPTEL has successfully reduced the backlog of consumer complaints, setting up a system that is fit for purpose going forward.

OSIPTEL has resolved the issues with consumer complaints via a combination of institutional and policy changes, which have been very effective. The 2018 review noted an exponential rise in complaints that led to an increase in treatment time of complaints from 8-10 days in 2015 to 120 days in 2017. At its peak, OSIPTEL estimates a backlog of around 250 000 second instance complaints, which was in part driven by loopholes in the regulatory regime that created perverse incentives to submit complaints. In response, OSIPTEL has posted guidance for handling various user issues to the Users' Portal on its website and created a Special Complaints Committee in 2017 with participation from the regulator and operators to explore issues and solutions with the complaints process. They also established three commissions to help deal with the backlog and adjust the process going forward:

1. A commission to survey the complaints resolution process and make recommendations on regulatory changes necessary to improve the process, with a report in 2019 that included international benchmarks and recommendations to improve the complaints resolution process.

2. A commission to analyse the files of the Administrative Court for the Resolution of User Complaints (*Tribunal Administrativo de Solución de Reclamos de Usuarios*, TRASU), who prepared a report for senior management in 2020.
3. A commission to review the Complaints Regulations, which as a result were modified in 2020 and 2021 to improve the complaints process.

Taken together, these reforms have enabled OSIPTEL to eliminate the backlog of complaints and reduce the volume of new complaints from 40 000 per month at its peak, to 6 000 per month in 2021. OSIPTEL notes that this volume allows them to treat complaints normally again. Users appear to be satisfied with the new system, which has enabled OSIPTEL to reduce the staff of the TRASU by 100 (who were hired temporarily to deal with the backlog). This provides OSIPTEL with a well-functioning consumer complaints system going forward.

Recommendation: Review approach to consumer protection, including the efficiency of the regional services offices

The 2018 review recommended that OSIPTEL review its approaches, functions and resources dedicated to consumer protection at the regulatory authority. This review should ensure that appropriate and proportional procedures are in place to carry out the consumer protection function of the regulator. This may include analysing if the regulator is over-stepping its role in committing resources to ensuring and monitoring user satisfaction and whether a more proportional attribution of resources could also be achieved through the roll-out of more technology-based engagement mechanisms.

The review also recommended OSIPTEL to evaluate the efficiency outcome of the two models of decentralised presence (regional offices and centres) and consider if cost-sharing arrangements could be extended also to offices. Outreach to users outside the Lima region should also increasingly build on digital and online tools and mechanisms.

Assessment of progress

OSIPTEL has sought to further emphasise its user protection functions, in part due to external pressures, while also enacting internal reorganisation and digital tools to streamline the governance of user protection.

OSIPTEL faces significant pressure to assert itself in “defending” users, which risks further misaligning approaches, functions and resources of the regulator dedicated to user protection versus economic regulation. OSIPTEL surveys of user satisfaction with the quality of care in 2020 and 2021 found satisfaction levels have not increased during those years, and in some cases decreased. User associations and congress may both expect OSIPTEL to become more aggressive in the way it regulates user protection, to go beyond assuring protection via a well-functioning complaints system and satisfaction via improved quality of service. This has led the regulator to take a strong approach to communications on user issues (see more in the section on Communications) and enter into issues potentially outside the traditional remit of an economic regulator. For example, Congress expects OSIPTEL to resolve issues related to stolen SIM cards, which does involve regulations regarding contracting and replacement of chips but also involves significant issues related to justice and criminal law.

It remains difficult for OSIPTEL to communicate the limits of its role as an economic regulator in the protection of user rights, in particular on issues that should fall within the mandate of other public bodies or that require joint approaches. However, failing to resolve these issues quickly has also been used by some to criticise the performance of the regulator. Similarly, while OSIPTEL aims to use the media to inform users of their rights, obligations and procedures that must be applied, the regulator also uses it as a channel to publicly demonstrate their strong enforcement measures against operators. At times, this may

be out of alignment with risk-based regulation approaches and may hinder effective approaches to economic regulation.

OSIPTEL has invested in institutional re-organisation and digital tools to improve the efficiency of its consumer protection functions. In 2020, OSIPTEL prepared a report that analysed its approach of having consumer protection functions spread across two directorates – one for consumer protection and another for decentralised offices. As a result, these two directorates have been merged into one to gain operational efficiency and consistency in approaches to user protection, which have been noted as being successful by external stakeholders. OSIPTEL has also developed the "Checa" ("Check Your") mobile application and portal on the OSIPTEL website, allowing users to check their IMEI (International Mobile Equipment Identity, a unique number for identifying a device), mobile plan, lines, mobile equipment, signal, and information guide, as well as a revised website (see more in the section Recommendation: Digital tools and social media).

In continuing to implement this recommendation, OSIPTEL should conduct a further analysis of its approach to user protection and consider re-balancing it against its other functions as an economic regulator. This should not disregard its efforts to protect users or improve quality of service, which is well recognised as a positive role for the regulator. Rather, the regulator should differentiate and further balance between solving issues for individual users versus the application of an overarching risk-based approach to ensuring positive outcomes at sector level. For example, while resolving consumer complaints in the second instance requires a case-by-case assessment, OSIPTEL's approach towards issues of non-compliance should be more risk-based and strategic to define a more high-level approach to support overall sector compliance. It would be important to align this approach across directorates – including between the Directorates for Communications, User Protection, Enforcement and Inspections, and Regulatory Affairs – and with efforts to communicate the role of the regulator externally, including what it can and cannot do within its current powers and functions.

Institutional co-ordination

Recommendation: Push for the creation of more structured co-ordination mechanisms, including proactively sharing a strategic view on the sector

The 2018 review recommended that OSIPTEL actively push for the creation and implementation of more structured and regular co-ordination mechanisms where all Peruvian entities with responsibilities and activities that impact the telecommunications sector would participate to share information, in the interest of building a "no surprises" relationship between all stakeholders. Such a mechanism would favour greater clarity of roles and enable robust forward planning by the regulator and its partners. This more high level engagement between senior management of the regulator and other branches of government, including Congress, should not replace more technical level collaboration between teams across public administration.

The review further recommended OSIPTEL to use its reputation as strong and independent technical body to proactively share a strategic view on the sector, share advisory comments with the Ministry on the direction of the sector, publish comments submitted to consultations launched by other public bodies, and set up co-ordination mechanisms with stakeholders (i.e. advisory body) to share data and analysis on sector performance and what it means for the further development of the sector

Assessment of progress

Political instability and high turnover at senior levels within the executive branch has hindered the creation of more structured co-ordination with public entities, including the MTC. OSIPTEL has continued to regularly issue non-binding opinions and engage via informal discussions as their main vehicle for co-ordination.

Institutional co-ordination is still mainly achieved through regular responses to ad hoc requests for input and issuing non-binding opinions. OSIPTEL can officially communicate their position on decisions being taken by Peruvian entities, either through issuing non-binding opinions or responding to consultation requests, which the regulator regularly sends in response to draft laws, regulations or other actions taken. As part of producing these opinions, OSIPTEL tries to organise co-ordination meetings and publishes opinions on their website. The 2018 review noted that OSITPEL's non-binding opinions can often be disregarded by the MTC in their final decision, especially in areas deemed as matters of sectoral policy by the MTC and not economic regulation – such as spectrum allocation or mergers. Furthermore, OSIPTEL only issues opinions when requested to do so by MTC. There is no significant change to this situation since the 2018 review, with MTC continuing to note that the current division of responsibilities between the regulatory and ministry are appropriate to the current context. While co-ordination is relatively fluid at the time of the assessment, it is still largely based on interpersonal relationships between senior managers that can be difficult to manage in the context of frequent personnel changes stemming from political instability. There have been frequent changes to ministerial and senior official positions within the Peruvian administration in recent years, including within the MTC. This includes four Presidents of Peru and 12 Ministers of Transport and Communications (see Table 1.2). This can make it difficult to maintain stability and continuity of discussions at the senior level between the regulator and the MTC. At the technical level, there is more regular, though informal, co-ordination with various public entities including the MTC.

Table 1.2. An overview of Ministers of Transportation and Communication since 2019

President	Minister of Transport and Communication	Period of service
Martin Vizcarra	Edmer Trujillo Mori	28 March 2018 – 14 April 2019
	Maria Jara Risco	26 April 2019 – 3 October 2019
	Edmer Trujillo Mori	3 October 2019 – 13 February 2020
	Carlos Lozada Contreras	13 February 2020 – 15 July 2020
	Carlos Estremadoyro Mory	15 July 2020 – 10 November 2020
Manuel Merino	Augusto Valqui Malpica	12 November 2020 – 17 November 2020
Francisco Sagasti	Eduardo González Chávez	18 November 2020 – 28 July 2021
Pedro Castillo	Juan Silva Villegas	29 July 2021 – 28 February 2022
	Nicolás Bustamante	4 March 2022 – 22 May 2022
	Juan Mauro Barranzuela Quiroga	22 May 2022 – 5 August 2022
	Geiner Alvarado López	5 August 2022 – 16 September 2022
	Richard Tineo Quispe	24 September 2022 – Present*

* Present denotes at the time of finalising this report for publication.
Source: Information provided by OSIPTEL.

In continuing to implement this recommendation, OSIPTEL should continue their focus on maintaining a fluid relationship with the MTC and other public entities at the senior level while advocating for stronger technical level co-ordination mechanisms. The goal would be to foster positive, constructive and continuous relationships at the technical level that would be maintained even through leadership transitions and could be used as an effective venue for proactively sharing OSIPTEL's strategic view of the sector, sharing comments with the Ministry and government entities and making their positions publicly known.

Recommendation: Assess governance and implementation of FITEL

The 2018 review recommended OSIPTEL to assess with the Ministry whether the governance and implementation of FITEL is aligned with overall strategic vision for the telecommunications sector, including optimising the role for OSIPTEL and co-operation between the regulator and the MTC at each stage of

FITEL projects to ensure market distortions and unnecessary administrative burdens are not created and overlaps in functions are minimised.

Assessment of progress

An assessment of OSIPTEL's role in FITEL has not been conducted with the MTC, and a further evolution of FITEL into PRONATEL has potentially created new areas of overlap.

While operating under a new name, PRONATEL (formerly FITEL) continues to be tasked with developing the national fibre optic backbone network that bridges the urban-rural divide via a levy on operators, which is then used to fund rural infrastructure development projects. The administration of PRONATEL continues to be solely the purview of the MTC, and the role of OSIPTEL remains the same: OSIPTEL can be called upon by PRONATEL to provide non-binding opinions and information to support various decisions, including on determining tariffs, developing quality indicators, or making infrastructure decisions. The evolution from FITEL has brought additional management responsibilities for the network by PRONATEL. OSIPTEL regularly communicates its position on potential decisions by PRONATEL. However, despite clear overlaps in functions, no assessment of OSIPTEL's role in relation to PRONATEL has been conducted by the MTC. There is a risk that different methodologies for determining tariffs and indicators and potential new responsibility for OSIPTEL in regulating rural concession contracts may result in inconsistencies and unnecessary burdens. While PRONATEL seeks OSIPTEL's non-binding opinion, they use a different methodology for determining tariffs and indicators, which is then approved by MTC. Dorsal Network extensions are implemented and managed by PRONATEL for an initial period of three years, after which PRONATEL issues a concession contract for operating the extension by a private operator, at which point OSIPTEL can provide its non-binding opinion. While PRONATEL is the quality regulator for rural concessions, there are discussions to extend OSIPTEL's role to include these rural concessions. As OSIPTEL would then be required to regulate these concessions, it would be important to create stronger consistency in methodologies used by the two agencies to avoid transitional issues.

In further implementing this recommendation, OSIPTEL should advocate for ways to formalise technical level co-operation with PRONATEL through a working group that seeks to gain consensus and consistency on methods and approaches to Dorsal Network regulatory decisions. OSIPTEL should also use any decision to extend its responsibilities into rural areas as an opportunity to revisit the regulator's role in the governance and implementation of the Dorsal Network, particularly with a focus on gaining more authority over decisions that the regulator will need to inherit.

Strategic planning

Recommendation: Share OSIPTEL's methodology for defining its strategic framework

The 2018 review recommended that OSIPTEL share and build on its methodology defining its strategic framework and performance indicators with other public entities in Peru, while working on streamlining the indicators and decreasing the burden of monitoring and reporting.

Assessment of progress

OSIPTEL uses a robust process for developing its strategic plan that is in alignment with standards of good practice, and could share their experience with other public entities in Peru.

The regulator revised its strategic plan (*Plan Estratégico Institucional*, PEI) in 2020 using the same robust methodology noted in the 2018 review, though no specific efforts were made to share or build on this methodology externally. The previous PEI was extended, now covering the 2020-25 period. The extension maintains the same vision and strategic institutional objectives (*Objectivos Estratégicos Institucionales*, OEIs), with some minor revisions that have updated two OEIs (see Table 1.3). These still focus on the

same core topics – quality of telecommunications and customer service – but reframe both as needing to be improved and placing more focus on improving their quality. OSIPTEL used the same methodology to develop the PEI, in accordance with central government procedural requirements, but this time did not include external consultation as it was treated as an extension of the current PEI with the majority of it remaining intact. This methodology has not been further iterated or shared, compared to the 2018 review. While OSIPTEL has streamlined some of its indicators, there still may be some burdens associated with monitoring and reporting (see section on Recommendation: Streamline PEI and POI indicators, including targets).

Table 1.3. Evolution of OSIPTEL's Strategic Institutional Objectives (PEI): 2018-22 to 2020-25

Updated objectives indicated in bold

2018-22	2020-25
• Promote competition between telecommunications operators	Promote competition between telecommunications operators
• Guarantee compliance with quality standards in telecommunications services, as established or offered by the operators	• **Improve the quality of telecommunications services provided by operators with respect to the established standards**
• Promote appropriate attention to users by operators	• **Improve the quality of customer service of public telecommunications services**
• Empower telecommunications service users	• Empower telecommunications service users
• Consolidate OSIPTEL's reputation as a transparent and highly specialised institution	• Consolidate OSIPTEL's reputation as a transparent and highly specialised institution
• Consolidate the management model of OSIPTEL towards excellence	• Consolidate the management model of OSIPTEL towards excellence
• Implement processes for disaster risk management	• Implement disaster risk management

Note: Translated from Spanish using a translation engine. As with the 2018-22 PEI, the first five bullets are considered "core" objectives while the remaining are considered "support" objectives.
Source: 2018 PAFER, PEI 2020-25.

Noting the purpose of a strategic plan to establish and communicate a stable vision for the sector, OSIPTEL may want to consider maintaining the five-year cycle unless driven by external factors, as opposed to revisions to the PEI that are driven by internal changes such as personnel changes. The 2020 update to the PEI was driven by a change of several directors of line departments, which OSIPTEL notes required a review and update to the strategic plan to take into account the vision and management model of the new directors. OSIPTEL plans on further revising its PEI for the 2023-27 period to align with the new mandate of its President, who had his five-year term renewed in 2022.

Communications

Recommendation: Develop a holistic approach to communications

The 2018 review recommended OSIPTEL to develop a holistic approach to bring together and clarify communications and official engagement mechanisms to extend the reach of OSIPTEL while making clear, separate, and consistent the appropriate avenues for information provision, complaints, claims, stakeholder engagement, and consultations. This approach should also take into account potential structured uses of social media as an additional means of stakeholder engagement.

Assessment of progress

OSIPTEL has continued to invest in strengthening its communication capabilities, with a focus on information provision and responding to user issues, but could invest in more structured two-way approaches to stakeholder engagement.

OSIPTEL has continued to develop its communications abilities, which is focused on information provision that could be enriched with more efforts to engage in two-way conversations. OSIPTEL has continued to grow its presence across traditional and social media channels, including adding new social media accounts (i.e. TikTok, see Table 1.4) and invests in other forms of communications like podcasts as part of a strategy to reach users from younger age groups. As part of the new Regulation of Organisation and Functions (*Reglamento de Organizaciones y Funciones,* ROF), the OCRI has been enlarged and under new management, adding additional staff responsible for monitoring social media and establishing the post of Parliamentary Co-ordinator in 2020. While the Parliamentary Co-ordinator's role is to liaise with Congress, the balance of the office's resources is dedicated to communicating with media and the public. It also created the role of Institutional Image Specialist, who reaches out to operators and stakeholders through newsletters and statistical reports. Furthermore, in 2018, OSIPTEL created the Commission for the Management of Social Networks to co-ordinate inquiries received via social media regarding regulation, supervision and user complaints. It is led by the OCRI and comprised by representatives from TRASU, the Directorate of Inspection and Enforcement (*Dirección de Fiscalización e Instrucción*, DFI, the Directorate of User Attention and Protection (*Dirección de Atención y Protección del Usuario*, DAPU) and the Directorate of Regulatory Policies and Competition (*Dirección de Políticas Regulatorias y Competencia*, DPRC).

Table 1.4. Evolution of OSIPTEL's social media presence, 2018-present

	2018	2022*
Twitter	84 000	173 300
LinkedIn	7 000	22 200
Facebook	170 000	236 800
Instagram		20 500
YouTube		4 700
Spotify		Unknown
TikTok		20 100

Note: Numbers are approximate. * data is reported as of July 2022, at the time of drafting the report. Missing information for 2018 is not to denote that OSIPTEL did not have these channels at the time, but rather they were not recorded in the 2019 report.
Source: OSIPTEL's social media accounts.

OSIPTEL has also occasionally used social media platforms to announce public consultations on draft resolutions, providing details about where and when the consultation is taking place. This demonstrates a strong focus on providing information, with an opportunity to leverage this infrastructure to engage more in two-way conversations with all types of stakeholders. OSIPTEL uses full time social media monitors to respond actively to user complaints made via social media, including to provide information and demonstrate how it is there to defend users, which may pose potential risks of parallel complaints channels if not actively managed. The OCRI counts with three staff members who are responsible for monitoring and responding to users who make complaints or claims via social media at all hours, including reaching out to gather more information about their issue. If the issue involves a lack of simple information, then the monitors are empowered to provide it; however, if the issue requires a complaint resolution, then it is brought to the DAPU. A potential risk OSIPTEL would need to manage is the grey area between when information is needed versus a complaints process, especially in the context of its communication strategy to actively demonstrate its support and protection of users. Over time, this could result in the creation of a de facto parallel complaints resolutions systems if not regularly reviewed and monitored.

To continue implementing this recommendation, OSIPTEL should:

- Conduct a regular programmed review of its Communications Plan and associated strategies to ensure separate avenues are maintained and reinforced for the provision of information and resolution of issues or processes related to complaints, claims, and sanction procedures.
- Consider ways to reallocate some of the resources of the OCRI towards establishing and communicating a stable narrative on the role of the regulator to its different stakeholders, including engaging in more two-way conversations (see also Recommendation: Digital tools and social media).

Input

The input dimension within the PAFER framework focuses on the extent to which the regulator's funding and staffing are aligned with the regulator's objectives, targets or goals, and the regulator's ability to manage financial and human resources autonomously and effectively. Since the review, OSIPTEL made strong progress in this area, most crucially by advocating for a new regulatory fee and by improving its human resource management. To support further progress in this area, OSIPTEL should advocate for the possibility to carry forward unspent funds and the removal of unnecessary restrictions on staff hiring.

Financial resources and management

Recommendations: Seek clarity on constraints and review fees periodically

The 2018 review recommended to seek clarity on central administration constraints that impact on the regulator's funding model and financial management to better differentiate those linked to the current context on the one hand, and macro-economic policies on the other. It advised to set up a practice whereby regulatory fees are reviewed every three years (or another regular and reasonable time frame) based on cost-recovery principles of funding of economic regulators. Any unspent funds could be included in the calculation of the next regulatory fee, to lower the burden on industry over the next period. The review could also include benchmarking the appropriate level of the fee against other regulators.

Assessment of progress

OSIPTEL has secured a more adequate budget through an increase in the regulatory fee that can be reviewed every three years based on a substantiated proposal by the regulator, although a lack of criteria or procedures for this review defined in law could reintroduce budgetary uncertainty.

At the time of the 2018 review, a discrepancy between the fee level and the increase in responsibilities of the regulator led to stretched resources. The regulatory fee used to finance OSIPTEL's operations was set at 0.5% of the billed and received revenues earned through the provision of public telecommunications services, excluding interconnection charges and taxes. The fee level had remained at this level since 2002, despite a number of new functions that were assigned to the regulator.

OSIPTEL successfully advocated for a change in the regulatory fee. The regulator submitted a proposal to increase the regulatory fee to the PCM in 2021, based on an analytical report that provided a discussion of the increase in the regulator's responsibilities and a projection of costs and revenues (see Recommendation: Engage with stakeholders on additional resource needs). In line with the regulator's proposal, the regulatory fee was increased by Supreme Decree 134-2021-PCM for revenues related to the provision of mobile services,[3] as specified in the table below. For other services, the percentage remained at 0.5%. However, in all cases, the percentage will be applied to the revenues billed, rather than only those billed and received.

Table 1.5. Development regulatory fee 2022-24

Year	Regulatory fee mobile services	Regulatory fee other services
2022	0.7997%	0.5%
2023	0.7998%	0.5%
2024	0.7450%	0.5%

Source: Supreme Decree 134-2021-PCM, https://busquedas.elperuano.pe/normaslegales/decreto-supremo-que-establece-disposiciones-sobre-el-regimen-decreto-supremo-n-134-2021-pcm-1974071-2/.

A mechanism for periodical revision of the fee could provide the basis for a more cost-reflective fee level, although the criteria and procedures for revision are unclear. The Supreme Decree contains a provision on the possibility of a review of the regulatory fee every three years at the request of OSIPTEL, based on a substantiated proposal. The decree was published along with a document that substantiates the proposed new fee level with an analysis of OSIPTEL's budgetary needs.

The decree does not specify the criteria or procedures that should be used to assess the proposal by the regulator, including the need for a cost-recovery principle to determine the fee level. The absence of such criteria or procedures leaves considerable discretion for the executive to decide upon any future revision in the fee level, which could complicate future requests for fee changes and result in budget uncertainty. Furthermore, the legislative changes do not provide for a structural mechanism to include any unspent budgets in the regulatory fee for the next period.

To increase the already strong progress by OSIPTEL on this recommendation, OSIPTEL should advocate for the definition in legislation of clear criteria and procedures for future revisions of the fee level, as well as a structural mechanism to include any unspent budget in the regulatory fee for the next period to reduce budget uncertainty and improve stability.

Recommendation: Engage with stakeholders on additional resource needs

The 2018 review recommended OSIPTEL to engage in a systematic discussion with relevant stakeholders of additional resource needs generated by new functions or tasks assigned to the regulator when they arise. The review found that given the dynamism of the sector, it is likely that these would continue to grow and evolve over the years following the review. Transparently sharing analysis of the added draw on resources would constitute a good practice.

Assessment of progress

OSIPTEL proactively engaged with the PCM and the MEF to share information and discuss its funding needs; a further aspirational step could be to engage more widely with other stakeholders on the topic of resource needs to support broader understanding.

The regulator supported transparency on its resource needs through engagement with the PCM and the Ministry of Economy and Finance (*Ministerio de Economía y Finanzas*, MEF) and by sharing an analytical report on the matter. The report identifies the expected gap in OSIPTEL's budget for the upcoming years, based on an increase in sector activities and functions, draws up revenue and cost projections, and compares the regulator's budget with other telecommunications regulators in the region and beyond. This engagement supported broader understanding of the resource needs of OSIPTEL. Additionally, one new function – to implement and administer the RENTESEG – has been funded through an additional budget allocated by the MTC, thereby allowing OSIPTEL additional resources to execute this function (El Peruano, 2017[3]) (El Peruano, 2019[4]).

To continue OSIPTEL's progress on the implementation of this recommendation, the regulator could consider raising wider awareness among other (non-ministerial) stakeholders such as operators and users on the regulator's resource needs. This could support procedural fairness by allowing stakeholders to voice any concerns during the process and increases the possibility that outcomes will be accepted by stakeholders (see (Lind and Arndt, 2016[5])). As the fee level could be reviewed every three years at the request of OSIPTEL, such engagement could support broader consensus on and understanding of the appropriate levels of funding for the regulator. This may be particularly important in a context where regulated entities are asked to pay the regulatory fees financing the regulator, which ultimately will translate into the prices they charge for telecommunications services. In such cases, potential opposition to any fee increases could be addressed through early engagement.

Recommendation: Advocate for the ability to carry forward unspent funds

The 2018 review recommended OSIPTEL to advocate with other economic regulators for a review of the law regarding absorption of carry forward in regards the budget of economic regulators, based on the principle of using income from industry to recover the costs of regulatory activities.

Assessment of progress

OSIPTEL advocated for a change regarding the use of carry-forward funds, but there is still no structural mechanism for the regulator to carry forward unspent funds.

OSIPTEL's ability to manage its financial resources remains constrained by central government restrictions on the ability to carry forward unspent funds between financial years.[4] In March 2022, a new Supreme Decree was issued that determined that any unspent funds as of 31 December 2022 will be transferred to the Treasury (MEF, 2022[6]). The decree follows on earlier restrictions regarding unspent funds through the Law on Financial Equilibrium (*Ley de Equilibrio Financiero*) (MEF, 2021[7]). It applies to all economic regulators in Peru, which have so far not jointly advocated for a change regarding these provisions, although OSIPTEL did advocate for change independently. The impact of this restriction is likely to be significant, as on average for the years 2018 to 2020, 7% of OSIPTEL's budget was unspent at the end of the year.

To move forward on this recommendation, OSIPTEL should continue advocating for a change in the restrictions on carrying forward unspent funds. If feasible, advocating this position jointly with other economic regulators may strengthen the case. OSIPTEL could build on its earlier experience of advocating for a revision to the fee level. A change in the restriction to carry forward unspent funds could support a "fair" burden for fee-paying entities, where fee payments are exclusively used towards funding the operations of the regulator rather than towards general government expenditures. Furthermore, the ability to carry forward funds could support a more stable fee level for regulated entities and reduce budget uncertainty for the regulator. To avoid an unnecessarily large build-up of unspent funds, any mechanism could be combined with a cap on the total level of unspent funds as a share of total fee revenues, with the excess being used towards a reduction in the fee level in future periods.

Human resources and management

Recommendation: Implement an HR framework that takes into account regulator's needs

The 2018 review recommended to implement a human resource framework regarding diversity, recruitment, remuneration and incentives that takes into account the special needs of economic regulators to attract specialised innovative technical talent while competing with the private sector for available human resources.

Assessment of progress

OSIPTEL improved its human resource management, but restrictions regarding remuneration, incentives, recruitment and training prevent the regulator from taking into account the special needs of economic regulators in its HR framework.

To support its efforts in putting in place effective human resource arrangements and making the regulator a more attractive place to work, OSIPTEL centralised its management of human resources by creating a dedicated Human Resources (HR) Office within the organisation. The HR Office is responsible for all matters related to the management of human resources within the organisation, including the design and monitoring of the HR Plan. The efforts by OSIPTEL are driven by an aim to put employees at the centre, increase the focus on well-being and start a process of cultural transformation based on the values of excellence, integrity and innovation.

To improve the employment conditions and benefits for staff, OSIPTEL makes use of a number of additional benefits to staff, including:

- Health insurance coverage for staff, their parents and children (up to 25 years old);
- Staff testing and vaccination during the COVID-19 pandemic;
- A programme to support relatives of staff members to start businesses;
- Three possible starting times (8.00am, 8.30am or 9.00am) to provide flexibility in working hours;
- An extra day off for the staff member's birthday and two additional half days for the birthdays of next of kin.

OSIPTEL has only limited freedom in the design of its HR practices, as these are conducted within the constraints set by the National Authority of Civil Service (*Autoridad Nacional del Servicio Civil*, SERVIR), such as regarding the remuneration, monetary incentives and training of staff. Given that the Civil Service Law has not yet been implemented (see Table 1.6), OSIPTEL is prohibited to financially support staff to obtain academic titles such as master's degrees and PhD's, but it can provide financial support for other courses and workshops. Furthermore, it cannot provide any additional monetary incentives or bonuses. Within these restrictions, it remains difficult for OSIPTEL to implement an HR framework that takes into account the special needs of economic regulators to recruit technical talent while competing with the sector it oversees. Moreover, OSIPTEL does not have in place a policy to improve diversity.

Moving forward, OSIPTEL should leverage its existing technical level co-ordination with HR offices at other economic regulators (see Recommendation: Share good practice in talent retention) to discuss the impact of existing restrictions on their ability to attract, develop, reward and retain staff. In a context of a relatively high turnover of staff (Table 1.6), the HR Office will need to assess if existing practices ensure adequate knowledge retention to maintain the organisation's institutional memory over time. A policy to improve diversity within the workspace could support the organisation to boost organisational performance through greater innovation, employee engagement and satisfaction (Nolan-Flecha, 2019[8]).

Table 1.6. Staff turnover rate OSIPTEL 2018-2021

Year	Turnover rate
2018	19%
2019	25%
2020	11%
2021	16%

Note: The turnover rate for a given year can be calculated by dividing the number of employees that left the organisation during the given year by the average number of employees in the same year.
Source: OECD Survey on the Resourcing Arrangements of Economic Regulators and information provided by OSIPTEL.

Recommendation: Uniform contract regime for all staff

The 2018 review recommended OSIPTEL to level the playing field for staff between the different categories of contracts by advocating for the implementation of one unified system of contracts with similar benefits to support recruitment efforts.

Assessment of progress

Progress to merge the different contract regimes into a new uniform regime is slow, and while job stability to staff employed under the CAS regime improved, this came at the cost of increasing difficulties to hire new staff.

Legislative changes have led to an overhaul of the contract regimes in place at the regulator. At the time of the 2018 review, staff were hired under two different labour regimes, the Law 728 with open-ended contracts and the Administrative Services Contract (*Contrato Administrativo de Servicios*, CAS) regime with fixed term appointments for six months and fewer benefits. This system was changed following a 2021 legislative change,[5] which envisaged the transition of staff employed under the CAS regime to the Law 728 labour regime.

The new changes affect OSIPTEL's ability to recruit new staff. From the entry in force of the law, public entities were prohibited to hire new staff under the CAS regime (El Peruano, 2021[9]). However, this prohibition was reversed by the Peruvian Constitutional Court (*Tribunal Constitucional*) in December 2021, which ruled that these provisions were unconstitutional (Tribunal Constitucional, 2021[10]). Recruitment for staff under Law 728 tends to be restricted to replacing departing staff. Since the 2018 review, OSIPTEL has been allowed to create only one new position under Law 728, as well as 24 replacements of staff.

Efforts to create a single and exclusive regime for people employed in public entities could improve the situation for OSIPTEL, but the implementation of the new regime is a slow and lengthy process that OSIPTEL has little control over. The transition to the new regime as defined in the 2013 Civil Service Law is executed through a number of stages, of which OSIPTEL currently is currently still in the first phase. The different stages include a mapping of the staffing needs for the different areas within the organisation, the definition of job profiles, positions and salaries, and finally the publication of job positions. At this final stage, staff will need to reapply to enter the new labour regime.

The transition is not automatic for all staff, which could mean parallel labour regimes remain in place for the foreseeable future. The willingness to transition into the new labour regime may differ between those employed under the Law 728 regime and those previously employed under the CAS regime, due to different levels of existing benefits. For example, those staff members previously employed under the CAS regime would become eligible for private health insurance, whereas those employed under Law 728 are currently already covered.

To make further progress on this recommendation, the HR Office could support the transition of staff towards the new uniform labour regime by providing transparent and non-complex information to staff. This could include an overview of changes to benefits and job security and the envisaged timeline, to decrease uncertainty regarding the transition to the new regime among staff members. The HR Office could make use of its exchanges with colleagues at other regulators to discuss issues regarding recruitment constraints, to create streamlined and consistent communication across regulators and to discuss potential issues regarding the transition. Frequent engagement with SERVIR should be used to stay informed on the status of processes and timelines, to be able to provide up-to-date and complete information to staff.

Recommendation: Share good practice in talent retention

The 2018 review recommended OSIPTEL to share its good practices and results in terms of talent retention and staff well-being across the Peruvian national administration and other regulatory authorities.

Assessment of progress

OSIPTEL maintains informal working level contact with HR colleagues at other regulators to share good approaches, which the regulator could leverage to discuss the issue of an increase in staff turnover.

OSIPTEL has continued to be recognised for its good results in the area of talent retention and staff well-being. For example, the organisation participated in the Great Place to Work workplace survey among Peruvian employers and was recognised as a Great Place to Work in 2019. This survey showed that for 2019, 75% of staff members found the organisation a great place to work. OSPITEL has been able to share its good practices with regulatory authorities and other public entities thanks to technical level co-ordination between the respective HR offices. Moreover, the four Peruvian regulators meet annually to discuss cross-cutting issues, which includes issues related to their human resources (see Recommendation: Set up a forum for economic regulators in Peru).

However, staff turnover at the regulator has increased, up from 9% in 2017 to an average of 18% over the years 2018-2021 (see Table 1.6). To continue progress on this recommendation, OSIPTEL could assess the underlying factors contributing to this rise in staff turnover and discuss this with other regulators to find common strategies and good practices.

Recommendation: Implement transparent and open recruitment for all positions

The 2018 review recommended to consider the possibility of implementing transparent and open requirements and recruitments for all posts in the regulatory authority, in order to tap into as wide a pool of talent as possible, diversify teams and promote innovation by bringing in people with different experiences and perspectives. At least for more senior positions, this could include binding profiles with specific requirements in terms of degrees, level of experience and other characteristics such as language skills.

Assessment of progress

OSIPTEL improved most of its staff recruitment processes to ensure merit-based recruitment, although certain senior positions can still be hired outside of public contests.

OSIPTEL made a number of improvements to its procedures to hire staff through the issuance of a new regulation. OSIPTEL recruits a majority of its staff through public contests, governed by the 2021 OSIPTEL regulation 00029-2021-GG/OSIPTEL (OSIPTEL, 2021[11]). It has approved a Job Classification Manual and uses a job profile for each new position, which details certain specifics such as location, functions, objectives and requirements for the role. Candidates go through several stages of the application process, which is based on a public competition on merits and with identical conditions for internal and external candidates. The stages of the application process include i) an internal preparatory stage, ii) a call for applicants through the SERVIR and OSIPTEL online portals, iii) a selection stage that involves an assessment of the CVs of candidates, an exam, a psychological test and a final interview. The candidate obtaining the highest score across all stages will win the contest.

Recruitment through public contests is not in place for all staff positions, with a number of privileged positions – mainly in senior management – that can be freely appointed. The public merit-based competition mechanism is not (as of yet) applicable for positions in certain of the regulator's tribunals, for staff members in strategic positions appointed by the President of OSIPTEL under the *puestos de confianza* modality and for Senior Directors of Free Appointment and Dismissal (*Directivos Superiores y aquellos de Libre Designación y Remoción*, DSLDR). While at the time of the 2018 review there were six staff members under the *puestos de* confianza modality, in 2022 this had increased to thirteen staff members. Additionally, one director is hired under the DSLDR modality.

Moving forward on this recommendation, OSIPTEL should consider introducing merit-based selection mechanisms also for specific staff for which this is not a legal requirement. These merit-based selection mechanisms should be aligned with an institutional policy of diversity (as discussed under Recommendation: Implement an HR framework that takes into account regulator's needs) to bring in people with diverse experiences and perspectives.

Process

The process dimension of the PAFER looks at the existence and effective use of regulatory tools and decision-making processes, as well as the extent to which the regulatory processes and organisational management support the regulator's performance. OSIPTEL made substantial progress in this area by implementing its RIA procedures and reactivating the user council. It could continue to improve performance in this dimension by involving board members further in strategic decision making, providing additional avenues for early stakeholder consultation and making inspections and sanctions more risk-based and behaviourally-informed.

Decision making

Recommendations: Board responsibilities and resources

The 2018 review recommended OSIPTEL to assess whether the activity and duties of the Board reflect its mandate and structure, and to consider ways to use limited available time to involve Board members in deciding on the long-term strategic direction of the organisation (including identifying priorities and targets) and monitoring the regulator's performance against this. It furthermore recommended to consider supporting informed decision making by the Board by making available advisory resources to all Board members, and proposing specialisation and responsibility for certain strategic areas that could rotate between members. These areas could correspond to technical areas or specific regulatory projects, rather than high level goals of the regulator. This would allow board members to focus on specific technical areas and increase their level of responsibility and accountability.

Assessment of progress

OSIPTEL submitted two unsuccessful requests to the executive and made practical improvements, but should expand the Board's involvement in strategic decision making to make best use of its limited time.

Since the 2018 review, OSIPTEL has attempted to improve the balance between the Board's responsibilities and resources by submitting two requests to the PCM and the MEF. OSIPTEL made a request to increase the number of paid sessions for each board member, from a cap of two sessions to four sessions per month. Similarly, it made a request to shift the responsibility to handle the appeals on sanctions to a new tribunal, which could free up the Board's time for regulatory and strategic decision making. However, these requests were not approved due to budget constraints.

In lieu, OSIPTEL has made a number of changes to the frequency and mode through which the Board convenes and comes to its decisions in a more flexible manner. Changes were made due to the limited time available to board members, and partly spurred by the context of sanitary measures in response to the COVID-19 pandemic. While board members' remuneration remains limited to two sessions per month, in practice the Board convenes more frequently, with around four sessions per month that can take place virtually, in person or even by email. Meeting documents are posted in a digital repository in advance of the meeting, allowing board members to submit written comments on the documents. Board members do not have specific advisors assigned to them but can take the initiative to request informal bilateral meetings

with technical specialists and legal advisors within the regulator in advance of board meetings, to ask questions and develop a deeper understanding of specific projects or proposals. These changes could allow a more flexible use of time of board members, which supports the efficiency of the decision-making process by the Board.

Recent changes to OSIPTEL's organisational structure have reduced the role of the Board on some aspects of decision making. In line with the situation at the time of the 2018 review, the Board's responsibilities remain somewhat scattered across administrative and regulatory decision making. In 2020, the PCM approved the new ROF based on a proposal by OSIPTEL, which affected the functions of the Board vis-à-vis the President and General Manager (Table 1.8). Following the approval of this new ROF, the Board's functions no longer include decision making on a number of administrative matters such as purchases, guarantees, loans and debts by the regulator, the enactment of inter-institutional agreements and the appointment and removal of the secretary to the Board. Furthermore, guidelines from the Board are no longer required for decisions on policies related to administration, personnel, finances, communication strategies and international relations, as well as temporary investments (Presidencia del Consejo de Ministros, 2010[12]) (OSIPTEL, 2020[13]). Since the 2018 review, board members have not been assigned specific technical areas or projects under their responsibility, which could have increased their level of responsibility and accountability.

The new ROF assigns strategic decision making explicitly to the President, thereby diminishing the Board's role and impact on the long-term strategic direction of the organisation. While board members are allowed to attend meetings on the preparation of the institutional strategic plan for the upcoming period 2023-2027, it falls to the President to approve the PEI and the Institutional Operational Plan (*Plan Operativo Institucional*, POI). In this context, the OECD *Best Practice Principles on the Governance of Regulators* suggest assigning strategic guidance functions to a body separate from the day-to-day operations in cases where the regulator requires significant strategic guidance or oversight to achieve its regulatory objectives, such as in developing compliance or enforcement activities or resource allocation (OECD, 2014[14]).

Moving forward on this recommendation, OSIPTEL should consider a prioritisation of the Board's time towards deciding upon the strategic direction of the organisation and those regulatory decisions with a more significant strategic impact, given the limited time available to members. In the short term, on strategic matters that the Board does not have the necessary decision-making powers under the 2020 ROF, the Board could be requested to provide guidelines on specific strategic matters or documents that could guide decision making. In the longer term, OSIPTEL should assess if changes to the ROF may be required to ensure the Board is able to set the strategic direction of the organisation and propose any necessary changes to the PCM. Additionally, OSIPTEL could consider the specialisation of individual board members in specific regulatory areas that can rotate between members and assess whether any existing functions by the Board with a lower strategic impact could be delegated. These efforts could be supported by existing improvements regarding the frequency and modes through which OSIPTEL conducts its board meetings.

Recommendation: Remove potential conflict of interest

The 2018 review recommended to remove any potential conflict of interest when reviewing the duties and structure of the Board.

Assessment of progress

OSIPTEL has implemented a number of measures to safeguard the integrity of both staff and the Board, and should support these measures by advocating for staggered board terms.

OSIPTEL made positive progress by implementing a number of initiatives to support the integrity of both staff and board members in line with its Integrity and Anti-Corruption Plan, as is discussed in the section Recommendation: Code of Ethics. Most importantly in regard to the strengthening of conflict of interest

provisions, in 2021 OSIPTEL implemented the Anti-Bribery Management System and appointed two compliance officers to monitor this system, as well as two integrity officers to monitor compliance with the Integrity Plan.

Staggered board terms could support integrity efforts by reinforcing the continuity and independence of the board. A lack of staggering of board terms could affect the knowledge and expertise of the Board and increase the risk of potential capture of the regulator. There may be a larger potential for political influence in the board's composition when multiple board members (or even a majority) are replaced by the political leadership in a single instance. Moreover, the length of board members' terms should be designed in a way that ensures that terms cut across electoral cycles, to avoid undue influence (OECD, 2017[15]).

While article 10 of Supreme Decree 042-2005-PCM prescribes a system of staggered terms, where each year the term of one board member ends, this continues not to be the case in practice (Presidencia del Consejo de Ministros, 2005[16]). At the time of the 2018 review, three of OSIPTEL's board members had their mandate extended for 90 days, and the organisation only had two remaining board members with an on-going mandate (including the President). Since the review, three board members have been appointed in December 2018 (two new members and one re-appointment) and one reappointment took place in 2021 (Table 1.7). In 2023, the term of three board members will expire, which could affect the stability and continuity in board decision making and the institutional memory and knowledge. This could raise integrity and independence concerns, where a majority (three out of five) board members can be replaced by the executive at the same time.

Table 1.7. Composition of Board OSIPTEL as of 2022

Name	Position	Start date of term in office	Foreseen end date of term in office	Term
Rafael Eduardo Muente Schwarz	President	2022	2027	Second term
Jesús Eduardo Guillén Marroquín	Vicepresident	2021	2026	Second term
Jesús Otto Villanueva Napurí	Director	2018	2023	Second term
Carlos Federico Barreda Tamayo	Director	2018	2023	First term
Arturo Leonardo Vásquez Cordano	Director	2018	2023	First term

Source: Information provided by OSIPTEL; El Peruano (2018), *Supreme Resolution N° 224-2018-PCM,* https://busquedas.elperuano.pe/normaslegales/designan-miembros-del-consejo-directivo-del-organismo-superv-resolucion-suprema-n-224-2018-pcm-1725177-1/; El Peruano (2020), *Supreme Resolution N° 242-2020-PCM*, https://busquedas.elperuano.pe/normaslegales/designan-miembro-del-consejo-directivo-del-organismo-supervi-resolucion-suprema-n-242-2020-pcm-1913578-4/; El Peruano (2022), *Supreme Resolution Nº 138-2022-PCM*, https://busquedas.elperuano.pe/normaslegales/designan-presidente-del-consejo-directivo-del-organismo-supe-resolucion-suprema-n-138-2022-pcm-2065518-2/.

To continue its progress on this recommendation, OSIPTEL should advocate to the PCM for the use of staggered board terms for future board appointments. This could reduce any potential perception of undue influence in the work of the regulator and promote consistency and institutional memory in regulatory decision making.

Internal organisation and management

Recommendation: Diversity in decision making

The 2018 review recommended to review the internal governance and management processes to ensure adequate diversity in decision making between the President of the Board (strategic) and General Manager (management), including appropriate resources to carry out each function. A more spread out internal governance model with adequate delegation of authority and additional challenge functions could support a longer-term vision for the regulator, as well as promote stability in decision making.

Assessment of progress

An internal reorganisation supports the operational efficiency of the regulator, but at the same time reduces the diversity in decision making.

In 2020, an updated ROF was approved, which introduced reforms to improve the operational efficiency of the regulator (OSIPTEL, 2020[13]). The new ROF led to a number of changes in the structure of the organisation, which received a positive response from many OSIPTEL staff members and external stakeholders. These include the following changes:

- The Decentralised Offices Department was incorporated into the User Attention and Protection Department, thereby bringing together many user protection functions into one single directorate;
- An HR Office was created;
- The normative function to issue regulations was centralised in the Directorate of Regulatory Policies and Competition;
- All legal analyses were centralised in the Legal Advisory Office.

The updated ROF removes certain responsibilities from the Board and assigns additional responsibilities to the President and General Manager, thereby further centralising decision-making powers in these two functions (Table 1.8). While board members can attend meetings on the preparation of the PEI, the updated ROF places the responsibility for approving the PEI and the POI to the President, and board guidelines are required in fewer cases (see Recommendations: Board responsibilities and resources). Furthermore, the new ROF results in a lack of role clarity regarding who is in charge of changes to the ROF within OSIPTEL, where both the President and Board have functions regarding the approval of the ROF and many elements are ultimately approved by the PCM.[6] Delegation of functions to departments and offices within the regulator has been limited, with the exception of some functions related to procurement that were delegated from the General Manager to the Administration and Finance Office.

Table 1.8. Functions Board of Directors, President and General Manager according to ROF 2020

Decision-making authority	Functions according to ROF 2020
Board of Directors	• Approve OSIPTEL's general policy. • Issue rules and resolutions of a general or specific nature, in matters within its competence. • Propose the issuance of regulations that contribute to the fulfilment of its purposes as well as to the development of activities in the telecommunications sector. • Approve the Annual Report. • Appoint and remove the members of the Collegiate Bodies and the Members of the Administrative Tribunal for the Settlement of Users' Complaints – TRASU, at the proposal of the Executive President. • Grant the powers it deems necessary. • Appoint the Vice-President of the Board of Directors. • Resolve, in second and final administrative instance, on appeal, the matters resolved by the General Management. • Resolve, in a single instance, when appropriate, matters within its competence. • Issue an opinion prior to the conclusion of any concession contract relating to the provision of carrier services or final public services, where appropriate. • Approve the proposed Regulation of Organisation and Functions, in accordance with the regulations in force. • Other functions that correspond to it within the current legal framework.
President	• Represent OSIPTEL before public authorities, national or foreign public and private institutions. • Convene and chair the meetings of the Board of Directors and to determine the matters to be included in the agenda. • Supervise the correct execution of the agreements of the Board of Directors. • In the event that it is not possible to convene the Board of Directors for a valid session, adopt emergency measures on matters that correspond to the Board of Directors, reporting on such measures at the following session of the Board of Directors. • Authorise the Public Prosecutor, at his request, to conciliate, settle or withdraw from actions in which OSIPTEL is a party, in accordance with the Administrative System of Legal Defence of the State.

Decision-making authority	Functions according to ROF 2020
	• Appoint and remove the General Manager. • Exercise the other functions as may be delegated or entrusted to it by the Board of Directors. • Approve the Institutional Strategic Plan, the Institutional Operational Plan, the Institutional Budget, the Investment Portfolio, the Balance Sheet, the Financial Statements, the Regulation of Organisation and Functions and the Digital Government Plan, in accordance with the regulations in force. • Enter into acts, agreements and contracts with national or foreign public and private entities, as required for the fulfilment of its purposes. • Approve, at the proposal of the General Manager, the hiring of Directors and Heads of Offices, as well as, if appropriate, their suspension and removal; informing the Board of Directors of such actions. • Appoint and remove personnel in positions of trust and/or freely appointed and removed. • Propose the appointment and removal of the members of the *Tribunal Administrativo de Solución de Reclamos de Usuarios* – TRASU, of the members of the Collegiate Bodies. • Approve the acquisition of goods and contracting of services charged to the Institutional Budget, in accordance with the regulations in force. • Decide on temporary investments or other operations with OSIPTEL funds. • Appoint and remove the Secretary of the Board of Directors. • Grant the necessary powers within the scope of its competence. • Propose to the Board of Directors the draft Annual Report. • Other functions corresponding to it within the legal framework in force. • Approve the alienation, exchange, purchase, granting of purchase and sale promises, guarantees, granting of loans and adjudication of OSIPTEL's real estate in payment of debts.
General Manager	• Exercise the legal and administrative representation of OSIPTEL. • Comply with and enforce compliance with the agreements of the Board of Directors and the directives of the Executive Presidency. • Conduct the preparation of the draft Budget, Balance Sheet and Financial Statements for approval by the Executive Presidency. • Provide the Board of Directors and the Executive Presidency with the necessary information, as well as technical studies, when appropriate, to enable adequate decision making. • Execute the acts necessary for the ordinary running of OSIPTEL. • Others entrusted to it by the Board of Directors, the Executive President or that are specific to his/her function. • Plan, organise, manage, execute and supervise the administrative, operational, economic and financial activities of OSIPTEL. • Propose to the Executive Presidency the norms and technical guidelines for the implementation of OSIPTEL's development policies and strategies. • Conduct the preparation of the draft Annual Report. • Propose to the Executive President of OSIPTEL the hiring of Directors and Heads of Offices, as well as, if appropriate, their suspension and removal. • Hire, suspend, remove or dismissing OSIPTEL employees, with the exception of those cases in which this corresponds to the Executive President and the Board of Directors. • Resolve the administrative procedures that correspond to it according to the laws and regulations. • Grant powers of attorney within the limits that correspond to him/her. • Conduct the activities related to information security, institutional security and National Defence. • Conduct the Integrity and Anti-Corruption Plan and the promotion of ethics in the civil service at OSIPTEL. • Conduct the entity's technical co-operation and international affairs activities, in accordance with the regulatory framework in force.

Source: OSIPTEL (2020), Integrated Text of the Regulation on the Organisation and Functions 2020, https://cdn.www.gob.pe/uploads/document/file/1363980/ROF-integrado.pdf.pdf.

To move forward on this recommendation, OSIPTEL could consider ways to improve the stability in decision making by decentralising certain decision-making responsibilities and by adding additional checks and balances that could provide for a challenge function in decision making (see also Recommendation: Mechanism for quality control and check). OSIPTEL could consider the further delegation of decision-making responsibilities on matters of lesser strategic or organisational importance towards directorates and offices within the organisation. At the same time, on matters of higher strategic importance, such as the approval of the PEI, OSIPTEL should consider mechanisms to assign additional responsibilities to the Board, which might include proposing to the PCM any necessary changes to the ROF (see

Recommendations: Board responsibilities and resources). Given the Board's limited available time, this could prioritise the Board's time towards setting the organisation's strategic direction and reduce its involvement in matters of lower strategic importance.

Recommendation: Mechanism for quality control and check

The 2018 review recommended to introduce a deliberate mechanism for quality control and check that can also serve as a challenge function with regard to decision making and processes. Several options exist for these functions – for example, on the lighter side, explicit peer review mechanisms internally or externally, or, on the more structural side, by setting up a dedicated independent body in charge of this function. Reviews may need to take place at several stages in the process, rather than only at the end, to provide meaningful opportunities to the scope and direction of the task or output.

Assessment of progress

OSIPTEL made some improvements to its internal quality control mechanisms, but reviews tend to take place only during the final stages of a proposal and OSIPTEL did not introduce any new peer review mechanism to provide a challenge function.

OSIPTEL has made a few improvements to its system of internal quality control, which mainly concern legal aspects. Under the updated organisational structure with legal advisors centralised in one office, the Legal Advisory Office is already involved during the earlier stages in which regulatory proposals are drafted, to provide input on legal aspects of the proposals. Once the proposal has been drafted, there is an internal review process, which builds upon the mechanisms already in place at the time of the 2018 review. During this review process, comments on the proposal are sought from across all directorates. After this step, proposals are reviewed by the Legal Advisory Office, General Management and by the official in charge of monitoring compliance with OSIPTEL's RIA guidelines. After completing these internal steps, proposals are published for comments by external stakeholders.

New mechanisms to provide a challenge function on decision making have not been introduced and reviews are usually conducted only at the later stages of the regulatory process. This reduces the opportunity to scrutinise initiatives by the regulator at earlier stages. The regulator did not introduce a specific peer review mechanism, internally or externally, to allow for additional controls on the quality of decision making. At the same time, early stage internal or external consultation before a proposal has been drafted is conducted on an ad hoc basis only for some projects. In the case of external consultation, this remains focused mainly on collecting additional information and data rather than to provide for a challenge function to decision making (see Recommendation: Early consultation). A lack of a deliberate mechanism to challenge decisions could affect the quality and stability of decision making, in a context where many decision making functions are centralised in the two functions of President and General Manager.

Moving forward on this recommendation, OSIPTEL could complement the improved internal consultation with additional mechanisms to scrutinise decision making, as well as more systematic use of early (internal and external) consultation, to improve the challenge function for regulatory proposals. The use of clear procedures and criteria could help OSIPTEL to systematically determine for which regulatory proposals this may be most relevant. OSIPTEL could also consider the creation of a new independent review function within the organisation, such as for example a Chief Economist, to provide additional challenge functions throughout the regulatory decision-making process.

Regulatory quality processes

Recommendations: RIA and ex post *evaluation*

The 2018 review recommended to maintain momentum towards the full implementation of the new RIA system, including the application of various methods according to the principle of proportionality. It also recommended to use the lessons learned from evaluating the entire stock of regulations to extend *ex post* evaluations as a consistent and automatic component of policy making at OSIPTEL.

Assessment of progress

OSIPTEL successfully implemented its new RIA system and is taking steps to complement this with a more consistent use of *ex post* reviews.

Following the approval of the RIA guidelines and manual in 2018, OSIPTEL has conducted regulatory impact assessments for nearly all new regulations, mainly using multi-criteria analysis. [7] The guidelines are published on OSIPTEL's website, together with a list of all acts for which RIA has been conducted and their supporting documents (OSIPTEL, n.d.[17]). The RIA guidelines allow for multiple types of RIA analyses, from multi-criteria analyses through to full cost-benefit analyses. However, there are no clear threshold tests or criteria to determine the type of RIA analysis that is used by the regulator. The Legal Advisory Office reviews the alignment of the RIA analysis with RIA guidelines and an advisor to the President conducts a final review, although these reviews focus on procedural steps rather than the quality of the analysis. Following a decision by PCM in 2021, OSIPTEL will review its RIA guidelines in 2022 to align with the manuals approved by PCM (El Peruano, 2021[2]).

Ex post evaluations are conducted more sporadically, limiting the regulator's capacity to assess the impact of its regulatory decisions, but the regulator is putting in efforts to improve this. Only five *ex post* reviews were conducted between 2018 and 2021 (Table 1.9). However, OSIPTEL established an *Ex Post* Review Commission that developed recommendations for the regulator in 2020, and OSIPTEL has developed a schedule for upcoming reviews over the period 2021-2023 (OSIPTEL, 2020[18]). This could support the regulator to establish the use of *ex post* review as a more structural part of the regulatory cycle. The urgency for *ex post* monitoring may be especially strong in cases where the regulator did not conduct RIA or follow standard stakeholder engagement and decision-making processes due to time constraints, as was the case for five regulations that were decided upon shortly after the start of the COVID-19 crisis (OECD, 2020[19]).

Table 1.9. Regulations issued, RIA and *ex post* evaluations 2018-2021

	2018	2019	2020	2021
Number of regulations issued	30	10	23	20
Number of RIAs conducted	24	10	18	20
Number of *ex post* evaluations conducted	-	1	2	2

Note: Six regulations in 2018 were conducted before the approval of the RIA guidelines and manual, explaining the difference between the number of regulations issued and the number of RIAs conducted for this year.
Source: Information provided by OSIPTEL.

OSIPTEL could build on its already substantial progress on the implementation of RIA, by implementing transparent proportionality thresholds to decide upon the type of RIA analysis. This would allow for more elaborate RIA analyses such as cost-benefit and cost-effectiveness analyses for regulatory decisions with higher levels of impact, in line with the OECD Best Practice Principles on RIA (OECD, 2020[20]). This could be complemented with a review function to assess the technical quality of the RIA analysis, to complement the current review functions that focus mainly on legal and procedural aspects.

Additionally, OSIPTEL should move towards a more systematic use of *ex post* evaluations, which may be especially crucial in situations where RIA procedures have been suspended due to emergency situations or where a lighter RIA analysis has been used. In the implementation of *ex post* evaluation as a standard component of the regulatory cycle, OSIPTEL should consider the Best Practice Principles on reviewing the stock of regulation (Box 1.1).

Box 1.1. Best Practice Principles on reviewing the stock of regulation

Building on the OECD 2012 Recommendation on Regulatory Policy and Governance, the following best practice principles have been devised in relation to *ex post* evaluation.

Overarching principles

- Regulatory policy frameworks should explicitly incorporate *ex post* reviews as an integral and permanent part of the regulatory cycle.
- A sound system for the *ex post* review of regulation would ensure comprehensive coverage of the regulatory stock over time, while "quality controlling" key reviews and monitoring the operations of the system as a whole.
- Reviews should include an evidence-based assessment of the actual outcomes from regulations against their rationales and objectives, note any lessons and make recommendations to address any performance deficiencies.

The Best Practice Principles cover many aspects, including system governance, broad approaches to reviews, governance of individual reviews, key questions to be answered, methodologies, public consultation, prioritisation and sequencing, capacity building and committed leadership.

Source: (OECD, 2012[21]), Recommendation of the Council on Regulatory Policy and Governance, https://doi.org/10.1787/9789264209022-en; (OECD, 2020[22]), Reviewing the Stock of Regulation, OECD Best Practice Principles for Regulatory Policy, https://doi.org/10.1787/1a8f33bc-en.

Recommendation: Activating the users' council

The 2018 review recommended to review and make necessary changes to activate the users' council mandated by law to provide structured engagement with users of telecommunications services as well as an avenue for early and open consultation.

Assessment of progress

OSIPTEL successfully reinstalled a users' council that performs a critical outreach function for the regulator, which can now be further integrated into the regulatory decision-making process.

Since the 2018 review, OSIPTEL has reactivated its use of user councils in a simplified format of just one nationwide user council. OSIPTEL now engages more frequently with its user council, whereas at the time of the 2018 review user councils were appointed in line with legislative requirements but in practice were not actively involved in the regulator's work (OSIPTEL, 2000[23]). Members from Peruvian user associations can get elected into the council for a two-year period and can get re-elected for one additional period, with a minimum of three and a maximum of nine members balanced across regions (OSIPTEL, 2019[24]). Members of the user council must have a higher education degree (Presidencia del Consejo de Ministros, 2005[16]). The 2019-2021 user council consisted of three members, whereas the current 2021-2023 user council includes seven members who represent different regions (OSIPTEL, n.d.[25]). The user council is granted a separate budget, set at 70 000 SOL (18 211 USD)[8] for 2022 (OSIPTEL, 2022[26]).

While the activities of the user council, as defined by law, include a wide range of activities, its involvement in the regulator's work is mainly focused on user empowerment. User councils are legally empowered to provide comments on supervisory, regulatory, normative, inspection and sanctioning activities, participate in public hearings, organise academic events, bring user queries to the Board and propose draft regulations (OSIPTEL, 2000[23]). However, in practice most of the council's activities centre around the objective of empowering users by informing them of their rights towards the telecommunication companies and raising awareness of OSIPTEL's products and services designed for users (such as its "Checa" apps, see Recommendation: Digital tools and social media).

As OSIPTEL mainly interacts with the user council as a user outreach mechanism, the council does not provide input to or act as a challenge function on the regulator's plans or new regulatory proposals. According to regulation 059-2015-CD/OSIPTEL, the users' council must hold two regular annual meetings and should approve the annual operating plan and the annual activities report (OSIPTEL, 2021[27]). However, OSIPTEL's website includes the summary record of just one meeting of the user council for the years 2020 and 2021, as well as a summary of the activities by the user council for the respective year (OSIPTEL, n.d.[25]). As of November 2022, there are not yet any minutes available for meetings in the year 2022. Moreover, the annual activity plans tend to be discussed by the user council well after the start of the year, missing an opportunity for timely consultation on the plan.[9] The involvement of the user council in the (early) consultation of draft regulations remains limited.

To further leverage the added value of the users' council, the regulator should consider ways to involve the council to channel input into regulatory decision making. While the role of the users' council to inform consumers can act as an important tool to empower consumers, it should not lose sight of its role to provide feedback on regulatory proposals and plans by OSIPTEL. This could ensure the consumer perspective is more accurately reflected in decision making by the regulator. In this endeavour, OSIPTEL could consider providing additional training to council members to understand regulatory frameworks and procedures to participate in consultation processes by the regulator, and dedicating specific sessions of the council to obtain feedback from consumers on important regulatory proposals. Additionally, OSIPTEL should consider advocating for the removal of the requirement of an academic degree as part of requirements to join the council, to allow a more diverse and inclusive representation of user on the council.

Recommendation: Early consultation.

The 2018 review recommended to create an advisory committee of stakeholders for transparent and early consultation with industry, users and other relevant stakeholders as a means to enhance the inclusiveness and predictability of OSIPTEL's regulatory activities. In setting up the committee, care will need to be taken to ensure adequate balance between participants and perspectives.

Assessment of progress

OSIPTEL did not yet establish an advisory committee for consultation on regulatory topics and initiatives, thereby lacking a platform to obtain information and feedback early on in the regulatory process.

OSIPTEL only makes sporadic use of early-stage consultation. OSIPTEL occasionally makes use of ad hoc (informal) early consultation on regulatory proposals, mainly to obtain additional information and data for its regulatory decision making, and publishes an annual regulatory programme on its website (see Recommendation: Annual regulatory programme). More formalised engagement that could provide a challenging function to decision making is conducted only after the proposal has already been drafted. At this stage, the proposal is posted online by the regulator, after which stakeholders can submit comments and OSIPTEL responds to comments through a comments matrix along with the final decision.

While there exists a Complaints Management Committee to engage on matters related to user complaints, there is no equivalent to conduct early consultation on regulatory proposals with a wider set of stakeholders. A lack of such an early consultation mechanism could at times make it difficult for the regulator to take on board all perspectives and information when deciding on the direction of a regulatory proposal or when conducting RIA.

Moving forward on this recommendation, OSIPTEL should aim to establish an advisory committee that brings together representatives from the industry and users, as well as other relevant representative organisations (Box 1.2). This advisory committee could meet periodically (for example, twice a year) to obtain input from stakeholders on pressing regulatory issues that could feed into regulatory proposals, the definition of the regulatory agenda and strategic planning processes. OSIPTEL may also consider dedicated sessions with this committee on all regulatory proposals with a more significant impact on the sector. OSIPTEL could use these discussions to present and discuss regulatory topics in a straight-forward and non-complex way – which may not always be possible in draft proposals due to the formal status of these documents – to support wider consensus and understanding.

Box 1.2. The role of consultative bodies in the regulatory decision-making process at Portugal's Energy Services Regulatory Authority (*Entidade Reguladora dos Serviços Energéticos*, ERSE)

ERSE's Statutes form the foundation for the regulator's inclusive and transparent decision-making approach, through the creation of three consultative bodies (known as councils), which contribute to the development of its technical regulations, tariff decisions and the broad lines of action and deliberations taken by ERSE's Board of Directors.

The three consultative councils – Advisory Council, Tariff Council and Fuels Council – act as a forum for creating consensus among key stakeholders. As part of a broader consultation and engagement policy, the councils issue non-binding opinions on ERSE's regulatory proposals. Importantly, where the regulator does not take on board the opinions presented by the councils, it must justify in writing why it has not adopted the council's proposed changes. Together with ERSE's other engagement mechanisms, this process ensures accountability and strengthens the integrity of the regulator's decisions. In addition, they provide a permanent platform for stakeholders to meet and understand each other's perspectives. In this way, the councils provide stability to stakeholders and achieve consensus in their statements in an impressive 90% of cases.

The councils are composed of a broad spectrum of representation from national, regional and municipal government, consumer organisations and the energy industry. Council members serve a nonremunerated and renewable term of three years. Each council decides how often to meet in order to prepare its opinions. Generally speaking, and in response to the increased activities and responsibilities of the regulator, the councils may meet several times a month. All opinions of the councils are approved by majority vote, although if members do not agree with all or parts of the opinion of the council they can state this in the submission to ERSE. The opinions of the councils are made public and published on the ERSE website.

Given the characteristic asymmetry of information and resources between the industry and consumers, ERSE seeks to facilitate the latter's engagement in a number of ways. First, industry and consumer representatives must be represented in equal numbers. Second, ERSE provides a subsistence and attendance allowance for consumer representatives, as well as for government, public bodies and representatives from Azores and Madeira. In addition, ERSE provides training to the household consumer associations that sit on its consultative councils in order to build their capacity and ability to contribute to deliberations.

Source: Information provided by ERSE, 2021.

Recommendation: Digital tools and social media

The 2018 review recommended to develop OSIPTEL's use of digital tools for regulatory activities, including building bespoke tools for specific sectoral needs (i.e. the mobile application under development at the time of the review) but also using existing tools such as WhatsApp and Twitter for more structured and effective consultation and feedback.

Assessment of progress

OSIPTEL's use of social media and digital tools aims to support users with complaints and provide information, but does not systematically facilitate consultation on regulations.

OSIPTEL is very active on social media and has developed a number of apps to assist consumers (such as the "Checa" apps), but neither of these are used for more structured consultation and feedback channels. OSIPTEL developed a wide range of digital tools[10] that serve to empower consumers through the provision of information. Similarly, the regulator's increased presence on social media allows the regulator to both inform consumers and to receive consumer complaints. However, while OSIPTEL occasionally uses these channels to share information on on-going consultations, it does not do so on a systematic basis, to allow for more structured and effective consultation and feedback.

To continue its progress on this recommendation, OSIPTEL should consider using social media in a more structured way to draw wider attention to all on-going consultation processes on regulatory proposals, in order to receive additional input and feedback from users. This consultation through social media should not replace existing consultation processes but could complement it by allowing a wider range of users to engage on regulatory topics.

Recommendation: Annual regulatory programme

The 2018 review recommended to develop and disseminate an annual regulatory programme that would present the regulator's activities with regard to the development of new regulations and would contribute to minimising short-term activities.

Assessment of progress

OSIPTEL made strong progress by publishing a regulatory agenda that it could now leverage as a tool for stakeholder engagement.

OSIPTEL now defines and publishes an annual regulatory agenda that identifies the scheduled regulations to be issued, modified or reviewed for the upcoming year. For each regulation listed, the agenda mentions the identified problem and intended action, as well as the trimester in which the action is foreseen (see Table 1.1).

However, the regulatory agenda is not used as a tool for early stage consultation, which could decrease the added value of developing the regulatory agenda. The regulator does not make full use of its regulatory agenda as a means to provide clarity on regulatory actions in the upcoming year. Although OSIPTEL has published its annual regulatory agenda on its website since 2020, not all stakeholders are aware of the existence of the agenda. Furthermore, those that are aware do not always find the level of detail that would allow them to foresee potential regulatory developments.

To build upon the positive practice of developing and publishing a regulatory agenda, OSIPTEL should consider using a draft of the regulatory agenda to engage with stakeholders, as a way to foster predictability by providing further clarification on the plans by the regulator for the upcoming year. This engagement could also be used to obtain input from stakeholders on the issues they are more concerned with, which could feed into the final regulatory agenda. In this effort, the regulator could support wider stakeholder

awareness of the regulatory agenda through proactive communication through email and social media to flag the regulatory agenda to stakeholders.

Inspection and enforcement

Recommendation: Risk-based strategy and streamlined sanctioning

The 2018 review recommended that OSIPTEL adopt a risk-based strategy to inspections and enforcement and to review methods for streamlining the sanctioning process to achieve desired behaviour changes faster and more efficiently, for the benefit of consumers, in line with the OECD Best Practice Principles and the OECD Toolkit on Enforcement and Inspections.

Assessment of progress

OSIPTEL modified its inspections regulation and implemented digital tools to collect data on compliance, and should now make its inspections and enforcement more risk-based and behaviourally-informed.

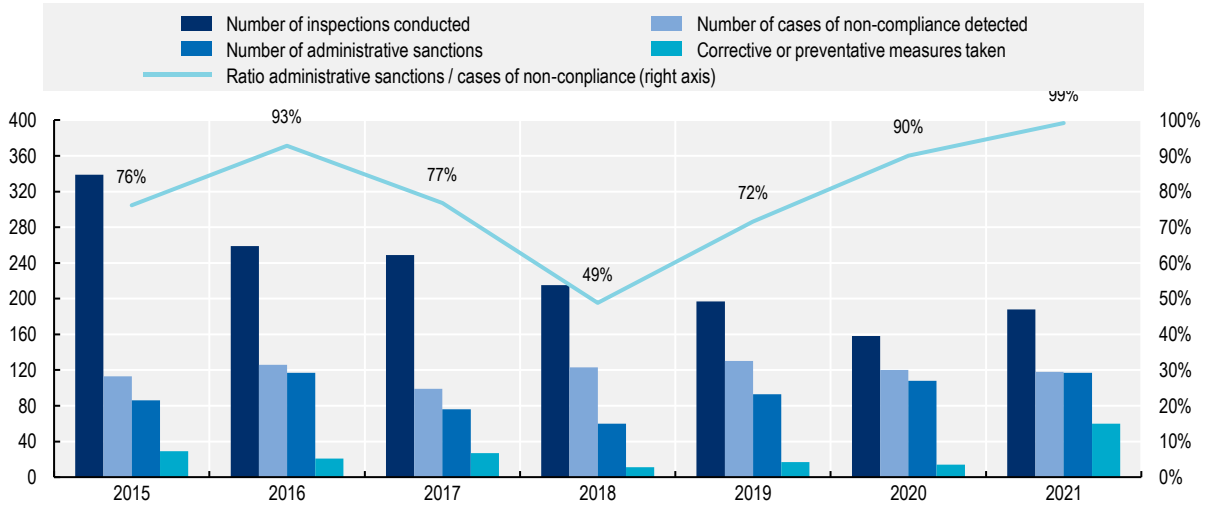
The regulator improved practices through a modification of its regulation on supervision and enforcement in 2021 (renamed as General Enforcement Regulation), which allowed for a number of changes:

- The use of remote access to systems and databases of supervised entities to verify compliance on a real-time basis;
- The use of preventative inspections to promote the timely compliance and to issue preventative alerts for entities to improve their management;
- An improvement commitment mechanism, which commits the non-compliant entity to a set of actions to be carried out within a set timeframe to restore compliance after a first breach;
- The outsourcing of inspections to third parties.

OSIPTEL's investment in big data could support a shift to a more risk-based planning of inspections and improve the efficiency of the process. While OSIPTEL plans its inspections yearly based on identified priorities and the recurrence of non-compliance, it does not use a systematic risk-based planning of inspections based on an objective scoring of risk factors. This therefore prevents the regulator from making full use of the additional data it started collecting since the 2018 review, which has the potential to allow the regulator to better target inspection activities towards higher-risk areas. In 2021, OSIPTEL established a Network Monitoring Centre that allows direct access to data systems from the four main operators, through which OSIPTEL obtains information on network performance. OSIPTEL also acquired a mobile internet measurement information service, which makes use of big data and collaborative applications to collect data on network quality.

An increase in the use of administrative sanctions coincides with a deterioration in the relationship between OSIPTEL and the operators in the sector. It is unclear if sanctions are achieving the desired behaviour change in terms of compliance. While OSIPTEL is more frequently using corrective or preventative measures in response to non-compliance, at the same time its use of administrative sanctions has sharply increased. Where in 2018 OSIPTEL used half as many administrative sanctions as cases of non-compliance it detected, in 2021 the number of administrative sanctions is roughly equal to the number of cases of non-compliance (Figure 1.3).

Figure 1.3. Inspections and enforcement by OSIPTEL, 2015-2021



Note: Ratio of administrative sanctions to cases of non-compliance is calculated by dividing the number of administrative sanctions issued in the respective year by the number of cases of non-compliance during the same year. Administrative sanctions in a given year may relate to a case of non-compliance issued in an earlier year.
Source: Information provided by OSIPTEL, 2018 and 2022.

To move forward on this recommendation, OSIPTEL should further align its inspection and enforcement practices with the OECD Regulatory Enforcement and Inspections Toolkit to make inspections and enforcement more risk-focused (OECD, 2018[28]). This effort could build upon existing improvements to OSIPTEL's regulation on inspections and enforcement, which now includes the use of preventative inspections and an improvement commitment mechanism.

A clear and active communication of a risk-based methodology towards inspections and enforcement could support predictability and transparency in decision making and emphasise OSIPTEL's position as an independent economic regulator. As such, it could support the regulator in normalising its relationship with operators in the sector and foster mutual understanding. In this effort, OSIPTEL should proactively plan a vast majority of inspections based on a systematic scoring of risk factors. Similarly, to guide its enforcement decisions, OSIPTEL should consider more responsive regulation and risk-proportionality, which could deliver better outcomes than uniform sanctioning of all violations (OECD, 2018[28]) (Box 1.3). As part of this methodology, the ultimate choice of regulatory instrument used in response to a case of non-compliance should be based on an assessment of the likely behavioural effect of each instrument, with the ultimate goal to improve sector outcomes.

Box 1.3. Risk-proportionality and responsive regulation

Sub-criterion 3.4: Enforcement decisions are effectively based on risk-proportionality

Risk-proportionality in taking enforcement decisions is at least as important as targeting inspections based on risk assessment. When assessing the situation in an establishment, inspectors should consider not only whether there are any violations, but whether these violations are part of a pattern, whether they reflect deliberate reckless behaviour or result from mistakes that the operator is ready to correct at the earliest, and crucially whether these violations actually create serious risks for the public welfare (safety, health, environment etc.) – and, if so, the magnitude of these risks. As much as possible, there should be official guidance clarifying how risk proportionality works and how enforcement decisions should be taken, so as to increase transparency and reduce uncertainty.

Sub-criterion 4.1: Applicable legislation allows for (or, at least, does not prohibit) differentiated (responsive) enforcement and provides an appropriate framework for discretion (allowing for it, but within bounds, and with accountability)

There is strong evidence that responsive regulation delivers better outcomes than uniform sanctioning of each and every violation – but laws and legal practices do not always allow for it. It is thus indispensable that legislation explicitly allows for differentiation in enforcement response (from simple warning to full weight of sanctions or prosecution) depending on the circumstances (seriousness of the violations in terms of risk, track record, overall situation in establishment, readiness to comply and improve, intent or lack thereof, dissimulation or openness etc.). Enforcement discretion should be clearly allowed (as it will anyway exist in practice), but also restrained by the application of principles and criteria (in particular risk-proportionality). There should also be requirements for enforcement structures to be accountable for their decisions (public guidelines for inspectors on decision making, annual reporting on enforcement actions, including justification).

Source: (OECD, 2018[28]), OECD Regulatory Enforcement and Inspections Toolkit, https://doi.org/10.1787/9789264303959-en (OECD, 2018[28]).

Recommendation: Sanctions

The 2018 review recommended that OSIPTEL assess the validity and accountability of decision making in setting the level of sanctions as well as reviewing appeals in first instance, in the interest of transparency and stability in the process.

Assessment of progress

While OSIPTEL updated its methodology to set the level of sanctions, there remains a lack of independent review of sanctioning decisions upon appeal that goes beyond internal legal analysis.

There have been no changes in the decision making mandates regarding sanctions. Proposed sanctions take into account the methodology of the new Infractions Qualification Regime and the new calculation methodology to determine the levels of the fine. Sanctions are decided upon by the General Manager based on a recommendation by the Inspection and Enforcement Department that has also undergone a review by the Legal Department.

OSIPTEL made a proposal to the executive to establish a new tribunal to decide upon appeals to sanctions, but this proposal was unsuccessful (see Recommendations: Board responsibilities and resources). Therefore, appeals to sanctions are still decided upon by the Board of Directors (Table 1.10).

Moving forward on this recommendation, OSIPTEL should continue to advocate to adjust the decision-making responsibilities on appeals to sanctions, to allow for an independent review function on appeals. In addition, OSIPTEL could consider an internal review mechanism (beyond only a legal analysis) to scrutinise sanction decisions before these are proposed to the General Manager.

Transparency, integrity and accountability

Recommendation: Engagement with congress

The 2018 review recommended OSIPTEL put in place a regular engagement activity with the Congress to increase accountability as well as understanding of the regulator's role and activities by the legislature. This could, for example, take place once a year as a reporting on performance and results around the regulator's annual report.

Assessment of progress

OSIPTEL engages more frequently with congress and its committees, especially through the new parliamentary co-ordinator, but it remains difficult to clearly communicate and assert the regulator's role in a context where dialogue revolves mainly around user complaints.

OSIPTEL has made efforts to increase its engagement with congress. Since 2020, OSIPTEL has a parliamentary co-ordinator who engages with members of congress to transmit OSIPTEL policy opinions and proposals. The co-ordinator also monitors congressional activity and follows legislative proposals, which it reports back to the regulator on a weekly basis. Furthermore, OSIPTEL engages with congressional committees through working meetings, often at the level of technical staff, to discuss legislative proposals and specific issues.

Congress may expect OSIPTEL to take on a role of "firefighter" on any emerging issues in the telecommunications sector. Engagement with Congress acts as another conduit for consumer complaints, whereby Congresspeople pass on user complaints or bring issues to OSIPTEL that may or may not fall within the regulator's mandate. Holding the regulator to account for specific user complaints or issues beyond its remit – rather than on its overall performance in terms of sector outcomes – could create a disproportionate focus on user protection and pressure OSIPTEL to take on roles that do not fall within the usual remit of an economic regulator. Relations between congress and OSIPTEL are set against a backdrop of increased congressional scrutiny of all Peruvian regulators. In 2020, a motion was passed which granted powers to CODECO to investigate the operations of all Peruvian regulators for a period of 180 working days (Congreso, 2020[29]).

Despite this intense focus by congress on the activities of economic regulators, OSIPTEL's initiatives to report to congress on its performance have been largely unsuccessful. In 2020, OSIPTEL held an accountability meeting with the CODECO to present its performance over the past year. Since 2020, the regulator also publishes an annual presentation on its website that presents the regulator's performance over the past year (OSIPTEL, n.d.[30]). However, a proposal by OSIPTEL to CODECO in 2021 to hold an annual accountability meeting was unsuccessful and no meeting was held since.

To continue progress on this recommendation, OSIPTEL should advocate for its proposal to implement a yearly meeting with congress to discuss the regulator's annual performance and role in the sector. In this discussion, OSIPTEL should highlight its role as a neutral arbiter in between operators and users, to promote competition and the functioning of markets as well as protecting consumers. In discussing performance, OSIPTEL could highlight the contributions it makes to sector outcomes such as quality and affordability as the regulator's ultimate objectives, to avoid a focus on specific user complaints.

Recommendation: Reporting and transparency tools

The 2018 review recommended to assess the impact of the various reporting and transparency tools implemented by OSIPTEL and, potentially, streamline. It also recommended to further refine the online transparency portal to provide full information about visits by regulated entities and other groups, as well as further communicate on the existence of this tool and guidance for staff on how to deal with these meetings to promote a constructive dialogue with industry. Improving the oversight mechanism and formalising rules could be introduced to promote transparency and minimise conflict of interest, while providing an avenue for constructive suggestions on regulations before becoming draft texts. Furthermore, the 2018 review recommended to consider the live streaming of board meetings for full transparency in decision making, when feasible from a confidentiality point of view.

Assessment of progress

OSIPTEL improved its reporting through an updated website and aligns its transparency reporting with the Peruvian central government's portal, although transparency on visits by regulated entities and board decision making could improve.

OSIPTEL's renewed website now provides a simplified overview of the regulator's transparency tools. Transparency and reporting information by the regulator is grouped under the "Good governance" section on the regulator's website and data on the sector is grouped in the open data portal. The open data portal includes PUNKU, an interactive tool with data on the sector, as well as data on aspects such as inspections, user satisfaction survey results and user guidance on aspects such as complaints procedures. Furthermore, the website includes a repository with publications, presentations, reports and studies by the regulator (OSIPTEL, n.d.[31]). The regulator also publishes all its decisions together with supporting documents on its website (OSIPTEL, 2022[32]).

The transparency portal on OSIPTEL's website is aligned with that of the Peruvian central government, based on the same categories of data and structure (OSIPTEL, n.d.[33]) (Portal de Transparencia Estándar, n.d.[34]). It brings together information on OSIPTEL such as applicable legislation, its organisation and functions, budget data, investment, public hearings, public procurement, staff travel, a visitor registry and contact details to request access to information. For the information on the visits, OSIPTEL expects to update its platform in line with an update to the portal by PCM to improve transparency. However, OSIPTEL has to conform this transparency tool to the central government format, which does not allow the regulator to disclose further information such as the topics that have been discussed.

While the regulator makes use of a wide range of reporting and transparency tools, the effectiveness of some is reduced by incomplete or outdated information. In particular, the alignment with Peru's central government's transparency portal means OSIPTEL cannot include more information than the central government template allows. Given this restriction, OSIPTEL has been unable to provide adequate information on what has been discussed during visits.

OSIPTEL has decided not to proceed with the recommendation to live-stream board meetings. The reason for not implementing this recommendation is that the deliberations by the Board may include information that could be confidential or otherwise reserved. There is no obligation for the regulator to broadcast or record meetings of the Board and such deliberations are exempt from the right of access to information according to the Law on Transparency and Access to Public Information (Congreso, 2002[35]).

Continuing its progress on this recommendation, OSIPTEL could leverage existing transparency and reporting tools further by ensuring information included is up-to-date and complete. OSIPTEL could also evaluate the added value of each of the tools to ensure it keeps its efforts focused on the most important transparency tools. Additionally, where the central government's transparency portal only provides for disclosure of limited information, as is the case for visits by stakeholders, OSIPTEL should consider supplementing this with additional information on its own website. This additional information could in particular allow OSIPTEL to specify in more detail for each meeting what has been discussed, as well as registering "virtual" visits that did not take place in person, thereby supporting the transparency of regulatory processes and decision making.

To support the transparency of decision making, OSIPTEL could consider as an alternative measure to make additional information available related to the decision making by the Board. While OSIPTEL already publishes the agendas of board meetings prior to sessions, as well as the session minutes and any supporting documents, it could consider systematically publishing comments received by stakeholders (with confidential information censored where applicable), as well as easy-to-read and non-complex guidance material for major regulatory decisions.

Recommendation: Code of Ethics

The 2018 review recommended to strengthen mechanisms to supervise and enforce OSIPTEL's Code of Ethics with the goal of creating a culture of integrity, transparency and justice that provides channels for protected disclosure for whistle blowers and adequate methods for handling complaints in line with the OECD Recommendation on Public Integrity.

Assessment of progress

OSIPTEL improved practice by implementing measures such as an Integrity Plan, integrity and compliance officers, the Anti-Bribery Management System and a guideline on complaints regarding acts of corruption.

In 2021, OSIPTEL approved an Integrity and Anti-Corruption Plan that focuses on staff ethics, transparency, anti-corruption and the monitoring of compliance with sworn declarations regarding conflict of interest, income and assets and role conflicts. The Integrity Plan includes staff training on ethics and transparency. In the same year, OSIPTEL also appointed two integrity officers to carry out and monitor integrity actions and two compliance officers to carry out and monitor the anti-bribery actions. This coincided with the implementation of a dedicated Anti-Bribery Management System in 2021. General Management is responsible for the Integrity Plan, anti-corruption initiatives and the promotion of ethics (OSIPTEL, 2020[13]). In 2021, OSIPTEL also approved guidelines for the management of complaints regarding corruption that includes provisions on protected disclosure for whistle blowers.

Moving forward on this recommendation, OSIPTEL should monitor if the guidelines on the management of complaints regarding corruption adequately safeguard the protected disclosure for whistle blowers – in line with the OECD Recommendation on Public Integrity – to foster a culture of integrity across the organisation. In practice, the willingness of whistle blowers to come forward may among other factors depend on the conditions and clarity on i) the protections that whistle blowers may be eligible to and ii) the scenarios under which these protections may potentially be denied in practice.

Output and outcome

The output and outcome dimension of the PAFER framework focuses on how a regulator monitors and reports on the performance of the regulated entities as well as on its own performance. OSIPTEL made modest progress in this area by streamlining its indicators and reducing regular data requests. It could continue this progress by reporting on indicators and establishing targets, and by reviewing its *ad hoc* data requests.

Performance assessment

Recommendation: Streamline PEI and POI indicators, including targets, and share experience

The 2018 review recommended that OSIPTEL streamline its PEI and POI indicators for more focused efforts and resources on monitoring and reporting. The aim of the indicators would be to support the management of the regulator and decisions on strategic (re)orientation. It further recommended that OSIPTEL explore including targets for indicators in the strategic framework and monitor achievement of these targets in reporting. The 2018 review also recommended OSIPTEL share its good experience of its strategic framework with other economic regulators and other Peruvian public bodies.

Assessment of progress

OSIPTEL has invested in streamlining its indicators and setting multi-annual targets, though reporting on indicators is complex. Further investments in transparency via reporting on performance could help OSIPTEL in its efforts to communicate the narrative of the regulator.

OSIPTEL has invested in streamlining its indicators and setting multi-annual targets, with more reductions in the number of indicators planned in the future. OSIPTEL continues to structure its PEI along seven high-level strategic institutional objectives (OEIs, see section above on Strategic planning), supported by 21 mostly outcome-level indicators. These indicators have been somewhat adjusted since 2018, with four being removed from the first OEI and four added to the second OEI (Table 1.10). The OEIs are translated into institutional strategic actions (*Acciones Estratégicas Institucionales,* AEIs). The previous PEI had 30 AEIs measured via 68 indicators, compared to the current PEI having 32 AEIs supported by 50 indicators. This does represent a tangible decrease in the number of PEI and POI indicators. Moreover, OSIPTEL has set multi-annual targets for each OEI and AEI.

Table 1.10. Evolution of OSIPTEL's strategic objectives and indicators, 2018-22 and 2020-24

2020-24 Strategic Objectives*	2018-22 Indicators	2020-24 Indicators
Promote competition telecommunications operators	• Mobile telephony competition index • Mobile telephony price index • Mobile internet competition index • Mobile internet price index • Fixed internet competition index • Fixed internet price index • Pay TV competition index • Pay TV price index	• Mobile telephony competitive intensity index • Mobile internet competitive intensity index • Fixed internet competitive intensity index • Pay TV competitive intensity index
Improve the quality of telecommunications services provided by operators with respect to the established standards	• Mobile telephony quality of service index • Mobile internet quality of service index • Fixed internet quality of service index • Pay TV quality of service index	• Mobile phone service quality index • Mobile internet service quality index • Fixed internet service quality index • Pay TV service quality index • % of users satisfied with the quality of mobile service • % of users satisfied with the quality of mobile internet service • % of users satisfied with the quality of fixed internet service • % of users satisfied with the quality of pay TV service
Improve the quality of customer service of public telecommunications services	• % of compliance with quality of service standards in customer service by operators • % of user satisfaction with quality of customer service by operator	• % of prioritised user service quality standards met by operating companies • % of users satisfied with the quality of care provided by the operating company
Empower telecommunications services users	• % of users who know they basic rights • % of users with problems with service who found an adequate solution	• % of users who know their basic duties and rights as consumers of telecommunications services • % of users who indicate that they had an adequate solution to their problem
Consolidate OSIPTEL's reputation as a transparent and highly specialised institution	• OSIPTEL reputation index	• OSIPTEL reputation index
Consolidate the management model of OSIPTEL towards excellence	• % of internal client satisfaction with Line bodies • % of internal client satisfaction with Support and Advisory bodies • OSIPTEL management excellency index	• % of internal customers satisfied with the Line bodies • % of internal clients satisfied with the Support and Advice units • Index of excellence in the management of the institution

2020-24 Strategic Objectives*	2018-22 Indicators	2020-24 Indicators
Implement disaster risk management	• Number of implementation or update reports for disaster risk management	• % of employees aware of disaster risk management practices

* For the purposes of comparison, the 2018-22 OEIs were not included as they are very similar (see section on Strategic Planning). 2018-22 Indicators were copied from the 2018 review, while the 2020-24 indicators were translated via machine translation.
Source: (OECD, 2019[1]); 2020-24 PEI.

Internal monitoring of the PEI remains complex, though it has been reformed with the creation of a new project management tool. In total, the PEI, POI, OEIs and AEIs amount to approximately 600 goals and activities that need to be tracked at an institutional level. OSIPTEL has created a Gantt Chart project planning tool to monitor a prioritised subset of these goals, which represent about 15% of these activities and changes yearly. The Chart is used to promote accountability with the responsible department and is reviewed quarterly at leadership team meetings to generate internal transparency and foster horizontal support between teams. The prioritised activities are changed yearly by approval of senior management, after explanation is provided to the leadership team. This prioritisation can be changed during the year, but this is not common according to OSIPTEL. The Gantt Chart and associated prioritisation exercises are not presented to the Board of Directors, nor are they consulted with external stakeholders.

External reporting continues to follow MEF and the National Centre for Strategic Planning (*Centro Nacional de Planeamiento Estratégico*, CEPLAN**)** methodologies for designing and reporting on its PEI, but is not aligned with OSIPTEL indicators for internal reporting. OSIPTEL follows the methodology of "Budgeting for Results," set by the MEF, which reports on about 5% of the 600 activities noted above. Indicators derived from the PEI are sent to CEPLAN. OSIPTEL also continues to use composite indicators (indices) to measure market performance for the OEIs, which are not the same as required by MEF. As noted in the 2018 review, this can lead to a duplication of efforts in terms of monitoring. Combined with the Gantt chart for internal reporting, this creates a complex system of internal and external reporting which is not fully aligned with reporting on all of OSIPTEL's strategic objectives.

In further implementing this recommendation, OSIPTEL should build on its good practice of streamlining indicators by ensuring the systems of monitoring and reporting match in terms of intention and outcome. This includes ensuring that the Gantt Chart prioritises efforts to monitor the indicators and targets associated with the strategic plan and creating a dedicated and easy-to-find location on the OSIPTEL website to report on high-level indicators, targets and strategic actions. OSIPTEL could further foster transparency and accountability by proactively reporting on these indicators to stakeholders, including sharing with other economic regulators and Peruvian public bodies as a way to support efforts to build a robust external narrative on the work of the regulator.

Data and reporting

Recommendation: Align and communicate on the strategic framework via the annual report and market snapshots

The 2018 review recommended that OSIPTEL further align its annual report to the strategic framework and use it as an opportunity to communicate on achievements against the strategic objectives. It also recommended that OSIPTEL organise public event with stakeholders for the presentation of the annual report. Finally, it recommended reviewing the scope of market performance snapshots in favour of a predictable annual market performance report, which could be used as an opportunity to engage with industry. This report would be different from the general institutional annual report.

Assessment of progress

OSIPTEL's annual report is not fully aligned with its strategic framework and could be communicated in a more systematic manner. The regulator does not yet produce an annual market performance report as a means to engage with industry.

The main publicly available tool used by OSIPTEL to report on its performance is its annual report (*Memoria)* publication, which contains a large amount of information but does not report against the seven strategic objectives defined in the strategic plan. The 2021 annual report reports on all strategic objectives but focuses on issues related to users and organisational governance. OSIPTEL notes that this is intentional, so as to align reporting on indicators associated with the Communication Plan and prioritised institutional objectives in the PEI, which are those related to user protection, competition and quality of services (OEIs 1 to 4) and reflected in the Communications Strategic Plan 2022. The rest of the publication presents data largely available on its open data portal (see above) with an explanation of what these data mean for the regulator. Furthermore, the annual report is difficult to find on the regulator's website.

Communication around the annual report is becoming more frequent, though could be more systematically implemented and aligned with the strategic plan. The regulator is not required to present the annual report to Congress or organise any other public event. In 2021, OSIPTEL proposed a presentation of its annual report to Congress, focusing on progress made in the management of the regulator and the performance of its functions and results. However, this meeting did not occur; though OSIPTEL continues to engage with CODECO on various issues. Since 2019, OSIPTEL has been posting presentations made by their President to various stakeholder groups (e.g. PCM, MTC, CODECO) to the accountability section of its website. The content of these accountability presentations varies considerably, oriented towards the audience – i.e. while all have market performance data, those for PCM and MTC have more details about governance issues compared to CODECO and external stakeholders that have more detailed information about OSIPTEL's role, data on user's satisfaction and problems, and challenges faced by the regulator. A next step could be to use these presentations to report back on the strategic objectives of the regulator and its progress towards the PEI targets and consistently deliver them to all types of stakeholders each year.

OSIPTEL publishes a large amount of technical data related to sector performance that could be better curated for public consumption. OSIPTEL presents stakeholders with data and information via its open data portal on its website, with six sections:

- *PUNKU*: A telecommunications information portal to obtain statistical reports of market indicators based on the information reported by operators;
- *Users' information portal*: Containing with a wide variety of data related to actions taken by OSIPTEL for users and information on the performance of operating companies;
- *Inspections Statistics Portal*: Containing a wide variety of data related to enforcement, inspections and sanctioning of operators;
- *Residential Survey of Telecommunications (Encuesta Residencial de Servicios de Telecomunicaciones, ERESTEL)*: Provides the history of reports on the results of the ERESTEL
- *User Satisfaction Study*: Contains the results of the study of user satisfaction, both in general and in final reports by sub-sector (fixed internet, mobile services, fixed telephony and pay TV).
- *National Open Data Portal*: This links to the Government of Peru's national open data portal, auto-linked to query data on OSIPTEL.

OSIPTEL also continues to produce statistical reports, hold ad hoc events on sector performance and produce informational bulletins. OSIPTEL has sub-sections in its repository on its websites for statistics, reports and studies, as well as presentations by the regulator on issues related to sector performance. They also produce bulletins that respond to specific issues (i.e. the recent issues with stolen SIM cards)

or priority areas of interest (i.e. user protection) to state OSIPTEL's position, regulatory decisions and/or plan of action.

In continuing to implement this recommendation, OSIPTEL should consider reviewing its annual report to streamline it into a concise document aimed at communicating the regulator's achievements against its entire strategic framework, and in particular its progress against indicators and targets. This would help to support a robust narrative on the role of the regulator that could be communicated to different stakeholders (the executive, Congress, industry, consumer groups, etc.). Additionally, OSIPTEL may still wish to consider producing a predictable annual market performance report that could be used to engage with industry and foster a discussion on how to improve outcomes in the sector.

Recommendation: Review data collection policies and explore opportunities for streamlining

The 2018 review recommended that OSIPTEL review the current data collection policies to ensure it is still fit for purpose and appropriate for achieving the strategic goals of the regulator to limit the data compliance burden on industry, with a priority given to only collecting data that can be reasonably used by the regulator. It also recommended that OSIPTEL explore the opportunity to streamline or reduce data reporting requirements to alleviate issues relating to inconsistency and incomplete information, particularly by reviewing the processes through which data is collected e.g. the forms, how data is asked for and understood, how easy/complicated the data collection process is.

Assessment of progress

OSIPTEL has invested in reducing the burden associated with its regular data requests, though a rise in ad hoc requests re-introduces burdens and reduces predictability in the regulatory process.

OSIPTEL conducted a review of its current data collection requirements, reducing the number of regular requests for large operators and with more reductions afforded for smaller operators. The NRIP, which establishes the data that needs to be sent regularly to OSIPTEL, was reviewed between 2020 and 2021 and amended in 2022 in a process that included a public consultation. The new NRIP reduces the number of regular forms required by operators from 176 to 100 according to Resolution 043-2022-CD, which will come in force in 2023. The same resolution further reduces the requirement for certain forms as well as quality and frequency of reporting for smaller operators.

However, ad hoc requests for data could increase regulatory burdens, reduce predictability in the regulatory process and can result in sanctions for operators in case of non-compliance. Such ad hoc requests are not limited by internal regulation, subjected to the 2021 Review. Operators have expressed frustration that these requests seem to be increasing, noting the burden of responding to requests when data is often not stored in the same format as requested by the regulator or when requests are not co-ordinated between OSIPTEL departments. Failure to comply or late compliance result in sanctions, which is noted by both the regulator and operators as still being an issue compared to the 2018 review.

In further addressing this recommendation, OSIPTEL should consider extending the review of the regular data requests to the system of ad hoc requests to ensure that overall regulatory burdens are minimised, and ad hoc requests are limited. The regulator should strive for predictability and ensure a "no surprises" relationship extends to data collection. This includes considering a central co-ordination of data requests to ensure burdens are managed on the side of the regulator.

Lessons learnt and way forward

OSIPTEL has made significant progress on the recommendations of the 2018 review in a number of crucial areas, including the regulatory fee, its complaints process, regulatory impact assessment and the reactivation of its user council. This shows the organisation's willingness to learn and improve practices.

To secure this progress, the regulator monitored the progress on recommendations internally through its Leaders Committee and presented legislative proposals to the executive based on analytical reports.

The progress review shows the need to view the regulator's performance assessment as a continuous process, especially where the regulator acts in a dynamic and challenging context. This will require monitoring and recalibrating recommendations and strategies where necessary, to ensure these remain appropriate. The progress review will provide important guidance to the regulator in this effort, by highlighting the areas of focus and strategies moving forward.

Follow-up mechanism

OSIPTEL did not establish a dedicated taskforce or committee to implement the recommendations from the 2018 review, but made use of different approaches depending on the specific recommendation. In general, two different processes can be identified:

- Internal processes to follow up on recommendations; and
- External processes to advocate for changes in legislation.

Internally, OECD recommendations were discussed within the Leaders Committee, comprising senior management, which meets on a weekly basis to discuss a wide range of matters related to governance, performance and organisational culture. The committee took measures and assigned responsibilities to specific departments or teams towards the implementation of recommendations. Decisions by the Leaders Committee are communicated by the directors of departments to their staff members, to support implementation.

Externally, OSIPTEL has made a number of legislative proposals to advocate for changes that were recommended by the OECD, usually to the Presidency of the Council of Ministers (*Presidencia del Consejo de Ministros*, PCM). Where relevant, OSIPTEL also engaged with other relevant ministries related to a specific proposal, such as the Ministry of Economy and Finance for its proposal to increase the regulatory fee. In this case, OSIPTEL made a proposal to increase the regulatory fee and review the fee periodically based on an analytical report by the regulator, which was ultimately approved by the PCM in 2021. Not all proposals were taken on board by the executive. For example, OSIPTEL's proposals to increase the number of meetings for board members and to establish a separate tribunal for appeals on sanctions were unsuccessful.

Continuous process

The progress review shows the need to monitor recommendations regularly, to assess if these remain feasible or require any adjustments. The work of an economic regulator very much depends on the context in which the regulator operates, and the initial PAFER review factored this context into its recommendations. Where changes in the sector or institutional context take place, this could therefore affect the appropriateness of initial recommendations, or the likelihood that the initial recommendation can be achieved. Furthermore, there may be unforeseen complexities that arise only during the implementation of the recommendation, which could warrant an adjustment to the initial approach.

In this light, performance assessment should be seen as a continuous process, with recommendations as the start of a conversation on performance and progress. Inevitably, certain recommendations will need amending due to external factors or complexities. Furthermore, implemented recommendations will spur the formulation of additional recommendations to support the process of continuous improvement. The instrument of a progress review could assist this process, by providing an accountability mechanism and an opportunity to highlight the areas to focus on moving forward.

Areas of focus going forward

The progress review highlights a number of areas that OSIPTEL could focus on moving forward, to ensure continuous progress and build on its achievements. The main areas of focus going forward are:

- **Clarifying its role**: in an unstable and challenging political context, OSIPTEL should continue its efforts to clearly communicate the scope of its remit within the telecommunications sector, as well as its main objectives and results. In the face of frequent changes in political leadership, the regulator should be ready to continuously provide a stable narrative on its role as a neutral arbiter that balances the concerns of different stakeholder groups, promoting competition as well as protecting consumers. OSIPTEL's five-year strategic plan and accompanying indicators and targets could serve as a powerful tool to communicate its longer-term objectives and demonstrate the regulator's impact on the sector.
- **Promoting diversity in decision-making:** a more spread out internal governance model with adequate delegation of authority and additional challenge functions could promote stability in decision making. Given the limited time available to board members, OSIPTEL should prioritise the Board's involvement towards the organisation's strategic direction and regulatory matters with a high impact.
- **Improving stakeholder input to the regulatory decision-making process:** OSIPTEL can build on existing stakeholder consultation mechanisms to ensure meaningful input of different groups into its regulatory decision-making. For example, the regulator can leverage its revived User Council to seek inputs from consumer representatives and use the recently-introduced annual regulatory agenda as a starting point for engagement. OSIPTEL could also establish a platform for early stage consultation, such as an advisory committee, to obtain feedback on the regulator's plan and initiatives from a wider range of stakeholders early on in the regulatory process.
- **Adapting inspections and sanctions**: through the use of more risk-based and behaviourally-informed strategies, OSIPTEL could support the impact of its inspections and sanctions on sector outcomes. Such an approach could also be a way to reverse the trend of deteriorating trust between the regulator and operators.

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Notes

[1] The others are the Supervisory Agency for Investment in Energy and Mining (*Organismo Supervisor de la Inversión en Energía y Minería*, OSINERGMIN), the Supervisory Agency for Investment in Public Transport Infrastructure (*Organismo Supervisor de la Inversión en Infraestructura de Transporte de Uso Público*, OSITRAN), and the National Superintendence of Sanitation Services (*Superintendencia Nacional de Servicios de Saneamiento*, SUNASS).

[2] These being: Users, executive agencies, congress, operators, business associations, media, collaborators with OSIPTEL, user associations, opinion leaders, specialists, academics, international organisations and suppliers.

[3] The services that are subject to the higher regulatory fee percentage are mobile telephony, personal communications, digital trunking and mobile internet access.

[4] Based on information provided by OSIPTEL through the 2021 Survey on the Resourcing Arrangements of Economic Regulators.

[5] This legislative change is defined in Law 31,131 of 8 March 2021 (El Peruano, 2021[9]).

[6] In practice, the new ROF 2020 has been approved in two parts. The first part of the ROF, detailing the functions of the Board, President and General Manager, as well as the structure and functions of the organisation in terms of the different offices, departments, the Institutional Control Body (OCI), the Public Prosecutor's Office, the resolution bodies and the User Council, are approved by PCM through Supreme Decree 160-2020-PCM. A second part, detailing the functions and structure of underlying units and subdirectorates, was approved by the President through Presidential Resolution 094-2020-PD/OSIPTEL (OSIPTEL, 2020[13]).

[7] Out of the 75 regulations issued between 1 January 2018 and 7 April 2022, 8 involved the use of a cost-benefit analysis (6 in 2018 and 2 in 2021) and two involved a cost-effectiveness analysis (both in 2021) (OSIPTEL, n.d.[36]).

[8] Using an exchange rate of 0.2602 USD/SOL as of 1 July 2022.

[9] The annual activity plan for 2020 was discussed at a meeting of the user council in February 2020 and the plan for 2021 was discussed at a meeting in November 2021.

[10] These digital apps include: “Check your plan”: a tool that enables a comparison mobile phone and fixed internet tariffs across providers; “Check your mobile device”: a tool that enables a comparison of mobile equipment across providers; “Check your signal”: a tool that allows users to check the coverage of mobile services; “Check your mobile internet”: a tool that compares the quality of mobile internet across geographical areas; “Check your lines”: a tool providing an overview of the phone lines on their name; “Check your IMEI”: an online database of stolen mobile devices; and the PUNKU data portal, which combines data on the sector.

Annex A. At a glance: progress on the 2018 recommendations

2018 Recommendations	Assessment of progress	Status
Role and Objectives		
Develop a robust external relations strategy	OSIPTEL made some progress by appointing a parliamentary co-ordinator, but lacks a robust external relations strategy – differentiated from its communications activities – to establish a stable narrative on its role as a neutral arbiter and outcomes to all stakeholders.	Moderate progress on recommendation
Set up a forum where economic regulators of Peru can come together	High-level co-ordination between economic regulators on strategic matters of joint concern continues to take place through informal channels and is complemented by increasing knowledge exchange at the technical level.	Good progress on recommendation
Develop a stable yearly regulatory planning	OSIPTEL has taken a positive step forward by establishing a yearly regulatory agenda published on their website, which can now be further improved to foster greater predictability and stability for all stakeholders.	Good progress on recommendation
Actively push for the creation and implementation of more structured and regular co-ordination mechanisms	Political instability and high turnover at senior levels within the executive branch has hindered the creation of more structured co-ordination with public entities, including the MTC. OSIPTEL has continued to regularly issue non-binding opinions and engage via informal discussions as their main vehicle for co-ordination.	Moderate progress on recommendation
Proactively share a strategic view on the sector, publish comments submitted to consultations and share data and analysis on sector performance	OSIPTEL submits and publishes comments to consultations when requested by the MTC and shares data on sector performance, but does not proactively share its strategic view on the sector.	Moderate progress on recommendation
Assess with the Ministry whether the governance and implementation of FITEL is aligned with overall strategic vision for the telecommunications sector	An assessment of OSIPTEL's role in FITEL (now PRONATEL) has not been conducted with the MTC, and a further evolution of FITEL into PRONATEL has potentially created new areas of overlap.	Limited progress on recommendation
Reassess if the functions and powers of the regulator are aligned with its roles and objectives	OSIPTEL continues to be given new functions and responsibilities by the executive or by Congress that may create confusion about the role of the regulator in relation to other public entities.	Limited progress on recommendation
Continue monitoring trend of customer complaints and assess whether relevant regulation continues to contain loopholes	OSIPTEL has successfully reduced the backlog of consumer complaints, setting up a system that is fit for purpose going forward.	Recommendation implemented fully
Review approaches, functions and resources dedicated to consumer protection	OSIPTEL has sought to further emphasise its user protection functions, in part due to external pressures.	Limited progress on recommendation

2018 Recommendations	Assessment of progress	Status
Evaluate the efficiency outcome of the two models of decentralised presence (regional offices and centres)	OSIPTEL enacted an internal reorganisation and digital tools to streamline the governance of user protection.	Good progress on recommendation
Share and build on OSIPTEL's methodology defining its strategic framework and performance indicators, while working on streamlining the indicators	OSIPTEL uses a robust process for developing its strategic plan that is in alignment with standards of good practice, and could share their experience with other public entities in Peru.	Moderate progress on recommendation
Develop a holistic approach to bring together and clarify communications and official engagement mechanisms while making clear, separate, and consistent the appropriate avenues	OSIPTEL has continued to invest in strengthening its communication capabilities, with a focus on information provision and responding to user issues, but could invest in more structured two-way approaches to stakeholder engagement.	Good progress on recommendation
Input		
Seek clarity on central administration constraints that impact on the regulator's funding model and financial management	The regulator has improved clarity on central administration constraints on the regulator's funding model through engagement with the executive, but did not engage on financial management.	Good progress on recommendation
Set up a practice whereby regulatory fees are reviewed every three years (or another regular and reasonable time frame) based on cost recovery principles of funding of economic regulators	OSIPTEL has secured a more adequate budget through an increase in the regulatory fee that can be reviewed every three years based on a substantiated proposal by the regulator, although a lack of criteria or procedures for this review defined in law could reintroduce budgetary uncertainty.	Good progress on recommendation
Engage in a systematic discussion with relevant stakeholders of additional resource needs	OSIPTEL proactively engaged with the PCM and the MEF to share information and discuss its funding needs; a further aspirational step could be to engage more widely with other stakeholders on the topic of resource needs to support broader understanding.	Recommendation implemented fully
Advocate with other economic regulators for a review of the law regarding absorption of carry forward in regards the budget of economic regulators	OSIPTEL advocated for a change regarding the use of carry-forward funds, but there is still no structural mechanism for the regulator to carry forward unspent funds.	Limited progress on recommendation
Seek to implement a human resource framework regarding diversity, recruitment, remuneration and incentives that takes into account the special needs of economic regulators	OSIPTEL improved its human resource management, but restrictions regarding remuneration, incentives, recruitment and training prevent the regulator from taking into account the special needs of economic regulators in its HR framework.	Moderate progress on recommendation
Level the playing field for staff between the different categories of contracts	Progress to merge the different contract regimes into a new uniform regime is slow, and while job stability to staff employed under the CAS regime improved, this came at the cost of increasing difficulties to hire new staff.	Moderate progress on recommendation
Share good practices and results in terms of talent retention and staff well-being	OSIPTEL maintains informal working level contact with HR colleagues at other regulators to share good approaches, which the regulator could leverage to discuss the issue of an increase in staff turnover.	Good progress on recommendation
Consider the possibility of implementing transparent and open requirements and recruitments for all posts in the regulatory authority	OSIPTEL improved most of its staff recruitment processes to ensure merit-based recruitment, although certain senior positions can still be hired outside of public contests.	Moderate progress on recommendation
Process		
Assess whether the activity and duties of the Board reflect its mandate and structure and consider ways to involve Board members in deciding on the long-term strategic direction	OSIPTEL submitted two unsuccessful requests to the executive and made practical improvements, but should expand the Board's involvement in strategic decision making to make best use of its limited time.	Limited progress on recommendation
Consider supporting informed decision making by the Board by making available advisory resources and proposing specialisation and responsibility for certain strategic areas that could rotate between members	Board members can request informal meetings with technical specialists and legal advisors ahead of board meetings, but have not been assigned specific strategic areas.	Moderate progress on recommendation

2018 Recommendations	Assessment of progress	Status
Remove any potential conflict of interest when reviewing the duties and structure of the Board.	OSIPTEL has implemented a number of measures to safeguard the integrity of both staff and the Board, and should support these measures by advocating for staggered board terms.	Good progress on recommendation
Review the internal governance and management processes to ensure adequate diversity in decision making	An internal reorganisation supports the operational efficiency of the regulator, but at the same time reduces the diversity in decision making.	Limited progress on recommendation
Introduce a deliberate mechanism for quality control and check that can also serve as a challenge function with regard to decision making and processes	OSIPTEL made some improvements to its internal quality control mechanisms, but reviews tend to take place only during the final stages of a proposal and OSIPTEL did not introduce any new peer review mechanism to provide a challenge function.	Moderate progress on recommendation
Maintain momentum towards the full implementation of the new RIA system	OSIPTEL successfully implemented its new RIA system.	Recommendation implemented fully
Review and make necessary changes to activate the users' council	OSIPTEL successfully reinstalled a users' council that performs a critical outreach function for the regulator, which can now be further integrated into the regulatory decision-making process.	Good progress on recommendation
Create an advisory committee of stakeholders for transparent and early consultation	OSIPTEL did not yet establish an advisory committee for consultation on regulatory topics and initiatives, thereby lacking a platform to obtain information and feedback early on in the regulatory process.	No progress on recommendation
Develop use of digital tools for regulatory activities and use existing tools such as WhatsApp and Twitter for more structured and effective consultation and feedback	OSIPTEL's use of social media and digital tools aims to support users with complaints and provide information, but does not systematically facilitate consultation on regulations.	Moderate progress on recommendation
Develop and disseminate an annual regulatory programme that would present the regulator's activities	OSIPTEL made strong progress by publishing a regulatory agenda that it could now leverage as a tool for stakeholder engagement.	Good progress on recommendation
Extend *ex post* evaluations as a consistent and automatic component of policy making	OSIPTEL is taking steps to complement its use of RIA with a more consistent use of *ex post* reviews	Moderate progress on recommendation
Adopt a risk-based strategy to inspections and enforcement and review methods for streamlining the sanctioning process to achieve desired behaviour changes	OSIPTEL modified its inspections regulation and implemented digital tools to collect data on compliance, and should now make its inspections and enforcement more risk-based and behaviourally-informed.	Limited progress on recommendation
Assess the validity and accountability of decision making in setting the level of sanctions as well as reviewing appeals	While OSIPTEL updated its methodology to set the level of sanctions, there remains a lack of independent review of sanctioning decisions upon appeals that goes beyond internal legal analysis.	Moderate progress on recommendation
Put in place a regular engagement activity with the Congress to increase accountability as well as understanding	OSIPTEL engages more frequently with Congress and its committees, especially through the new parliamentary co-ordinator, but it remains difficult to clearly communicate and assert the regulator's role in a context where dialogue revolves mainly around user complaints.	Moderate progress on recommendation
Assess the impact of the various reporting and transparency tools and potentially streamline	OSIPTEL improved its reporting through an updated website and aligns its transparency reporting with the Peruvian central government's portal.	Good progress on recommendation
Strengthen mechanisms to supervise and enforce OSIPTEL Code of Ethics	OSIPTEL improved practice by implementing measures such as an Integrity Plan, integrity and compliance officers, the Anti-Bribery Management System and a guideline on complaints regarding acts of corruption.	Good progress on recommendation
Further refine the online transparency portal to provide full information about visits	Transparency on visits by regulated entities could improve by providing additional information on visits on the regulator's website.	Limited progress on recommendation
Consider live streaming meetings of the Board	OSIPTEL has decided not to proceed with the recommendation to live-stream board meetings.	No progress on

2018 Recommendations	Assessment of progress	Status
		recommendation
Output and Outcome		
Share the good experience of OSIPTEL's strategic framework	OSIPTEL could share the good practice of its strategic framework with other public bodies as a way to support efforts to build a robust external narrative of the work of the regulator	Limited progress on recommendation
Streamline PEI and POI indicators for more focused efforts and resources on monitoring and reporting	OSIPTEL has invested in streamlining its indicators and setting multi-annual targets, with more reductions in the number of indicators planned in the future.	Good progress on recommendation
Explore including targets for indicators in the strategic framework and monitor achievement of these targets in reporting	OSIPTEL sets targets, though reporting on indicators is still complex. Further investments in transparency via reporting on performance could help OSIPTEL in its efforts to communicate the narrative of the regulator.	Moderate progress on recommendation
Further align the annual report to the strategic framework and use it to communicate on achievement against the strategic objectives	OSIPTEL's annual report is not fully aligned with its strategic framework and could be communicated in a more systematic manner	Limited progress on recommendation
Review the scope of market performance snapshots in favour of a predictable annual market performance report, which could be used to engage with industry	The regulator does not yet produce an annual market performance report as a means to engage with industry.	No progress on recommendation
Review the current data collection policies to ensure it is still fit for purpose and appropriate to limit the data compliance burden on industry	OSIPTEL has invested in reducing the burden associated with its regular data requests, though a rise in ad hoc requests re-introduces burdens and reduces predictability in the regulatory process.	Moderate progress on recommendation
Organise public event with stakeholders for the presentation of the annual report	Communication around the annual report remains ad hoc, although the regulator made a proposal to present the annual report to Congress.	Moderate progress on recommendation
Explore opportunity to streamline or reduce data reporting requirements to alleviate issues	OSIPTEL has invested in reducing the burden associated with its regular data requests, though a rise in ad hoc requests re-introduces burdens and reduces predictability in the regulatory process.	Moderate progress on recommendation

Annex B. Methodology

Measuring regulatory performance is challenging, starting with defining what to measure, dealing with confounding factors, attributing outcomes to interventions and coping with the lack of data and information. This annex describes the methodology developed by the OECD to help regulators address these challenges through a Performance Assessment Framework for Economic Regulators (PAFER), as well as how it was adapted for a follow-up review. It first presents some of the work conducted by the OECD on measuring regulatory performance. It then describes the key features of the PAFER and presents a typology of performance indicators to measure input, process, output and outcome. It finally provides an overview of the approach and practical steps undertaken for developing the present follow-up review.

This Annex summarises the methodology developed by the OECD to assess regulatory authorities' governance arrangements, drivers of performance as well as their performance measurement matrices. The methodology was prepared based on the experience of regulators participating in the OECD Network of Economic Regulators. The framework was applied to 13 regulatory bodies, and the present report is the second application of a follow-up review (following a first follow-up review of Latvia's Public Utilities Commission in 2021). The reviews up to date, spanning a number of sectors and countries, include: Colombia's Communications Regulation Commission (OECD, 2015[1]), Latvia's Public Utilities Commission (OECD, 2016[2]) (OECD, 2021[3]), Mexico's three energy regulators (OECD, 2017[4]); (OECD, 2017[5]); (OECD, 2017[6]); (OECD, 2017[7]), Ireland's Commission for Regulation of Utilities (OECD, 2018[8]); Peru's Energy and Mining Regulator (OECD, 2019[9]); Peru's Telecommunications Regulator (OECD, 2019[10]), Peru's Transport Infrastructure Regulator (OECD, 2020[11]), Ireland's Environmental Protection Agency (OECD, 2020[12]), Portugal's Energy Services Regulatory Authority (OECD, 2021[13]), Brazil's Electricity Regulatory Agency (OECD, 2021[14]) and Peru's Water and Sanitation Services Regulator (OECD, 2022[15]). The methodology has been adapted since its first application to learnings throughout the review process and is adjusted to take into account specific needs and contextual characteristics of each regulator, sector and jurisdiction.

Analytical framework

The analytical framework that informs this review draws on the work conducted by the OECD on measuring regulatory performance and the governance of economic regulators. OECD countries and regulators have recognised the need for measuring regulatory performance. Information on regulatory performance is necessary to better target scarce resources and to improve the overall performance of regulatory policies and regulators. However, measuring regulatory performance can prove challenging. Some of these challenges include:

- *What to measure*: evaluation systems require an assessment of how inputs have influenced outputs and outcomes. In the case of regulatory policy, the inputs can focus on: i) overall programmes intended to promote a systemic improvement of regulatory quality; ii) the application of specific practices intended to improve regulation, or, iii) changes in the design of specific regulations.
- *Confounding factors*: there is a myriad of contingent issues that have an impact on the outcomes in society which regulation is intended to affect. These issues can be as simple as a change in the weather, or as complicated as the last financial crisis. Accordingly, it is difficult to establish a direct causal relationship between the adoption of better regulation practices and specific improvements to the welfare outcomes that are sought in the economy.
- *Lack of data and information*: countries tend to lack data and methodologies to identify whether regulatory practices are being undertaken correctly and what impact these practices may be having on the real economy.

The OECD (2014[16]) *Framework for Regulatory Policy Evaluation* starts addressing these challenges through an input-process-output-outcome logic, which breaks down the regulatory process into a sequence of discrete steps. The input-process-output-outcome logic is flexible and can be applied both to evaluate practices to improve regulatory policy in general, and to evaluate regulatory policy in specific sectors, based on the identification of relevant strategic objectives. It can be tailored to economic regulators by taking into consideration the conditions that support the performance of economic regulators (Box A B.1).

The OECD Best Practice Principles for Regulatory Policy: The Governance of Regulators (OECD, 2014[17]) identifies some of the conditions that support the performance of economic regulators. They recognise the importance of assessing how a regulator is directed, controlled, resourced and held to account, in order to improve the overall effectiveness of regulators and promote growth and investment, including by

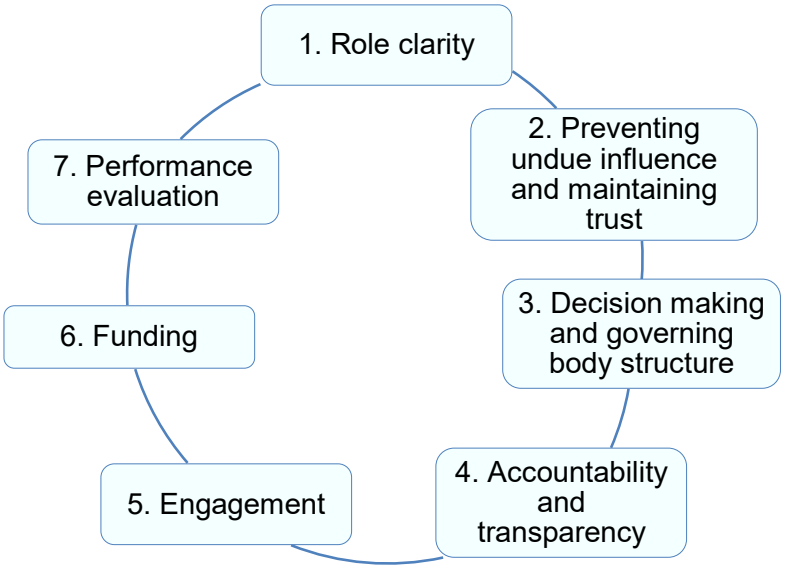
supporting competition. Moreover, they acknowledge the positive impact of the regulator's own internal process on outcomes (i.e. how the regulator manages resources and what processes the regulator puts in place to regulate a given sector or market) (Figure A B.1).

Box A B.1. The input-process-output-outcome logic sequence

- Step I. Input: indicators include for example the budget and staff of the regulatory oversight body.
- Step II. Process: indicators assess whether formal requirements for good regulatory practices are in place. This includes requirements for objective setting, consultation, evidence-based analysis, administrative simplification, risk assessments and aligning regulatory changes internationally.
- Step III. Output: indicators provide information on whether the good regulatory practices have actually been implemented.
- Step IV. Impact of design on outcome (also referred to as intermediate outcome): indicators assess whether good regulatory practices contributed to an improvement in the quality of regulations. It therefore attempts to make a causal link between the design of regulatory policy and outcomes.
- Step V. Strategic outcomes: indicators assess whether the desired outcomes of regulatory policy have been achieved, both in terms of regulatory quality and in terms of regulatory outcomes.

Source: (OECD, 2014[16]).

Figure A B.1. The OECD Best Practice Principles on the Governance of Regulators



Source: Adapted from (OECD, 2014[17]).

The two frameworks are brought together into a Performance Assessment Framework for Economic Regulators that structures the drivers of performance along the input-process-output-outcome framework (Table A B.1).

Table A B.1. Criteria for assessing regulators' own performance framework

References	Strategic objectives	Input	Process	Output and outcome
Best Practice Principles for the Governance of Regulators	• Role clarity	• Funding	• Maintaining trust and preventing undue influence	• Performance evaluation
			• Decision making and governing body structure	
			• Accountability and transparency	
			• Engagement	
Institutional, organisational and monitoring drivers	• Objectives and targets	• Budgeting and financial management	• Strategy, leadership and co-ordination	• Performance standards and indicators
	• Functions and powers	• Human resources management	• Institutional structure	• Performance processes and reports
			• Management systems and operating processes	• Feedback or outside evidence on performance
			• Relations and interfaces with Government bodies, regulated entities and other key stakeholders	
			• Regulatory management tools	

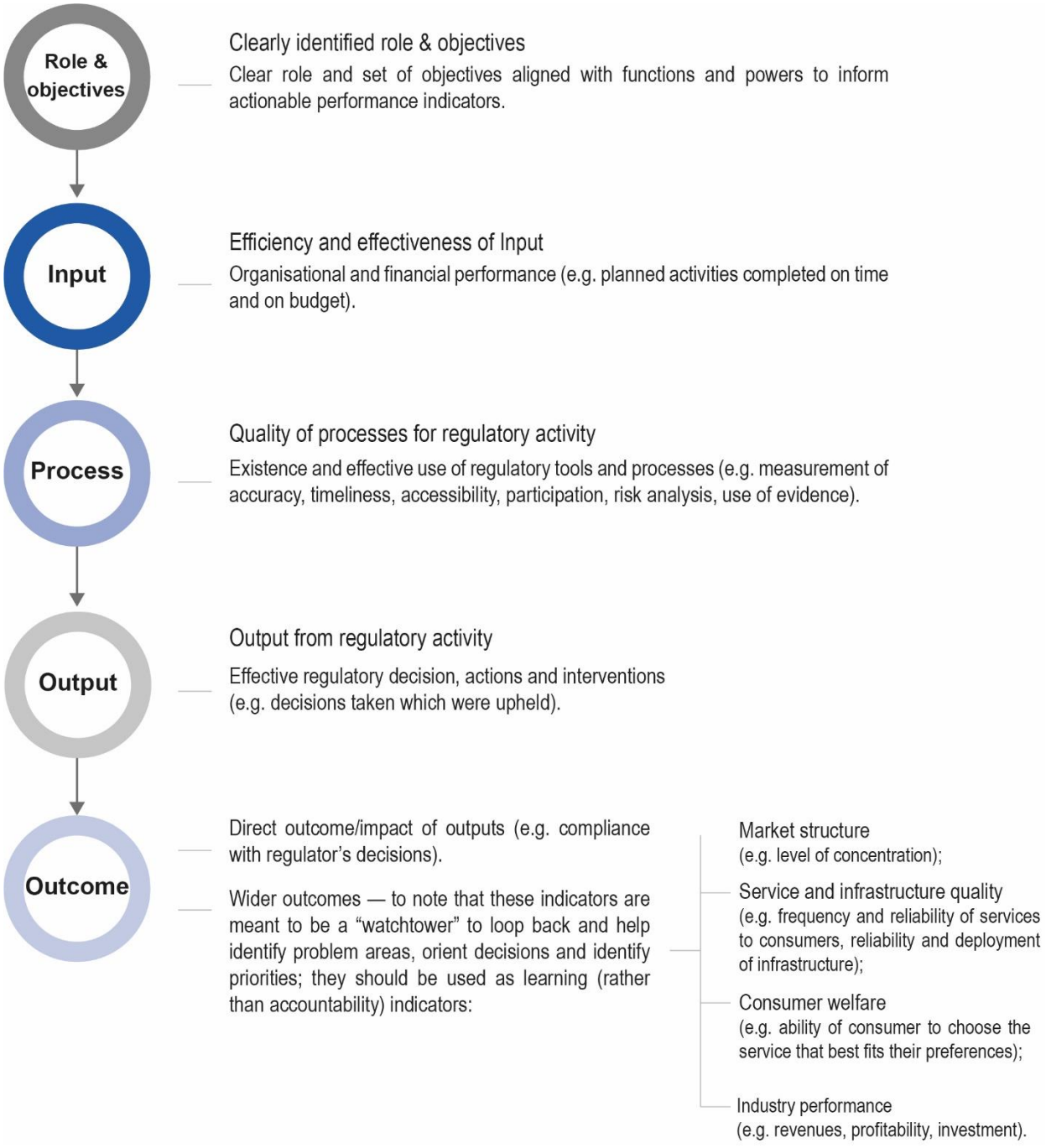
Source: OECD Analysis.

Performance indicators

For regulators, performance indicators need to fit the purpose of performance assessment, which is a systematic, analytical evaluation of the regulator's activities, with the purpose of seeking reliability and usability of the regulator's activities. Performance assessment is neither an audit, which judges how employees and managers complete their mission, nor a control, which puts emphasis on compliance with standards (OECD, 2004[18]).

Accordingly, performance indicators need to assess the efficient and effective use of a regulator's inputs, the quality of regulatory processes, and identify outputs and some direct outcomes that can be attributed to the regulator's interventions. Wider outcomes should serve as a "watchtower", which provides the information the regulator can use to identify problem areas, orient decisions and identify priorities (Figure A B.2).

Figure A B.2. Input-process-output-outcome framework for performance indicators



Notes: This framework was proposed in the initial methodology for the performance assessment framework for economic regulators (PAFER) discussed with the OECD Network of Economic Regulators (NER). It has been refined to reflect feedback from NER members and the experience of other regulators in assessing their own performance.
Source: (OECD, 2015[1]), Figure 3.3 (updated in 2017).

Approach

The analytical framework presented above informed the data collection and the analysis presented in the report. The present report looks at the internal and external governance arrangements of Peru's Supervisory Agency for Private Investment in Telecommunications (OSIPTEL) in the following areas:

- ***Role and objectives***: to identify the existence of a set of clearly identified objectives, targets, or goals that are aligned with the regulator's functions and powers, which can inform the development of actionable performance indicators;
- ***Input***: to determine the extent to which the regulator's funding and staffing are aligned with the regulator's objectives, targets or goals, and the regulator's ability to manage financial and human resources autonomously and effectively;
- ***Process***: to assess the extent to which processes and the organisational management support the regulator's performance;
- ***Output and outcome***: to identify the existence of a systematic assessment of the performance of the regulated entities, the impact of the regulator's decisions and activities, and the extent to which these measurements are used appropriately.

Data informing the analysis presented in the report was collected via a desk review and a fact-finding mission:

- ***Questionnaire and desk review***: OSIPTEL completed a detailed questionnaire which informed a desk review by the OECD Secretariat. The Secretariat reviewed existing legislation and OSIPTEL documents to update its understanding on the *de jure* functioning of the regulator, and to inform the fact-finding mission. This questionnaire was tailored to OSIPTEL for a follow-up review process of OSIPTEL's progress, based on the findings of the OECD 2019 PAFER report (OECD, 2019[10]), methodology already applied by the OECD to other regulators since 2015 and on the participation of OSIPTEL to OECD data collection exercises such as the 2018 Indicators on the Governance of Sector Regulators.
- ***Fact-finding mission***: the fact-finding mission focused on meeting OSIPTEL internal teams as well as external stakeholders. The mission took place between 13 and 16 June 2022, and it was a key tool to collect and complete the *de jure* information obtained through the questionnaire with the *de facto* state of play and progress on recommendations. The work of the fact-finding mission tailored the PAFER methodology to OSIPTEL features. Information collected was completed and checked with OSIPTEL for accuracy. The mission took place in Lima, Peru.

During the fact-finding mission, the team met with OSIPTEL's leadership team as well as a number of staff from across the institution. In addition, the team met with government institutions and external stakeholders, including:

- Presidency of the Council of Ministers (*Presidencia del Consejo de Ministros*, PCM)
- Ministry of Transport and Communications (*Ministerio de Tranporte y Comunicaciones*, MTC)
- Congress of the Republic of Peru (*Congreso de la República del Perú*)
- National Institute for the Defense of Competition and Intellectual Property (*Instituto Nacional de Defensa de la Competencia y Protección de la Propiedad Intelectual*, Indecopi)
- National Telecommunications Programme (*Programa Nacional de Telecomunicaciones*, Pronatel)
- Peruvian Association of Consumers and Users (*La Asociación Peruana de Consumidores y Usuarios*, ASPEC)
- Institute for the Legal Defense of the Environment and Sustainable Development (*Instituto de Defensa Legal del Ambiente y el Desarrollo Sostenible*, IDLADS)
- Operators in the telecommunications sector – América Móvil, Entel, Bietel and Telefónica del Perú

- Users' council of OSIPTEL (Consejo de Usuarios del OSIPTEL)
- Augusto Álvarez Rodrich, economist and journalist, former OSIPTEL Board member

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The Governance of Regulators

Progress Review of Peru's Telecommunications Regulator

DRIVING PERFORMANCE

Regulators act as "market referees", balancing often competing interests of stakeholders, including governments, current and future actors in the markets, and consumers. At the same time, markets are changing at an unprecedented pace due to new technologies, the international drive toward carbon-neutral economies, shifts in consumer needs and preferences, and, more recently, the profound changes brought by the COVID-19 pandemic. Assessing the performance of economic regulators must therefore be a continuous effort.

This progress review evaluates the changes put in place by Peru's telecommunications regulator, OSIPTEL, since the previous OECD performance assessment review in 2018, in the interest of increasing the effectiveness of its regulatory activities and improving final outcomes for consumers and the economy.

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