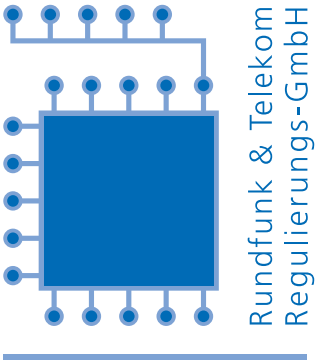
Communications Report 2007



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Preface

In its work program for 2007-2008 in the field of information and communications technologies, the European Commission calls for a reshaping of Europe's economy and society in order to be sustainably equipped to meet the challenges of the 21st century. The Commission also emphasizes the importance of developing information and communications technologies (ICT) in order to stimulate innovation in European industry and to reduce the digital divide in society.

In its 2007 program, the Austrian government also addresses the topic of media and telecommunications. The government's program refers to the convergence of broadcasting, print media and online media as well as the entire field of information and communications technologies (e.g., the Internet, fixed-link technologies and mobile telephony). Content is now offered independently of transmission modes. At the same time, the program notes that the convergence of media also requires convergent structures. As a result, one special objective of the Austrian government is to establish an independent media authority in November 2008. Another major goal is to position Austria among the top three ICT nations and to provide broadband infrastructure for the entire population.

The European and Austrian plans for the future have various effects on the development of Austria's national communications markets as well as the work of the relevant regulatory institutions, specifically RTR, KommAustria and the TKK. One focus area which – especially in light of the government's program – has a substantial effect on RTR's regulatory work and its activities as a competence center is the field of convergence and its effects on communications networks, services and applications as well as the development of terminal devices and gradually changing consumer behavior. Another focus area on which the regulatory authorities have concentrated heavily since last year is the new legal framework presented by the European Commission in November 2007. This new framework also deals with the future of the digital dividend, an area in which the Austrian regulatory authorities plan to contribute a great deal of know-how.

The Communications Report, which is published every year in fulfillment of RTR's legal reporting requirements under the KommAustria Act (KOG) and the Telecommunications Act (TKG) 2003, documents the authorities' work with regard to broadcasting, the Austrian Digitization Fund, the Austrian Television Fund, press and journalism subsidies as well as electronic signatures and telecommunications. The report also contains information about RTR's activities as a competence center, and about developments and trends on the Austrian communications markets. Finally, we provide a brief description of RTR as an organization which – in line with its legal mandate – is managed according to the principles of economy, thrift and expedience as is prevalent in the private sector.

We sincerely hope that this publication provides you with a comprehensive and interesting picture of RTR's activities as well as the development of the ICT sector in Austria.

Vienna, June 2008 *Alfred Grinschgl* *Georg Serentschy*

1. Management Summary

1.1 Introductory remarks

The 2007 Communications Report serves to meet all of RTR's legal reporting requirements under the KommAustria Act (KOG) and the Austrian Telecommunications Act 2003 (TKG 2003).

- Represented by its two managing directors for the Telecommunications and Broadcasting Divisions, RTR is required under Art. 7 Par. 2 KOG to report to its owner (the Austrian federal government) on the company's business activities. In this context, the Communications Report must provide a specific account of the duties RTR fulfilled, its staff development as well as its operating expenses for the year.

- In addition, RTR also reports to the relevant bodies in the Austrian federal government and to the National Council (one of the two chambers of the Austrian Parliament) on the fulfillment of its regulatory objectives as established in the relevant material laws. This report focuses on RTR's obligations under Art. 34 Par. 2 TKG 2003, and pursuant to Art. 24 Par. 2 TKG 2003 it must also include information on dishonest practices in the provision of value-added services as well as the measures taken to combat such practices (cf. Section 4.2.16).

- Finally, the Communications Report provides in-depth and realistic insights into the problems and challenges addressed by the regulatory authorities and RTR in fulfilling their obligations and objectives in the interest of consumers and the economy during the reporting period.

In this year's report, content which has been described extensively in previous years has been abridged in such a way that the complex concepts and circumstances remain understandable for first-time readers but do not burden our "veteran" readers with repeated information.

The Communications Report is structured as follows:

1. **Management Summary:** In addition to giving the reader a brief overview of RTR's reporting obligations and the additional information contained in the report, this section summarizes the essential contents of the report and provides an outlook for the year 2008.

2. **Regulatory authorities and environment:** This section comprises an appropriately brief discussion of how the regulatory institutions contributed to the attainment of regulatory objectives as specified in the relevant legislation (TKG 2003, KOG, SigG) and describes the national and international regulatory environment.

3. **Decisions of the high courts, Administrative Court and Constitutional Court:** This section briefly describes the relevant lines of command and provides an overview of proceedings pursued before the Austrian Administrative Court and Constitutional Court.

4. RTR's activities in 2007: This part provides information on RTR's regulatory work in the Broadcasting and Telecommunications Divisions with due attention to the achievement of regulatory objectives.

5. The Austrian communications markets: This section contains a variety of information and data on the development and state of the advertising market (broken down into major media categories) as well as the markets for listeners, viewers and readers. The information on advertising and consumer markets is based on data which is collected regularly and generally acknowledged by market participants (e.g., data from FOCUS Media Research and the Austrian Media Analysis). Based on the overall development of the telecommunications market, this section also provides detailed information on rates and charges as well as revenues and market volumes.

6. RTR as a competence center: This section describes the activities undertaken by RTR in its capacity as a competence center in the year 2007.

7. The company: In this section, we provide information on the development of RTR's staff size, its financial statements and the members of the RTR Supervisory Board.

In this report, RTR's management gives an account of the operational implementation of regulatory objectives in the interest of all market participants and for the benefit of the consumer. For RTR's management, striving for efficiency in execution and for effectiveness in attaining regulatory objectives as well as international benchmarking are important elements in its provision of services and its activities as a competence center.

1.2 Broadcasting: Contribution to the achievement of objectives under the KommAustria Act (KOG)

The objectives to be pursued by KommAustria and thus also by the Broadcasting Division in their regulatory activities are defined as follows in Art. 2 Par. 2 of the KommAustria Act:

1. to facilitate market access for new providers;
2. to ensure the diversity of opinions and encourage quality in broadcasting programs, including the technical prerequisites for their dissemination;
3. to develop technical and economic plans for dual broadcasting in Austria;
4. to ensure that content providers adhere to European minimum standards, especially in the interest of child, youth and consumer protection;
5. to optimize the utilization of Austria's broadcasting frequency range;
6. to provide expert knowledge on convergence between audiovisual media and telecommunications, and to promote the development of markets in the audiovisual and telecommunications sectors;
7. to create and maintain modern, high-quality communications infrastructure in order to reinforce the high quality of Austria as a media location.

All of the activities carried out by KommAustria and RTR's Broadcasting Division can be attributed to these seven legally required objectives. Below we provide a description of how our activities in 2007 served to achieve specific objectives under Art. 2 Par. 2 KOG.

One essential part of the regular work and ongoing procedures handled by KommAustria and the Broadcasting Division at RTR serves the purpose of increasing media diversity and thus also facilitating market access for new providers – both in radio and in television. In this context, the coverage areas of the 21 private radio broadcasters which launched operations on April 1, 1998 – nearly ten years ago – were put out to tender for relicensing. Some of the licenses in question were already issued to the applicants in 2007, while a slightly larger share of radio broadcasters received their licenses in the first quarter of 2008. Moreover, new and additional radio broadcasting licenses were issued, specifically for the LINZ 91.8 MHz frequency and the "Linz, Wels and Steyr" coverage area. In the field of television, a number of new broadcasters emerged in terrestrial broadcasting, namely ORF Sport Plus, 3sat and PULS 4 on the digital MUX B, which is operated along with MUX A by ORS. Finally, digital terrestrial platforms for local and regional television (MUX C) and for mobile television (MUX D) were also put out to tender.

The licensing selection procedure (or "beauty contest") required by law ensures that decisions always take into account the need to secure a diversity of opinions in the media for the relevant coverage area.

The authority promotes the quality of broadcasting programs through various education and training measures for broadcasters, to name just one example. In its capacity as a competence center, RTR has provided expertise and financial support for two initiatives launched by private (commercial and non-commercial) broadcasters.

Another constant endeavor in the authority's regulatory work is to promote the technical prerequisites for the dissemination of broadcasting programs. In coordination with the frequency administrations in neighboring countries, our primary concern in this area is to optimize the performance parameters of frequencies used in Austria. In addition, all activities related to the launch of digital broadcasting ultimately contribute to improving technical dissemination capabilities.

The continued development of the dual broadcasting market is also a key premise for future strategic efforts on the television market.

In its capacity as the legal supervisory authority for private television and radio broadcasters, KommAustria works constantly to ensure and enforce minimum European standards, especially in the interest of child, youth and consumer protection. In particular, the authority's activities in advertising monitoring represent an ongoing contribution to ensuring these standards.

All activities in the field of broadcasting frequency management and a great deal of work related to broadcasting digitization are guided by the objective of optimizing the use of the frequency spectrum. Broadcasting frequencies are a scarce commodity, especially in a country such as Austria due to its topography and numerous neighboring countries. As a result, the efficient use of transmission capacities also plays an especially important role in licensing selection procedures.

The provision of expert knowledge on the convergence of audiovisual media and telecommunications concurs with RTR's self-perception as an independent and transparent service organization for all stakeholders, including market participants, consumers and politicians. This expertise is disseminated through publications, events and ongoing responses to specialist inquiries of all kinds.

All of RTR's activities in connection with broadcasting digitization pursue the ultimate goal of creating modern, high-quality communications infrastructure in order to promote Austria's location quality at a high level. This objective is especially important to Austrian television broadcasters. In an even broader context, sustainable communications infrastructure is also a significant factor in maintaining Austria's cultural identity. Along with the increasing diversity of offerings in the field of television, we can highlight the expansion of the nationwide multiplex platform, the tender procedures for regional and local multiplex platforms as well as a multiplex platform for mobile terrestrial broadcasting (mobile TV) as especially significant developments in 2007.

1.3 Telecommunications: Contribution to the achievement of objectives under the TKG 2003 (report pursuant to Art. 34 Par. 2 TKG 2003)

The objectives of regulation and the duties of the regulatory authorities are set forth in the Austrian Telecommunications Act 2003 (TKG 2003). Through its specific activities in the year 2007, RTR was able to make substantial contributions to the attainment of these objectives.

In brief, all activities pursue the following objectives:

- to ensure clarity in general conditions for the market;
- to enforce obligations and rights;
- to allocate scarce resources fairly, transparently and in a non-discriminating manner;
- to ensure consumer protection;
- to promote investment and innovation;
- to support harmonization at the EU level.

These goals are pursued in the interest of equitable, sustainable and functioning competition.

Several examples of RTR's specific contributions in 2007 are described briefly in this section.

Ensuring competition

The regulatory authority is required by law to review the results of market analysis procedures at least every two years. These reviews continued in 2007, for example in the definition of the wholesale broadband market. Likewise, mobile termination markets, the transit markets and the fixed-link origination market were re-analyzed.

Enforcement and adaptation of imposed obligations

On the basis of market analyses, companies deemed to possess significant market power are subjected to regulatory measures which represent suitable remedies for existing or potential competition problems. This is handled in the course of the market analyses. In many cases (e.g., in the area of interconnection), it is then necessary to carry out further procedures in order to enforce these obligations on the market. Rates and charges have also been an important issue in these procedures. One especially interesting issue in 2007 was the redefinition of the "glide path" for mobile termination fees.

In the field of unbundling, activities in 2007 focused on the enduring issue of unbundled local loop rental rates as well as topics such as process optimization and collocation (i.e., housing the equipment of alternative providers in Telekom Austria's facilities).

Frequencies

In preparation for a planned frequency allocation procedure, a consultation was carried out on the 2010-2020 MHz and 2500-2690 MHz frequency ranges and on the future use of the 900/1800 MHz ranges. The core topics in this consultation were general technical conditions and specific issues related to the allocation procedure (e.g., frequency packet sizes and the time of the invitation to tender).

With regard to the use of the 900/1800 MHz ranges, which are currently reserved for GSM services, the consultation focused on the possibility of opening these ranges up for additional mobile communications technologies (e.g., UMTS).

Mergers

Telekom Austria's acquisition of eTel Austria AG was subject to a number of conditions which were required in order to minimize adverse effects on competition. The regulatory authority supported the Federal Competition Authority and the Cartel Court in these procedures.

Supervisory procedures

Supervisory procedures were required in a wide variety of areas. A selection of relevant topics from the year 2007 includes:

- Suspicion of the unauthorized setup of carrier selection;
- Interference by transmission systems in upstream facilities;
- Unauthorized disclosure of end-consumer data;
- Violation of non-discrimination obligations in connection with a wholesale broadband product;
- Product bundling and discrimination.

Adaptation of communications parameters

The second amendment to the Communication Parameters, Fees and Value-Added Services Ordinance (KEM-V) went into effect during the reporting period. This amendment introduced the 116 number range, which includes the first service harmonized throughout the EU: 116 000, the "missing children hotline."

International roaming

In mid-2007, the regulation on international roaming went into effect at the EU level. The purpose of this regulation is to reduce retail as well as wholesale rates for voice roaming services. The regulatory authority observes and monitors adherence to this new regulation. RTR determined that Austrian mobile operators notified the appropriate rates and that the rates prescribed for retail consumers are already being applied.

Cooperation in developing the legal framework at the European level

In 2007, the European Commission published proposals for the further development of the regulatory framework (i.e., the "Review 2006"). RTR contributed actively to this process and submitted comments on all major issues within the framework of the European Regulators Group (ERG).

ENUM (Electronic Number Mapping)

Austria has taken a leading role worldwide in the field of ENUM. In order to maintain this position, the original contract signed by RTR and enum.at in 2004 was expanded to include infrastructure ENUM in 2006. In 2007, this contract was extended for another 2 years.

1.4 Outlook for 2008

1.4.1 Focus areas in the Broadcasting Division

Facilitating market access for new providers

This objective in the KommAustria Act (KOG) covers all of KommAustria's activities in the field of licensing and frequency allocation procedures for private radio and television broadcasting. One special focus in the year 2008 will be the completion of the next invitation to tender for the 21 radio broadcasting licenses granted in 1998, as their validity is limited to ten years and will expire on March 31, 2008.

Therefore, licensing and allocation procedures will also be the focus of RTR's regulatory activities in 2008.

Ensuring the diversity of opinions and encouraging quality in broadcasting programs

This objective is supported by all of KommAustria's activities in its legal supervision of private radio and television broadcasters, especially with regard to ownership, etc. Moreover, RTR also provides financial support for the education programs of both commercial and non-commercial private broadcasters. These activities will also continue in 2008.

Developing technical and economic plans for dual broadcasting in Austria

This objective comprises all of KommAustria's and RTR's activities in connection with the digitization of broadcasting, such as the commissioning of two studies on the digital radio market.

Enforcing regulations for child, youth and consumer protection as well as advertising regulations

In its capacity as the legal supervisory authority for private broadcasters and in its advertising monitoring activities for private broadcasters and the Austrian Broadcasting Corporation (ORF), KommAustria ensures that regulations pertaining to child, youth and consumer protection are observed.

Creating and maintaining modern communications infrastructure

One special focus in the fulfillment of this objective is RTR's regulatory support for the transition to digital terrestrial television (DVB-T). At the end of 2007, coverage with MUX A (ORF 1, ORF 2 and ATV) had reached 87% of the population, and coverage with MUX B (ORF Sport Plus, 3sat and PULS 4) had reached 81% of the population. The level of analog coverage – that is, the areas which have not been switched over completely – was 18% to 22% for ORF channels and 4.5% in the case of ATV. Efforts to increase nationwide DVB-T coverage (MUX A) will be intensified even further in regional and local areas in 2008.

Activities in this area will also focus on issuing licenses for the planning, technical construction and operation of local and regional terrestrial multiplex platforms (MUX C) as well as the construction and operation of a nationwide multiplex platform for mobile terrestrial broadcasting (MUX D) which will enable television reception on cell phones.

Whether – and most importantly, when – digital radio will be introduced in Austria will be the subject of the two studies commissioned by RTR (one jointly with the Federal Chancellery), as mentioned above.

1.4.2 Focus areas in the Telecommunications Division

Competition regulation

In the field of telecommunications competition regulation as laid down in Section 5 of the Telecommunications Act 2003, RTR plans to review the Telecommunications Market Ordinance 2003 (TKMVO 2003) in the course of the year 2008. In this context, RTR will have to take into account the new recommendation of the European Commission on relevant product and service markets within the electronic communications sector, which was published on November 13, 2007. Moreover, due to the fact that the Commission's recommendation has changed, RTR will deal intensively with issues of market delineation on the basis of the "Three-Criteria Test" (see Section 4.2.1.2).

Demand-side survey on broadband services

As was already the case in November 2006, another survey on the use of broadband services among residential and business customers will be carried out toward the end of 2008. The main objective of this survey will be to assess the potential for demand-side substitution between various modes of access (especially DSL, cable and mobile broadband). The data will also be used to estimate price elasticities in demand for the various types of access. The results of the survey will then be accounted for in the delineation of the wholesale broadband market, which will be carried out once again in early 2009.

Demand-side survey on mobile number porting (MNP)

As MNP has been possible on the Austrian market for three years now, a review of the adequacy and practicability of the framework defined by the TKK is scheduled for the year 2008. In order to answer these questions and to obtain detailed information on the porting-related behavior of residential and commercial customers, a market research institution will be hired to carry out the corresponding statistical surveys.

Enhanced market dialog

Over the year 2007, RTR invited market participants to intensify their dialog with the regulatory authority. The reasons for this step can be found in changes at the European level, shifts due to investments in next-generation networks (NGNs) and next-generation access (NGA) as well as the need to evaluate new charging modes between network operators. This is mainly relevant to the future regulation of termination fees.

International activities

On the basis of resolutions passed by the ERG in 2006, cooperation between national regulatory authorities and the European Commission was further reinforced, new and more detailed common positions were developed, and adherence to those positions was reviewed in 2007.

In terms of content, the work program for 2008 is based on current market developments. Activities in the year 2008 will focus on the revision of the European Union's legal framework. The national regulatory authorities will support the process with their expertise on ongoing implementation and detailed knowledge in the form of opinions and comments, reports and recommendations.

Specifically, the following topics have been placed on the agenda for 2008:

1. Review of the legal framework

2. Harmonization

Topics in this area include:

- Further development of IRG and ERG common positions;
- Monitoring and reports on adherence to common positions;
- Identification of additional focus areas for harmonization;
- Article 7 expert reports; and
- Roaming (voice and data).

3. Future topics

The following future topics have been identified for 2008:

- Convergence;
- Future charging models between network operators;
- IP-related challenges; and
- Next-generation networks (NGNs).

Next-Generation Networks (NGNs)

The topics surrounding NGNs deal with the migration of classic telecommunications networks toward next-generation packet-based networks, with a distinction being made between developments in the core network (next generation core) and in the access network (next generation access, or NGA). The accompanying technical and economic changes will bring about regulatory challenges at various levels of the value chain, and such challenges have to be discussed at both the national and international level. Specifically, RTR plans to hold general discussion events on the topic, to offer tutorials and lecture series at the expert level, and to establish an industry work group in 2008. These activities are intended to increase awareness of the upcoming changes on the market and to stimulate the timely development of common positions and procedures in a cooperative dialog with market participants.

Frequencies

With regard to frequencies, three central topics will be especially relevant in the year 2008. First, the TKK will have to review whether the allocation holders in the 3.5 GHz frequency range ("WiMAX") have complied with the coverage obligations imposed on them. The corresponding review procedures will begin in early 2008. Moreover, spectrum which has been returned by Telekom Austria will also be available for allocation. Second, we can expect the Federal Ministry of Transport, Innovation and Technology (BMVIT) to assign the IMT-2000 expansion bands in the 2.6 GHz range to the TKK for allocation in the year 2008, after which the frequencies will be put out to public tender. The auction and definitive allocation of these frequencies will take place in late 2008 or early 2009. Third, the topic of refarming GSM frequencies for IMT-2000 is also becoming increasingly important. As the TKK must consent to such a change in usage, this issue will be another focus of regulatory activities. RTR already began its preparations in 2007 by carrying out a consultation on this topic. From the current perspective, we can expect this issue to remain on the authority's working agenda throughout the year 2008.

Communications parameters

In the course of the year 2008, the regulatory authority and market participants will engage in a broad-based discussion of further developments related to numbering. This discussion will primarily focus on the issue of whether it is permissible to use geographical telephone numbers for VoIP-based services which do not provide physical subscriber access. Through the development of new technologies – especially VoIP and NGN – questions have been raised repeatedly as to the conditions under which geographical numbers can (also) be used in connection with VoIP and whether the restrictive regulations currently applied in this area are appropriate to the present situation.

Monitoring of value-added services

With regard to the provision of value-added services, experience in recent years has shown that the provisions of the relevant ordinances (especially the KEM-V), which are considered sufficient in their current form, are not observed by all service providers. This has also led to an increase in the number of dispute resolution cases, especially in connection with value-added text message services (SMS).

Therefore, RTR will focus more sharply on monitoring in the future. These activities will include ongoing monitoring as well as a dialog with operators, service providers, interest groups and government authorities (telecommunications authorities, police, public prosecutors). These networking activities will enable timely, coordinated and bundled measures in cases of misuse. The objective in this context is to create fair conditions for competition and to enhance consumer protection in this area.

1.4.3 RTR's focus areas as a competence center

Convergence

Current developments such as DVB-H and IP-TV have already brought about convergent implementations in the media world, and RTR plans to address specific areas in greater detail on the basis of previous work. Examples include the topic of "associated facilities," which is a critical issue with regard to competition, and a comparison of the cost structures of audiovisual transmission services on different network platforms. RTR's activities in relation to convergence will continue to involve both divisions of the organization.

Information and communications technologies (ICT)

In its capacity as a competence center, RTR will continue to provide support for the Federal Chancellery, the Federal Ministry of Transport, Innovation and Technology, and the ICT Task Force. Moreover, selected ICT indices and their evaluation methods will be analyzed in order to develop a better understanding of Austria's position and to take targeted measures in this regard. In order to provide an overview of ICT activities in Austria, an ICT platform will be set up on the Internet and will provide comprehensive information on the Austrian ICT sector. With regard to broadband infrastructure, preparations have been made for the creation of a broadband coverage map of Austria; this map will also provide information on the technologies available in each geographical area.

2. Regulatory authorities and environment

2.1 Regulatory authorities

In implementing the Austrian Telecommunications Act 1997 (TKG [1997]), two regulatory authorities for telecommunications were established in Austria: The Telekom-Control Commission (TKK) and the Austrian Regulatory Authority for Broadcasting and Telecommunications (formerly known as Telekom Control-GmbH). On the basis of the KommAustria Act (KOG), KommAustria was set up in 2001 as a regulatory authority for the broadcasting market.

Liberalization began with the establishment of the regulatory authorities.

The duties and objectives of all regulatory authorities responsible for the communications markets are defined in the relevant laws, specifically in the Austrian Telecommunication Act 2003 (TKG 2003) and the KommAustria Act (KOG). For example, the Telecommunications Act calls for the creation of modern electronic infrastructure, ensuring equal opportunities and functional competition as well as promoting and protecting the interests of the users. The KommAustria Act defines the specific duties of the regulatory authority as follows: issuing broadcasting licenses, legal supervision of private broadcasting organizations, administration of the resources in the Austrian Digitization Fund and Austrian Television Fund, and monitoring adherence to advertising regulations by private broadcasters as well as the Austrian Broadcasting Corporation (ORF). Regulatory objectives include facilitating market access for new providers, creating and maintaining high-quality communications infrastructure in order to promote high-level locational quality, and providing expert knowledge on convergence between audiovisual media and telecommunications.

2.1.1 Austrian Regulatory Authority for Broadcasting and Telecommunications (Rundfunk und Telekom Regulierungs-GmbH; RTR)

RTR is a convergent regulatory authority which is wholly owned by the Republic of Austria. RTR is managed by two directors: The managing director of the Broadcasting Division was previously appointed by the Federal Chancellor (now by the Federal Minister for Women, Media and Civil Service), while the managing director of the Telecommunications Division is appointed by the Federal Minister of Transport, Innovation and Technology. With regard to the specific technical matters handled by these divisions, the managing directors run their respective units separately; in all other matters, decisions are made jointly by both directors.

Continuity ensured in RTR's management

During the 2007 business year, the managing director of the Broadcasting Division was Alfred Grinschgl, while the managing director for the Telecommunications Division was Georg Serentschy, who was confirmed in November 2007 for a maximum term of three additional years until the establishment of a media authority.

The duties assigned to RTR by law can be subdivided into the following areas:

1. Operational support for the TKK and KommAustria;
2. Execution of official duties in the Telecommunications Division (e.g., powers to issue ordinances and to carry out procedures in the field of numbering);
3. Performance of duties under the Signatures Act (SigG);
4. Administration and allocation of grants from the Austrian Digitization Fund and Austrian Television Fund (handled by the Broadcasting Division);
5. Management of a competence center for issues related to media and telecommunications convergence (both divisions);
6. Maintenance of the list pursuant to Art. 7 of the Austrian E-Commerce Act (ECG).

All of the activities carried out in 2007 contributed to achieving the regulatory authorities' objectives as defined in the relevant Austrian laws.

2.1.2 Telekom-Control Commission (TKK)

The Telekom-Control Commission was set up as a panel authority with the powers of a court and makes major decisions in connection with telecommunications regulation. The authority is not bound by instructions from any authority. The Commission also acts as the supervisory authority for electronic signatures. Each member of the Commission is appointed for a term of five years. In the year under review, the Commission comprised the following members:

From January 1, 2007 to November 4, 2007:

- Eckhard Hermann (Chairperson)
- Erhard Fürst
- Gottfried Magerl
- Elfriede Solé (Alternate Member)
- Martin Hagleitner (Alternate Member)
- Peter Knezu (Alternate Member).

As of November 5, 2007, the federal government and the Federal Minister of Transport, Innovation and Technology appointed the following members and alternate members to the TKK:

New members since November 2007

- Elfriede Solé (Chairperson)
- Erhard Fürst
- Günter Haring
- Eckhard Hermann (Alternate Member)
- Mathias Grandosek (Alternate Member)
- Otto Petrovic (Alternate Member).

A comprehensive list of the TKK's duties can be found in Art. 117 TKG 2003.

2.1.3 Austrian Communications Authority (KommAustria)

KommAustria reports directly to the Austrian Federal Chancellery and was headed by Michael Ogris in 2007. In its business operations, KommAustria acts as an independent body and relies on RTR for operational support in the performance of its duties in broadcasting regulation.

Within the scope of its official activities, the authority makes first-instance decisions and performs its duties in broadcasting regulation in accordance with the following laws:

- KommAustria Act (KOG)
- Private Radio Act (PrR-G)
- Private Television Act (PrTV-G)
- Telecommunications Act 2003 (TKG 2003)
- Access Control Act (ZuKG).

Moreover, KommAustria is assigned additional official duties and responsibilities in private-sector administration for the federal government, for which RTR is essentially responsible for providing infrastructure:

- Since 2004, KommAustria has been responsible for administering and allocating federal press and journalism subsidies on the basis of the Press Subsidies Act 2004 (PresseFG 2004) and the Journalism Subsidies Act 1984 (PubFG).

- Since mid-2006, KommAustria has also acted as the supervisory authority for collecting societies under the Collecting Societies Act 2006 (VerwGesG 2006). In terms of organization, this area is separated from KommAustria's other activities and is therefore not covered by this report on RTR's activities.

2.2 National regulatory environment

In order to achieve the regulatory objectives defined under Austrian law, the regulatory authorities cooperate with numerous national and international institutions, many of which are described in brief below.

Federal Chancellery (BKA)

As authorities which are subordinate to the Federal Chancellery, KommAustria and RTR are now bound by the instructions of the Federal Minister for Women, Media and Civil Service in their handling of broadcasting affairs. This change came about due to a resolution issued by the Austrian Federal President on March 1, 2007. At the operational level, RTR cooperates closely with the Media Department (V/4) in the BKA's Constitutional Service, especially in legal matters, in matters related to broadcasting digitization and the continued development of a dual broadcasting market, and in events pertaining to media policy.

Federal Ministry of Transport, Innovation and Technology (BMVIT)

The Federal Ministry of Transport, Innovation and Technology is responsible for defining the general framework for the telecommunications market. The managing director of the Telecommunications Division is bound by the instructions of the Federal Minister of Transport, Innovation and Technology.

On the basis of experience in day-to-day implementation (e.g., in the Communications Committee, or CoCom), RTR advises the Ministry on the further development of this framework.

Telecommunications authorities

The duties of the telecommunications authorities – which include the Federal Ministry of Transport, Innovation and Technology (as the highest authority), the Telecommunications Offices, as well as the Office for Radio Systems and Telecommunications Terminal Equipment – are governed by Articles 112 to 114 TKG 2003. For the Telecommunications Division, it is important to emphasize the competence of the telecommunications authorities as the first-instance administrative penal authority as well as their competence in granting rights of way and in allocating frequencies.

KommAustria is responsible for managing the frequency spectrum for terrestrial broadcasting and for issuing building and operating permits for terrestrial broadcasting facilities. Monitoring adherence to the technical parameters approved for such facilities is the responsibility of the telecommunications authorities.

Digital Platform Austria

The Digital Platform Austria working group was established by the Austrian Federal Chancellor under Art. 21 of the Private Television Act (PrTV-G) in order to support the regulatory authority in creating a scheme for the introduction of digital broadcasting. The group's activities are managed by the regulatory authority (KommAustria) and by RTR. The working group consists of over 300 experts representing broadcasters, service providers, network operators, industry, trade, science and research, as well as consumer protection organizations and other stakeholders.

Broadcasting Advisory Board

This board was set up as an advisory body for KommAustria and must be given the opportunity to submit comments before private broadcasting licenses are issued or changes in programming are approved.

The Broadcasting Advisory Board consists of six members appointed by the Austrian federal government.

Until the end of May 2007, the Board comprised the following members:

- Eduard Pesendorfer (Chairperson)
- Christian Jelinek (Deputy Chairperson)
- Milan Frühbauer
- Karl-Heinz Petritz
- Michael Rami
- René Tritscher.

On May 30, 2007, the Austrian federal government appointed the following members for the second six-year term of the Broadcasting Advisory Board:

New Broadcasting Advisory Board since end of May 2007

- René Tritscher (Chairperson for three years)
- Astrid Zimmermann (Deputy Chairperson for three years)
- Barbara Auzinger
- Gerald Grünberger
- Eduard Pesendorfer
- Harald Stockbauer.

Federal Communications Senate (BKS)

The Federal Communications Senate established within the Federal Chancellery is responsible for handling appeals against KommAustria decisions and for legal supervision of the Austrian Broadcasting Corporation (ORF).

A majority of the five members of the BKS must be appointed judges in Austria, and according to Art. 12 Par. 1 KOG they are independent and not bound by instructions in the performance of their duties. The members of this body are nominated by the federal government and appointed by the Austrian president.

Federal Competition Authority

The regulatory authorities also cooperate with the Federal Competition Authority, which has the right to submit comments and motions in matters related to general competition law.

Other organizations and national working groups

In addition to the bodies mentioned above, RTR also cooperates with other relevant institutions and organizations, such as the Austrian Federal Economic Chamber, Austrian Chamber of Labor, Consumer Information Association, universities and specialized colleges as well as the Telecommunications Research Center Vienna and the Working Group for Technical Coordination in Telecommunications (AK-TK).

2.3 International regulatory environment

Focus: new legal framework

In the Telecommunications Division, developments in the year 2007 were dominated by discussions on the reform of the legal framework in the course of the Review 2006. The review process is motivated by current market developments (such as increasing convergence) as well as experience with the legal framework introduced in 2002. Specifically, the European Commission expects the drafts presented in November 2007 to bring about the following improvements:

- More competition by introducing a new regulatory instrument, namely the functional separation of infrastructure and services. This separation is intended to ensure that new providers are granted more fair and non-discriminatory access to the networks of the former telecom monopolies.

EU-level regulatory authority proposed

- More centralized regulation and establishment of a regulatory authority at the EU level: One frequently discussed issue is the proposed establishment of a European Electronic Communications Market Authority (EECMA). Instead of the current practice of national telecom regulators cooperating in the European Regulators Group (ERG) and Independent Regulators Group (IRG), a new authority with approximately 130 employees has been proposed. Among other things, this authority would address the proposed extension of the European Commission's veto powers with regard to regulatory measures. The ERG has publicly expressed its opposition to the establishment of the new authority and an extension of the European Commission's veto powers, and the group is preparing a practice-oriented alternative.

Use of the "digital dividend"

- "Digital dividend": The transition from analog to digital television has made certain broadcasting frequencies available. The proposals call for these frequencies to be traded throughout Europe and to be used for services more flexibly. The European Commission hopes that this will bring about better coverage with high-speed wireless Internet services in rural areas.

- Reinforcing the rights of consumers, for example by requiring operators to enable customers to switch from one service provider to another more quickly or to ensure that toll-free numbers are also reachable from abroad.

- Greater transparency of rates and charges for retail customers.

- More security: Tighter regulations are proposed in order to combat spam, viruses and other attacks on computers and networks.

Initial discussions were already launched in the Council working groups in late 2007. In the next step, the telecom package will be presented to the European Parliament and the relevant Council of Ministers. The proposals are expected to take effect in 2010.

In addition to the general review, activities in this area focused on two other topics:

- Revision of the markets recommendation: At the end of 2007, the European Commission published a new relevant markets recommendation which calls for a reduction of the number of relevant markets from 18 to seven. For example, the number of retail voice telephony markets is to be reduced from six markets to one access market.

New markets recommendation: less regulation

- Introduction of a new EU-level regulation on international roaming: With the new regulation on wholesale and retail rates introduced in the summer of 2007, the regulatory authorities as well as the ERG took on additional duties in the implementation of this regulation, especially with regard to monitoring.

"Eurotariff" since summer 2007

3 Decisions of the high courts, Administrative Court and Constitutional Court

3.1 Lines of command and levels of appeal

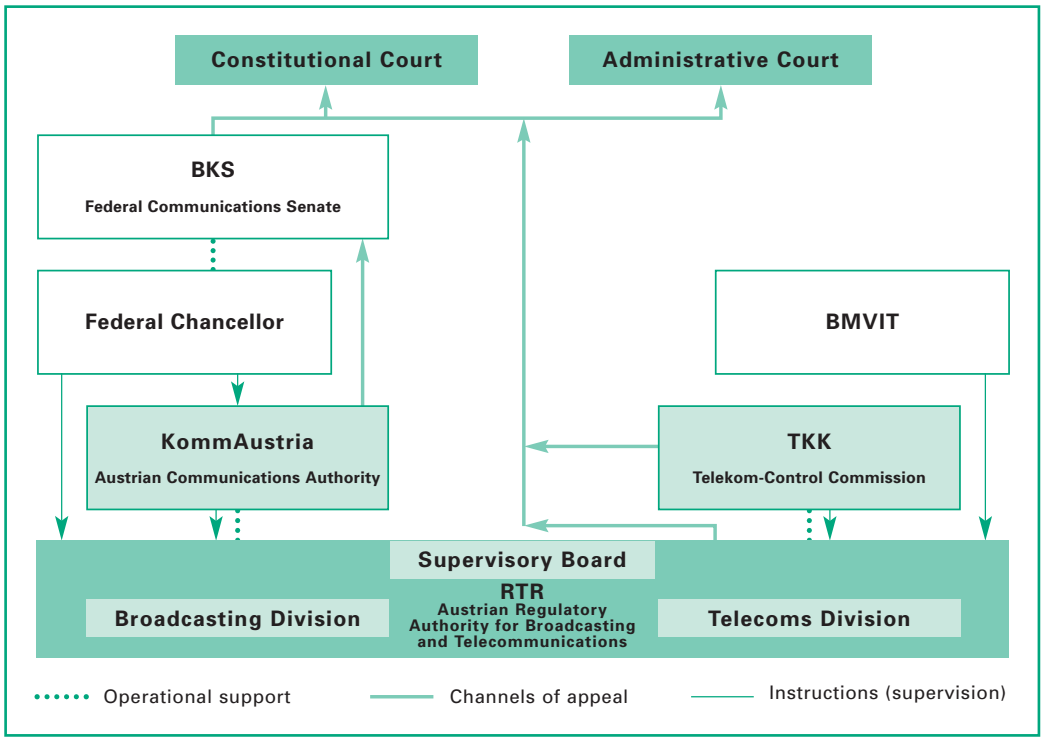
In the field of broadcasting, the Austrian Communications Authority (KommAustria) as well as the managing director of RTR's Broadcasting Division are bound by the instructions of the Federal Minister for Women, Media and Civil Service. Instructions to the managing director of the Broadcasting Division must be issued in writing and justified accordingly.

In the field of telecommunications, the Austrian Federal Minister of Transport, Innovation and Technology is authorized to issue instructions to the managing director of RTR's Telecommunications Division; these instructions likewise have to be issued in writing and justified accordingly.

Finally, the chairperson of the Telekom-Control Commission (or the member designated in TKK's rules of procedure) and the head of KommAustria also have the power to issue instructions to RTR's staff in specialist matters, except in the preparation of expert opinions.

TKK decisions can be contested by means of complaints filed with Austria's high courts (i.e., the Austrian Administrative Court and/or the Austrian Constitutional Court). Appeals against RTR's official decisions (in matters pertaining to the Telecommunications Division) can be submitted to the Austrian Administrative Court and/or the Austrian Constitutional Court, while appeals against KommAustria decisions can be submitted to the Federal Communications Senate (BKS) in the second instance. Further appeals against BKS decisions can be submitted to Austria's high courts.

Figure 1: Lines of command and levels of appeal



Source: RTR

3.2 Broadcasting Division

3.2.1 Federal Communications Senate

KommAustria's official decisions regarding broadcasting regulation issues can generally be contested by means of appeals, which are decided on by the Federal Communications Senate (BKS). The BKS issues decisions on the cases themselves and can amend official first-instance decisions in any way. As an exception, this competence is assigned to the Independent Administrative Board (*Unabhängiger Verwaltungssenat*) in Vienna for administrative penal cases.

Nearly all KommAustria decisions confirmed in second instance

In the reporting period, the BKS issued 25 decisions in response to appeals. Twelve of those official decisions were related to radio licenses or frequency allocations, with one decision issued in a substitute procedure in which KommAustria's decision was amended after being overturned by the Administrative Court. The BKS did not agree with KommAustria's assessment as to whether an event radio program fulfilled the relevant legal requirements. In all other cases, KommAustria's decisions were confirmed, including the license issued to a new radio station in Vienna (98.3 MHz) and the new licenses issued in Innsbruck (95.5 MHz and 99.9 MHz).

Three other decisions in the course of licensing procedures clarified the key procedural point that the tender submission period involves a substantive legal deadline where participation can not be permitted after such a deadline is missed.

In addition, the BKS issued rulings on official decisions made by KommAustria in connection with advertising monitoring in eight cases where violations were identified on the part of private broadcasters. In one case, the BKS partly confirmed the appeal, while in the other cases the decisions of KommAustria were confirmed in their entirety or violations of other advertising regulations were identified.

At the beginning of the year, the BKS confirmed two KommAustria decisions from 2006 which identified an SMP company on the two broadcasting transmission markets. In several respects, the specific obligations imposed in those decisions were amended. In addition, the BKS confirmed one KommAustria decision in which a fundamental change in the nature of a broadcaster's programming was not approved, as well as three decisions related to the assessment of financing contributions for RTR. Finally, the BKS also confirmed KommAustria's official request that ATV Privatfernseh-GmbH surrender certain frequencies previously used for analog transmission in connection with the digitization of television broadcasting.

In its capacity as the (first-instance) legal supervisory authority for ORF, the BKS also decides on reports filed by KommAustria in the course of its advertising monitoring activities (for further information, please refer to Section 4.1.5). In the period under review, twelve official decisions were issued in this regard; all but one decision identified violations of the ORF Act (ORF-G).

Outside of the field of broadcasting regulation, appeals against KommAustria's official decisions are handled by the Copyright Senate in matters related to the supervision of collecting societies, and otherwise the Federal Chancellor or the Federal Minister for Women, Media and Civil Service decides on appeals (in exceptional cases, for example in connection with press subsidies). In the reporting period, one appeal pertaining to a decision on press subsidies was rejected, as such decisions in private-sector administration activities for the federal government are not issued in the form of official decisions.

3.2.2 Proceedings before the Administrative Court (VwGH)

The Administrative Court reviews official decisions issued by the BKS.

BKS decisions on appeals are subject to review by the Administrative Court. In contrast to the BKS, the Administrative Court does not decide on the cases themselves; instead, it can overturn BKS decisions where appropriate, which subsequently requires the BKS to amend its decision.

In the reporting period, the Administrative Court ruled on one case related to the monitoring of private radio broadcasters' advertising and on two official decisions related to press subsidies. None of the decisions were overturned. Nine additional rulings handed down by the Administrative Court pertained to the monitoring of ORF's advertising on the basis of reports filed by KommAustria.

3.2.3 Proceedings before the Constitutional Court (VfGH) and preliminary ruling of the European Court of Justice (ECJ)

No obligation to publish "preliminary" results regarding legal violations in advertising monitoring

Complaints regarding BKS appeal decisions can also be filed with the Constitutional Court. In the field of advertising monitoring, one private radio broadcaster lodged a complaint about the fact that KommAustria was obliged to publish preliminary findings on identified legal violations (prior to the initiation of an official procedure), but not on the potentially exculpating results of such procedures. In the course of reviewing the complaint, the Constitutional Court ruled that the obligation to publish the results of advertising monitoring activities (prior to the initiation of the procedure) was unconstitutional. Since that time, KommAustria has only published results which have been confirmed in the form of an official decision at the end of the procedure (in cases where they bear fundamental significance) in accordance with legal requirements.

ECJ ruling on call-in shows

In interpreting the provisions of Community law, certain national courts and authorities can (or must) refer to the European Court of Justice (ECJ) for a preliminary ruling in qualifying cases of doubt. Based on a report filed by KommAustria in connection with its monitoring of advertising in ORF broadcasts, it was necessary to clarify the extent to which call-in game shows (in this case "Quiz-Express") might be placed in a category such as teleshopping as defined in the Television Directive, in particular because ORF is prohibited from broadcasting such shows. The ECJ defined the relevant assessment criteria in a ruling issued on October 18, 2007 in Case C-195/06; this judgment was awaited with great interest throughout Europe. In the continuing procedure, the BKS will have to assess the extent to which those criteria are fulfilled in the case in question.

3.3 Telecommunications Division

3.3.1 Proceedings before the Administrative Court (VwGH)

The Administrative Court handed down a total of 34 decisions in the reporting period. These decisions pertained to 16 interconnection procedures, one procedure related to frequency allocations, one procedure involving subscriber directories and directory assistance services, 14 procedures in which companies were identified as possessing significant market power (SMP) and were thus subjected to obligations under Articles 38 to 47 TKG 2003, and two additional procedures. Among the decisions mentioned above, the Administrative Court referred two cases to the ECJ for preliminary rulings, overturned 23 TKK decisions as unconstitutional, and declared nine complaints invalid and subsequently discontinued the procedures.

The two procedures referred to the ECJ pertained to the right of competitors to submit opinions and comments in market analysis procedures under Art. 37 TKG 2003, and the ECJ was expected to issue a ruling on those cases on February 21, 2008. Over two thirds of the 23 official decisions overturned by the Administrative Court related to mobile termination. In those cases, the Administrative Court considered it essential that the market analysis decisions, which are characterized as official enforcement decisions, lacked sufficient certainty and that the opinion of the European Commission was largely not taken into account. Subsequently, the Administrative Court overturned all of the interconnection decisions issued

on the basis of those procedures due to their inextricable links to the market analysis decisions. The other rulings issued by the Administrative Court related to one procedure pursuant to Art. 56 TKG 2003, one procedure under Art. 10 KOG (financing contributions for RTR), four interconnection procedures and three procedures in which a company was identified as having significant market power.

As of January 31, 2008, 28 complaints were pending with the Administrative Court.

3.3.2 Proceedings before the Constitutional Court (VfGH)

During the period under review, a total of six complaints were filed with the Constitutional Court in responses to TKK decisions.

The Constitutional Court refused to hear one complaint pertaining to an interconnection procedure and handed down two additional decisions in the reporting period: In one case, the court refused to hear the complaint, and in the other case the complaint was declared invalid and the procedure was discontinued.

Five complaints were filed with regard to financing contributions for RTR and were still pending before the Constitutional Court as of January 31, 2008.

4. RTR's activities in 2007

4.1 Broadcasting Division

In addition to ongoing procedures, RTR's regulatory work in the field of broadcasting focused on the new invitations to tender for the 21 radio broadcasting licenses which are set to expire on March 31, 2008. These invitations to tender lasted from early April 2007 to July 2007 and especially dominated regulatory work in the summer months, during which the regulatory authority held 14 negotiation sessions.

Moreover, activities in this area also focused on the further expansion of nationwide DVB-T coverage as well as specialist preparations and invitations to tender for MUX C (local and regional television) and MUX D (mobile TV for cell phones).

4.1.1 Regulatory activities in broadcasting

4.1.1.1 Licensing procedures / Allocation of transmission capacities

Applications can be submitted at any time.

Applications for the allocation of new transmission capacities can be submitted to KommAustria at any time. Applicants can either request a license for a new, separate coverage area or for the expansion or improvement of existing coverage areas. Moreover, an existing nationwide radio broadcaster can also request the allocation of transmission capacities in order to expand its coverage area.

These applications must indicate the essential technical parameters regarding planned usage, information on technical range/coverage deficiencies, and (in the case of license applications) credible evidence of the applicant's fulfillment of technical, financial and organizational requirements.

Technical range as a key criterion

Under Art. 12 PrR-G, an application involving the creation of a new coverage area is to be rejected in cases where the technical range amounts to less than 50,000 people and the applicant fails to provide evidence that an independent radio station in the coverage area would serve special local needs and that the radio station could be financed in the long term despite its low range. Applications are also to be rejected in cases where the technical range covers a population of 50,000 to 100,000 – with due attention to the existing coverage level with Austrian private radio stations and the competitive situation on the radio market – and one can not reasonably expect radio broadcasting to be financially viable in the requested coverage area in the long term.

Otherwise, new transmission capacities to be used for the creation of a new coverage area, the expansion of an existing coverage area, or the expansion of coverage by a nationwide licensee must be put out to public tender (*Wiener Zeitung*, daily newspapers, RTR web site), unless it is reserved by a KommAustria ordinance for the purpose of planning new coverage areas. This makes it possible for other interested parties to submit applications within a time period of at least two months as specified by KommAustria. If different applications are then submitted for

the improvement/expansion of an existing coverage area, the creation of a new coverage area, or the expansion of a nationwide license, they must be reviewed according to the sequence specified in Articles 10 and 12 PrR-G.

Article 10 PrR-G defines the objectives to be pursued in allocating transmission capacities in the interest of a dual broadcasting system and sets the sequence of priorities for allocation:

- The allocation of transmission capacities to ORF takes top priority, but only if such capacities are actually required to meet coverage obligations pursuant to Art. 3 ORF-G.
- The next priority is the allocation of transmission capacities to improve coverage provided by previously licensed radio broadcasters. However, this does not include expanding such coverage areas.
- At the next level, transmission capacities are allocated for the purpose of expanding nationwide licenses.
- Finally, KommAustria has to review whether the requested transmission capacity will be used to create a new coverage area or to expand an existing coverage area. Both possibilities are considered to be legally equivalent alternatives. The decisive criteria in this context include the diversity of opinions in media, economic efficiency in radio broadcasting, as well as political, social and cultural considerations.

2007: 20 allocation procedures completed

In the 2007 business year, a total of 20 allocation procedures for radio broadcasting pursuant to the Private Radio Act (PrR-G) were completed by means of official decisions. These procedures were carried out at the request of the relevant parties or due to official invitations to tender. A total of 13 radio licenses were issued to private broadcasters, thus creating new coverage areas or re-assigning existing coverage areas, while three frequencies were issued to existing private broadcasters for the purpose of expanding their coverage areas, and four were issued for the purpose of improving coverage. In addition, a total of ten frequencies were allocated to KRONEHIT Radio BetriebsgmbH., Austria's only nationwide private radio broadcaster during the reporting period, in order to expand the organization's nationwide license. Two license applications were rejected due to failure to fulfill the relevant legal requirements. ORF was allocated three frequencies in order to ensure coverage with its radio stations. Finally, 26 additional allocation procedures were still pending at the end of the reporting period (not including the transmission capacities requested by the nationwide radio broadcaster for the purpose of expanding its coverage area).

4.1.1.2 Allocation of transmission capacities to create new coverage areas

Expiration of 21 radio licenses

In the year 2007, activities in the field of radio broadcasting focused on the procedures required due to the upcoming expiration of 21 local and regional broadcasting licenses issued in 1997. These licenses expired at the end of March 2008. The coverage areas in question were officially put out to public tender on April 3, 2007. In nearly all cases, the previous licensees reapplied for the transmission capacities.

7 existing licenses renewed

By the end of 2007, seven of the 21 procedures had been concluded by way of an official decision. In those procedures, KommAustria issued licenses to the previous licensees, again for a period of ten years, for the following coverage areas: "Upper Austria" (Life Radio GmbH & Co KG), "Carinthia" (Antenne Kärnten Regionalradio GmbH & Co KG), "St. Pölten District" (Hit FM Privatradio GmbH), "Wörthersee Area and Town of Villach" (Privatradio Wörthersee GmbH & Co KG), "Waidhofen/Ybbs" (Österreichische christliche Mediengesellschaft – Verein zur Förderung wertorientierter Lebenskultur), "Liezen Area" (Verein CulturCentrum Wolkenstein) and "Bludenz" (Dachverband für Kultur- und Medieninitiativen und Jugend).

6 new coverage areas created

In addition, six additional radio broadcasting licenses were granted for the creation of new coverage areas in 2007: Klassik Radio GmbH & Co KG and N & C Privatradio Betriebs GmbH were issued radio broadcasting licenses for the coverage areas "Innsbruck 95.5 MHz" and "Innsbruck 99.9 MHz." Welle Salzburg Gesellschaft mbH and Entspannungsrundfunk GesmbH received licenses for the "Linz" and "Linz, Wels and Steyr" coverage areas. IQ plus Medien GmbH was granted a radio broadcasting license for the "Graz 94.2 MHz" coverage area, and Österreichische christliche Mediengesellschaft – Verein zur Förderung wertorientierter Lebenskultur received a license for the "Jenbach 107.9 MHz" coverage area.

4.1.1.3 Allocation of transmission capacities to expand or improve existing coverage areas

In the case of an application for expansion, the public invitation to tender for transmission capacities which have a technical range comprising a population of less than 50,000 can be restricted to existing radio broadcasters for the purpose of expanding existing coverage areas (Art. 13 Par. 3 PrR-G).

Three existing coverage areas expanded

Two procedures carried out with such a restricted invitation to tender under Art. 13 Par. 3 PrR-G led to the expansion of previously existing coverage areas in 2007:

- JENBACH 3 104.1 MHz – Expansion of the existing coverage area "Innsbruck 92.9 MHz" (Lokalradio Innsbruck GmbH);
- INZING 2 97.6 MHz – Expansion of the existing coverage area "Innsbruck 105.1 MHz" (Antenne Österreich GmbH).

In addition, one procedure carried out under Art. 12 in conjunction with Art. 10 PrR-G – after an unrestricted invitation to tender – also served to expand a previously existing coverage area:

- INNSBRUCK 6 97.0 MHz – Expansion of the existing coverage area "North Tirol - Eastern Region" (Unterländer Lokalradio GmbH).

Finally, one application for a frequency allocation had to be rejected due to its lack of technical feasibility.

Under Art. 12 Par. 4 PrR-G, if an application for improvements in coverage is deemed technically feasible and permissible, it is announced to the radio broadcasters licensed for the area which could be covered by the requested transmission capacity. Within two weeks of delivery of the announcement, those radio broadcasters have the right to apply for allocation of the transmission capacity themselves if the capacity in question could also serve to improve coverage in their own areas. In these applications, the applicants are also required to specify the coverage deficiencies to be remedied by the transmission capacity in question.

If another radio broadcaster submits an application and is able to provide evidence that allocating the transmission capacity to that broadcaster's coverage area would bring about a greater improvement of deficiencies in its coverage, the transmission capacity is to be allocated to that broadcaster and not to the original applicant.

The decision as to whether such an improvement is greater is based on the principle of economy in frequency usage (with special attention to avoiding double or multiple coverage), the number of people affected by the coverage deficiencies (resident population) as well as the geographical extent and severity of the coverage deficiencies.

Four allocations for coverage improvement

Four allocation procedures carried out under Art. 12 in conjunction with Art. 10 PrR-G served to improve coverage quality in existing coverage areas:

- HINTERTUX 2 104.1 MHz, to improve the Tyrol coverage area (Regionalradio Tirol GmbH, station name: Life Radio Tirol);

- SCHRUNS 100.2 MHz, to improve the Vorarlberg coverage area (Vorarlberger Regionalradio GmbH, station name: Antenne Vorarlberg);

- LEOBEN 2 104.7 MHz to improve the coverage area "Bruck an der Mur/Mur- Mürztal 106.6 MHz" (Radio-TV Grün Weiss BetriebsgmbH Nfg. KEG);

- TRABOCH 103.3 MHz to improve the coverage area "Bruck an der Mur/Mur- Mürztal 106.6 MHz" (Radio-TV Grün Weiss BetriebsgmbH Nfg. KEG).

4.1.1.4 Nationwide broadcasting licenses

On December 6, 2004, KommAustria issued KRONEHIT Radio BetriebsgmbH the first license for nationwide private terrestrial radio broadcasting in Austria. Based on the allocation of 28 frequencies issued together with the license, the company was allocated seven additional frequencies in 2005 and 15 in 2006, meaning that by the end of that year the broadcaster reached more than 80% of the Austrian population with its adult contemporary program broadcast under the name "Kronehit."

10 additional frequencies allocated to Kronehit radio

In 2007, the licensee was allocated the following ten frequencies to expand its coverage, and its license was amended accordingly:

- Radio broadcasting station: MAYRHOFEN 3, location: Filzenalm, frequency: 98.2 MHz;
- Radio broadcasting station: BEZAU 2, location: Bergstation radio mast, frequency: 104.7 MHz;
- Radio broadcasting station: EBEN PONGAU, location: Langbruckwald, frequency: 104.3 MHz;
- Radio broadcasting station: S ANTON ARLB 2, location: Galzig RIFU Telekom, frequency: 103.3 MHz;
- Radio broadcasting station: BRUECKL, location: Lippekogel, frequency: 105.3 MHz;
- Radio broadcasting station: STEUERBERG, location: Hinterwachsenberg, frequency: 106.6 MHz;
- Radio broadcasting station: GREIFENBURG, location: Egg, frequency: 94.2 MHz;
- Radio broadcasting station: REUTTE 3, location: Hahnenkamm PTA radio station, frequency: 107.4 MHz;
- Radio broadcasting station: DEUTSCHLANDSBERG, location: Demmerkogel, frequency: 101.1 MHz;
- Radio broadcasting station: PAISSLBERG, location: Juffing, frequency: 103.2 MHz.

Kronehit coverage exceeds 85% of population

The allocation of these transmission capacities served to reduce coverage gaps, especially in the provinces of Tyrol, Carinthia and Salzburg. With the total of 60 frequencies allocated to the company as of late 2007, Kronehit's coverage included more than 85% of the Austrian population.

Between October 20, 2006 and April 30, 2007, the regulatory authority invited interested parties to apply for a nationwide license pursuant to Art. 28b Par. 1 PrR-G. However, no applications were received by KommAustria during that period.

Table 1: Overview of Austria's top ten private radio broadcasters in terms of range (as of December 31, 2007)

Operator	Broadcasting area / Station name	Technical range (rounded)
KRONEHIT Radio BetriebsgmbH.	Nationwide / Kronehit	6.8 m / 85%
Radio Eins Privatradio GmbH	Vienna / 88.6 Der Supermix für Wien	2.2 m / 28%
Antenne Österreich GmbH	Vienna / Antenne Wien 102.5	2.2 m / 28%
Radio Arabella GmbH	Vienna / Radio Arabella Wien 92.9	1.9 m / 24%
Superfly Radio GmbH	Vienna / 98.3 Superfly	1.85 m / 23%
N & C Privatradio Betriebs GmbH	Vienna / Energy 104.2	1.75 m / 22%
Kirchliche Stiftung Radio Stephansdom	Vienna / Radio Stephansdom	1.7 m / 21%
Life Radio GmbH & Co KG	Upper Austria / Life Radio	1.5 m / 19%
Freies Radio Wien	Vienna / Radio Orange	1.4 m / 18%
Antenne Steiermark Regionalradio GmbH & Co KG	Styria / Antenne Steiermark	1.25 m / 16%

Source: RTR

4.1.1.5 Event and educational radio programs

Event radio refers to radio licenses which are granted for a maximum of three months under Art. 3 Par. 5 PrR-G and which are used in the local area surrounding an independent public event at and around the time of the event.

Two licenses for event radio programs

In 2007, licenses were granted for the following event radio programs:

- "*Aufbruch in den Äther,*" a program broadcast by Freier Rundfunk Oberösterreich GmbH in connection with the "Festival of Regions 2007" from June 9 to July 22, 2007;
- A program broadcast by Linzer Veranstaltungsgesellschaft mbH during the *Linzer Klangwolke* music festival from September 1 to September 8, 2007.

Educational radio refers to licenses granted to education and training institutions for the surrounding local area if the programs have a functional relationship to the duties to be fulfilled by those institutions. These licenses can be granted for a maximum of one year.

Three licenses for educational radio programs

The following educational radio licenses were granted in 2007:

- One license for a secondary school in Freistadt with the objective of familiarizing interested pupils with the radio medium;
- One license for an independent campus radio association's educational radio program, which in particular involved the Simulation-Assisted Communications Technology, Telecommunications and Media, Media Management and Social Work courses at the university of applied sciences (FH) in St. Pölten;
- One license for an educational radio program issued to the Basic Vocal association in the HLW Media education program at the HLW Deutschlandsberg secondary school.

4.1.1.6 Procedures under telecommunications law in the field of radio broadcasting

KommAustria responsible for broadcasting licenses as well as telecommunications procedures

For the sake of simplicity in administration ("one-stop shopping"), KommAustria is responsible for issuing licenses under broadcasting law as well as permits for radio systems (for the provision of broadcasting services) under telecommunications law.

If an application pursuant to TKG 2003 for the construction and operation of a new radio system also refers to the allocation of a new transmission capacity to the broadcaster, this will lead to a tender procedure (or the announcement of applications for improvement) under Articles 12 and 13 PrR-G.

In contrast, applications under telecommunications law without direct reference to broadcasting law generally pertain to planned technical changes in radio systems, such as the use of new transmitter antennas, site changes or output enhancements.

All such applications are reviewed for compatibility with existing domestic and foreign transmitters by RTR's Broadcasting Frequency Management Department. In most cases, this requires an international coordination procedure in which it is necessary to obtain the consent of the neighboring countries which may be affected.

In applications for changes, it is then possible to approve the planned modifications to radio systems. With regard to applications which are also subject to broadcasting law, the procedure provided for under broadcasting law is continued and the telecommunications permit is issued together with the final broadcasting permit.

20 changes in broadcasting systems

In 2007, KommAustria approved 20 applications for changes in radio systems for private radio broadcasters. At the end of the year, four additional applications were still pending.

4.1.2 Regulatory activities in television broadcasting

4.1.2.1 Digital terrestrial television

Expansion of MUX A and launch of MUX B

After the nationwide launch of digital terrestrial television in 2006, activities in the reporting period were dominated by the first shutdowns of analog broadcasting in Austria's provincial capitals after the end of the simulcast phase and the further expansion of MUX A. KommAustria issued the necessary permits in a timely manner in a total of eleven telecommunications decisions, and by the end of 2007 the technical range of MUX A had reached 87% of Austria's population.

After the analog frequencies were switched off in all of Austria's provincial capitals in the fall of 2007, it was possible to put MUX B into operation for the first time. Through this platform (which, along with MUX A, was assigned to ORS in 2006), additional channels – currently 3sat, ORF Sport Plus and PULS 4 – can be received in areas of high population density. MUX B's technical range came to 81% of the population at the end of 2007. The required telecommunications permits were issued by KommAustria in three official decisions. Moreover, SevenOne Media Austria GmbH was issued a license for the channel PULS 4 on MUX B; the other channels broadcast on MUX B are not subject to supervision by KommAustria.

The activation of new digital frequencies and the switchover to target channels generally requires that frequency allocations previously used for analog broadcasting be shut down and surrendered by the allocation holders. ATV Privatfernseh-GmbH participated in the shutdowns, but the company did not subsequently surrender the allocated frequencies. As allocation holders are required by law to surrender the frequencies after the end of the simulcast phase because the frequencies are required for the further expansion of MUX A and MUX B, KommAustria was forced to initiate the corresponding (two-stage) revocation procedure for those frequency allocations. The appeal procedure against the revocation was still pending at the end of the reporting period. Moreover, ORF's delayed return of switched-off frequencies brought about delays in the issuance of permits.

Review of MUX B lineup

As a rule, the multiplex operator defines the channel lineup on multiplex platforms (with the exception of certain legal requirements, known as "must carry" obligations), and the operator is bound to certain conditions set forth in the official licensing decision. The license issued to ORS requires a transparent procedure for determining the channel lineup on MUX B. One complaint was submitted to KommAustria by a broadcasting company which had not been included, as the company believed that ORS had not adhered to the relevant conditions. KommAustria subsequently identified a legal violation because the procedure carried out by ORS did not exhibit the required level of transparency. However, no objections could be raised as to the result of the channel selection.

During the year under review, two pilot-testing licenses for digital terrestrial television (in one case for mobile television) were also extended, and two broadcasters with analog terrestrial licenses were issued permits to run trials of digital broadcasting for their channels.

4.1.2.2 Local digital terrestrial television

Analog shutdown enables local terrestrial television

With the ongoing shutdown of analog television frequencies in Austria and certain neighboring countries, it has been possible to make frequency resources under the Geneva Frequency Plan available for new uses. Due to the nationwide liberalization of terrestrial television and the difficult situation with regard to analog frequencies, it was only possible to allocate analog terrestrial frequencies to local or regional providers in a few exceptional cases in the past.

As the regulatory authority's consultation on the Digitization Plan 2007 revealed, interest in terrestrial broadcasting among the numerous local television broadcasters – which have been disseminated almost exclusively in cable networks up to now – is still quite high. As a result, the Digitization Plan 2007, which defines the steps in digitization following the switchover of nationwide frequency chains, provides for a digital frequency coverage layer (put out to public tender as "MUX C" in the fall of 2007) to be used by regional and local broadcasters.

Great response to invitation to tender: 29 applications received

In the nationwide invitation to tender, local and regional broadcasters as well as infrastructure companies acting on behalf of those broadcasters were able to apply for DVB-T multiplex platform licenses with individually defined coverage areas; these platforms allow local channels to be broadcast with a minimum of frequency utilization due to the robust modulation procedure. By the end of the tender submission period (November 15, 2007), a total of 29 applications had been received for various areas throughout Austria.

Licensing procedures to be completed in 2008

At the end of the reporting period, the applications were being reviewed for completeness, compliance with legal requirements and technical feasibility. As only one frequency coverage layer can be deployed, it will be necessary to explore possible joint solutions in the areas with multiple applicants – in general, a multiplex platform can transmit multiple channels. In the course of the year 2008, the corresponding multiplex licenses will be issued so that broadcasting operations can be launched. This will further enrich the selection of channels broadcast digitally in Austria.

4.1.2.3 Mobile TV

Mobile TV already offered via UMTS

A new development which is making rapid progress at the interface between broadcasting and telecommunications throughout Europe is mobile TV, that is, the ability to receive television channels on mobile devices such as cell phones. In this area, mobile network operators have provided several offers which involve streaming generally well-known television programs to handsets using the UMTS standard. As it is necessary to establish a separate connection to each user in such cases and the system suffers from major capacity problems when demand is high, this form of dissemination has not been defined as broadcasting from a legal standpoint up to now.

Fulfillment of legal requirements, DVB-H invitation to tender

Thanks to the recent shutdowns in analog terrestrial television broadcasting, it is now possible to make frequencies available for broadcasting-based transmission, which is more efficient and generally ensures higher transmission quality. A number of standards have been developed in this field. In the course of the consultation on the Digitization Plan 2007, the participating experts unanimously supported DVB-H (Digital Video Broadcasting – Handheld). In the summer of 2007, the Austrian legislature amended the relevant laws in order to enable implementation of the desired distribution of roles. In addition to adapting the selection criteria for granting the multiplex license, this legislation now defines the "program aggregator," which refers to the company – typically a mobile network operator – which assembles channel packages and sells them to the consumer.

With the Digitization Plan 2007 and the Multiplex Operator Selection Principles Ordinance of 2007, KommAustria created the preconditions necessary for the invitation to tender for Austria's first nationwide multiplex platform for mobile terrestrial broadcasting ("MUX D") in the fall of 2007. The tender submission period ended on December 14, 2007.

Four applicants

By the end of the submission period, four applications for this license had been received:

- Mobile TV-Infrastruktur GmbH was established by the media companies Moser Holding (*Tiroler Tageszeitung*), Styria Medien AG (*Kleine Zeitung* and *Die Presse* newspapers, etc.), Vorarlberger Medienhaus (*Vorarlberger Nachrichten* newspaper) and the Oschmann Group (Radio Arabella and others). Michael Krüger, a media lawyer, and Tillmann Fuchs, the company's managing director, also own relatively small shares.

- Österreichische Rundfunksender GmbH & Co KG (ORS), the spin-off of ORF's broadcasting technology arm, is owned by ORF (60%) and the Medicur Group (40%), which is a Raiffeisen subsidiary. ORS operates the existing DVB-T platforms for digital terrestrial television.

- T-Systems Media&Broadcast GmbH was previously a subsidiary of Deutsche Telekom and operates a majority of the broadcasting transmission networks in Germany. The company was recently acquired by Télédiffusion de France (TDF). As program aggregators, One GmbH and Hutchison 3G Austria ("3") support this application.

- Telekom Austria TA AG (of which just under 30% is indirectly owned by the Republic of Austria and the rest is held as free-floating shares) applied along with its affiliate company mobilkom austria AG ("A1") as a program aggregator.

At the end of the reporting period, KommAustria was in the process of reviewing the applications and checking whether the planned constructs are permissible. Moreover, RTR's official experts began to draw up technical and economic opinions for the purpose of evaluating the applications. If multiple applicants fulfill the legal requirements, then a selection procedure must be carried out according to previously defined criteria. A decision can be expected in the first quarter of 2008. All of the applicants' schedules called for the launch of broadcasts in time for the Euro 2008 Football Championship, which will be held in Austria and Switzerland.

4.1.2.4 Activities in the Digital Platform Austria working group

Digital Platform Austria provides input for Digitization Plan.

The Digital Platform Austria working group was established by the Austrian legislature in 2001. One of the group's primary objectives is to support the regulatory authority in the process of developing broadcasting digitization plans. In 2007, KommAustria published the Digitization Plan 2007, which forms the regulatory basis for the introduction of local and regional digital terrestrial multiplex platforms as well as mobile terrestrial television based on the DVB-H standard. The approximately 300 members of the Digital Platform Austria working group were heavily involved in preparations for this publication. First, all of the group's members were asked to contribute their comments and opinions on these two media projects in a consultation procedure, after which the key elements of the Digitization Plan were distributed to all members as a preliminary basis for discussion at the plenary assembly on March 26, 2007. At the plenary assembly, participants engaged in intensive and constructive expert discourse, in which Doris Bures, Austria's Federal Minister for Women, Media and Civil Service, also took part. The results of these discussions were taken into account in the preparation of the Digitization Plan 2007.

Expert panel on DVB-S2

In addition to the plenary assembly mentioned above, another expert panel was held during the reporting period by the Digital Platform Austria working group on the topic of "DVB-S2: The new generation of satellite television," with participants discussing future developments in this field, such as the introduction of high-definition television (HDTV).

4.1.3 Satellite broadcasting

KommAustria is also responsible for issuing satellite broadcasting licenses. The uniform licensing procedure for satellite television and radio broadcasting is governed by Art. 4 et seq. of the Private Television Act.

25 new satellite licenses

In 2007, KommAustria granted new satellite broadcasting licenses for a total of 22 television channels and three radio channels:

- StarSat Werbevertriebs GmbH: Licenses were issued for the teleshopping/erotic channels Flirtrepublik, Heiße Nummer, Kurven Reich, Liebesrundfunk, Uschis Schwestern and Weiber TV. The provisions regarding the protection of minors as set forth in Art. 32 PrTV-G are observed in all channels.

- FASHION TV Programmgesellschaft mbH: License for the "FASHION-TV MEN" specialty fashion channel.

- PULS City TV GmbH: The "Puls TV" channel is a full 24-hour channel which offers at least 75% in-house productions as well as mobile and event-based service programming for Vienna.

- StarSat Werbevertriebs GmbH: License issued for Kuren und Wellness, a 24-hour teleshopping channel specializing in spa treatments and wellness vacations.

- INNSAT.TV GmbH: License issued for INNSAT.TV, a local channel for the Innviertel region.

- Merkur Warenhandels-Aktiengesellschaft: License issued for the Euro-Billa specialty channel.

- Deep Space Media GmbH: License issued for two specialty teleshopping channels, All Fun TV and Aktiv Direkt TV. The company was also granted licenses for three additional channels: Gratis Hot TV, Top & Hot TV and Manneskraft TV, which are unencrypted specialty teleshopping channels in the form of "slide-show channels" on which direct service offerings, especially value-added voice and text message services, are presented 24 hours per day. The provisions regarding the protection of minors as set forth in Art. 32 PrTV-G are observed in all channels.

- Mr. Dalibor Petrovic was issued a license to broadcast Radio Kissplus, a radio channel which provides request-based entertainment for adults who speak Serbo-Croatian and Romanian.

- Mr. Mihael Foral was issued a license to broadcast the "Radio Zurka" channel in Serbo-Croatian language.

- Sonalba Privatrundfunk GmbH: Licenses issued for SexyGirls.TV, Venusclub.TV, ErotikDome, Sat Erotiktreff.TV and Club1.TV, which are unencrypted specialty teleshopping channels in the form of "slide-show channels." The provisions regarding the protection of minors as set forth in Art. 32 PrTV-G are observed in all channels.

- Austria 9 TV GmbH: The Austria 9 TV channel includes a programming mix of international crime series, Austrian films, quiz and game shows, infotainment shows and teleshopping broadcasts.

- RSL tirol tv Filmproduktion GmbH: License issued for tirol tv, a local channel for the Tyrol Province.

Changes in satellite broadcasting licenses

Substantial changes in satellite channels are subject to approval under Art. 6 PrTV-G. The following changes were approved by KommAustria in 2007:

- Kanal Telemedial Privatrundfunk GmbH ("PRIMETIME-TV"): In accordance with Art. 6 PrTV-G, KommAustria approved the transmission of this channel on the analog satellite ASTRA 2C 19.2° East, Transponder 49, in addition to transmission via the satellite defined in the license, ASTRA 1G 19.2° East, Transponder 1.108 (digital), between 9:00 pm and 6:00 am each day.

- BELAGRO MEDIEN UND HANDEL GmbH: In accordance with Art. 6 PrTV-G, KommAustria approved the additional transmission of the Volksmusik.tv and Auto-Moto-TV channels via ASTRA 19.2° East, Transponder 113, between 6:00 am and 8:00 pm each day in the case of Volksmusik.tv, and between 8:00 pm and 6:00 am each day in the case of Auto-Moto-TV.

In one case, KommAustria ascertained the lapse of a satellite broadcasting license in 2007:

- MEC Sport und Entertainment GmbH: KommAustria determined that MEC Sport und Entertainment GmbH's satellite broadcasting license had lapsed in accordance with Art. 5 Par. 7 No. 1 PrTV-G, as MEC Sport und Entertainment GmbH had not carried out regular broadcasting operations in accordance with the terms of the license over a continuous period of one year for reasons within the company's control.

4.1.4 Public communications networks and services

Communications networks must be reported under Art. 15 TKG 2003.

The obligation to report the planned operation or provision of a public communications network or service for broadcasting transmission (radio and television) and additional broadcasting services refers in particular to dissemination by means of radio networks and cable networks. The launch, modification and discontinuation of such operations are each to be reported separately. All providers which offer communications services in Austria – regardless of their place of incorporation – are subject to this reporting requirement. After receiving a complete notification report, KommAustria issues a confirmation (general approval) pursuant to Art. 15 Par. 3 in conjunction with Art. 120 TKG 2003.

In practice, this reporting obligation is especially important to the broadcasting activities of cable network operators. In this context, fundamental issues of delineation also need to be resolved, mainly in connection with new and convergent transmission modes for broadcasting or broadcasting-related services. In the reporting period, KommAustria issued 24 confirmations under Art. 15 Par. 3 TKG 2003 to cable network operators. In some cases, KommAustria did not issue a confirmation because the cases did not involve broadcasting transmissions.

Competition regulation for broadcasting networks

Public communications networks and services for broadcasting are also subject to competition regulation by KommAustria under the TKG 2003. The relevant activities in the course of the market analysis are described in Section 4.1.6.

4.1.5 Legal supervision

4.1.5.1 Advertising monitoring

Since August 1, 2004, KommAustria has been obligated under the KommAustria Act (KOG) to review evaluations of broadcasts containing advertising among all broadcasters on at least a monthly basis in order to ensure that they comply with advertising provisions under Austrian broadcasting law.

For decisions on possible violations of the law, the KommAustria Act maintains the "dual system" of organization in broadcasting regulation: KommAustria is responsible for decisions related to the programs of private broadcasters in the enforcement of advertising regulations set forth in the PrR-G and PrTV-G, while – as the legal supervisory authority for ORF (and its channels) – the BKS is responsible for identifying violations of advertising regulations under the ORF Act (ORF-G). In determining the frequency of evaluations and selecting the sample reviewed, KommAustria accounts for the market shares of the respective broadcasters and tries to attain a representative cross-section of programs from various areas (culture, sports, reports, news, entertainment shows, feature films, etc.).

Channels monitored

Monthly samples

In the reporting period, ORF channels as well as those of private broadcasters were generally evaluated on a monthly basis.

Numerous ORF broadcasts reviewed.

Among ORF's channels, the regional radio channels for Vienna, Lower Austria, Burgenland, Carinthia, Styria, Salzburg and Vorarlberg, as well as FM4 and the television channels ORF Sport Plus, ORF1 and ORF2 (three times) were reviewed in 2007.

KommAustria submitted reports to the BKS with regard to the ORF1, ORF2 and ORF Sport Plus television stations, and the corresponding procedures are still pending. The BKS identified legal violations on the part of the Radio Salzburg and Radio Oberösterreich radio stations as well as the ORF1 and ORF2 television stations.

Legal violations identified on the part of eight private broadcasters

Among the private radio broadcasters, the following channels were evaluated in addition to the nationwide radio broadcaster Kronehit: Carinthia: Truck Radio; Lower Austria: Hit FM St. Pölten and Campusradio; Upper Austria: Freies Radio Freistadt; Salzburg: Welle 1 Salzburg and Radio Salzachtal; Styria: Radio Soundportal and Radio Grün Weiss; Tyrol: Antenne Tirol and 106 FM; Vorarlberg: Proton – das freie Radio; Vienna: 88.6, Radio Arabella and Radio Stephansdom as well as the satellite radio channel Radio Max. Violations of advertising regulations (or of the obligation to provide recordings) were identified by KommAustria in only four of those cases. The decision on an appeal filed against one of those decisions is still forthcoming, and one other procedure has not yet been completed.

As for the private television broadcasters, broadcasts by Premiere Austria, ATV, Aichfeld aktuell, Race On TV, Happy XX 2, Auto-Moto-TV and Mostviertel Kanal were selected. In four cases, violations of advertising regulations (or of the obligation to provide recordings) were identified.

4.1.5.2 Decisions of the Federal Communications Senate (BKS) on advertising violations

In the reporting period, the BKS completed numerous legal supervisory procedures initiated by a KommAustria report regarding ORF as well as procedures regarding those private broadcasters who appealed against KommAustria's identification of advertising law violations. The BKS maintained its interpretation of advertising regulations under Austrian broadcasting law.

KommAustria decisions mostly confirmed

Once again, the BKS (as the legal supervisor and authority for appeals) concurred with KommAustria's legal views regarding advertising violations in a vast majority of cases. In this context, the regulations prohibiting cross-promotion on ORF channels (Art. 13 Par. 9 ORF-G), surreptitious advertising (Art. 14 Par. 2 ORF-G, Art. 34 Par. 2 PrTV-G) and – as in the past – the separation requirement (Art. 13 Par. 3 ORF-G, Art. 38 PrTV-G and Art. 19 Par. 3 PrR-G) for ORF and private broadcasters gained significance during the reporting period.

Constitutional Court overturned obligation to publish suspected legal violations.

Another important development was the Constitutional Court's ruling on the repeal of a provision in the KOG pertaining to the regulatory authority's obligation to publish the results of its advertising monitoring activities, especially due to the lack of legal protection for the broadcaster concerned (Art. 2 Par. 1 No. 7 KOG). This means that KommAustria now only publishes decisions of fundamental significance (Art. 7 Par. 1 KOG). Finally, in several cases the Administrative Court confirmed the principles developed by KommAustria, especially those regarding separation requirements, and emphasized an interpretation based on the wording of sponsoring and product placement provisions with regard to ORF.

4.1.5.3 Legal violations

KommAustria decides on violations of the Private Radio Act (PrR-G) and the Private Television Act (PrTV-G) by virtue of its office or on the basis of complaints pursuant to Art. 25 PrR-G and Art. 61 PrTV-G.

Four unsuccessful complaints

During the reporting period, three complaints regarding radio and television broadcasters were lodged but subsequently rejected or withdrawn due to non-fulfillment of formal requirements. In another case, a complaint which stated that a television broadcaster was promoting illegal practices by broadcasting gambling advertisements (Art. 37 No. 6 PrTV-G) was rejected, and this decision was confirmed by the BKS.

During the reporting period, official monitoring activities largely focused on reviewing compliance with advertising regulations (see Section 4.1.5.1 on advertising monitoring) as well as the associated legal violation procedures due to failure to provide recordings for the purpose of advertising monitoring. In the reporting period, KommAustria initiated legal violation procedures against two radio broadcasters and three television broadcasters due to their failure to provide recordings. The official decisions on legal violations issued in those cases have entered into legal effect. In another case, KommAustria effectively completed the procedure during the reporting period. In addition, KommAustria initiated administrative penal procedures in two cases due to failure to report the transmission of channels via different satellites (Art. 6 PrTV-G) and accordingly completed one procedure with legal effect. Finally, KommAustria effectively identified legal violations of provisions for the protection of minors (Art. 32 PrTV-G) in one case.

4.1.5.4 Changes in ownership

Ongoing monitoring of ownership structures

Another major area of legal supervision covered by KommAustria involves monitoring the ownership structures of private broadcasters. This is intended to ensure that the legal requirements for broadcasting (Articles 7 to 9 PrR-G and Articles 10 and 11 PrTV-G), such as professional and financial qualifications, the absence of reasons for disqualification, and the safeguarding of a diversity of opinions (i.e., avoidance of excessively high media concentration), are still fulfilled after a license is issued. Violations of or lapses in the fulfillment of these licensing requirements constitute grounds for the revocation of broadcasting licenses.

In order to enable the regulatory authority to monitor compliance with these provisions, Art. 22 Par. 4 PrR-G stipulates that any and all (direct or indirect) changes in ownership or partnership structures must be reported to the regulatory authority. In cases where new partners acquire more than 50% of the shares in a radio broadcaster, Article 22 Par. 5 requires an official assessment to be obtained from KommAustria before the change in ownership is effected in order to determine whether the changes comply with the provisions of Articles 7 to 9 PrR-G.

Changes subject to approval

Likewise, Art. 10 Par. 6 PrTV-G stipulates that broadcasters must notify the regulatory authority of any and all changes in their ownership or partnership structures. If more than 50% of the shares in a television broadcaster are transferred to third parties, it is also necessary to obtain an official assessment from KommAustria as to whether the changed structure will still comply with legal requirements before the shares are transferred (Art. 10 Par. 7 PrTV-G).

During the reporting period, numerous changes in ownership structures under Art. 22 Par. 4 PrR-G were reported; some changes did not exceed the 50% threshold, while others referred to the accompanying changes in management. One noteworthy change in this context was the transfer of shares and merger of Antenne Salzburg GmbH (the licensee for "Innsbruck 105.1 MHz," "Lower Inntal Valley including the town of Hall," "Lienz" and "Salzburg Province") and Antenne Wien Privat Radio Betriebsgesellschaft m.b.H. (the licensee for "Vienna 102.5 MHz") as the transferring companies into their sole shareholder, Antenne Österreich GmbH, as the acquiring company. This transaction means that Antenne Österreich GmbH is now the licensee for the following coverage areas: "Vienna 102.5 MHz," "Innsbruck 105.1 MHz," "Lower Inntal Valley including the town of Hall," "Lienz" and "Salzburg." Additional changes in Antenne Österreich GmbH's ownership structure are currently underway.

Moreover, it is also worth mentioning the transfer of 10% stakes in Radio Oberland GmbH (the licensee for the "Tyrolean highlands" coverage area) to Gstrein-Jaksch-Gstrein Vermietungs GmbH and to Gstrein-Jaksch-FMZ-GmbH, meaning that exactly 50% of the shares (as recorded at the time when the license was issued) have been transferred to third parties.

During the reporting period, procedures carried out under Art. 22 Par. 5 PrR-G included the review of reorganization measures at Antenne Salzburg GmbH and Antenne Wien Privat Radio Betriebsgesellschaft m.b.H.; in both cases, KommAustria determined that the changes would still comply with the provisions of Art. 5 Par. 3 and Articles 7 to 9 PrR-G.

Changes subject to notification requirements

Moreover, a number of notifications pursuant to Art. 10 Par. 6 PrTV-G were submitted during the year under review, in particular several changes in the ownership structure of ATV Privatfernseh-GmbH. The most recent notification from ATV Privatfernseh-GmbH indicated that 99.67% of the previous owners' shares in the parent company ATV Privat-TV Services AG were acquired by HKL Medienbeteiligungs GmbH.

In addition, the regulatory authority also received a notification on a change in ownership and transfers of shares in the group SevenOne Media Austria GmbH, SAT. 1 Privatrundfunk und Programmgesellschaft m.b.H., ProSieben Austria GmbH and PULS CITY TV GmbH.

During the reporting period, procedures carried out under Art. 10 Par. 7 PrTV-G included a review of Red Bull GmbH's assignment of 95% of shares in Salzburg TV Fernsehgesellschaft m.b.H. to Red Bull Media House GmbH. In this case, the regulatory authority determined that the transfer would not violate the provisions of Art. 4 Par. 2 and 3 PrTV-G.

4.1.5.5 Programming changes

Approval procedures for programming changes in radio broadcasting

Programming changes pursuant to the PrR-G

Since an amendment to the PrR-G went into effect in August 2004 (Federal Law Gazette I No. 97/2004), private radio broadcasters are permitted under Art. 28a Par. 2 PrR-G to request an official decision from KommAustria on whether or not planned changes in programming can be considered fundamental changes. The assessment of whether a change in programming can be considered fundamental is to be carried out with due attention to the original licensing decision.

Fundamental programming changes are to be approved by KommAustria at the radio broadcaster's request after a hearing with those radio broadcasters whose stations can be received by terrestrial means in the same coverage area, as long as the radio broadcaster has been broadcasting in accordance with the official licensing decision for at least two years and the intended change is not expected to bring about any severely detrimental effects on the competition situation, the economic efficiency of existing radio broadcasters in the coverage area, or the diversity of content offered for listeners. In this context, it is necessary to consider the extent to which external circumstances relevant to the radio broadcaster's activities have changed since the license was issued.

In cases where a planned change does not constitute a fundamental change in programming according to KommAustria's assessment decision, no official approval is necessary in order to carry out the programming change. Art. 28a Par. 1 PrR-G specifies what can be regarded as a fundamental programming change and what was already considered a fundamental change under Art. 28 Par. 2 PrR-G prior to the amendment in question.

During the reporting period, N & C Privatradio Betriebs GmbH ("Vienna 104.2 MHz") requested a determination as to whether a limited-time change in its programming would be regarded as fundamental and at the same time requested KommAustria's approval if the changes were indeed considered fundamental. KommAustria determined that the change was not a fundamental change in the nature of the broadcaster's programming.

In addition, one request from Antenne Oberösterreich GmbH (Wels, Upper Austria) for the approval of a fundamental change in the nature of its programming in the form of a changed music format was rejected because the requirements pursuant to Art. 28a Par. 3 PrR-G were not fulfilled; this rejection came after the BKS issued an official decision indicating that the requested change in programming can be considered fundamental.

Approval procedures for programming changes in television broadcasting (PrTV-G)

Programming changes pursuant to the PrTV-G

In the amendment introduced by Federal Law Gazette I No. 97/2004, the Private Television Act (PrTV-G) was also changed in such a way that licensees under the PrTV-G can request an official assessment under Art. 63a PrTV-G from KommAustria as to whether or not a planned change can be considered a fundamental change in the nature of programming, and they can have such fundamental programming changes approved by the authority. This decision is taken according to the same criteria as those set forth in the PrR-G. No procedures pursuant to Art. 63a PrTV-G were carried out in the reporting period.

4.1.6 Broadcasting market analysis

Under the TKG 2003, KommAustria is required to carry out regular reviews and analyses of broadcasting-specific markets for the provision of communications networks and services ("broadcasting transmission services").

Review of relevant markets ordinance

Pursuant to Art. 36 Par. 1 TKG 2003, a review of the ordinance identifying relevant markets susceptible to sector-specific regulation (RFMVO 2004) was initiated. For this purpose, the regulatory authority conducted a comprehensive data survey among market participants. The data collected will be used as a basis for delineating and defining the relevant national markets for broadcasting transmission services to deliver broadcast content to end users which are susceptible to sector-specific regulation.

4.1.7 Broadcasting frequency management and frequency coordination

Transition from analog terrestrial television to DVB-T

In the field of frequency management, activities in the reporting period focused on the implementation of DVB-T in Austria and neighboring countries. In this process, it was necessary to check each new DVB-T transmitter for interference with existing analog transmitters. Depending on the results, the schedules for the switchover were adapted and replacement channels were coordinated for the relevant analog transmitters. The objectives in this context are to make the switchover as simple as possible for television subscribers and to minimize the transition costs for the operators of television transmitters. In addition to the transition from analog television to DVB-T, another focus of activities was the planning of a DVB-H layer for mobile television. The frequencies defined for this layer will form the basis for the implementation of a DVB-H network in the invitation to tender for MUX D. More specific planning activities can only be carried out in cooperation with the company which is awarded the licenses, as only the licensee can decide on the exact locations of the transmitters and their antenna diagrams.

Within the framework of CEPT, the Broadcasting Frequency Management Department participated actively in discussions regarding the digital dividend and the preparation of studies on potential uses of a lower band in the UHF broadcasting frequency range for mobile services.

4.1.7.1 Working basis for frequency management

Frequency management and frequency coordination form the basis for the use of terrestrial transmission capacities at specific transmitter locations.

Coordination ensures interference-free operation of broadcasting transmitters

Coordination activities are necessary at the national and international level in order to ensure the efficient use of the frequency spectrum and to avoid interference between individual radio services or broadcasting stations.

The currently relevant international treaties are as follows:

- Geneva 06 (ITU conference);
- Geneva 84 (ITU conference);
- Maastricht 2002 Special Arrangement, as revised in Constanta 2007 (CEPT conference);
- Wiesbaden 1995 Special Arrangement, as revised in Constanta 2007 (CEPT conference);
- Geneva 75 (ITU conference).

In the "Maastricht 2002 Special Arrangement, as revised in Constanta 2007," the arrangement governing digital broadcasting in the L-Band was expanded in order to enable to the coordination of mobile multimedia applications (including mobile television) in the future.

4.1.7.2 Frequency coordination procedures

New transmission capacities require international coordination procedures.

Terrestrial transmission capacities to be used by broadcasting operators can only be opened up by means of coordination procedures, which generally last three to six months.

Table 2 below shows the number of coordination procedures carried out for new frequency planning and modifications in the year 2007.

Table 2: Number of coordination procedures

Country	Analog radio	Digital radio	Analog television	Digital television
Austria	29	3	-	17
Germany	8	108	-	90
France	8	-	-	-
Croatia	11	-	-	-
Luxembourg	-	-	-	3
Poland	4	-	1	1
Switzerland	72	45	-	111
Slovakia	17	-	-	-
Slovenia	33	-	9	11
Czech Republic	28	-	-	-
Hungary	14	-	4	24
TOTAL	**224**	**156**	**14**	**257**

Source: RTR

In addition, bilateral and multilateral frequency coordination meetings were also held in 2007 with administrations in Austria's neighboring countries in order to ensure a smooth transition to DVB-T in Austria and its neighboring countries.

4.1.7.3 Participation in licensing and allocation procedures

RTR's Frequency Management Department prepares expert opinions for the authority.

During the year under review, RTR's expert opinions with regard to VHF radio largely focused on the 21 licenses which will have to be re-issued ten years after their initial approval in 1998. As in 2006, numerous expert opinions were also drawn up in connection with the expansion of the nationwide radio chain. In addition, two new coverage areas for the "LINZ 2" location were planned on the basis of four frequency allocations belonging to ORF which were legally revoked in 2006, and those coverage areas were approved in 2007. Finally, a large number of procedures were related to changes in technical parameters for existing transmission capacities which were subjected to technical reviews.

In the course of DVB-T implementation, the Broadcasting Frequency Management Department reviewed and confirmed the feasibility of 51 DVB-T transmitters for ORS, the operator of the terrestrial multiplex platform for DVB-T in Austria. In addition, a number of projects involving DVB-T and DVB-H broadcasting trials required technical frequency testing with regard to television channels and radiated power.

4.1.7.4 Frequency register

Another duty of the regulatory authority under the Private Radio Act (PrR-G) and Private Television Act (PrTV-G) is to maintain the Austrian frequency register, in which all licensed analog and digital broadcasting transmitters must be entered.

The RTR web site provides up-to-date information on all approved broadcasting transmitters.

This data is also available to the public on the RTR web site (http://www.rtr.at). The graphic transmitter map and frequency registers were adapted to suit the new design of RTR's web site in 2007.

Over 2,300 transmitters are currently included in the frequency register and transmitter map. Of those transmitters, approximately 2,000 are ORF and ORS stations (including transmitters belonging to municipalities), while the remaining 300 transmitters are operated by private broadcasters.

4.1.7.5 Measurement activities

Measurements support Frequency Management in opening up new transmission capacities.

In connection with licensing procedures in broadcasting, numerous expert opinions were supplemented by technical measurements. Among other things, technical measurements were taken in order to support the transfer of the 96.7 MHz frequency from the Freinberg location to Lichtenberg, a mountain with higher elevation, thus enabling better reception and longer range for the "Arabella Linz" station. In addition, the RTR measurement vehicle made it possible for a new private radio station to launch broadcasting operations on the 106.6 MHz frequency in the area surrounding the town of Bruck an der Mur.

Activities in this field also focused on measuring the coverage of the DVB-T transmitters put into operation in 2007. These activities were carried out using newly acquired equipment for mobile DVB-T measurements.

In connection with CEPT Working Group FM PT22, measurement campaigns were carried out in cooperation with radio supervision bodies in order to collect current values for hub and multiplex power from VHF transmitters, and the results were presented to the FM22 group. These campaigns also involved many other European countries. The objective in this context is to develop a uniform regulation within CEPT in order to standardize the volume level of radios and to minimize interference from adjacent frequencies.

4.1.7.6 Participation in international working groups

FM PT45

Strategies are developed and studies are conducted in international working groups.

In CEPT Working Group FM PT45, a report on the flexible use of the 1452-1479.5 MHz frequency range for mobile multimedia services was prepared in response to a mandate from the European Commission. In March 2007, this report was accepted in Krakow by the Electronic Communications Committee (ECC) and then passed on to the Commission.

In addition, the FM PT45 Working Group expanded the 2002 Maastricht Agreement for the 1452-1479.5 MHz frequency range to account for the introduction of mobile multimedia applications in addition to the existing T-DAB services, and the expansion was approved at the ECC meetings in Constanta (Romania) in July 2007. In Constanta, parts of the T-DAB agreement "Wiesbaden 1995 Special Arrangement, as revised in Maastricht 2002" relating to the 174-230 MHz frequency range were repealed. This frequency range is already covered by the agreement reached at the conference in Geneva in 2006 (RRC 06).

ECC TG4

The activities of the ECC TG4 Working Group focused on the use of the digital dividend in 2007. Two studies examined the potential use of parts of the UHF spectrum for mobile services. These studies were presented to the European Commission. The studies revealed that the use of an uplink for mobile services in close proximity to broadcasting frequencies is the most serious problem from a frequency management perspective, as such uplinks may interfere with the reception of terrestrial broadcasting signals. In order to ensure interference-free operation, therefore, it is necessary to account for certain restrictions when defining a frequency band plan.

Frequency policy requires close cooperation with the BMVIT.

In parallel to the work of ECC TG4, the decision was made at the World Radio Conference 07 (WRC07) that the 790-862 MHz frequency range will also be dedicated to mobile services (in addition to broadcasting) from 2015 onward. Two CEPT working groups will continue to examine the unresolved issues associated with the interference-free coexistence of broadcasting and mobile services in the same frequency band. In the ITU, Joint Task Group 5-6 was established in order to prepare a study on the concurrent use of the band for mobile applications and other primary services in this frequency range before WRC11. This study is necessary in order to enable the interference-free implementation of different services in adjacent countries and regions. We can expect some countries in Europe to continue using this band for broadcasting, while others will implement mobile services. In this area, the Broadcasting Frequency Management Department will have to coordinate carefully with Austria's Highest Post and Telecommunications Authority (OPFB), especially as the Federal Ministry of Transport, Innovation and Technology (BMVIT) plays a key role the European Commission working groups which deal with the potentially harmonized use of the digital dividend in the EU.

4.1.8 Digitization Fund

In 2007, the Austrian Digitization Fund received an endowment of EUR 6.738 million (due to the adjustment of the federal government contribution to the Broadcasting Division). These funds are derived from Austrian broadcasting fees collected jointly with ORF programming fees but generally allocated to the federal budget. In addition, funds from previous years were available in the amount of EUR 9.346 million, thus yielding a total of EUR 16.084 million.

On April 8, 2005, RTR issued guidelines for awarding grants from the Digitization Fund. Those guidelines form the decision-making basis for grants and define specific award criteria.

Terrestrial digitization

One focus of the fund's activities in 2007 was the digitization of terrestrial television (DVB-T). In the course of the year, analog television broadcasting was switched off in Austria's provincial capitals. In September 2007, the grant for early adopters was extended until early 2008, especially in light of the shutdown of analog terrestrial television in October.

Digitization of cable television

Another focus area in the reporting period was a campaign developed in cooperation with the Austrian Federal Economic Chamber (WKÖ) to provide subsidies for devices which support digital cable broadcasting reception (DVB-C). This campaign was carried out in the first half of 2007 and extended until the end of the year; it mainly targets consumers who switch to digital cable reception using terminal devices which support additional interactive services (such as video on demand, voting, etc.) in addition to displaying linear content. The objective of the project is to accelerate the digitization of cable infrastructure in Austria.

Finally, RTR also supported or financed the following projects using resources from the Digitization Fund in 2007:

Grants for trial operations

- DVB-H test operation in Salzburg and Vienna: Trials were conducted by ORF, ORS, Siemens AG Österreich, mobilkom austria, Hutchison and the Salzburg University of Applied Sciences from the summer of 2006 to the summer of 2007; the objective was to test mobile television broadcasting via DVB using mobile telecommunications for the return channel;

  Ongoing monitoring and documentation of the DVB-H project by evolaris research & development GmbH;

- Continuation of the three-year project to finance the additional costs arising from simultaneous analog and digital broadcasting (simulcast operation) for ORF and ATV;

- Grants for the construction and operation of a cable multiplex platform.

Of the EUR 16.084 million (see above) available in 2007, funds were used as follows: EUR 1.262 million was used for RTR's administrative activities, for participation in projects and for studies commissioned in connection with broadcasting digitization. EUR 4.390 million was paid out in the form of terminal device subsidies, including execution costs (DVB-T and DVB-C); and payments for additional grant projects amounted to EUR 2.646 million (e.g., additional costs arising from simulcast operation). Therefore, a total of EUR 8.298 million was paid out in the year 2007, and at the same time the fund earned interest income totaling EUR 376,000. The remaining amount of EUR 8.396 million (including the EUR 233,000 returned to the fund as it

was not required for RTR's administrative activities and participation in projects) has been carried forward to the year 2008. Of that amount, EUR 4.302 million is reserved for previously awarded grants which were not paid out in 2007. As a result of the economic and expedient use of resources, additional funds in the amount of EUR 4.094 million are still available for the year 2008.

4.1.9 Austrian Television Fund

EUR 7.5 million from broadcasting fees

The Austrian Television Fund was established at RTR by an amendment to the KommAustria Act (KOG) as of January 1, 2004. RTR administers this fund, which receives an annual endowment of EUR 7.5 million from the fees collected in accordance with Art. 3 Par. 1 of the Austrian Broadcasting Fees Act (RGG) and allocated to the federal budget. This amount (less the personnel and material expenses incurred by RTR in administering the fund) is used to support the production of television films, series and documentaries.

The establishment and duties of the Review Board for the Austrian Television Fund are governed by Art. 9h KOG. Grant decisions are made by the managing director of RTR's Broadcasting Division on the basis of the grant guidelines and after due consideration of the Review Board's comments.

New Review Board since May 2007

A new Review Board was appointed in May 2007:

- Andreas Hruza, Chairperson (Andreas Hruza AV Medienbüro GmbH);
- Bettina Leidl (Managing Director, Kunsthalle Wien);
- Werner Müller, Deputy Chairperson (Austrian Federal Chamber of Economics);
- Gerlinde Seitner (Austrian Film Institute);
- Matthias Settele (SetTele Entertainment GmbH).

4.1.9.1 Guidelines on grants from the fund

New guidelines since July 1, 2007

The guidelines for grants from the Austrian Digitization Fund were amended in 2007. The guidelines approved by the European Commission until June 30, 2007[1] were applied for the first two application dates of the year. The applications submitted as of the third and fourth application dates were assessed under the new guidelines.

Before the guidelines were amended, a comprehensive survey of opinions was conducted among major television broadcasters in Austria and Germany, the Austrian Association for the Audiovisual & Film Industry at the Austrian Federal Economic Chamber, and the Erich Pommer Institute (EPI, Potsdam). After receiving comments from the Review Board, RTR notified the European Commission of the new guidelines. The draft guidelines submitted were approved by the European Commission[2] and entered into effect retroactively as of July 1, 2007. The new guidelines will remain in force until June 30, 2013.

4.1.9.2 Projects supported

A total of 82 different projects were submitted as of four application dates in 2007.

Of those project applications, 17 were withdrawn for various reasons before a decision was made, while 29 projects were rejected because at the time of submission they did not fulfill the purpose of grants as defined in the guidelines and the KommAustria Act (KOG), or were considered less worthy of funding compared to the other projects submitted. As a result, those projects were not awarded grants, in particular due to limited funds.

35 projects supported in 2007

Grants were awarded for 36 projects and amounted to an approximate total of EUR 7,010,087.00 (14 television films, 21 television documentaries and one television series). Various producers submitted applications for projects of varying length and content. One producer did not accept the grant awarded for a project because it could not be financed in full. Therefore, 35 grant awards totaling EUR 6,975,387.00 were still active as of December 31, 2007.

Grant decisions can be viewed at http://www.fernsehfonds.at (in German).

[1] The European Commission approved the guidelines for the period ending June 30, 2007 (Decision of July 13, 2005 K(2005)2571, State Aid No. N 77/2005).

[2] The European Commission approved the guidelines in its decision of June 28, 2007 (K(2007)3215, State Aid No. N 168/2007) for the period ending on June 30, 2013.

4.1.9.3 Events

The future of television production in Austria

Study evaluating the Austrian Digitization Fund

On December 7, 2007, a forum was held at Filmstadt Wien on "The future of television production in Austria." At the event, a study conducted by the Hans Bredow Institute (Hamburg) on the Austrian Television Fund was presented. The study will be published in 2008 and made available on the Austrian Digitization Fund's web site at http://www.fernsehfonds.at.

Seminars: Rights clearance and Digital cinema – New opportunities for the Austrian film business

Know-how for the Austrian film business

In cooperation with the Austrian Film Institute, the Austrian Digitization Fund succeeded in bringing "Rights Clearance," part of the EPI's "Essential Legal Framework" seminar series, to Austria.

Another EPI seminar was held on the topic of "Digital cinema – New opportunities for the Austrian film business" and provided participants with a comprehensive overview of current developments in this field. The seminar covered new developments with regard to the future digitization of the entire production chain – from shooting to post-production and archiving, distribution and cinema presentation.

4.1.10 Press and journalism subsidies

4.1.10.1 Press subsidies

Applications and budget

Second-highest number of applications since 1975

In 2007, KommAustria received a total of 149 applications for financial support pursuant to the Press Subsidies Act 2004 (PresseFG 2004; Federal Law Gazette I No. 136/2003); this was the second-highest number of applications since federal press subsidies were introduced in 1975. KommAustria granted subsidies in 136 cases, while 12 applications had to be rejected due to non-fulfillment of the relevant legal requirements. In one case, the grant awarded was not accepted because the proposed project was postponed indefinitely.

The group of recipients remained largely unchanged compared to the year 2006.

In 2007, a total of EUR 12,827,999.80 in subsidies were paid out, which means that the amount of funds used for press subsidies has only changed slightly since 2005.

Details on the subsidies allocated are published on the RTR web site (http://www.rtr.at).

Table 3: Development of subsidy amounts, applications and success rates since 2004

	Subsidy amount in EUR	Number of applications	Approvals	Success rate in %
2004	13,482,295.48	139	119	85.6
2005	12,837,950.20	154	134	87.0
2006	12,837,949.80	144	133	92.4
2007	12,827,999.80	149	136	91.3
Total	**51,986,195.28**	**586**	**522**	**Ø 89.1**

Source: RTR

Press Subsidies Commission

New member of Press Subsidies Commission

In its grant decisions, KommAustria is supported by the Press Subsidies Commission, which consists of six members and one chairperson. In April 2007, Clement Achammer, an attorney who was first appointed by the Federal Chancellor in 2004, resigned from his position on the commission. Mr. Achammer has been succeeded by Alexandra Knell, who is also an attorney.

Evaluation report

Publication of KommAustria's evaluation report

KommAustria's evaluation report on the Press Subsidies Act of 2004 (PresseFG 2004) was published on the RTR web site in 2007.

The evaluation includes subsidies allocated in 2004, 2005 and 2006, and includes an overview of the perspectives of relevant interest groups on the various promotion measures.

In addition to suggestions for further improvements and legal clarifications, points for discussion in the future include subsidies for Internet newspapers, expansions to include media subsidies, and an adjustment of the funds available.

The entire evaluation report is available on the RTR web site.

Guidelines on subsidies

Guidelines on subsidies for 2008: First provisions regarding e-papers and print-on-demand periodicals

The subsidy guidelines for 2008, which were published on the Internet by KommAustria at the end of 2007, include references to e-papers and print-on-demand periodicals for the first time. In the guidelines, KommAustria has defined the criteria for the inclusion of copies distributed by these means in connection with press subsidies and is thus one step ahead of the Austrian Circulation Survey (*Österreichische Auflagenkontrolle*; ÖAK) as well as the M.A.K.NEU media circulation survey conducted by the publishers Mediaprint and NEWS GmbH.

4.1.10.2 Journalism subsidies – Promotion of print periodicals

Under Section II of the Federal Act on Subsidies for Political Education Work and Journalism 1984 (PubFG 1984), the federal government is required to "promote print periodicals for the sake of preserving their diversity and multitude."

In 2007, KommAustria was responsible for decisions on subsidies for print periodicals which serve the purpose of citizens' education. The Journalism Subsidies Advisory Board supports KommAustria in these decisions.

The 19 members of this board represent various areas of the public sphere: The political parties represented in Austria's National Council, the relevant trade union, science and research, education, churches and religious communities, publishers of periodicals, presses and freelance journalists. In addition, various federal ministries and the Chamber of Tax Consultants and Certified Accountants have the right to submit suggestions.

Subsidies for 100 print periodicals

In 2007, grants totaling EUR 360,999.95 were paid out to support 100 print periodicals.

A total of 15 applications were rejected because they did not fulfill the grant prerequisites defined in Section II of the Journalism Subsidies Act.

4.2 Telecommunications Division

In Austria, the first EU regulatory framework was implemented in the Telecommunications Act 1997 (TKG 1997). However, the progress of liberalization soon made it necessary to refine the definition of regulatory duties and instruments. As a result, a new package of EU directives was announced in 2002. This framework was implemented under national law by the Austrian Telecommunications Act 2003 (TKG 2003), which entered into effect on August 20, 2003.

In 2006, the European Commission began to revise the EU legal framework in the course of the "Review 2006," mainly as a result of experience with the legal framework from 2002 and market trends such as convergence and Voice over Internet Protocol (VoIP). In November 2007, the European Commission presented its proposals for changes to the EU's existing legal framework for electronic communications networks and services. The major changes envisaged by the Commission include the establishment of a European regulatory authority, the introduction of functional separation as a possible specific obligation for operators with significant market power, the strengthening of consumers' rights and improved radio spectrum management.

New markets recommendation: 7 markets instead of 18

Moreover, the European Commission issued a new relevant markets recommendation which now only provides for seven markets (instead of 18) susceptible to sector-specific ex ante regulation (Commission Recommendation of 17 December 2007 on relevant product and service markets). RTR will have take this (generally non-binding) recommendation into account in its review of national markets susceptible to ex ante regulation (Art. 36 TKG 2003).

"Eurotariff": Lower prices for voice telephony in the EU

With regard to international roaming, the European Commission decided already in 2006 to pass a special regulation for the entire EU. The Regulation of the European Parliament and of the Council on roaming on public mobile telephone networks within the Community went into effect on June 30, 2007. This regulation reduces the price level for mobile voice telephony within the European Union.

The sections below describe the regulatory work carried out by both RTR and the TKK during the reporting period.

4.2.1 Market definition and analysis

The three-stage market analysis process required in this context comprises the following steps:

1. Market definition;
2. Market analysis and identification of SMP companies (where applicable);
3. Imposition of regulatory instruments (where necessary).

Review of sector-specific market delineation

Art. 36 Par. 1 TKG 2003 requires RTR to review and define the relevant national markets subject to sector-specific regulation according to national circumstances, in line with the principles of general competition law, and taking into account the requirements of sector-specific regulation. This must be done by issuing (new) ordinances as required under Art. 36 TKG 2003 at regular intervals (at least every two years).

Relevant markets recommendation of the European Commission

The basis of the review carried out was once again the Commission Recommendation of 11 February 2003 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation issued on the basis of Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services (Framework Directive) and the relevance criteria contained in that recommendation. For all of the markets listed in the recommendation, it was necessary to review whether the legal requirements for sector-specific regulation in the field of electronic communications were still fulfilled.

The review of the Telecommunications Markets Ordinance 2003 (TKMVO 2003, in effect since October 17, 2003) and of the relevant telecommunications markets included in the ordinance was launched on October 13, 2005 and continued in the first half of 2007 with the review of the wholesale market for broadband access (Art. 1 No. 17 TKMVO 2003).

The second stage generally requires the TKK to analyze all of the markets defined by RTR with a view to determining whether effective competition prevails or one or more companies have significant market power on those markets (Art. 37 TKG 2003).

Finally, depending on whether any positions of significant market power exist or effective competition prevails, the third stage involves the definition of measures (regulatory remedies; i.e., specific obligations under Articles 38 et seq. TKG 2003) which can be used to resolve the current and potential problems identified (Art. 37 Par. 1 and 2 TKG 2003).

4.2.1.1 Review of the Markets Ordinance – Definition of the wholesale market for broadband access

Once the wholesale-level substitution considerations underlying the delineation of the wholesale market for broadband access had been taken into account, a public consultation on the draft "Review of the wholesale market for broadband access as defined by RTR in Art. 1 No. 17 of the Telecommunications Markets Ordinance 2003 (TKMVO 2003) as last amended by Federal Law Gazette II No. 117/2005" was launched on April 17, 2007.

Broadband market defined

After completing the consultation procedure and appropriately accounting for the comments and opinions received, RTR published a resolution on May 14, 2007 confirming the prior definition of the wholesale market for broadband access under Art. 1 No. 17 TKMVO 2003.

The market for wholesale broadband access comprises the provision of bidirectional broadband access to the subscriber at the wholesale level exclusively via digital subscriber line (DSL) technology based on copper-wire pairs, CATV modem technology based on coaxial cable television connections, and fixed wireless access products (e.g., using WLL and W-LAN).

As there was no need to change the already proven market delineation, the TKMVO 2003 was not amended.

4.2.1.2 Market analyses

Analysis of operator-specific mobile termination markets

Mobile termination market analysis repeated

After carrying out a public consultation at the national level (Art. 128 TKG 2003) and a coordination procedure at the European level (Art. 129 TKG 2003), on October 15, 2007 the Telekom-Control Commission (TKK) issued four official decisions with regard to the analyses of the mobile termination markets of mobilkom austria AG (mobilkom austria), T-Mobile Austria GmbH (T-Mobile), One GmbH (One) and Hutchison 3G Austria GmbH (Hutchison).

Administrative Court overturns decisions on mobile termination.

These decisions were necessary because the Austrian Administrative Court overturned the initial decisions on the mobile termination market analysis (Decisions M 15a-e/03 of October 27, 2004 and M 13a-e/06 of December 18, 2006). The Administrative Court overturned the decisions mainly on the grounds that the original TKK decisions did not "give the utmost consideration" to an opinion of the European Commission (in violation of Art. 129 Par. 2 TKG 2003), and because the Administrative Court considered the cost orientation requirement imposed ("LRAIC of an efficient operator") to be insufficiently defined.

In the course of these substitute procedures, the TKK obtained new economic opinions on the competitive conditions on operator-specific mobile termination markets and determined on the basis of those opinions that the above-mentioned mobile operators each possess significant market power as defined in Art. 35 TKG 2003.

In order to address the competition problems which would arise on these individual mobile termination markets in the absence of regulation, the TKK subjected the mobile operators to specific obligations of non-discrimination and interconnection as well as obligations to publish a reference offer for mobile termination services and to ensure cost-based pricing for the period from October 2004 until the completion of the next market analysis. In accordance with the opinion of the European Commission – and thus also with the ruling of the Administrative Court – the cost orientation requirement for mobile termination fees was implemented in such a way that specific fees for mobile termination services are defined.

Definition of specific fees

The following fees apply to the service of termination in individual public mobile telephone networks:

Table 4: **Mobile termination fees, 2004 to 2009**

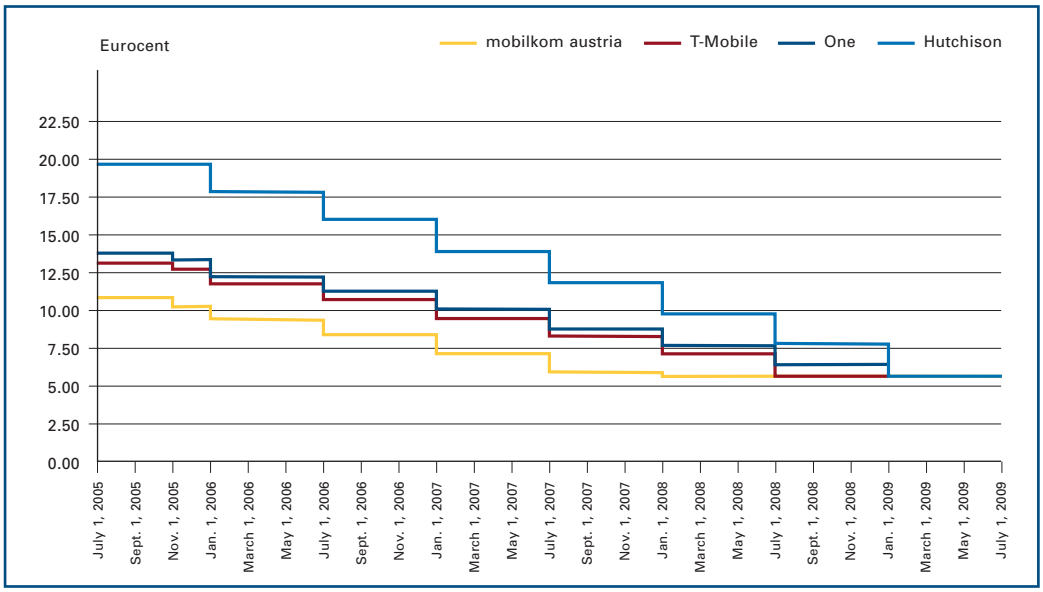
EUR cents (excluding VAT)	mobilkom austria	T-Mobile	One	Hutchison
From October 29, 2004	10.86	13.18	13.80	19.62
From January 1, 2005	10.86	13.18	13.80	19.62
From November 1, 2005	10.34	12.66	13.28	19.62
From January 1, 2006	9.34	11.66	12.28	17.79
From July 1, 2006	8.34	10.66	11.28	15.95
From January 1, 2007	7.13	9.45	10.07	13.90
From July 1, 2007	5.91	8.23	8.85	11.86
From January 1, 2008	5.72	7.02	7.64	9.81
From July 1, 2008	5.72	5.80	6.42	7.76
From January 1, 2009	5.72	5.72	5.72	5.72

Source: RTR

Glide path to a uniform market price

The termination fees were ordered in accordance with a "glide path," that is, a plan which calls for a reduction of all mobile network operators' fees to a uniform level of EUR 5.72 cents by January 1, 2009 at the latest. The glide path, which begins with the higher operator-specific termination fees, serves the purpose of avoiding disruptive intervention and compensating for latecomer disadvantages. The definition of a glide path for the gradual reduction of these fees to a uniform level is also in line with the European trend.

Figure 2: Glide path for mobile termination fees



Source: RTR

Analysis of the transit market

In a resolution issued on October 2, 2006, RTR determined in Procedure RVON 2/05 that there is no need to amend the definition of the market for transit services in the fixed-link public telephone network (transit market), and as a result there was no need to change the TKMVO 2003 (as last amended by Federal Law Gazette II No. 117/2005).

Likewise on October 2, 2006, the TKK initiated procedures under Art. 37 et seq. TKG 2003 for the analysis of the transit market and instructed RTR's official experts to draw up an economic opinion on this topic.

Effective competition on the transit market

In accordance with Art. 7 of the Framework Directive, on February 6, 2007 the TKK notified the European Commission of a draft measure in Procedures M 16/06 and M 16a/06, in which it was determined that effective competition prevails on the market for transit services in the public fixed-link telephone network. This confirmation of effective competition is based on the economic opinions prepared by RTR's official experts, in which they thoroughly examined the specific competition indicators of market share, barriers to market entry, control over infrastructure which can not be duplicated ("bottlenecks") and the presence of countervailing power on the demand side. This analysis showed that no company – in particular Telekom Austria – possessed significant market power, which is why the regulatory obligations imposed on Telekom Austria (such as the obligation to offer services at cost-based prices) were lifted as of June 30, 2007.

TKK decision confirmed by Commission's opinion.

In an opinion dated March 6, 2007, the European Commission stated that it agrees with the TKK's proposal to eliminate ex ante regulation on this market. The Commission further noted that high and non-transitory barriers to market entry do not exist on the Austrian transit market, and that this market tends toward effective competition under the Three-Criteria Test in the markets recommendation. On March 19, 2007, the TKK issued its final decisions in Procedures M 16/06 and M 16a/06.

Market analyses for fixed-link origination and termination

Wholesale fixed-link markets for origination and termination

In a resolution issued on February 6, 2006, the TKK initiated procedures under Art. 37 TKG 2003 under the code M 7/06 for the fixed-link origination market and M 8/06 (subsequently continued as M 8a/06 to M 8m/06) for operator-specific fixed-link termination markets.

Based on economic opinions drawn up by RTR's official experts in July and September 2006, draft decisions were prepared, and the consultation procedure under Art. 128 TKG 2003 and coordination procedure under Art. 129 TKG 2003 were initiated on November 15, 2006. Once those procedures had been completed, the TKK issued Decisions M 7/06 (origination market) and M 8a-m/06 (termination markets of Telekom Austria TA AG, Aplus Informationstechnologie GmbH, COLT Telecom Austria GmbH, eTel Austria AG, Hutchison 3G Austria GmbH, Informations-Technologie Austria GmbH, LIWEST Kabelmedien GmbH, Verizon Austria GmbH, Multikom Austria Telekom GmbH and Tele2UTA Telecommunication GmbH) in its session on February 5, 2007.

Significant market power

The draft decisions once again provide for the following regulatory remedies to be imposed on Telekom Austria due to its position of significant market power on the origination market and on its operator-specific termination market, as was already the case in 2004 (TKK decisions on M 7/03 and M 8a/03):

1. An interconnection obligation under Art. 41 TKG 2003;

2. An obligation under Art. 42 TKG 2003 to base charges for origination and termination services on the forward-looking long-run average incremental costs (FL-LRAIC) of an efficient operator (price regulation);

3. A non-discrimination obligation under Art. 38 Par. 1 and Par. 2 TKG 2003;

4. An obligation under Art. 38 Par. 3 TKG 2003 to publish a reference offer for origination and termination services;

5. An obligation under Art. 40 Par. 1 TKG 2003 to maintain accounting separation and to set up a cost accounting system.

In contrast, the alternative termination network operators were only subjected to price regulation in the form of benchmarking, as was already the case in the TKK's decisions in 2004 (M 8b-k/03). Once again, the regional fee charged by Telekom Austria served as the point of reference in this context.

Market analysis procedure: Wholesale market for broadband access

Once the definition of the wholesale market for broadband access had been reviewed, the TKK initiated Procedure M 1/07 on May 14, 2007 in accordance with Art. 37 TKG 2003 in order to determine whether effective competition prevails or one or more companies have significant market power on this telecommunications market.

At the end of the year under review, this procedure had not yet been completed.

4.2.2 Network access

Creating the conditions necessary to enable new entrants to provide services on the market is a crucial area of activity. In this context, (open) network access, especially in the form of interconnection, is especially important. The interconnection of communications networks supports interoperability between the subscribers of all public telephone networks.

Under Art. 48 Par. 1 TKG 2003, each operator of a public communications network is required to provide upon request a reference offer for other operators of such networks. In this context, all parties involved are to pursue the objective of enabling and improving communication among the users of different public communications networks. Should an agreement on interconnection under Art. 48 TKG 2003 not be reached between these operators, then any party involved can call upon the regulatory authority (Art. 50 Par. 1 TKG 2003).

4.2.2.1 Definition of mobile termination fees in cases of dispute

Definition of MT fees: 10 decisions

On October 29, 2007, the TKK issued ten official decisions pursuant to Articles 48 and 50 TKG 2003. The requests for orders specifying interconnection terms between mobilkom austria AG, T-Mobile Austria GmbH, One GmbH, Hutchison 3G Austria GmbH, Tele2 Telecommunication GmbH, Multikom Telekom Austria GmbH and UPC Telekabel Wien GmbH essentially focused on setting the amounts of mobile termination fees for various time periods after 2005.

In addition to other general terms of interconnection, the TKK also set the amount of mobile termination fees in accordance with the decisions issued on October 15, 2007 and December 18, 2007 (M 15a-e/03, M 13a-f/06); for more information on those decisions, please refer to Section 4.2.1.2.

4.2.2.2 New terms for local-loop unbundling

In the course of the year 2007, a number of Telekom Austria's unbundling partners, specifically Tele2 Telecommunication GmbH, Silver Server GmbH and UPC Austria GmbH, requested that various terms be redefined in relation to the unbundling of subscriber lines. These requests included the calculation of the monthly rental fee, subscriber line fault elimination, planning, and other terms related to local-loop unbundling. The procedures were still pending at end of reporting period.

4.2.2.3 Request for definition of new fees for fixed-link origination and termination

In October 2007, Hutchison 3G Austria GmbH requested an interconnection order vis-à-vis Telekom Austria TA AG in order to set new fees for fixed-link interconnection services. This procedure was also still pending at the end of the period under review.

4.2.2.4 Definition of unbundling terms – Open collocation

Unbundling: Open collocation

In Procedure Z 1/07, Tele2 Telecommunication Services GmbH requested a partial unbundling order for the purpose of reducing the costs associated with local-loop unbundling. The request referred to specific provisions in Annex 6, which governs physical collocation at the main distribution frame, of the parties' existing unbundling order (Z 15/00-150 of November 14, 2005) and aimed to enable open collocation.

Content of request

Tele2 requested open collocation only at locations newly established by Tele2, but not at previously existing locations. Moreover, Tele2's request provided for a standard space of 4 m², changes in the power supply, and rules regarding access to (open) collocation spaces and the relevant deadlines for provision. In justifying its request, Tele2 indicated that only approximately 10% of the main distribution frames had been unbundled, and this small number could be attributed to the high investment costs associated with opening up an unbundling location. Tele2 argued that permitting open collocation would reduce costs considerably, and due to the lower overhead per customer it would enable the establishment of additional, not yet unbundled, main distribution frame locations in thinly populated areas with small numbers of customers. Tele2's request went on to argue that the reservations expressed by Telekom Austria with regard to access to the location, fire safety and air conditioning were not justified.

Reason: Cost reductions

Despite several meetings, the parties were unable to reach an agreement in the preceding dispute settlement procedure involving RTR. As a result, the procedure continued before the TKK, and RTR was instructed to conduct on-site inspections at ten Telekom Austria main distribution frame buildings which had not yet been established as unbundling locations in order to determine whether they are suitable for open collocation, and to inspect two existing Tele2 collocation spaces in order to identify Tele2's needs with regard to open collocation.

The on-site inspection at Telekom Austria's main distribution frames revealed that due to the reduced size of technical switching and transmission equipment, sufficient open space was generally available for the alternative network operators to set up equipment for open collocation, that a majority of main distribution frame buildings were equipped with forced-air ventilation systems and access to fresh air is usually ensured, and that air conditioning may be necessary if additional heat-producing equipment is installed. Moreover, it became clear that Telekom Austria personnel is usually not constantly on duty at the (generally smaller) main distribution frames to which the requested changes in regulations refer.

After discussing the parties' statements on the inspection reports sent to them, the TKK issued a draft enforcement measure on September 3, 2007 with regard to enabling open collocation as requested by Tele2. In the course of the ensuing consultation procedure, a number of opinions were received. The European Commission declared that it did not intend to submit an opinion on the draft. With due attention to the opinions received, the TKK issued an official decision on October 22, 2007 to define the partial unbundling order requested between the parties.

Open collocation only at "new" MDFs starting January 1, 2008

However, in contrast to Tele2's request, the official decision stipulates that open collocation will only be possible from January 1, 2008 onward (earliest possible ordering date) in order to enable Telekom Austria to adapt the relevant processes accordingly by that point in time. At the same time, open collocation was limited to those main distribution frames at which neither Tele2 nor another unbundling partner has collocation space as of January 1, 2008 in order to ensure that open collocation is used especially in connection with the opening up of main distribution frames in rural areas. Finally, Telekom Austria will have the right to provide the unbundling partner with a closed collocation space instead of the open collocation ordered, but such space must be provided within the provision periods applying to open collocation and only up to the amount of expenses incurred for open collocation.

4.2.2.5 Definition of terms for collection fees

Collection fee

In Procedure Z 3/07, atms Telefon- und Marketing Services GmbH requested a reduction of the collection fee it had agreed upon with UTA/Tele2 to an appropriate level of no more than 8%. atms submitted this request after terminating Annex 17 (regarding access to services with regulated maximum prices, value-added services without price regulations and services subject to event-based charges) of its interconnection agreement with UTA and the applicable termination and origination agreement with Tele2 regarding Tele2 mobile traffic in April 2007.

Private-law settlement between atms and Tele2

For the use of value-added services, the retail customer is required to pay a service charge to the source network operator, which passes the payment on to the service network (target network) operator after deducting its own collection expenses (including collection risk). In turn, the service network operator pays to the value-added service provider an amount specified in a private-law agreement.

atms justified its request mainly by arguing that Tele2's collection risk and objection-related expenses in connection with value-added services should bring about a considerable reduction in the collection fee due to provisions in the 2005 amendment to the KEM-V (e.g., limitation of dialer programs to certain number ranges, opt-in policy for value-added services subject to higher prices, more stringent provisions regarding advertisements for value-added services, and automatic disconnection after 30 or 60 minutes), and that the services should be offered as interconnection services on appropriate terms; the cost underlying the service should serve as the main basis for determining whether prices are appropriate. The parties were unable to reach an agreement in RTR's preliminary dispute settlement procedure, thus the procedure was continued before the TKK. Subsequently, the request which had triggered the procedure was withdrawn due to a private-law settlement between the parties, and the procedure was discontinued on July 23, 2007.

4.2.2.6 Definition of terms for collection fees, setup charges for services subject to event-based charges, mobile origination and termination

Private-law settlement between atms and mobilkom austria

In Procedure Z 4/07, atms Telefon- und Marketing Services GmbH submitted a request in May 2007 regarding its interconnection relationship with mobilkom austria AG and requested a reduction of the contractually agreed collection fee for fees from target network-priced value-added services to an appropriate level of no more than 8% as well as the elimination of the setup charge for services subject to event-based charges. atms submitted this request after terminating the annexes of its interconnection agreement with mobilkom austria which govern

access to services with regulated maximum prices, value-added services without price regulations and services subject to event-based charges. Another disputed subject was the issue of whether the TKK recognized the termination of Annex 3 (mobile termination and origination fees) announced by a mobilkom austria employee. As an alternative in this case, atms requested a reduction of the mobile termination fee to a cost-based level and the reduction of the mobile origination fee to an appropriate level, stipulating that appropriate origination fees should not be higher than the termination fees.

While atms again justified its requests in this case by citing the lower costs to mobilkom and the 8% collection fee as customary practice on the mobile market, mobilkom austria argued that the changes in the KEM-V did not have a notable effect due to the higher connection fees in mobile communications, and that the collection risk for mobile network operators was rising due to aggressive customer acquisition measures. The parties were unable to reach an agreement in RTR's preliminary dispute settlement procedure, thus the procedure was continued before the TKK. However, the requests submitted in the procedure mentioned above were withdrawn due to a private settlement between the operators, and therefore the procedure was discontinued on July 23, 2007.

4.2.3 Competition regulation: General terms and conditions / rates and charges

Different means of regulation depending on the market in question

In market analysis procedures, an operator identified as possessing significant market power on a market relevant to telecommunications law can, among other things, be subjected to a specific obligation to have its general terms and conditions of business approved by the regulatory authority. The authority is required to issue a decision on each request for approval within eight weeks. If a company subject to this requirement requests approval for its rates and charges, then these have to meet the standard of cost orientation. In the approval of general terms and conditions, the regulatory authority reviews compliance with certain legal provisions (cf. Art. 45 Par. 6 TKG 2003). Without this approval, companies subject to this requirement are not allowed to apply the respective terms and conditions and/or rates and charges (ex ante review).

In addition to this conventional ex ante approval obligation for fees, the current regulatory framework also provides for less stringent obligations. In this context, fees need only be notified to the regulatory authority, after which the TKK can raise an objection within eight weeks of the notification date.

Three companies subject to obligations in Austria

At the end of 2007, Telekom Austria as well as its subsidiaries mobilkom austria and eTel were subject to appropriate obligations:

Notification requirement with possibility of regulatory objections

- International telephone services for non-residential customers (fixed-link network);
- Local and/or national telephone services for non-residential customers (fixed-link network);
- Local and/or national telephone services for residential customers (fixed-link network);
- Specified types of leased lines.

Ex ante approval obligation

- Access to the public telephone network at a fixed location for non-residential customers;
- Access to the public telephone network at a fixed location for residential customers.

For more information on the obligations imposed on eTel during the year 2007, please refer to Section 4.2.1.2.

On the basis of the above-mentioned obligations arising from significant market power, the following approval procedures from the year 2007 are worth mentioning:

In Decision G 144/06-14 of February 5, 2007, a number of minor changes in Telekom Austria's rates were approved. For example, the changes included an increase in the fee for payments without direct debit authorizations from EUR 2.17 to EUR 2.50, slight adaptations in international calling zones (changes in zone assignments in the customer's favor), an increase in international calling rates and the introduction of new bonus packages. In this context, it is important to note that this procedure – although it concerned connection fees only – was an ex ante procedure, as the new wholesale obligations, which only required notification for these markets, were not yet in effect at the time when this official decision was issued.

In Decision G 64/07-16 of September 3, 2007, the TKK approved eTel's general terms and conditions, service descriptions and fees. Where products subject only to notification requirements were concerned, no objections were raised to the terms and conditions or fees notified. In this procedure, eTel – which had previously been taken over by Telekom Austria – was required to subject the relevant products to retail regulations for the first time.

Objection raised to rates and charges notified by mobilkom austria

On December 20, 2007, the TKK issued an official objection to provisions regarding rates and charges notified by mobilkom austria (Procedure G 148/07-08). After a review of the notified provisions regarding rates and charges, a differentiation in charges for calls to numbers starting with "0664/73" (in contrast to other numbers beginning with "0664") was found to contain a violation of Art. 864a of the General Civil Code (ABGB; "Provisions with unusual content in general terms and conditions or contract forms"); in the course of this review, recent interpretations of the Austrian Supreme Court (especially Case 4 Ob 227/06w of March 20, 2007) were taken into account.

4.2.4 Services subject to notification requirements / general approvals

As mandatory licensing was eliminated when the TKG 2003 went into effect, access to the market was facilitated even further: It is now only necessary to report the operation or provision of a public communications network or service to the regulatory authority. As early as 2003, the regulatory authority had already developed a web interface which made registration easier and far less bureaucratic.

Users can also log on to the web interface using a signature card. In practice, notifications under Art. 15 TKG 2003 (General approval notifications) are now submitted exclusively via the web interface, meaning that correspondence between the regulatory authority and companies is now handled completely by electronic means (with the exception of written confirmations of report submissions). A list of companies which have reported the operation or provision of a public communications network or service can be found on the RTR web site.

RTR web interface: A "one-stop shop" for notifications

The web site also enables companies subject to notification requirements to submit their general terms and conditions as well as their rates and charges, to request and return telephone numbers, and to submit information relevant to financing contributions, the Communications Survey Ordinance (KEV) and market analyses by electronic means.

As of December 31, 2007, a total of 1,476 active services were notified pursuant to Art. 15 TKG 2003.

4.2.5 General terms and conditions / rates and charges under Art. 25 TKG 2003

Under Art. 25 TKG 2003, the operators/providers of communications networks and services are obligated to notify their general terms and conditions as well as their provisions regarding rates and charges to the regulatory authority. This obligation applies to both the initial version of and any later changes in general terms and conditions or provisions regarding rates and charges. Non-compliance with these notification requirements (initial reports or change reports) constitutes an administrative violation pursuant to Art. 109 Par. 4 No. 3 TKG 2003 and is subject to a fine of up to EUR 58,000.00.

TKK can raise objections to terms and conditions which contain legal violations.

The TKK has the right to object to notified general terms and conditions (including service descriptions) – but not to provisions regarding rates and charges – if such terms do not comply with the review requirements (cf. Art. 25 Par. 6 TKG 2003). The TKK's power to review the content of terms and conditions serves to ensure certain minimum standards for subscribers. The TKK must issue objections in the form of an official decision within eight weeks. In such cases, the terms and conditions in question can no longer be used in any case.

Operators required to amend terms and conditions in a majority of cases

A written request for the TKK's opinion with an indication of possible objections under Art. 25 Par. 6 TKG 2003 was only necessary in 17 of the 174 procedures pending during the year 2007; in all other procedures, the questionable clauses were adapted accordingly by the operators once RTR had communicated the presumed need for change by telephone in the course of the initial review. In a total of 89 procedures, the originally notified terms and conditions were withdrawn or adapted accordingly on the basis of the necessary changes communicated by the regulatory authority. An average of two to three repeat notifications were necessary before all of the regulatory authority's reservations had been addressed.

In addition, a total of 274 notifications of provisions regarding rates and charges were received in 2007. However, Art. 25 TKG 2003 does not stipulate that the TKK has the right to object to such provisions.

The general terms and conditions and provisions regarding rates and charges published by the regulatory authority can be found at www.rtr.at/agb-eb (in German).

4.2.6 Frequencies

During the reporting period, the following topics and procedures were handled with regard to frequencies:

Consultation on the allocation of frequencies in the 2010 – 2020 MHz and 2500 – 2690 MHz ranges and on the future use of the 900/1800 MHz ranges

Due to international developments, new frequency ranges will be available for allocation to market participants in the foreseeable future.

In this context, the 2500-2690 MHz frequency range is an essential resource. This range was earmarked for IMT 2000 systems during the World Radio Conference 2000 (WRC 2000). In response to a mandate from the European Commission, CEPT developed plans for the division of this spectrum. These plans were applied in CEPT Decision ECC/DEC/(05)05, which stipulates that 2x70 MHz can be made available for FDD and 50 MHz for TDD or FDD (together with frequencies in other bands).

In principle, these frequencies are already available for allocation in Austria at the present time. The frequency ranges have been designated for terrestrial digital mobile communications systems.

In preparing for the allocation procedure, the regulatory authority carried out a consultation in the summer of 2007, which included questions for market participants on general technical conditions and on specific aspects of the allocation procedure (possible spectrum subdivisions, timing of invitation to tender, etc.).

The second part of the consultation focused on the future use of the 900 and 1800 MHz frequency ranges.

The European Commission is currently preparing a decision on the harmonization of the 900 and 1800 MHz frequency ranges. The objective of this decision is to open up the 900/1800 MHz ranges, which are currently reserved for GSM services, for additional mobile communications technologies (UMTS, IMT, etc.).

In Austria, the 900 and 1800 MHz frequency ranges are dedicated to providing mobile communications services using GSM technology. The frequency allocations are held by mobilkom austria AG (approximately 32 MHz), T-Mobile Austria GmbH (approximately 38 MHz) and One GmbH (approximately 32 MHz). Those frequency allocations will expire at the end of 2015, 2017 and 2019.

In order to ensure a coordinated and efficient procedure with regard to the future use of those frequency ranges, RTR also invited market participants to submit their comments and opinions on this subject.

A total of 12 companies and institutions participated in the consultation procedure. The results of the consultation have been published on the regulatory authority's web site.

The regulatory authority will use the results as a basis for further discussions in those areas. With regard to procedures, the year 2007 was largely characterized by requests for changes in the conditions imposed by official decisions in the course of frequency allocations.

450 MHz frequency range

In early 2006, frequencies in this range were allocated to T-Mobile Austria GmbH and Green Network AB. The frequency allocation was subject to the condition that a certain number of municipalities (310) had to be covered using the allocated frequencies by September 1, 2007.

In cases where this condition was not met, the allocation holder would be required to pay a penalty of up to EUR 3 million.

In the summer of 2007, the two allocation holders submitted requests for an extension of the original deadline (September 1, 2007). In justifying their requests, the companies explained that the frequency allocation decision had been disputed by one of the losing applicants, and thus a state of legal uncertainty had prevailed for the duration of the procedure before the Austrian Administrative Court, which made it unreasonable for the frequency allocation holders to carry out the relevant network development activities.

Fulfillment of coverage obligations by April 12, 2008

In an official decision issued on August 27, 2007, the TKK fulfilled the requests by postponing the deadline for the fulfillment of the coverage obligations by 32 weeks (to April 12, 2008). In its decision, the TKK explained that such terms are announced by the regulatory authority already during the tender procedure in each case and thus serve as a decision-making basis for potential applicants with regard to participating in the procedure. The TKK reasoned that companies decide whether or not to apply for certain frequency allocations on the basis of the general conditions (e.g., terms of use).

Therefore, amending such terms after the fact may also lead to changes in essential decision-making criteria for companies participating in the procedure and is problematic in any case. Moreover, such changes also create a state of legal uncertainty for future allocation procedures, as companies would not be able to rely on the terms of the invitation to tender if terms are constantly changed after the fact in future procedures, thus severely limiting their level of certainty in planning.

Reasons which may be able to justify changes in terms include advances in technology accompanied by substantial increases in efficiency, necessary changes due to international requirements (e.g., changes in frequency usage), unforeseen delays in standardization (where certain standards are prescribed in frequency allocations) and in general any reasons which hinder the operator's ability to fulfill the terms as long as those reasons are not within the operator's control.

With regard to the arguments presented in this procedure (i.e., that the procedure before the Austrian Administrative Court had created a state of legal uncertainty, which made it unreasonable for the frequency allocation holders to make investments during the proceedings) the TKK came to the conclusion that the state of uncertainty regarding planning and investments in that period provided sufficient justification for amending the terms after the fact. The period for fulfillment of the coverage obligations was therefore extended by the duration of the procedure before the Administrative Court.

3.5 GHz frequency range

In November 2004, frequencies in the 3.5 GHz range were allocated to a number of companies. One part of the frequency allocation was the condition that a certain number of municipalities had to be covered using the allocated frequencies by December 31, 2007.

In the summer of 2007, several companies submitted requests for a change in this requirement in order to eliminate the coverage obligation altogether or to postpone the deadlines for fulfillment.

In addition, the allocation holders requested changes in order to expand the possible uses of the frequencies as well as changes in connection with the fulfillment of the coverage obligations arising from technological advances.

In December 2007, the TKK issued a decision in which it rejected the requests for the elimination of coverage obligations and postponement of the deadline for fulfillment of the coverage obligations. In justifying its decision, the TKK indicated that the reasons for the non-fulfillment of terms were within the control of each of the companies in question, and as a result it was not possible to justify changing the originally stipulated terms (which, for reasons of legal certainty, is problematic in any case).

On the other hand, the requests were fulfilled to the extent that the TKK permitted use of the frequencies for mobile communications. Likewise, adaptations were made with regard to specific provisions related to the fulfillment of coverage obligations.

At the end of 2007, Telekom Austria returned its allocated frequencies.

4.2.7 Mergers and substantial changes in ownership structure

Acquisition of eTel Austria AG by Telekom Austria AG

On December 29, 2006, Telekom Austria reported its planned acquisition of eTel Austria AG to the Federal Competition Authority. The object of the merger was the full acquisition of eTel along with its international subsidiaries.

Telekom Austria acquires eTel.

On January 26, 2007, the Federal Competition Authority and the Public Attorney for Cartel Matters requested a review of the merger in a procedure before the Cartel Court (Phase 2 of merger control).

After a comprehensive economic review of the planned acquisition's potentially adverse effects on competition on the telecommunications markets in question (involving RTR and the TKK in cooperation with the Federal Competition Authority and the Public Attorney for Cartel Matters), Telekom Austria made a declaration pursuant to Art. 17 Par. 2 Cartels Act (KartG) vis-à-vis the Federal Competition Authority and the Public Attorney for Cartel Matters. On April 11, 2007, the official parties withdrew their request for a review of the merger in a procedure before the Cartel Court.

Among other things, Telekom Austria undertook to fulfill the following obligations wherever possible in order to prevent the merger from having any adverse effects on competition:

- Support for the migration of eTel wholesale customers wishing to switch to other wholesale providers;
- Waiver of the right to terminate in favor of eTel's contract partners;
- Cession of eTel's collocation spaces to competitors;
- Waiver of exercise of eTel's usage rights in the 26 GHz band;
- Sale of eTel's fiber optic infrastructure;
- Reduction of Etherlink prices where local-loop unbundling is used;
- Reduction of minimum capacity utilization, also in existing interconnection agreements;
- Additional profiles for the use of Telekom Austria's wholesale bitstream services in connection with price reductions (shared use);
- Simplifications to facilitate ordering in the context of local-loop unbundling (web interface).

Planned acquisition of Tele2's mobile communications division by Telekom Austria

On December 11, 2007, Telekom Austria reported its planned acquisition of the mobile communications division at Tele2 Telecommunication GmbH (Austria) to the Federal Competition Authority.

At the end of 2007, this merger control procedure had not yet been completed.

4.2.8 Shared use of communication lines

Section 2, Art. 5 et seq. of the TKG 2003 defines regulations regarding wayleave rights and rights of joint use, and the TKK is assigned responsibility for procedures concerning rights of joint use and site sharing.

Request for shared use rejected

On November 20, 2006, the TKK received requests from Multikom Austria Telekom GmbH (Multikom) under Art. 8 Par. 1 TKG 2003 for the shared use of communication lines belonging to Salzburg AG für Energie, Verkehr und Telekommunikation (SAG; Procedure D 1/06).

On April 16, 2007 the TKK had to reject Multikom's requests for shared use because they lacked sufficient specifications which would have enabled SAG to make specific offers and negotiate the shared use arrangement.

4.2.9 Conciliation procedures

4.2.9.1 Dispute settlement procedures pursuant to Art. 122 TKG 2003

RTR as conciliation body

Under Art. 122 Par. 1 TKG 2003, RTR can act as a conciliation body in cases where disputes between a customer and an operator can not be settled in a satisfactory manner (No. 1) and in cases of alleged violations of the TKG 2003 (No. 2). The complainants may be users, operators/providers of communications networks/services, or interest groups.

Under the TKG 2003, RTR can also act as a conciliation body in disputes with resellers of communications services and handle complaints regarding providers of broadcasting infrastructure (e.g., cable network operators) in the course of conciliation procedures. In accordance with the law, KommAustria has placed RTR in charge of conducting these procedures.

4.2.9.2 Mandatory dispute settlement procedures under Art. 121 Par. 2 TKG 2003

Article 121 TKG 2003 requires RTR to conduct preliminary dispute settlement procedures before the following requests are handled by the TKK: requests regarding the shared use of communications networks, the provision of data for subscriber directories or directory assistance services, charges for number portability, non-discrimination obligations, access to network facilities and network functions, the provision of leased lines, charges for call-by-call and carrier pre-selection, additional obligations regarding access and interconnection, as well as the costs of interconnection.

In such cases, RTR must attempt to negotiate an amicable solution within six weeks. If the parties are able to reach an agreement, the procedure before the TKK is to be discontinued; otherwise, the procedure resumes before the TKK, which has to decide within four months of receipt of the request.

The reports on procedures concerning network access also cover RTR's mandatory dispute settlement procedures.

4.2.9.3 Alternative dispute resolution (ADR)

RTR as mediator

In Article 115 Par. 3 TKG 2003, the Austrian legislature provides for another out-of-court negotiation procedure for conflicts between market participants (i.e., companies or interest groups). Under this provision, RTR may be called upon to take part in negotiations regarding any disagreements resulting from the TKG 2003 according to criteria to be published by RTR and to support the parties in settling the conflict on their own. However, the parties to the dispute must have attempted to resolve the conflict independently before calling upon the regulatory authority. The subject of such negotiated settlements under Art. 115 Par. 3 TKG 2003 can only be disputes which arise from the TKG 2003 or its accompanying ordinances and which are related to communications services. Another requirement for the involvement of RTR is that each party must fill out and submit the ADR questionnaire (see http://www.rtr.at/adr).

ADR has been offered to market participants since 2003. In 2007, however, no market participants availed themselves of these procedures.

4.2.10 Supervisory procedures

The duties of RTR and the TKK also include monitoring the enforcement of general conditions as well as the provisions of the TKG 2003 and the relevant ordinances. This is achieved by means of the supervisory procedure under Art. 91 TKG 2003. This refers to a multi-stage procedure in which a company is first informed about the (suspected) violation and given an opportunity to submit comments regarding the allegation or to restore legal compliance within (at least) one month.

If these requirements are not met, the second step may involve issuing a decision which imposes the appropriate measures on the company in question. In the third and final step, it is possible to suspend or refuse the company's right to operate/provide communications networks or services, and allocated frequencies and communications parameters may be revoked.

Section 7 of the TKG 2003 also specifically defines provisions regarding the revocation of communications parameters. The supervisory process described above generally applies to any procedures carried out in this context.

Supervisory procedure against Tele2 Telecommunication GmbH

Suspicion of unauthorized setup of carrier selection

After a report as well as several inquiries from various operators and subscribers, suspicions arose that Tele2 Telecommunication GmbH had set up carrier pre-selection for a number of subscribers who had not concluded a contract with Tele2 for such an arrangement. The TKK's official decision on Procedure Z 20/01 stated that carrier pre-selection can only be established in cases where the subscriber has concluded the relevant contractual agreement with the operator in question. As a result, the TKK decided on September 17, 2007 to initiate a supervisory procedure against Tele2. Tele2 was given the opportunity to submit comments, in which the company stated that individual errors may arise given the very high number of lines on which carrier pre-selection is set up each day. The company indicated that it makes every effort to avoid such switching errors, and that the situation had been remedied for all subscribers where such errors had occurred. In other cases addressed in the procedure against Tele2, a contractual relationship existed. As the suspicion of conduct in violation of the law or the official decision had not been confirmed, the TKK ultimately discontinued the supervisory procedure. However, the TKK plans to continue monitoring the developments in this area very carefully.

Possible interference by transmission systems in upstream facilities

Upon the suggestion of Telekom Austria's unbundling partners, the TKK began in late 2007 to investigate whether Telekom Austria's use of transmission systems in upstream facilities (serving area interfaces) was causing interference in the broadband services provided by alternative network operators on unbundled lines. The procedures were still pending at the end of the reporting period.

Telekom Austria's violation of non-discrimination obligations by passing on wholesale partners' end-consumer data to its own retail arm

Violation of obligations by passing on confidential data

Poaching attempts by telephone

In Procedure R 1/07, which was initiated ex officio at the suggestion of UPC Austria GmbH and net4you Internet GmbH on May 29, 2007, the TKK examined the extent to which Telekom Austria's forced disconnection of xDSL wholesale customers from the UPC network and the attempted poaching of UPC broadband customers by Telekom Austria employees (as alleged by UPC) constituted a violation of obligations imposed in the course of the market analysis or other (e.g., contractual) obligations. In this context, UPC maintained that its xDSL wholesale customers were disconnected from the UPC network without their consent, meaning that UPC could not provide its Internet access service for those customers; moreover, Telekom Austria employees had contacted UPC customers by telephone and advised them of a special termination privilege for the purpose of poaching UPC customers. In this case, UPC alleged in par-

ticular that Telekom Austria had passed on customer data administered by its wholesale operations to Telekom Austria's own retail division in violation of existing secrecy obligations to UPC.

Telekom Austria allowed data on its wholesale partners' retail customers to be passed on.

Despite statements to the contrary from Telekom Austria, multiple telephone calls to the UPC retail customers in question revealed that in several cases the callers who attempted to poach customers for Telekom Austria had known that the person called was a customer of UPC. In light of these insights, the TKK issued an official decision on August 6, 2007 stating that by allowing the wholesale customers' subscriber data to be passed on from its wholesale division to the retail Internet access service for end-consumers, and by contractually requiring other Internet service providers (ISP) – but not its own retail Internet access service – to comply with retail termination confirmations, Telekom Austria had violated its non-discrimination obligation arising from the market analysis decisions regarding local-loop unbundling and broadband access at the wholesale level. Moreover, the decision instructed Telekom Austria to refrain from passing on its wholesale customers' subscriber data from the wholesale division to its own retail Internet access service in the future, to make effective arrangements to ensure that data can not be shared, and to report to the TKK within three weeks. Finally, Telekom Austria was required to ensure that the process of switching providers (where customers switch from Telekom Austria's own retail Internet service to that offered by one of Telekom Austria's wholesale customers) is subject to the same rules regarding retail customer termination confirmations as a provider switch from one of Telekom Austria's wholesale customers to its own retail Internet access service, and to report to the TKK within two weeks.

New compliance manager

Restriction of access to database

Telekom Austria fulfilled its obligations within the periods specified. With regard to the arrangements made to prevent retail customer data from being passed on, Telekom Austria explained that the employees of the wholesale division were explicitly reminded of the existing non-disclosure obligations; in addition, a new compliance manager was appointed, and authorizations for access to wholesale-relevant systems and databases were reduced substantially. In order to ensure non-discrimination against DSL wholesale partners in provider switching, Telekom Austria adapted the rules indicated in the reference offer for broadband Internet access solutions accordingly.

"aonSpeed Easy" – Telekom Austria's alleged violation of non-discrimination obligation due to the lack of a bandwidth profile for DSL wholesale partners

Adapted reference offer

The TKK initiated a supervisory procedure concerning Telekom Austria, as the notification of changes submitted by the company on August 28, 2007 with regard to bandwidth changes in its special offer "aonSpeed Easy" gave rise to suspicions that Telekom Austria had violated the obligations imposed on the company on the wholesale broadband market. The TKK identified a potential violation in the fact that from August 27, 2007 onward, Telekom Austria offered the special retail broadband service "aonSpeed Easy" with 1024/128 kbit/s for EUR 1.00 per day of usage (minimum charge: EUR 14.00/month, unlimited flat rate) for a limited period of time (from August 27 to October 14, 2007) without simultaneously offering the corresponding bandwidth profile of 1024/128 kbit/s in its reference offer for broadband Internet access solutions at the wholesale level. However, alternative ISPs would not be able to replicate an Internet access product such as aonSpeed Easy without their own infrastructure. Moreover, Telekom Austria had violated the imposed obligation to inform its wholesale DSL partners at least four weeks prior to the planned launch of the corresponding retail product.

Report to Telecommunications Office

A short time later, it came to light that on August 30, 2007, Telekom Austria had already offered a limited-time wholesale product with the corresponding bandwidths, although that product was not available until September 12, 2007. As a result, the supervisory procedure was discontinued on September 17, 2007. Telekom Austria's violation of the advance notice period was reported to the Vienna Telecommunications Office.

Review of suspected violations of access and non-discrimination obligations by Telekom Austria

Another supervisory procedure which is still pending with the TKK pertains to Telekom Austria's setup of broadband connections for its own retail customers after refusing to set up the corresponding wholesale DSL connections.

Review of Telekom Austria's combination package

Examination of Telekom Austria's "Triple Play" retail package ("combination package")

In a resolution issued on November 19, 2007, the TKK decided to initiate a procedure pursuant to Art. 91 TKG 2003 in order to investigate Telekom Austria TA AG's suspected violations of TKK Decision M 1/05-59 of February 28, 2006 by offering a "Triple Play" combination package. Priced at EUR 19.90 per month and consisting of a "TikTak Privat" rate plan, a broadband Internet connection with a data transmission rate of 2,048/384 kbit/s (flat rate) and up to three SIM cards for mobile phones with a calling rate of 5 euro cents per minute to all networks, the combination package originally violated several existing provisions of Decision M 1/05-59 and the provisions of general competition legislation.

From a competition perspective, the following problems initially arose:

First, Telekom Austria enjoyed a competitive advantage in that its existing customers could switch to the new product (for EUR 19.90), while the customers of alternative providers could not. In this form, this advantage lasted until November 21, 2007. Moreover, an additional advantage for Telekom Austria lay in the fact that its existing customers were able to switch under a new product offer (for EUR 25.90) from November 21, 2007 onward. This created a disadvantage for alternative providers in that their existing customers had to switch to the new product offered by Telekom Austria or another alternative provider if they wished to have a product for EUR 19.90. This disadvantage continued to exist with the offer priced at EUR 25.90 for existing customers until November 27, 2007, as the alternative providers were not able to purchase the corresponding wholesale product at the wholesale level and thus secure their existing customer relationships until that time.

TKK demands adaptation of combination package

Alternative operators were placed at a disadvantage in that they were unable to plan their own retail products, as the special offer for bitstream customers (who should have been notified four weeks before the offer was launched) was not announced far enough in advance and the new wholesale product was also offered for a very limited time in order to prevent or limit switching by Telekom Austria customers.

The alternative operators also suffered a disadvantage because in the combination package Telekom Austria launched a mobile communications product ("aonMobil") for which there was no common equivalent on the market. In this way, Telekom Austria made it impossible for the alternative providers to replicate the entire combination package. This advantage generally

lasted until November 21, 2007. At that time, mobilkom austria announced a new, stand-alone market product under the "bob" brand and also made it available for retail customers of alternative providers. Indirectly, the advantage for Telekom Austria customers persisted in that the "bob" product for 5 euro cents, which was offered from November 21, 2007 onward, did not provide the same technical functions (voice mail configuration functions, availability of data and MMS services) as the existing aonMobil service until January 1, 2008.

On December 20, 2007, the TKK came to the conclusion that the combination package also violated regulatory requirements in one of the three bundled elements (fixed-link telephony, mobile telephony and Internet).

This referred to parts of Telekom Austria's aonMobil mobile communications product, the design of which made better functions available than those which Telekom Austria's competitors could replicate for their own retail customers. Therefore, the TKK issued Decision R 4/07, which instructed Telekom Austria to ensure that the two mobile products were technically equivalent by January 1, 2008.

However, the TKK was not able to confirm the suspicion expressed by a third party that Telekom Austria's combination package contained severe violations of regulatory requirements with regard to pricing. The review calculations carried out in the course of the supervisory procedure revealed that the products can indeed be replicated by competitors in practice, as also shown in numerous attractive bundled products recently offered by alternative providers.

4.2.11 Communications parameters

The legal basis for RTR's administration of telephone numbers in Austria is the Communications Parameters, Fees and Value-Added Services Ordinance (KEM-V), which defines a plan for communications parameters and regulations with regard to value-added services.

More flexible usage of geographical telephone numbers only from 2008 onward

This ordinance was slated for revision in 2007. The focus of this "major amendment" to the KEM-V was a discussion/adaptation of the possible uses for geographical telephone numbers. With regard to these terms of use, a harmonized European approach is highly important. In particular, coordination in the process of revising the EU's legal framework and in the IRG/ERG are crucial, although certain delays have arisen in that area. As discussed in Section 4.2.17.2, the ERG's Common Position on VoIP was not finalized until December. As a result, the process of fundamentally revising the KEM-V was launched during that same month. One of the main topics was the possibility of allowing more flexible usage of geographical telephone numbers; in 2008, this will be the subject of intensive discussions with all market participants. Legislative implementation is not expected until the end of 2008. Up-to-date information on this and other topics related to communications parameters can be found at http://www.rtr.at/num.

2007: 63% of number requests submitted online

Since March 20, 2006, RTR has made a web interface available for the purpose of requesting telephone numbers. This means that all correspondence in the course of the allocation procedure can be handled via the web interface. Whereas 33% of all applications were submitted via the web interface in 2006, this proportion increased to 63% in 2007.

4.2.11.1 116 number range

Already in late 2004, the ECC (Electronic Communications Committee) recommended reserving the 116 number range for harmonized European services in the future. With the European Commission's decision of February 15, 2007 (2007/116/EC), the 116 number range was reserved for "harmonized services of social value" at the EU level.

The objective of this decision was to establish short numbers which are easy to remember and standardized throughout the EU for harmonized services of social value. The 6-digit short numbers connect the caller to the same service in each country of the EU. The 116 number range functions in a manner similar to the European emergency number 112, which is easy to remember and connects the caller to an emergency call center in each EU country.

116 000 hotline for missing children

In the decision cited above, a missing children hotline was established as the first harmonized service of social value. The number for this service is 116 000.

116 111: child helpline

The child helpline (116 111) and the emotional support helpline (116 123) followed in the European Commission's decision of October 29, 2007 (2007/698/EC).

116 123: emotional support helpline

Calls to these services are charged in a manner analogous to (0)800 numbers. The call is toll-free for the caller, and the costs are borne by the party receiving the call.

4.2.11.2 Amendments to the Communications Parameters, Fees and Value-Added Services Ordinance (KEM-V)

Second amendment to the KEM-V effective August 31, 2007

The second amendment to the KEM-V went into effect on August 31, 2007. This amendment defines the first EU-wide harmonized service of social value, using the standardized number 116 000 as the missing children hotline. The newly inserted Articles 24a to 24i generally introduce the 116 number range in the Austrian numbering plan. In line with the system applied in other number ranges, the purpose and numbering structure of the number range are first defined in general, after which service definitions, requirements for allocation, allocation rules and rules of conduct are defined for the new hotline. Finally, the new provisions also define charging arrangements and the requirement of toll-free usage.

Among other things, applicants must have the appropriate experience in providing professional telephone counseling for adults, youths and children in problem situations, as well as the necessary capital resources. In order to account for the pan-European nature of these services, the applicant must also be a member of at least one international organization or association for the protection of children and youths or in the field of counseling or emotional support.

Numbers in the 116 range are allocated upon request. Once a request is received, RTR will announce the request on its web site and provide interested parties with an opportunity to request the allocation of that number within a period of one month after the publication of the request. All requests received in that period will be considered to have been submitted at the same time. Where allocation requests are received from multiple applicants which fulfill the legal requirements for allocation, the decision will be made by random drawing. As of December 31, 2007, no requests had been received.

Public consultation on the third amendment to the KEM-V started in December 2007.

The rules for the allocation of the numbers 116 111 (child helpline) and 116 123 (emotional support helpline) will be included in the third amendment to the KEM-V. The public consultation on this amendment was launched on December 18, 2007, and the amendment itself will go into effect on February 29, 2008. After that time, it will be possible to request allocation of the numbers mentioned above from RTR.

(0)70 local network code valid until May 12, 2014

For historical reasons, subscribers in the Linz local network can currently be reached using the local network codes (0)732 as well as (0)70. Under the current version of the KEM-V, it will only be possible to reach those subscribers using the local network code (0)732 from May 12, 2009 onward. This regulation was defined in 2004 along with the provision eliminating the dual network codes for Vienna ([0]1 and [0]222), which has already been implemented. At that time, the (0)70 local network code was only used by one in five callers. With regard to the discontinuation of this network code, market participants have now suggested a postponement of the shutdown date, as operators would be able to reduce costs substantially if the shutdown is postponed until the introduction of next generation networks (NGNs). In light of the still-declining use of this local network code, the shutdown was postponed five years in the interest of a subscriber-friendly arrangement. Therefore, it will be possible to reach subscribers in the Linz local network using the (0)70 local network code until May 12, 2014. However, the operators are also required to carry out an extensive information campaign for subscribers in order to ensure a steady decline in the use of the (0)70 local network code. This change will also be implemented in the third amendment to the KEM-V.

4.2.11.3 Statistical analyses in telephone number administration

Table 5 provides a quantitative overview of the telephone number allocation decisions issued over the last six years. In this context, the increasing trend in the number of allocation decisions for geographical numbers has persisted. This continuous increase can primarily be attributed to requests submitted by VoIP operators which offer telephone services in Austria. Those operators are permitted to use geographical telephone numbers under the KEM-V passed by RTR in May 2004.

2007: 20% more number allocation decisions

Table 5: Number of decisions issued

	2002	2003	2004	2005	2006	2007
Number of affirmative decisions	**502**	**600**	**494**	**871**	**834**	**1,036**
for geographical numbers	22	20	31	79	150	247
for non-geographical numbers	480	580	463	792	684	789
Number of negative decisions	**25**	**82**	**41**	**47**	**68**	**48**
Total	**527**	**682**	**535**	**918**	**902**	**1,084**

Source: RTR

In its administration of special communications parameters,[5] RTR issued a total of nine affirmative decisions in 2007.

Under the TKG 2003, the regulatory authority is required to decide on requests within three weeks of receiving the complete application. As shown in Table 6, RTR's processing times have exceeded this requirement by a wide margin. Here it is important to note that the figures indicated do not refer to business days, meaning that an application received on a Thursday and completed on the following Monday is considered to have taken four days to process.

Table 6: Processing times for telephone number requests

Processing time for telephone number requests (days)	2002	2003	2004	2005	2006	2007
Average processing time	5	4	3	3	2.5	2.5
50% of all requests	4	3	2	2	2	2
90% of all requests	7	8	6	5	4	5

Source: RTR

[5] The 2005 Communications Report contains an overview of the parameters administered by RTR. See also http://www.rtr.at/en/tk/Nummerierung.

Table 7 provides an overview of all telephone number ranges administered by RTR as of December 31, 2007, including allocated numbers and numbers in use. Compared to the previous year, the number of location-independent fixed-link numbers in use rose by 60%, which can largely be attributed to the increased use of these numbers by VoIP providers. The overall number of geographical numbers in use declined by 6.2%. The number of geographical numbers in use at Telekom Austria dropped by 9.2%, while alternative network operators including VoB providers[6] and VoIP providers recorded a substantial increase (16%).[7] Moreover, the number of geographical numbers in use also declined among value-added service numbers for dialer programs (-14%) and carrier selection prefixes (-13%). The latter development supports the generally declining trend in the use of carrier network operators. As regards service numbers in use, it is worth noting the increase of 23% in toll-free numbers and 26% in value-added service numbers subject to event-based charges.

[6] For an explanation, see Section 4.2.17.

[7] The values for "Geographical telephone numbers in use" from the 2006 Communications Report have been corrected.

Table 7: Allocated and utilized telephone numbers in Austria

	Range(s)	Allocated	Used
Geographical subscriber numbers Telekom Austria	(0)1, (0)2xx, (0)3xx, (0)4xx, (0)5xx, (0)6xx, (0)7xx	25,705,700*	2,564,014**
Geographical subscriber numbers Alternative network operators	(0)1, (0)2xx, (0)3xx, (0)4xx, (0)5xx, (0)6xx, (0)7xx	2,545,400*	439,433**
Area codes for private networks	(0)5	368	289
Area codes for mobile networks	(0)6xx	11	8
Dial-up internet access	(0)718	7,100	118
Location-independent fixed-link numbers	(0)720	251,000	29,305
Convergent services	(0)780	3,013	3,013
Toll-free services	(0)800	82,616	14,743
Toll-free dial-up internet access	(0)804 00	231	31
Services with regulated fee limits	(0)810, (0)820, (0)821	86,874	10,025
SMS services in the range for services with regulated fee limits	(0)828 2	1,591	22
Value-added services	(0)900, (0)930	119,169	28,743
Value-added services subject to event-based charges	(0)901, (0)931	42,093	1,589
Dialers (value-added services)	(0)939	10,400	65
Carrier selection prefix (public carrier networks)	10	37	26
Telephone troubleshooting hotlines	111	69	35
Telephone directory assistance services	118	57	46
Routing numbers for number portability	86	51	19
Routing numbers for mobile number portability	87	12	8
Routing numbers for services	89	36	8

Source: RTR

* Figures are indicated in terms of unabbreviated numbers; that is, a telephone number shortened by one or two digits corresponds to 10 or 100 unabbreviated numbers, respectively.

** Actual numbers in use

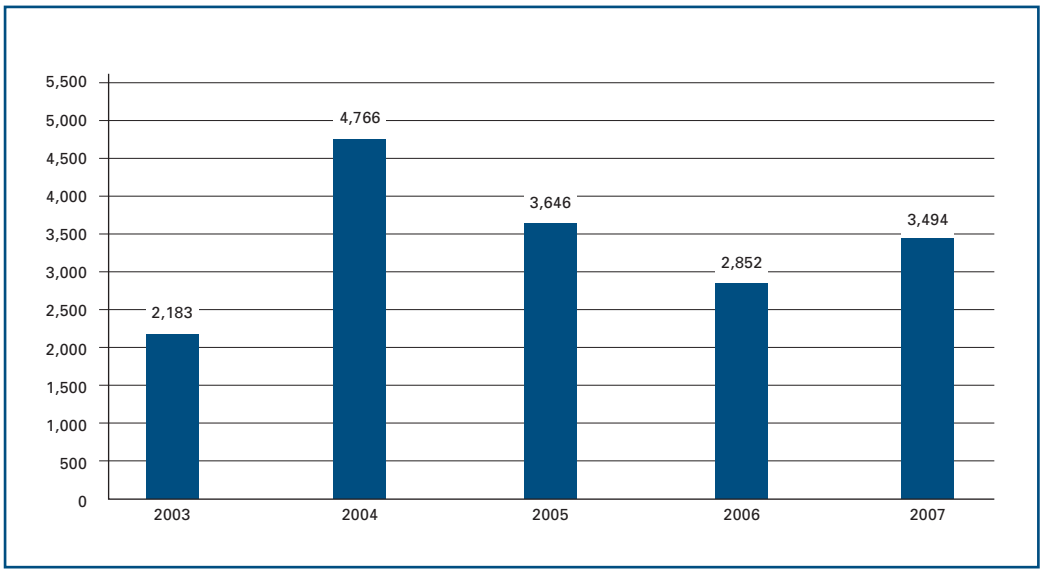
4.2.12 Retail conciliation procedures

RTR is also required to act as a conciliation body in disputes between customers and operators. The prerequisite for the initiation of a conciliation procedure under Art. 122 TKG 2003 is that the customer first attempts to reach an agreement with the operator independently. If it is not possible to reach such an agreement, the complaint can be submitted within one month to the conciliation body, which will then make efforts to find an amicable solution or communicate its opinion on the case in question to the parties involved.

The number of newly initiated procedures saw unfavorable developments in 2007. While the number of new cases declined year on year from 2004 to 2006, this number showed an increase of more than 22% in 2006.

Figure 3: Number of conciliation cases submitted, 2003 to 2007

Substantial increase in number of cases in 2007



Source: RTR

Various reasons for increased number of complaints

This increase can be put down to various factors. One persistent factor is the constantly increasing level of public awareness of the RTR conciliation body. Another factor was the introduction of new mass-market services such as mobile Internet access and data cards. Unfortunately, their success on the market also brought about a major wave of retail customer complaints. The problems in this area ranged from complaints regarding connection quality to problems with invoices for these services. Many of the invoice-related complaints thus concerned fees for the data transfer volumes used. In addition, numerous disputes arose in connection with sometimes exorbitant roaming charges for mobile data services.

Mergers repeatedly cause problems.

Another reason for complaints was the merging of different customer bases into a uniform structure. When one company acquires another and integrates the newly acquired customers into its own system, the changes usually have an impact on complaint statistics because the integration of previously separate billing and customer management systems is nearly always accompanied by problems and initial difficulties.

One increasingly prevalent problem in 2007 was the number of complaints regarding value-added text message (SMS) services. Many users complained that they had been charged for value-added text messages without having ordered the services in question. Further information on value-added services can be found in Section 4.2.16.

In contrast, 2007 also brought a certain degree of relief with regard to fixed-link networks, especially services based on local-loop unbundling. Until 2006, a large number of complaints about these services were lodged; the complaints primarily concerned quality and in some cases the charges billed for broadband Internet access services. In this context, the companies most affected by these complaints were increasingly able to resolve their service quality problems. Fortunately, the increasing prevalence of flat-rate products in fixed-link networks also led to a decline in the number of disputes regarding data transfer fees. This development is likely to continue in 2008.

Problem areas becoming increasingly diverse

As demonstrated by the topics mentioned above, the activities of the conciliation body are becoming increasingly diverse. While clear focus areas could be identified in 2004 and 2005 (i.e., dialer problems), the conciliation body's activities in 2007 involved increasingly varied problem areas, with more and more differences arising between individual cases. As a result, the effort involved in processing these cases has risen noticeably along with the number of procedures.

4.2.13 User rights

The TKG 2003 contains a number of provisions intended to protect users, and it is RTR's duty to monitor adherence to those provisions. Typical obligations for operators include rules regarding the compulsory provision of itemized bills or the rules regarding qualifying reminders in cases where customers fail to pay invoices on time.

The rules provided for in Art. 70 TKG 2003, which detail the circumstances under which a telecommunications service user who is behind in payments can be disconnected from the network, were the basis for an official decision issued on April 10, 2007 with regard to T-Mobile Austria GmbH.

Special rules regarding late payments for telecommunications services

On the basis of insights gained in the course of retail conciliation procedures, it became clear that the service was sometimes very quickly disconnected for T-Mobile customers within the "tele.ring" product group in the case of late payments. However, this only concerned those customers who paid their invoices by way of direct debit authorizations and whose account balances did not cover the invoiced amounts, meaning that the direct debit was reversed. Art. 70 TKG 2003 stipulates that service can only be blocked due to late payments once the service provider has sent a payment reminder advising the customer that the service will be disconnected if payment is not received within a grace period of at least two weeks. In the cases mentioned above, the company failed to grant this grace period of two weeks in connection with the advised disconnection and in some cases disconnected the customer earlier.

In the relevant official decision, T-Mobile was instructed to ensure that the provisions of Art. 70 TKG 2003 are also observed in cases where customers who have granted direct debit authorizations fall into arrears due to insufficient funds in their bank accounts, to send qualifying reminders to those customers who pay their invoices by means of direct debit authorizations and to define a grace period of at least two weeks prior to interrupting or disconnecting the service.

T-Mobile complied with this instruction, and the reminder and disconnection process was changed in such a way as to conform with the law.

Regulations regarding user rights generally observed

In general, however, it should be noted that Austrian communications service companies take the regulations protecting users' rights seriously and also observe those regulations in most cases. Regardless of whether it is a question of blocking value-added services free of charge at the customer's request or of providing itemized bills – the user can expect to have access to these possibilities without restrictions.

4.2.14 International roaming

Roaming as an EU concern

The Regulation of the European Parliament and of the Council of 27th June 2007 on roaming on public mobile telephone networks within the Community went into effect on June 30, 2007. One of the main purposes of this regulation was to respond to the increasingly prevalent demands for more affordable roaming charges within the European Union. The regulation was not an isolated measure but serves as a supplement to the legal framework for electronic communications from 2002, which defines the principle that companies in the communications sector should only be subjected to ex ante obligations in cases where effective competition does not prevail. Against this backdrop, the regulatory obligations in the regulation – especially the price regulations – constitute very far-reaching measures.

The regulation constitutes immediately applicable legislation and will at first remain valid until the end of June 2010. In geographical terms, the regulations extends to all 27 EU member states including the overseas regions of Madeira (P), the Azores (P), French Guyana (F), Martinique (F), Réunion (F), Guadeloupe (F) and the Canary Islands (E), and since December 22, 2007 the EEA countries Liechtenstein, Norway and Iceland as well.

4.2.14.1 Content of the regulation

The regulatory measures in the regulation concern the wholesale as well as the retail level. The price regulations apply to voice telephony, but not to data services such as text messaging, MMS or Internet services. For "regulated roaming calls" as defined in Art. 2 lit. e of the EU Roaming Regulation, price limits are introduced at the wholesale as well as the retail level.

Further reduction of roaming charges in 2008

At the wholesale level, a maximum average price per minute of EUR 0.30 was set for regulated roaming calls from August 30, 2007 onward. As of August 30, 2008 and August 30, 2009, the maximum average price per minute must be reduced to EUR 0.28 and EUR 0.26, respectively.

Eurotariff

In line with the price regulations at the wholesale level, a retail "Eurotariff" was introduced and must be implemented for every customer within three months of the regulation's entry into effect. This calling rate must not exceed EUR 0.49 for outgoing roaming calls and EUR 0.24 for incoming roaming calls (prices excluding VAT). By August 30, 2008 and August 30, 2009, these price limits are to be reduced to EUR 0.46 and EUR 0.43 for outgoing roaming calls and EUR 0.22 and EUR 0.19 for incoming roaming calls, respectively (prices excluding VAT).

Extensive information obligations

The regulation requires mobile network operators to offer their customers a Eurotariff. Under Art. 4 of the regulation, it must be possible to combine this tariff with every (national) retail tariff. The introduction phase defined in Art. 4 (3) of the regulation for the Eurotariff at the retail level is relatively complex and can be regarded as the result of a compromise. In addition to the obligation to inform every customer of the Eurotariff within one month after the regulation's entry into effect, the mobile network operators were also required to provide their customers with the Eurotariff within certain defined periods.

Specific tariffs – Tariff switching

Other tariff options possible in addition to the Eurotariff

In addition to the Eurotariff, mobile network operators can also offer other roaming tariffs known as specific roaming tariffs (i.e., rates), which include non-public rates or flat rates, for example. Starting on September 30, 2007 at the latest, all roaming customers must be able to switch from a Eurotariff to another roaming tariff (specific roaming tariff) or vice versa free of charge. The tariff must be switched within one working day of the receipt of the corresponding customer request, with due attention to the minimum contract duration for any previously chosen tariffs for a period of no more than three months.

Push SMS, information obligations

In addition to the wholesale and retail price regulations discussed above, the regulation also defines information obligations for mobile network operators vis-à-vis their customers:

Each mobile network operator must send a push text message to customers entering another member state immediately after their arrival in order to inform them of the maximum roaming charges incurred under the customer's specific rate scheme and to indicate a toll-free service number which the customer can call in order to request more detailed information on the roaming charges incurred. This service is generally mandatory, although the customer may also opt out. Upon request, this service must also be provided for people with blindness and visual impairments in a suitable manner.

In general, Art. 6 of the regulation defines a transparency requirement for roaming rates and roaming charges, especially the Eurotariff; this applies to new as well as previously existing subscriber contracts.

4.2.14.2 Implementation of the regulation

Duties and activities of the regulatory authority

RTR required to monitor implementation of the Roaming Regulation

Under Art. 7 of the regulation, national regulatory authorities are required to monitor and supervise compliance with the regulation in their respective territories.

National regulatory authorities are also required to provide up-to-date information on the application of the regulation. Current information on this topic can be found at http://www.rtr.at/eurotarif (in German).

Eurotariff successfully introduced in Austria

RTR determined that Austrian mobile operators notified the appropriate rates (Eurotariffs); according to surveys conducted by RTR, the roaming charges according to the Eurotariff went into effect at the end of August for a large number of customers.

With regard to the rates notified by Austrian mobile network operators, it is necessary to note that the majority of operators based their prices on the maximum rate indicated in the regulation. Only two operators offer rates lower than the maximum rate of EUR 0.49 (excluding VAT) for outgoing roaming calls.

Within the ERG, RTR was able to contribute to numerous discussions regarding the standardized or harmonized application of the regulation in all member states of the EU. Guidelines were developed on topics which included specific roaming tariffs, the ability to combine the Eurotariff with other tariffs, the treatment of existing and new customers, and data collection. These guidelines can be found at http://erg.ec.europa.eu/whatsnew/index_en.htm.

Outlook

Data roaming under observation

As mentioned above, the regulation will at first remain in effect for three years. However, it can not be ruled out that the regulation's validity may be extended or amended – for example by introducing price regulations for data services – for the sake of ensuring a high level of consumer protection and continuing to promote competition in the roaming sector. Price regulations for data services (SMS, MMS, Internet connections) are not included in this regulation; however, price developments in those areas are under observation and price regulations may be introduced for those services if necessary.

Overall, only few complaints have arisen, and the regulation has been implemented efficiently. (In this context, it is necessary to note that national regulatory authorities can not assess any existing disputes or conflicts unless they are consulted in those matters.)

Of approximately 9.6 million subscribers (mobile connections) in Austria, some 9.3 million can use roaming services. Among those 9.3 million subscribers, approximately 8.2 million used the Eurotariff as of September 30, 2007. Expressed as a percentage, this means that 87.75% of all subscribers who use roaming services used the Eurotariff as of that date.

4.2.15 Universal service

Universal service refers to a minimum set of public services to which all end users must have access, regardless of their place of residence or business (Art. 26 TKG 2003). It must be available throughout the country at a uniform and affordable price and at a specified quality level. Universal service includes the following services:

1. Access to publicly available telephone services via a connection set up at a fixed location;

2. Creation of a comprehensive subscriber directory for all operators as well as access to this directory;

3. Nationwide coverage with public pay telephones.

Directory assistance service, which was also originally included in universal service, was removed from the scope of universal service in 2006, as this service is already provided in a competitive environment.

Under Art. 31 Par. 1 TKG 2003, the provider of universal service is to be compensated for the verifiable costs incurred in the provision of universal service which can not be recovered despite efficient management where these costs constitute an unreasonable burden. For those years in which it provided universal service, Telekom Austria had concluded private-law agreements on the compensation amount with the alternative telecoms operators up to and including 2004. In late 2006, Telekom Austria submitted a request to the TKK for compensation of the costs of universal service for the year 2005. In parallel to this procedure before the TKK, however, negotiations between Telekom Austria and the alternative network operators continued in the first quarter of 2007. In May 2007, the parties reached a private-law agreement as a result of those negotiations. Under the agreement, Telekom Austria received a total of EUR 1.9 million from multiple alternative network operators. This agreement was also applied to the year 2006, for which Telekom Austria again received compensation in the same amount.

In the summer of 2007, Telekom Austria, which is still the provider of universal service in Austria, also submitted key figures on the provision of universal service (to be reported annually). The regulatory authority's review of those figures did not give rise to any major objections.

A detailed discussion of the topic of universal service until the end of 2006 can be found in the 2006 Communications Report.

4.2.16 Dishonest practices in the provision of value-added services (report pursuant to Art. 24 Par. 2 TKG 2003)

KEM-V as the basis for value-added service regulation in Austria

With regard to value-added services, the last sentence of Art. 24 Par. 2 TKG 2003 requires the regulatory authority to provide information on unfair practices and the corresponding measures taken in its annual report pursuant to Art. 34 Par. 2 TKG 2003. The Communications Parameters, Fees and Value-Added Services Ordinance, which was passed in mid-2004 and amended in October 2006 and August 2007, is especially important in this context. This ordinance created Austria's first framework of rules defining the essential general conditions for the provision of value-added services. For details, please refer to the relevant issues of the Communications Report from previous years, in particular the discussion of the KEM-V amendment in Section 4.2.11.1 of the 2006 Communications Report.

Dialer problems disappearing.

Once again, the number of complaints related to dialer services saw a decline during the reporting period. As already noted in the 2005 and 2006 Communications Reports, complaints have practically disappeared due to the KEM-V's opt-in regulation for the provision of these services at domestic value-added numbers. The migration of dialer services to international numbers identified at that time and the accompanying increase in complaints was countered successfully with the improved user protection measures included in the KEM-V amendment, which has also brought about a decline in the number of disputes in that area. In 2006, there were 172 conciliation cases at RTR in connection with those services; this number was reduced to 27 in 2007.

Contests with numbers subject to event-based charges

Contests and voting functions offered on the radio and television in which listeners/viewers can participate by dialing value-added service numbers in the (0)901 range also prompted subscribers to lodge complaints with RTR. These numbers involve "event-based" charges, meaning that a fixed amount is charged per call (regardless of its duration).

The KEM-V's advertising regulations and fee information requirements were sufficient with regard to price transparency for services subject to event-based charges. As a result, the conciliation body received only a negligible number of complaints in which the users claimed not to have been aware of the costs of a successful connection. Most complaints related to the number of connections established to the numbers subject to event-based charges. The complainants generally explained that they had used the services offered, but not to the extent charged to them. Therefore, the problem was often the users' subjective perception, which in many cases led to differing perceptions of the number of calls made due to the use of the telephone's "redial" function.

The regulation which was introduced in the latest amendment to the KEM-V and requires an announcement informing the caller that his/her call is subject to a charge immediately after the connection is established was generally implemented consistently by the providers concerned and therefore made a successful contribution to improving user protection in this area. In this way, the number of procedures pertaining to these numbers dropped from 159 in 2006 to 100 in 2007.

Increasing number of complaints regarding value-added text message services

The number of complaints regarding value-added text message (SMS) services saw a substantial increase in 2007 (412 procedures). The greatest problem in the reporting period was encountered in MT-billed text message services. In MT billing, charges are not only incurred

for value-added text messages sent by the user, but also for those received by the user. In a considerable number of cases, subscribers were sent random MT-billed text messages without ever having requested the service or any other services. Many of the mobile customers affected by this phenomenon made use of RTR's conciliation procedure under Art. 122 TKG 2003, which made it possible to assist those subscribers effectively. At the same time, an enhanced media campaign was used to raise the public's awareness of their rights in this respect.

Intensified monitoring of value-added services

This specific development in value-added text message services provided ample reason to intensify the monitoring of value-added services. RTR restructured its existing resources in such a way that it will be able to monitor compliance with provisions regarding value-added services even more efficiently in the future. These activities will also involve regular exchanges of information on this topic with institutions responsible for consumer protection. This and other measures related to monitoring compliance with the regulations on value-added services in the KEM-V (for example, RTR reviews whether erotic hotlines are provided in the (0)900 range or in the 118 range for directory assistance services) highlight the importance of these activities and the need for RTR to monitor their observance. The importance of these measures becomes especially clear if we consider the situation in Germany, where many directory assistance service numbers serve to conceal erotic hotlines. Through the amendment to the KEM-V introduced in 2006 and the sustained monitoring of compliance with KEM-V regulations during the year under review, the regulatory authority has consistently been able to stay its chosen course.

4.2.17 Voice over Internet Protocol (VoIP)

4.2.17.1 VoIP continues to grow

In recent years, VoIP (i.e., voice communication via IP-based networks) has made considerable advances in terms of technology as well as its number of users. RTR has accounted for this development and concerned itself with these issues intensively at the national as well as the international level for several years now.

The guidelines published by RTR for VoIP service providers primarily target communications service providers and network operators. In conjunction with the frequently asked questions (FAQs) on VoIP services published at the same time, the guidelines clearly define RTR's position – based on the provisions of the TKG 2003 and the accompanying ordinances – with regard to a number of substantial VoIP-related issues which are still relevant in this form.

One point worth mentioning in this context is RTR's classification of publicly provided VoIP services into two main groups: VoIP services which enable access to the classic telephone network (Class A; regulated as telephone services) and "Internet-only" VoIP services (Class B; unregulated).

While the guidelines for VoIP service providers focus on the classification of services under the TKG 2003 and the resulting rights and obligations of providers, the market analysis procedures deal with issues of competition and competition regulation. In the course of the review of the TKMVO 2003, this topic was addressed in such a way that services were classified into two groups (currently only services in Class A are taken into account).

- VoI: In VoI (Voice over Internet), the VoIP provider offers services using the (public) Internet, but these services are generally not bundled with (broadband) Internet access to the retail consumer.

Voice over Internet

- VoB: Voice over Broadband (VoB) is offered in the form of "Voice over DSL" (VoDSL) using copper-wire pairs, or as "Voice over CATV" in cable television networks, meaning that the VoIP service is offered by the access network operator.

Voice over Broadband

The ensuing market analysis came to the conclusion that VoB must be included in access as well as carrier markets, while VoI is not (currently) to be included in either of those relevant markets.

4.2.17.2 International harmonization

With regard to VoIP at the international level, the year 2007 was largely characterized by the ERG's efforts to develop a uniform perspective on VoIP and the related regulatory issues. Not least due to the general prediction that VoIP will ultimately replace circuit-switched voice telephony, the importance of an internationally harmonized approach to relevant issues in connection with this technology is increasing. In the ERG's VoIP High Level Task Force, RTR was directly involved in the preparation of the group's Common Position on VoIP, which was finalized in December 2007.

ERG High Level VoIP Task Force

The ERG position on VoIP specifically addresses the issues of numbering and porting, access to emergency call services, exterritorial service provision as well as definition-related aspects of public telephone and communication services.

ERG Common Position on VoIP

As regards access to emergency call services, the ERG recommends that all telephone service providers be required to ensure access, and that routing to the relevant local emergency call center should be implemented wherever technically possible. The same applies to location information: In this context, the emergency call center should be informed whether a caller is potentially nomadic. On the other hand, the caller must be informed about possible limitations on emergency calls, for example in the case of nomadic use.

Access to emergency call services

With regard to telephone numbers, the ERG recommends allowing nomadic use for all fixed-link telephone services and in this context refers explicitly to the need to make geographical telephone numbers available for this purpose. Numbering plans should be designed in a technology-neutral manner, meaning that geographical numbers for conventional telephony should come from the same pool as VoIP telephone numbers.

As for number porting, the ERG believes that there should not be any restrictions as long as the number-specific terms of use are fulfilled.

Moreover, the ERG points out a number of definition-related problems in the current legal framework. For example, the ERG states that the current definition of an electronic communications service (ECS) makes it difficult to categorize some VoIP services, and that it would be useful to clarify such definitions in the course of the EC Framework Review. The same applies to the definition of publicly available telephone services (PATS), from which it is necessary to eliminate the circular logic with regard to emergency calls and to rethink the question of whether

Definition of ECS and PATS unclear

PATS really includes only those telephone services which enable calls to and from conventional telephone numbers.

More detailed information can be found at http://www.rtr.at/voip (in German).

4.2.18 Electronic Number Mapping (ENUM)

Austria was the first country in the world to launch commercial ENUM operations. Since December 9, 2004, end-users have been able to register geographical numbers, mobile numbers, and numbers in the (0)5 (private networks), (0)720 and (0)800 ranges with ENUM registrars; telephone numbers in the (0)780 range, in which an ENUM domain must be assigned to each number used, have also been delegated since May 17, 2005. In addition to user ENUM, on April 18, 2006 RTR also created the legal basis for infrastructure ENUM, which may also play a role in NGNs.

In general, ENUM supports the mapping of telephone numbers to addresses which can be used on the Internet (domain names), thus it can be seen as a bridge between conventional telephone networks and the Internet. While in user ENUM the retail customer individually enters the data which can be queried by other retail customers or operators, infrastructure ENUM is a tool which allows operators to support routing in an IP/PSTN environment.

Although the use of ENUM has remained within certain limits up to now, we can expect the significance of (infrastructure) ENUM to increase with the switch to next-generation PSTN networks (NGNs) using the Internet Protocol.

The basis which enabled user ENUM in Austria is the contract concluded by RTR and enum.at GmbH in 2004. In August 2007, the validity of the contract, which was set to expire at the end of 2007, was extended for another two years.

Both the contract and the addendum to the contract between RTR and enum.at can be downloaded from the RTR web site at http://www.rtr.at/enum.

Table 8 shows the number of ENUM domains allocated in Austria at the end of 2005, 2006 and 2007. The (0)780 number range is shown separately because every number in this range must be allocated an ENUM domain.

Number of ENUM domains more than tripled between 2005 and 2007.

Table 8: Number of ENUM domains assigned

	Dec. 31, 2005	Dec. 31, 2006	Dec. 31, 2007
ENUM domains (except in the +43780 range)	1,544	3,018	4,424
ENUM domains in the +43780 range	583	2,582	3,013
Total	**2,127**	**5,600**	**7,437**

Source: RTR

4.2.19 International activities

In 2007, RTR was very active in contributing its expertise to international bodies. Through the close cooperation of independent European regulatory authorities in the European Regulators Group (ERG) and the Independent Regulators Group (IRG), it was possible to contribute to ongoing harmonization in Europe and to exchange experiences from day-to-day regulatory practice. Depending on the focus areas involved, RTR participates in a wide variety of working groups, such as CEPT/ECC, OECD and the Forum of European Supervisory Authorities for Electronic Signatures (FESA). In addition to its activities as a direct member of those working groups, RTR also acts as an advisor to Austrian representatives, for example in the European Commission's Communications Committee (CoCom).

On the basis of resolutions passed by the ERG in 2006 (Statement on the Development of the ERG), cooperation between national regulatory authorities and the European Commission was further reinforced, new and more detailed common positions were developed, and adherence to those positions was reviewed in 2007. Institutionally, the year 2007 saw further professional development in the organization, for example through the establishment of a "Chair's Secretariat" in Brussels.

The ERG/IRG paid special attention to the following topics in 2007:

- Review 2006; *Core topic: Review*
- Opinions on drafts of the new regulatory framework;
- Future organization of regulatory activities (i.e., in relation to the European Commission's proposed establishment of an EU regulatory authority);
- European Commission proposal to expand its veto power to regulatory remedies;
- Opinion on functional separation as a new regulatory remedy;
- Cooperation in specifying and implementing the European Commission's Roaming Regulation; *Roaming*
- Common positions on broadband, local-loop unbundling and leased lines;
- Update on the status of regulatory cost accounting in Europe;
- Report on the status of broadband competition;
- Regular reports on the development of mobile termination fees;
- Best-practice document on the calculation of costs of capital;
- Preparation of independent opinions on Article 7 Phase 2 procedures in the course of market analysis;
- Organizational measures for the further professional development and reinforcement of international cooperation.

4.3 Electronic signatures

The Signatures Act (SigG) assigns duties to the TKK as Austria's supervisory authority for electronic signatures. Similar to the TKG 2003, the Signatures Act also requires RTR to provide operational support for this supervisory authority. RTR's performance of its duties under the Signatures Act is strictly separated within the company in terms of organization and financing, especially with regard to cost accounting. The authority is financed by fees as well as funds from the federal budget.

21 procedures conducted under the Signatures Act in 2007

In 2007, the TKK initiated 21 procedures under the Signatures Act. Twenty of those procedures (plus four additional cases from 2006 that were still pending at the beginning of the year) were completed during the year under review.

In 2007, the certification service provider A-Trust Gesellschaft für Sicherheitssysteme im elektronischen Datenverkehr GmbH was the only Austrian provider of qualified certificates. In this context, A-Trust notified one organizational change as well as three changes in its certification practice statement. One of those changes was required due to the fact that A-Trust moved its technical infrastructure to a new IT center. Another change resulted from the fact that A-Trust will also be issuing qualified certificates on the e-Cards issued by the Main Association of Austrian Social Security Institutions from 2008 onward and will therefore offer a registration process in which customers need not be physically present at a registration authority for the purpose of identity verification. The list of technical components and processes recommended by A-Trust was changed three times. In addition to the already recommended products, the e-Card was added to the list as a secure signature creation device, as were additional smart card readers and new software versions.

Expert opinion commissioned by TKK on the security of the SHA 1 hash function.

In connection with qualified certificates, two procedures were initiated ex officio in the year 2007. One case dealt with the fundamental question of whether the SHA 1 hash function generally used to create secure electronic signatures still complied with the security criteria set forth in the Signatures Ordinance (SigV). For this purpose, the TKK commissioned an expert opinion from Prof. Vincent Rijmen. This opinion indicated that one can expect the "collision resistance" required for hash functions (i.e., the practical impossibility of constructing different documents with an identical hash value) to break down between mid-2007 and the end of 2008. As the only certification service provider concerned, A-Trust announced that technical components and processes based on SHA 1 will no longer be recommended from 2008 onward; as a result, the TKK did not have to take supervisory measures. However, RTR appealed to the application developers to ensure that alternative hash functions (e.g., RIPEMD 160) are made available in their signature products without delay.

Another procedure initiated ex officio concerned the security of a signature application component which had been questioned by experts at the Vienna University of Technology (TU Wien). In the course of this procedure, the application developer took several measures in order to ensure the security of its software. At the end of the procedure, there were no longer any indications that this software could violate the security requirements of the Signatures Act or Signatures Ordinance.

In addition to qualified certificates, A-Trust also issues non-qualified certificates. In this regard, A-trust notified the provision of a new class of certificates in the a.sign light certification service for use in the "DaMe" medical data network; the notification regarding another non-qualified certification service was later withdrawn.

Several certification services registered in 2007

Also in the field of health care, two other certification service providers launched activities in 2007: The Austrian Federal Ministry of Health, Family and Youth Affairs (previously the Federal Ministry for Health and Women) notified the TKK that it would be providing a certification service in its implementation of the Act on Telematics in Health Care. Steiermärkische Krankenanstaltengesellschaft m.b.H. also notified the TKK that it plans to issue non-qualified certificates to its employees.

The University of Vienna submitted a notification for the "Austrian Grid CA" certification service. However, in the course of the procedure the certification practice statement was amended in such a way it created a closed system to which the Signatures Act is not applicable.

A new time-stamp service was notified by the Arge Daten – Österreichische Gesellschaft für Datenschutz association, which had already served as a certification service provider in the past.

As Telekom Austria AG, which had been operating as a certification provider since 2006, only performed the function of a holding company after its reorganization in 2007, the certification services previously provided by Telekom Austria were taken over by its operational subsidiary Telekom Austria TA AG.

mobilkom austria AG and Energie-Control GmbH also reported slight changes to their certification practice statements.

In October 2007, mobilkom austria notified the TKK that it planned to stop issuing certificates under the "A1 Signatur" certification services. However, the signature server continued to operate for existing customers of this certification service.

In the year 2007, RTR completed the regular review of A-Trust (conducted ex officio) as well as the initial review of the Federal Office of Metrology and Surveying as a secure time-stamp service provider. None of these reviews revealed severe defects which would have warranted supervisory measures.

Two comprehensive reviews completed in 2007

Maintaining the secure directory of certification service providers launched in September 2002 is a substantial part of RTR's duties, and additional measures were taken in 2007 to ensure the sustained and uninterrupted operation of the directory. For example, the infrastructure was connected to an additional power grid secured by diesel generators. In addition, preparations were made to ensure that the supervisory authority need not rely on the recently debated SHA 1 hash function when issuing certificates.

Since the summer of 2007, substantial amendments to signature legislation have been developing, including a reduction in supervisory activities. Under an amendment passed in December 2007, the Signatures Act will only apply to providers of qualified certificates or of qualified time-stamp services from 2008 onward. Qualified certificates will only be issued to physical persons, and secure electronic signatures will be referred to as qualified electronic

Preparations for the adaptation of supervisory activities to an amendment to Signatures Act passed in 2007

signatures. In order to ensure a smooth transition once the new legislation goes into effect, the TKK issued a new version of its certification practice statement in December 2007. In the new version, the TKK will only issue non-qualified certificates to certification service providers from 2008 onward and will no longer issue those certificates with secure electronic signatures. Moreover, the TKK will only issue certificates to providers of qualified certificates or of qualified time-stamp services once the new legislation goes into effect.

With regard to the interpretation of Art. 3 Par. 2 of the Signatures Ordinance on the suitability of algorithms and parameters for secure electronic signatures, RTR also published a recommendation in 2007 in cooperation with the Zentrum für sichere Informationstechnologie – Austria (A-SIT) confirmation authority.

At the European level, RTR continued its activities in the Forum of European Supervisory Authorities for Electronic Signatures (FESA) founded in 2002. The forum now has 24 member organizations and two associate member organizations, and is dedicated to cooperation between the various European supervisory authorities and to the harmonization of their respective activities. In this context, one of the issues addressed was the accreditation of certification service providers from countries which do not belong to the European Economic Area.

RTR participated in the standardization of algorithms and parameters for secure electronic signatures.

Likewise at the European level, RTR was represented in the European Telecommunications Standards Institute (ETSI) Working Group STF 317, which adapted the ETSI TS 102 176 technical specification to the current state of technology. This technical standard aims to define which algorithms and parameters are suitable for the creation of secure electronic signatures. The standard can also be used as a supplement in the evaluation of signature products based on generally recognized standards (Art. 3 Par. 5 of the Signature Directive). The updated version was published in November 2007.

5. The Austrian communications markets

5.1 Development of the Austrian media markets

5.1.1 General remarks on the year 2007

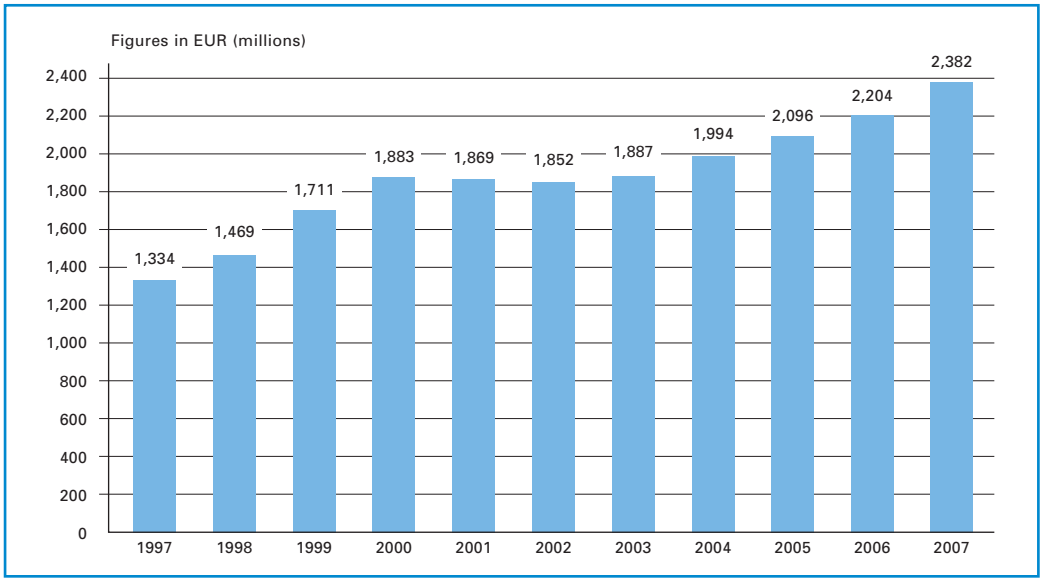
In the year 2007, the Austrian media industry saw a number of significant changes compared to previous years:

1. "Content for free," which has enjoyed very high growth rates primarily due to the Internet in recent years, expanded even more quickly in 2007. This development has brought about a substantial increase in the number of free newspapers, especially for younger target groups.

2. In parallel to the "content for free" development, the more conventional media types – in particular paid daily newspapers and conventional television – have lost ground.

3. Overall, advertising volumes increased drastically in the year 2007: After growing 5% in 2006, advertising revenues jumped 8% to EUR 2.382 billion in 2007.

Figure 4: Development of overall advertising expenditure



Source: FOCUS Media Research (not including cinema / classic brochure / online advertising)

First of all, with regard to "content for free" and young readers, viewers and listeners, it is especially important to mention the free newspaper *Heute*, which clearly focuses on the city of Vienna. The Regioprint 2007 survey carried out by FESSEL-GfK and IFES indicates that *Heute* has attained a reach level of 25% and a circulation of 347,000. Compared to the previous year, this represents an increase of nearly 40%. "Content for free" is an especially common form of media consumption in the 14 to 49 age group in Austria (and even more so in the 14 to 29 age group), and this manifests itself in the popularity of *Heute* and *Österreich* as well as the use of online services offered by Austria's daily newspapers, to name just a few examples.

This new form of media usage is linked to the fact that media are now used selectively, very quickly, and increasingly often in mobile situations. Mobile usage also includes cell phones, on which UMTS television broadcasts have been offered for several years now and for which DVB-H will be launched in 2008. Naturally, the use of mobile television is also a question of the rates charged for these services.

In parallel to the development of new forms of media use as described above, we have also observed a decline in the use of conventional media, especially among young Austrians. For example, according to the Austrian Media Analysis (*Media-Analyse*), the number of persons reached each day by daily newspapers in Austria dropped from 74.2% in 2005 to 72.7% in 2006 and finally to 70% in 2007. The number of people who watch television on a daily basis also declined, from 69.3% (2005) to 67.2% (2006) and 64.2% (2007), which makes for an overall decline of 5.1% over the last three years. In particular, developments in the fields of print media and television can be attributed to the fact that the diversity of media offerings in Austria has also increased year after year. This has brought about a situation in which individual media offerings, especially in the field of television, have seen lower market shares and reach, and in which additional forms of media usage are also emerging in favor of free content as mentioned at the beginning of this section.

The increasing growth of content for free – in the form of complimentary newspapers and increasingly prevalent online media as well as mobile television – has also led to a "flattening" of media consumption, which was originally very news-oriented. In other words, as people ultimately spend more time per day consuming both conventional media and newer forms such as content for free, online media, etc., the media have become a more constant accompaniment to everyday activities, especially as they are now also used more frequently for entertainment, games and sports.

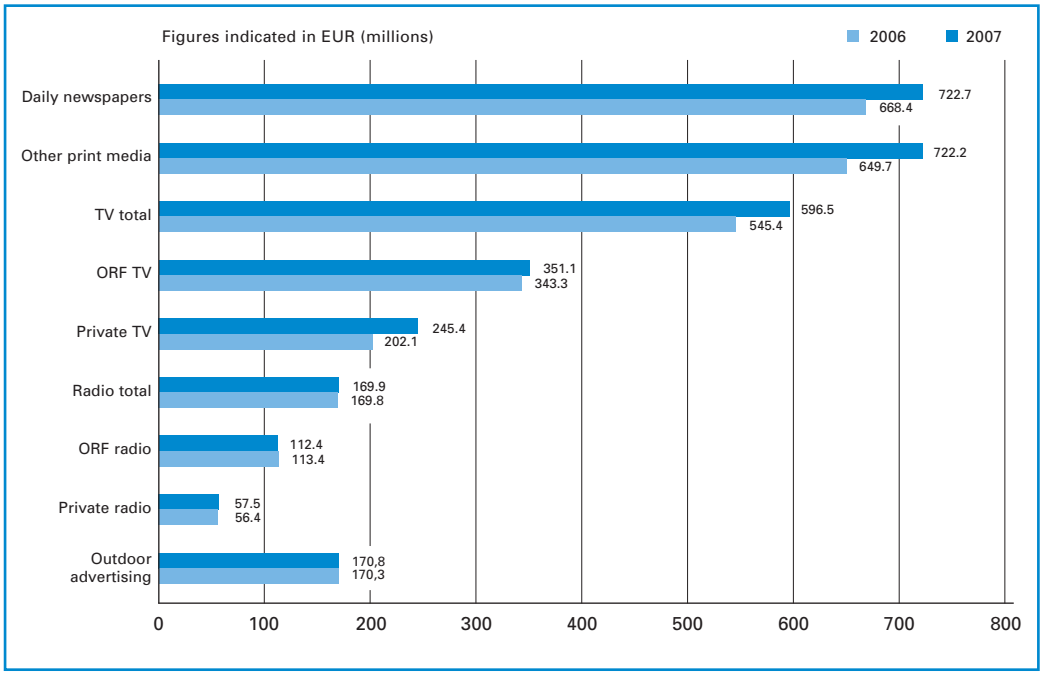
Overall, advertising expenditure has seen a substantial increase in recent years – from EUR 1.994 billion in 2004 to EUR 2.382 billion in 2007 – especially compared to the beginning of the decade, when expenditure nearly came to a standstill (2000 to 2003). In this context, however, it is necessary to note that the statistics indicated here are gross figures from the FOCUS Media Research survey which may be as much as 50% higher than the net figures in some areas. At the time of this report, it is also debatable whether this development will continue along the same lines in 2008, as Austrian media agencies have a fairly skeptical outlook regarding the second half of the year.

5.1.2 Advertising expenditure

Private television again sees highest growth rate in advertising revenues.

Nearly all sectors of the media industry were able to profit from the increase in advertising expenditure in 2007, with private television stations once again seeing the largest percentage gains. Whereas growth in this area reached 17.8% in 2006, it rose to a remarkable 21.4% in 2007 (EUR 245.4 million). ORF's television channels also saw a slight increase in advertising revenues, which rose 2.3% to EUR 351.1 million in 2007.

Figure 5: Advertising expenditure: 2006 vs. 2007



Source: FOCUS Media Research (not including cinema / classic brochure / online advertising)

The clearly visible shift in advertising expenditure from ORF to private television channels once again showed itself in the narrowing margin between the competing groups' advertising revenues in 2007: The advertising revenues of private television stations have now reached 70% of those taken in by ORF's public television stations. However, this only refers to gross advertising revenues, which are substantially higher than net revenues at private stations compared to ORF.

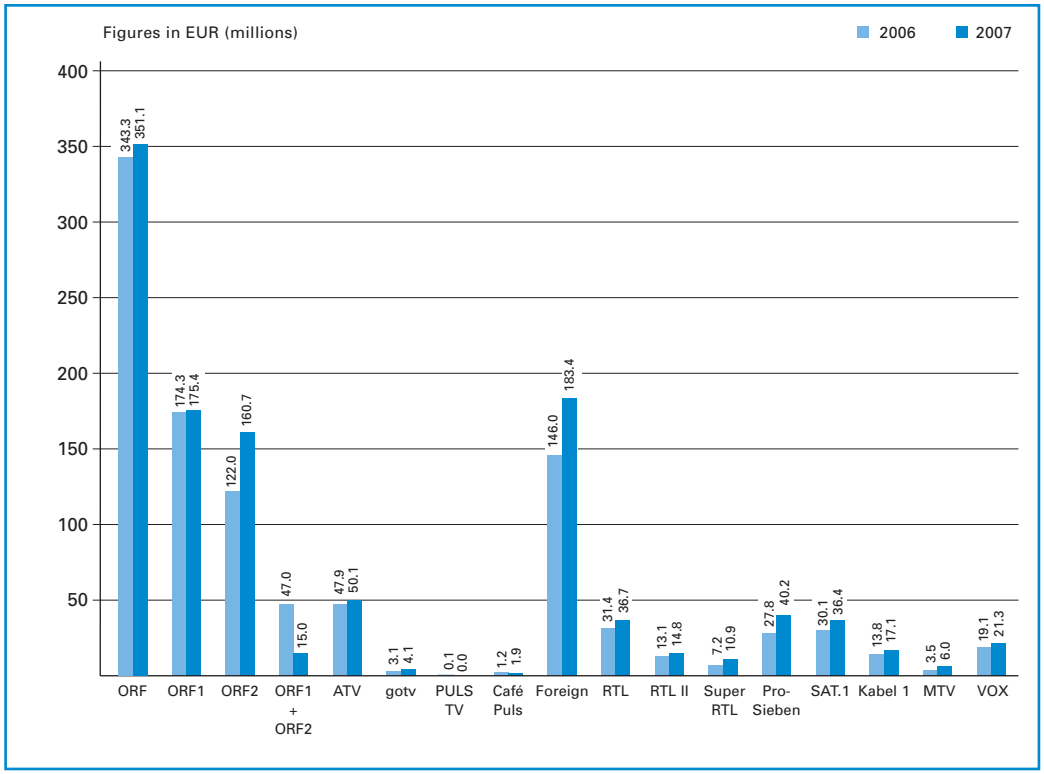
The print media sector once again saw gains in advertising revenues in 2007. Both daily newspapers and other print media were able to increase their respective shares of advertising revenues to more than EUR 722 million.

Continued debate on foreign channels which offer partly Austria-specific content

Once again due to the sharp increase in advertising volume on the private television market, the debate regarding German channels which offer partly Austria-specific content in Austria also continued in 2007. The proponents of this practice (i.e., inserting Austria-specific advertising content in lieu of German advertising blocks) emphasize that this is the only way to operate economically attractive private television in Austria, that it is also an investment in the future to be able to create additional programming windows, that those companies also pay taxes in Austria, that Austrian companies are involved, and that the Austrian advertising industry also profits from this practice. On the other hand, critics such as ORF and ATV continue to maintain that vast quantities of Austrian advertising funds are flowing to Germany and causing severe damage to Austrian media companies.

In this area, advertising volumes also increased in 2007: With EUR 183.4 million, the foreign channels were able to increase their advertising revenues by a full 25.6% compared to the previous year. In this context, ProSieben took the lead, gaining 44% with advertising revenues of EUR 40.2 million in 2007. RTL and SAT.1 were not far behind with EUR 36.7 million and EUR 36.4 million, respectively. While the foreign channels which take in the highest advertising revenues were still in close competition with Austria's only nationwide private television station (ATV) in 2006, the latter was able to pull farther ahead than ever before in 2007: After generating advertising revenues of EUR 47.9 million in 2006, ATV attained a total of EUR 50.1 million in 2007, which places the Austrian private station clearly ahead of ProSieben.

Figure 6: Development of television advertising expenditure



Source: FOCUS Media Research, *Buch der Werbung 2007*

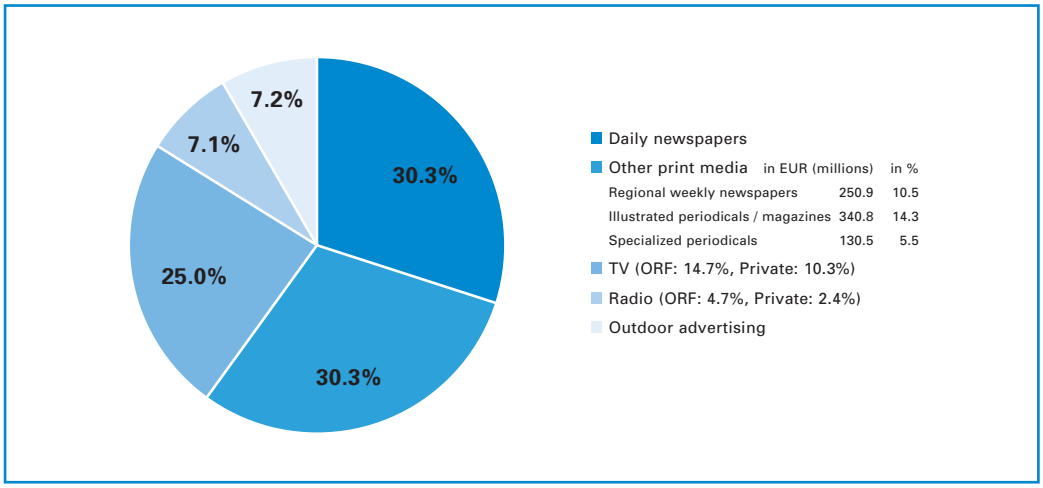
Only minor changes were observed in each medium's relative share of advertising. As in the previous years, the largest share of overall advertising expenditure (60.6%) went to print media in 2007, with daily newspapers taking half of that share (30.3% of overall revenues). Advertising revenues in the print media segment excluding daily newspapers increased slightly, with regional weekly newspapers accounting for 10.5% (+0.8), illustrated periodicals and magazines 14.3% (-0.3%), and other specialized periodicals 5.5% (+0.3%).

Television accounted for 25% of overall advertising expenditure in 2007, 0.2 percentage points more than in the previous year.

7.1% of advertising spending went to the radio sector (again down 0.6 percentage points in 2007 after a decrease of 0.3 percentage points in 2006), with shares of revenues again shifting slightly from ORF toward the private radio broadcasters in 2007 (4.7% and 2.4%, respectively).

7.2% of overall advertising expenditure went to outdoor advertising (billboards, illuminated signs, advertising on public transportation).

Figure 7: Share of advertising in 2007

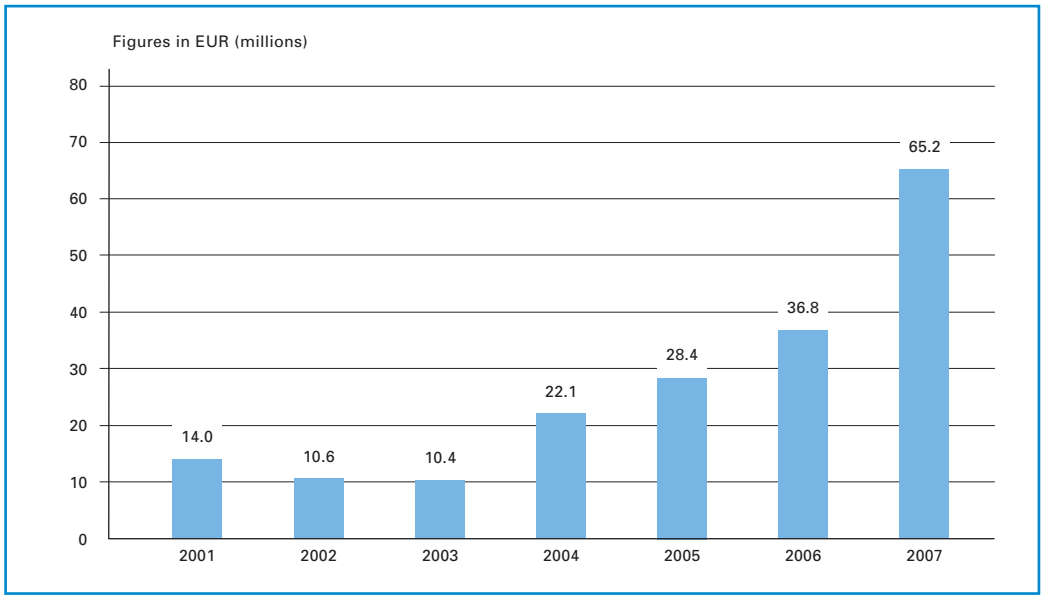


Source: FOCUS Media Research

Online advertising showing rapid growth in Austria

Online advertising expenditure, which is not included in the figures for conventional advertising, has shown extremely dynamic development since 2004. Already in 2006, total spending had risen from EUR 28.4 million to EUR 36.8 million, and in 2007 it climbed even further to EUR 65.2 million. This impressive value, which nearly doubled in just one year, shows the rapid expansion of this new medium's competitive position in terms of gross revenues (which are slightly higher than the net amounts). In a number of other advertising categories, the difference between gross and net revenues is substantially lower.

Figure 8: Online advertising expenditure in Austria

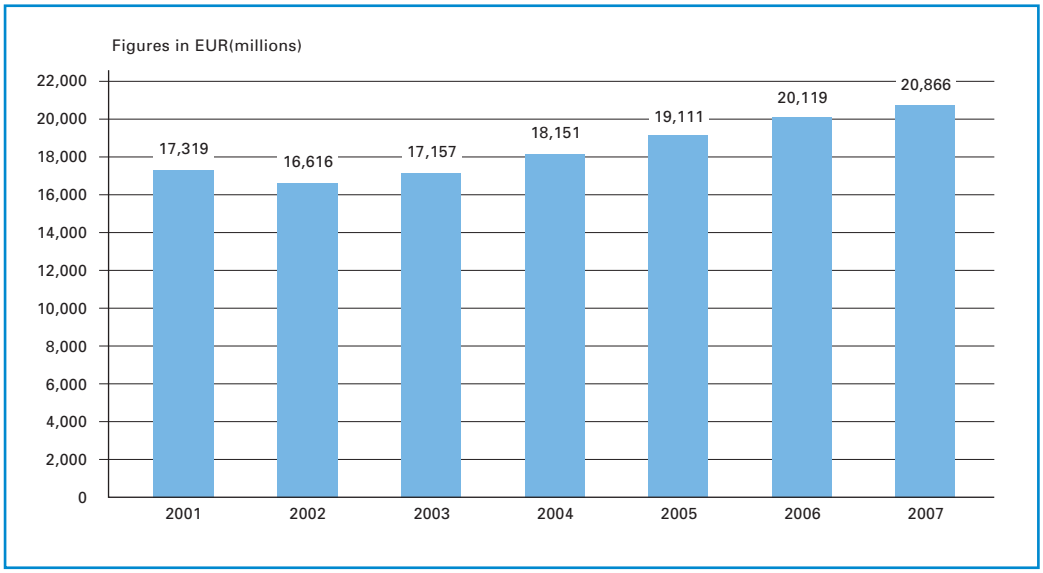


Source: FOCUS Media Research; Note: Survey method changed in 2004 and 2007.

Advertising expenditure also reached a record level in Germany.

The media in Germany, a country which exerts considerable influence on Austria due to its geographical proximity, the common language and its strength as Europe's largest media market, also saw a highly successful year in 2007. With EUR 20.866 billion in advertising expenditure, the German market reached a new record high, recording an increase of EUR 747 million (3.7%) compared to the previous year.

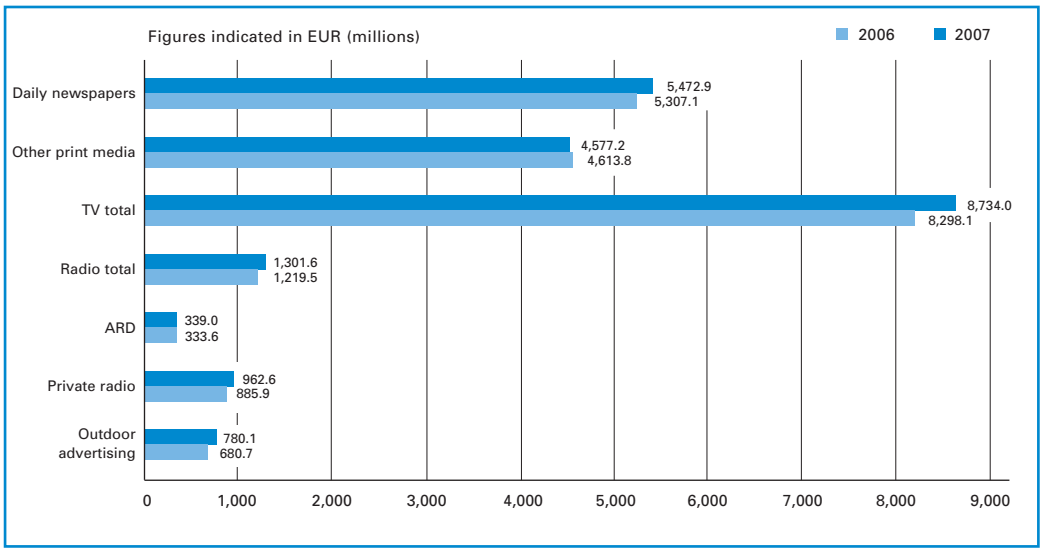
Figure 9: Development of overall advertising expenditure (Germany)



Source: S+P Deutschland

As in the year 2006, the German daily newspapers (+3.1%) as well as television stations (5.2%) benefited most from the upswing in advertising expenditure in 2007. The field of radio broadcasting even saw overall revenues increase by 6.7%.

Figure 10: Advertising expenditure: 2006 vs. 2007 (Germany)



Source: S+P Deutschland

5.1.3 Television

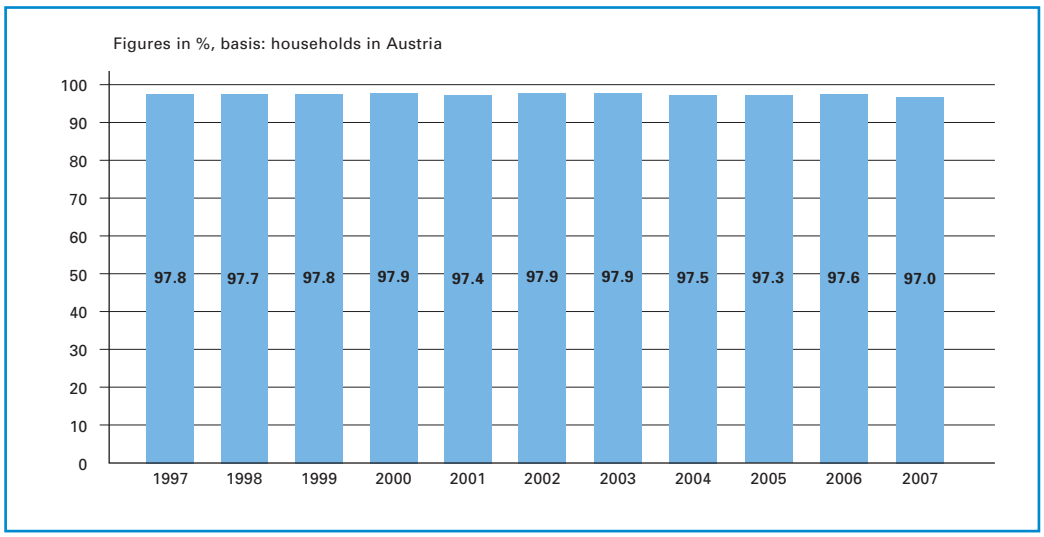
Digitization brings about innovation.

The most significant future changes on the Austrian media market can be expected in the field of television, mainly as a result of technical advances and innovations. In 2006, the transition from analog to digital transmission also began in terrestrial broadcasting, and this switchover will provide broadcasters with new marketing opportunities. Digitization in satellite and cable television has already been underway for years and will exceed 50% of all television households in 2008.

The vastly dominant position of ORF and its significant socio-political role were already clearly visible in ORF's share of overall advertising revenues; this dominance is undisputable on the television market. However, the figures for 2007 also reveal that the public broadcaster's lead is steadily declining. This can be seen in the figures regarding ORF's reach as well as the fact that the audience is no longer bound exclusively to ORF as a source of news and opinions due to various programming innovations developed by the private broadcasters. Nevertheless, ORF's two television channels were still the most powerful force on the Austrian television market in 2007.

As regards television households, the market is nearly identical to the overall population: According to the Austrian Media Analysis, 97% of all households in Austria had at least one television set in 2007.

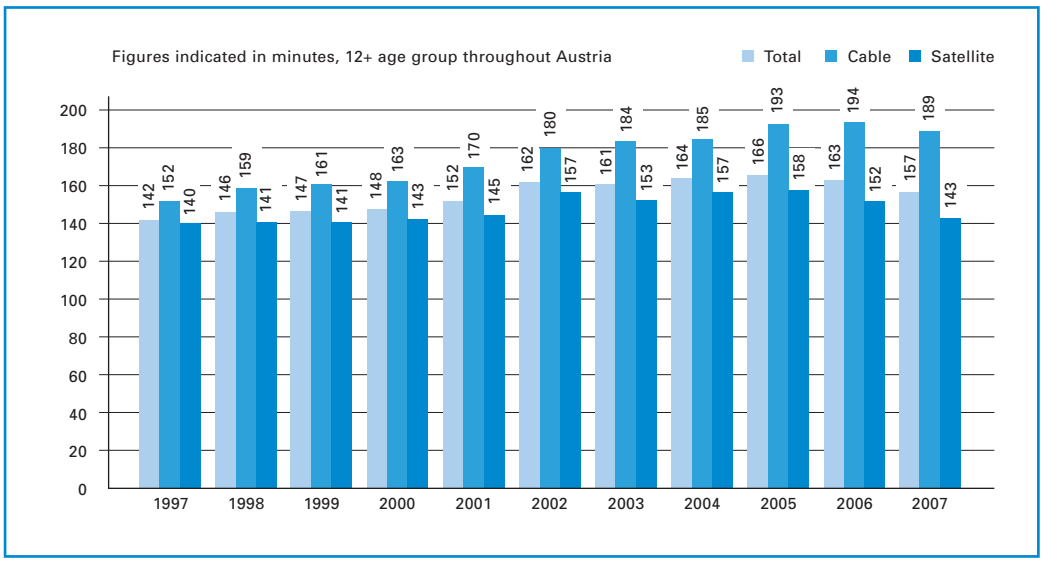
Figure 11: Percentage of Austrian households with television sets



Source: Austrian Media Analysis

While viewing time among Austrian television viewers over 12 years of age increased steadily in the past, it has declined over the last two years. This figure dropped slightly to 163 minutes per day in 2006, after which it again declined to 157 minutes in 2007. This development was observed in all reception modes.

Figure 12: Development of viewing time

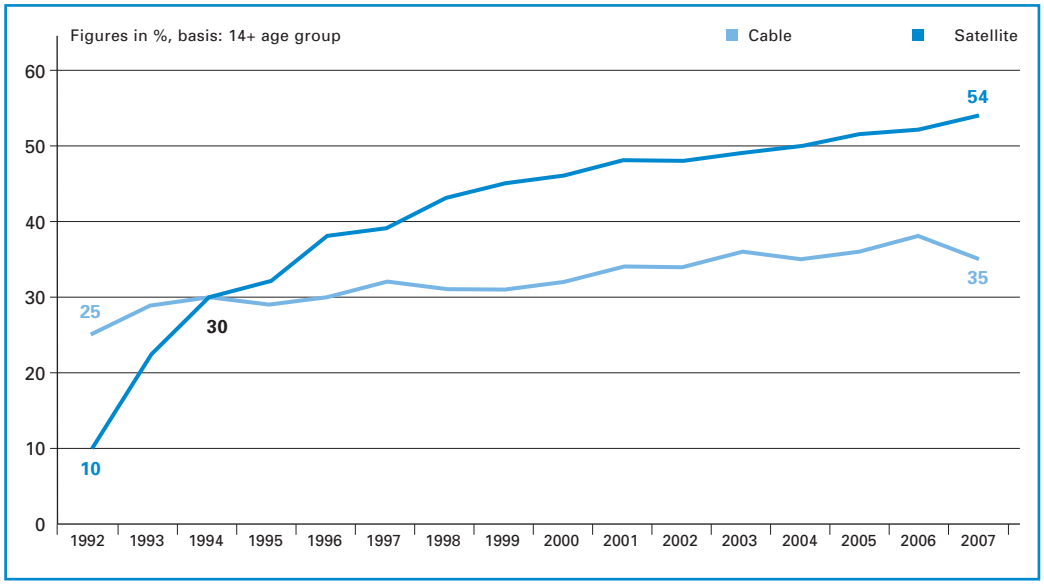


Source: Teletest

Satellite reception continues to grow.

The three reception modes (terrestrial, cable and satellite) not only differ in terms of viewing habits, but also in terms of reach. It was not until 1994 that the percentage of Austrians who receive television channels via satellite caught up to the number supplied by cable networks (30% each). Since then, the share of persons supplied via satellite has increased to 54%, while the corresponding figure for cable reception edged down to 35% in 2007. This means more than half of the viewers in Austria already receive their television signals via satellite.

Figure 13: Development of cable TV vs. satellite systems

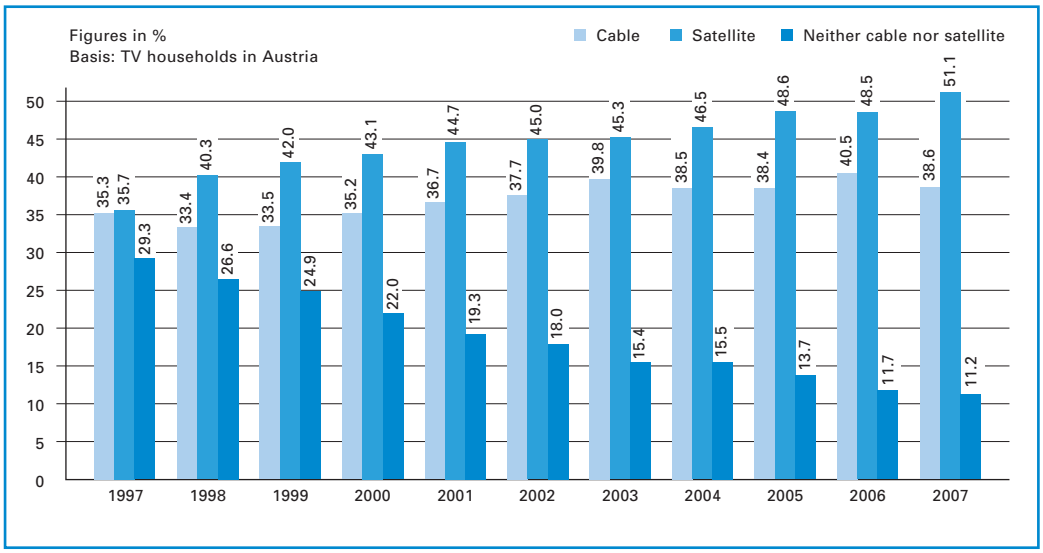


Source: Austrian Media Analysis

Number of terrestrial-only television households declining steadily

In contrast, the number of households which use terrestrial-only reception has been decreasing for some time, dropping by more than half over the last eight years. Whereas 29.3% of households still received television channels exclusively via terrestrial antenna in 1997, this figure was down to a mere 11.2% in 2007. Naturally, this does not include the number of households which receive foreign channels via an analog satellite system and the Austrian channels (such as ORF1, ORF2 and ATV) by terrestrial antenna. Terrestrial digitization in particular has accelerated the transition from analog to digital satellite reception, which has brought about a substantially larger number of channels for households and thus reduced ORF's market share.

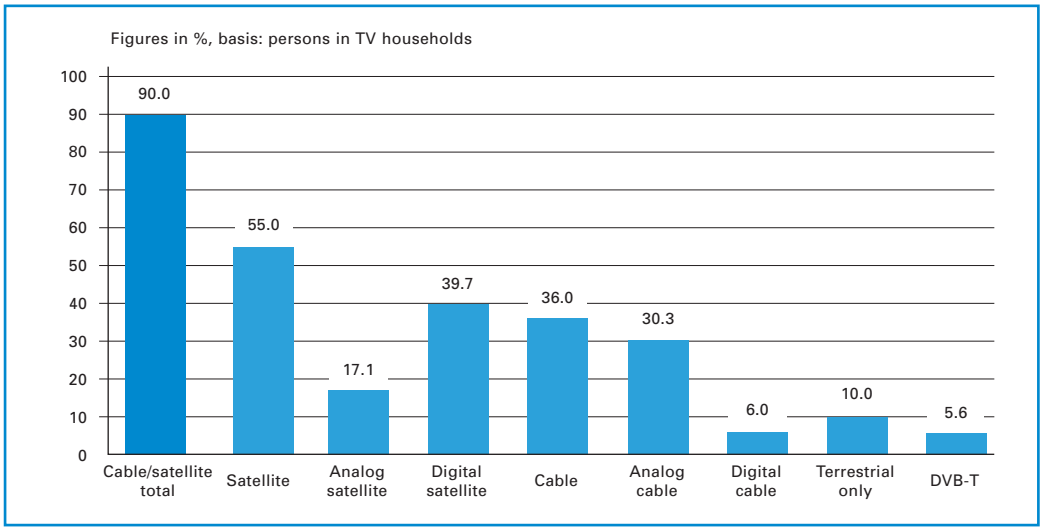
Figure 14: Development of reception modes



Source: Austrian Media Analysis

Measured against the 97% of households with television sets, only 10% were supplied exclusively by terrestrial signals in 2007.

Figure 15: Reception modes in 2007

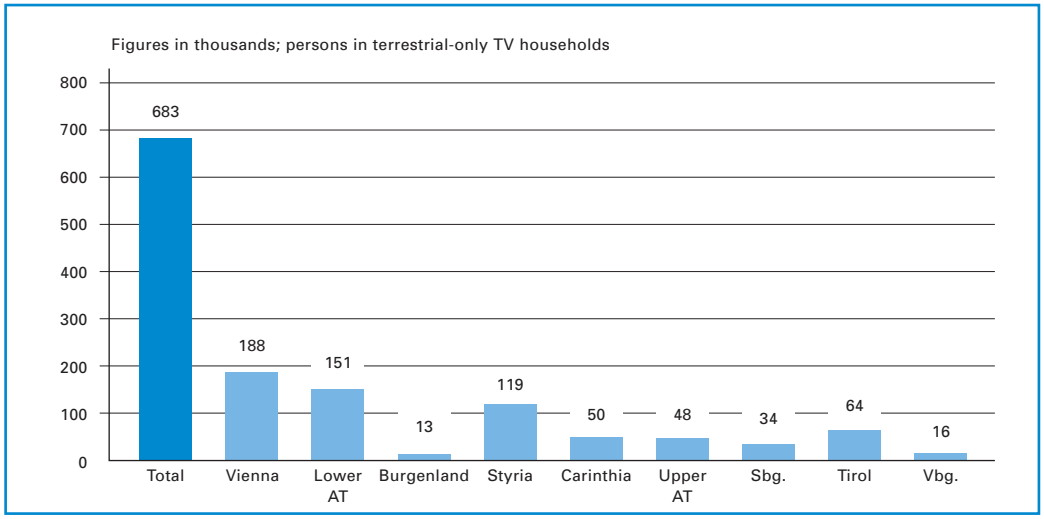


Source: Austrian Media Analysis

Most terrestrial households in Vienna

In terms of the number of people with at least one television set in their households, only 683,000 still received terrestrial-only television in 2007. The largest share of these viewers was in Vienna (188,000), followed by Lower Austria (151,000). Although these figures indicate how uncommon terrestrial-only reception has become in Austria, they also demonstrate how many people did not have an Austrian alternative to ORF's television stations until the launch of ATV in 2003.

Figure 16: Terrestrial-only reception in 2007



Source: Austrian Media Analysis 2007

The transition from analog to digital satellite reception is advancing quickly, meaning that we can expect analog reception in this segment to disappear completely sometime around 2012. The providers of Austrian content and advertising "windows" on private German television channels are conducting targeted marketing campaigns to promote this trend and are attracting viewers with new Austrian programs which can only be received by digital satellite. In recent years, the reach of these channels has risen quite substantially, and if the rapid trend of technological development continues apace, the private television market will continue to catch up swiftly.

Status of broadcasting digitization in Austria

At the end of 2007, the share of Austrian television households which received digital television came to 40%. This represents an increase of approximately 33% compared to December 2006, when this figure was 30% according to the Teletest working group (AGTT) / GfK.

Satellite broadcasting once again proved to be the "heavyweight" in broadcasting digitization in 2007. Within just one year (December 2006 to December 2007), the percentage of television households with digital satellite reception rose from 25% to 33%. The speed of this development was also clear in the first quarter of 2008: At the end of March 2008, the share of Austrian television households which received digital satellite television came to 38%. At the same time, the share of households receiving analog satellite television signals decreased from 27% to 16% at the end of December 2007 (March 2008: 14%).

At the end of 2007, hardly any changes could be observed in cable reception compared to the previous year. Approximately 35% of Austrian television households still used an analog cable connection, while some 4% received digital cable television.

For technical reasons, the consumer subsidy campaigns for digital receivers launched by several large cable network operators in late 2007 with the support of the Austrian Digitization Fund will not take full effect until 2008. In early 2008, Austria's largest cable provider (UPC) set the price of a basic digital package at the same level as that of analog cable television. Both of these measures could provide key stimuli for the spread of digital cable reception in 2008.

Looking to the future, the fact that ORF1 will be broadcast in HD via satellite and fed into all major Austrian cable networks from June 2008 onward is likely to serve as an important driver of further digitization in satellite and cable households. According to industry estimates, there were nearly 700,000 flat-screen televisions with at least HD-ready technology in Austrian households at the end of 2007. In the months of January and February 2008 alone, approximately 100,000 such television sets were sold in Austria, an increase of 40% compared to the same period in the previous year. However, HD channels are hardly available, or at least only in the form of pay television.

According to AGTT/GfK, the share of television households which received only terrestrial television at the end of 2007 remained unchanged from the previous year at 10% to 11%.

Some 5% of all television households in Austria were already using digital terrestrial reception (DVB-T) at the end of 2007. This means that approximately 170,000 use DVB-T as their primary means of reception. At the same time, this figure is markedly lower than the total number of DVB-T receivers sold, which exceeded 400,000 (GfK Electronics Panel, December 2007). This means that some 230,000 DVB-T receivers are used for additional television sets in Austrian television households, or as a complementary means of reception in households with analog satellite reception in order to receive Austrian channels which are not available via analog satellite. Therefore, just 15 months after its introduction, DVB-T has obviously been received very well and the launch can be regarded as a success.

IP-TV is still not particularly significant on the Austrian market, although Telekom Austria's aggressive marketing strategy and its pricing of the aonTV product are beginning to show

results. According to a GfK survey conducted on behalf of SES Astra, roughly 17,500 households, or 0.5% of Austria's television households, were using IP-TV by the end of 2007. According to Telekom Austria, the corresponding figure came to approximately 3,000 households one year earlier. Naturally, it is quite possible that IP-TV's success in Austria is yet to come.

Digitization of satellite television reception (DVB-S)

More than 65% of satellite households have switched to digital reception.

The share of Austrian television households which use digital or analog satellite reception has only changed slightly. After reaching approximately 50% at the end of 2006, the percentage of households with satellite receivers now stands at approximately 52%. However, the share of digital versus analog satellite receivers has changed markedly. While approximately half of all satellite households used digital receivers at the end of 2006, this share had risen beyond 65% just one year later.

The rapid expansion of digital satellite reception in 2007 can largely be attributed to the launch of digital terrestrial television (DVB-T) in the fall of 2006 and especially the ensuing shutdown of analog terrestrial television in high-density areas in Austria in the course of 2007. In the areas where analog terrestrial broadcasting has been shut down, the vast majority of television households which used analog satellite receivers and thus had to receive ORF's channels and ATV by terrestrial means have now switched to digital satellite reception and receive Austrian and foreign (especially German) channels from a single source.

Digitization of cable television reception (DVB-C)

At 3% of all television households, the virtually unchanged share of digital cable customers can probably be attributed to the fact that once again there were hardly any incentives for consumers to switch from analog to digital cable television in 2007. According to AGTT/GfK, 40% of all television households receive television channels by cable, which even represents a slight increase compared to the end of 2006 (38%). Analog cable broadcasting will not be shut down (as was the case with terrestrial television) in the foreseeable future, and Austrian channels can still be received without any problems (in contrast to analog satellite reception). Apparently, in many cases the larger number of channels offered in digital cable television only justifies the usual additional costs until the end of the year for a small group of cable users.

The subsidy campaign launched in 2007 using resources from the Austrian Digitization Fund will not be put into full effect until 2008. The digital receivers eligible for such grants are capable of displaying the new media product "MultiText" broadcast by ORF and ATV. However, this requires a modified form of signal transmission to cable providers, and up to now it has been handled predominantly using a satellite feed. A cable multiplex set up for this purpose at ORS was only put into operation in early 2008. This situation made the cable networks participating in the campaign highly reticent about offering the receivers to their customers.

With the total available funds of EUR 4 million, up to 66,666 DVB-C set-top boxes which support MHP will be subsidized in the amount of EUR 60.00 each. Despite initial difficulties, some 12,500 receivers were sold in 2007. In addition, the cable network operators participating in the campaign will also offer more digital cable receivers which support HDTV. Therefore, the launch of ORF1 HD will create another key form of added value in digitization for cable customers as well. UPC, Austria's largest cable network operator, will also be offering HD receivers.

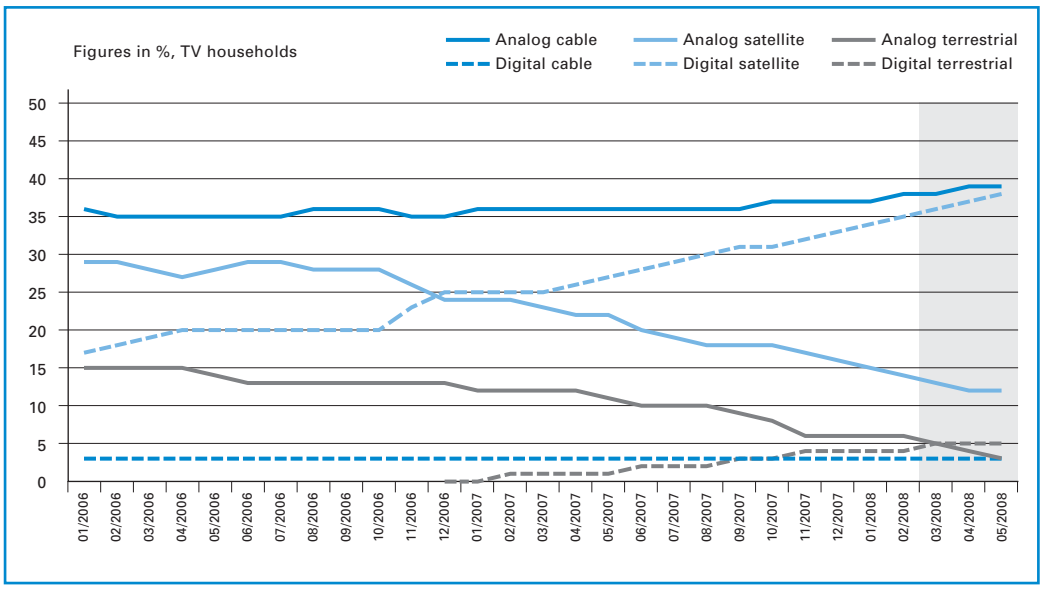
HDTV and receiver subsidies will promote cable digitization in 2008.

Digitization of terrestrial television reception (DVB-T)

For a majority of Austrian households, the digitization of terrestrial television has already been completed. Since the shutdown of analog terrestrial television in all densely populated areas of Austria and their surroundings in the course of the year 2007, some 80% of households have used DVB-T as their only form of terrestrial reception. According to ORS, another 10% of Austrian households were able to receive digital terrestrial television at the end of 2007 but are also still provided with analog signals. Therefore, the level of DVB-T coverage amounted to 90% of Austrian households in December 2007. The fact that 40% to 50% of terrestrial-only households still use analog terrestrial television can largely be explained by the fact that cable reception is especially widespread in areas of high population density, while terrestrial-only households are generally located in more rural areas which are not yet covered by DVB-T or have not been switched over completely.

Digital terrestrial television already available to 90% of Austrian households

Figure 17: Distribution of reception platforms, January 2006 to February 2008 (including projected distribution from March to May 2008)



Source: AGTT/GfK: Teletest

The final shutdown of analog broadcasting in Austria is scheduled for late 2010 or early 2011 at the latest.

With the recent shutdown of analog broadcasting operations in one densely populated area (Vienna/Lower Austria in the fall of 2007), an additional multiplex (MUX B) with three television channels was switched on at all broadcasting locations in areas of high population density; this included Austria's provincial capitals as well as large parts of the surrounding areas. As a result, approximately 80% of Austrian households can now receive the channels PULS 4, 3sat and ORF Sportplus on MUX B in addition to ORF1, ORF2 and ATV on MUX A. According to ORS, limited additional expansions of MUX B in more densely populated areas at the edges of MUX B's coverage area are also planned.

Of the 400,000 DVB-T receivers sold by the end of December 2007 (according to the GfK Electronics Panel), some 260,000 are simple DVB-T receivers, while the remaining 140,000 are MHP-compatible set-top boxes. The latter receivers are capable of displaying the new "MultiText" media product broadcast by ORF and ATV. A separate consumer subsidy campaign requested by Austria's DVB-T platform operator ORS in order to encourage early adopters was approved by RTR in 2006 and supported using the resources from the Austrian Digitization Fund. In this context, a total of EUR 4 million was available for direct subsidies for approximately 100,000 receivers, for which consumers were given a grant of EUR 40.00 per device at first and EUR 30.00 from September 2007 onward. This successful promotion campaign expired at the end of March 2008. Consumers received grants for the purchase of approximately 105,000 MHP-compatible DVB-T receivers.

A separate campaign in which subsidies of EUR 40.00 per device and household were granted to households which are exempt from paying broadcasting fees had provided support for nearly 6,000 households by the end of 2007 and will be extended until the end of the overall process of switching over to digital terrestrial television.

Digital television via broadband Internet (IP-TV)

Digital cable television via broadband telephone lines, also known as IP-TV (Internet Protocol Television), is still in its early stages and may very well be a major success in the future. Telekom Austria, the country's largest IP-TV provider by far, launched an aggressive pricing campaign in the second half of 2007. The company has stated that IP-TV has grown substantially, but it has not revealed more detailed information to date.

According to market surveys, the company's offer for existing fixed-link telephony customers to add its IP-TV product aonTV for an extra charge of only EUR 4.90 per month had led to a 500% increase in the number of IP-TV customers by the end of 2007. In absolute terms, this would be an increase from approximately 3,000 customers at the end of 2006 to just under 18,000 customers at the end of 2007. By the end of 2008, aonTV is meant to be technically available to 50% of Austrian households.

The special potential of IP and "conventional" cable television lies in the bidirectional use of the lines delivering the signal; this is a key feature in facilitating the implementation of interactive services such as video on demand. aonTV as well as cable providers already provide their digital customers with these services as well as other types of additional features.

Digital television for mobile handheld devices (DVB-H)

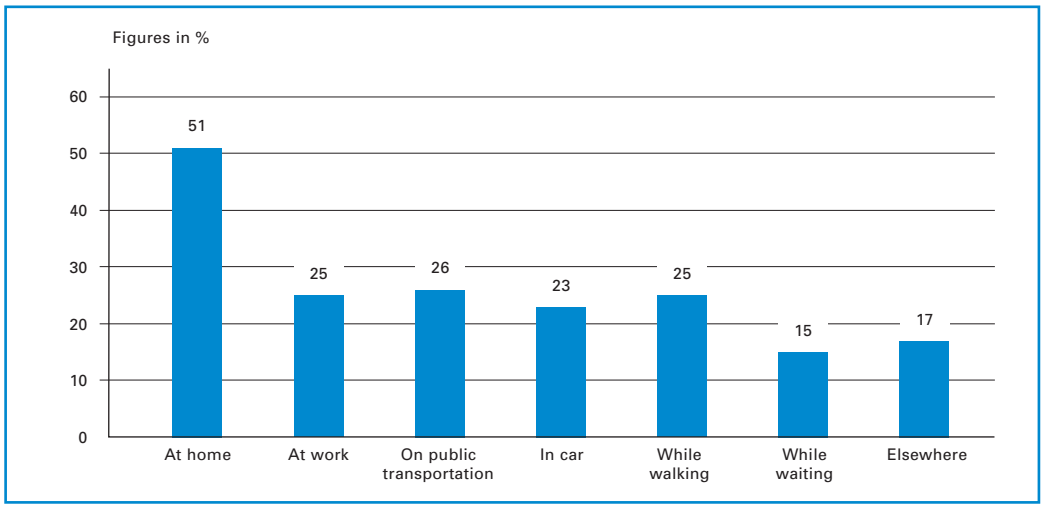
In mid-December 2007, the deadline expired for applications to operate a DVB-H platform in Austria. On February 29, 2008, KommAustria issued the license to Media Broadcast GmbH, which plans to launch DVB-H television at various locations in Austria in time for the start of the Euro 2008 football championships in June 2008.

The mobile network operators Hutchison 3G Austria ("3") and One will be involved in Austrian mobile television in any case, and the infrastructure will be constructed by Media Broadcast GmbH, the licensee, with the support of Österreichische Rundfunksender GmbH & Co KG (ORS). DVB-H enables people to watch television anytime, anywhere according to their individual needs, and this new form of usage is predicted to have enormous development potential worldwide. In Austria, a DVB-H pilot test known as "mobile tv austria" was launched very early by the project partners Hutchison, mobilkom austria, ORF, Siemens Austria, ORS and the Salzburg University of Applied Sciences. This was one of the reasons why Austria was among the first countries in Europe to carry out an invitation to tender and award a license for the operation of a DVB-H platform.

Especially younger target groups are interested in mobile television; participants in the pilot test most preferred using DVB-H at home, followed by usage on public transportation, at work, while walking and in the car. In terms of temporal distribution, the highest usage levels were recorded during the period from 6:00 pm to 8:00 pm and from 2:00 pm to 6:00 pm.

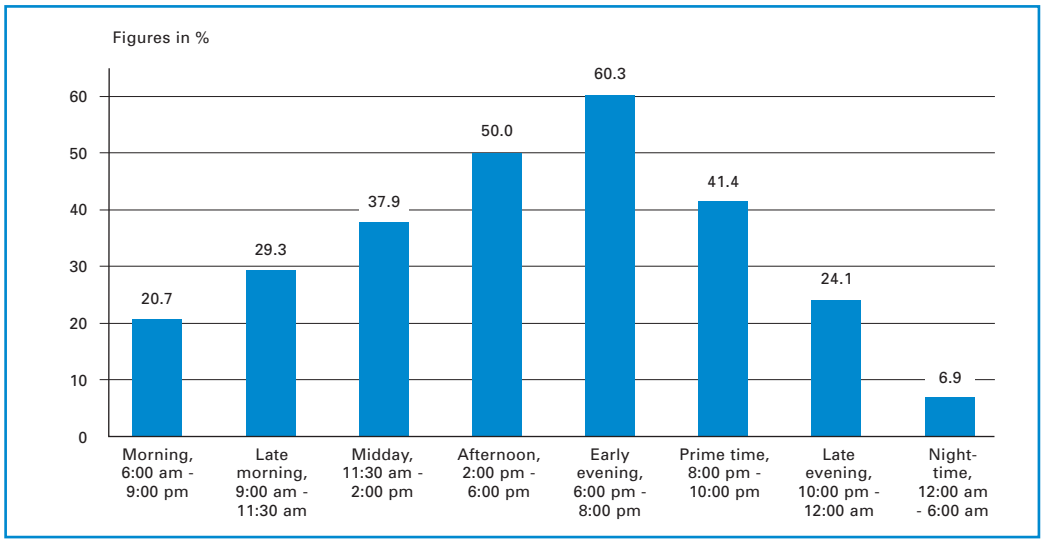
In 2008, Austria will become one of the first countries in Europe to introduce mobile terrestrial television using the DVB-H standard.

Figure 18: Preferred places for use of mobile TV in Austria



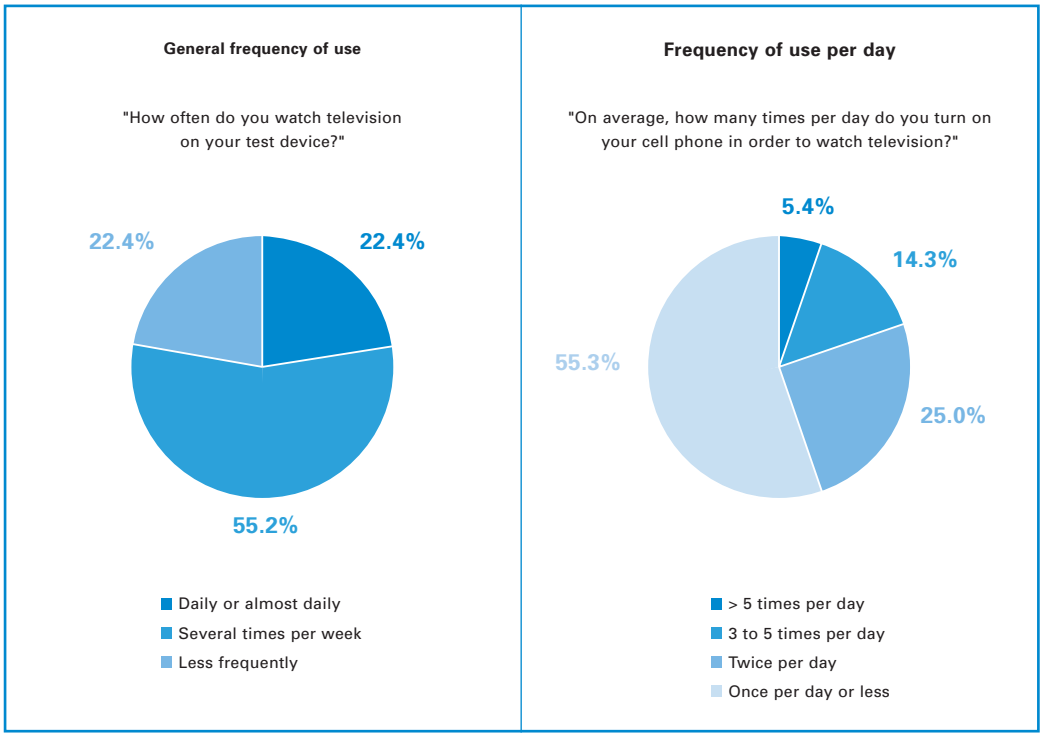
Source: RTR/Salzburg UAS study on mobile TV, 2007

Figure 19: Use of mobile TV throughout the day



Source: RTR/Salzburg UAS study on mobile TV, 2007

Figure 20: Mobile TV frequency of use



Source: RTR/Salzburg UAS study on mobile TV, 2007

New Teletest

New general framework for the Teletest

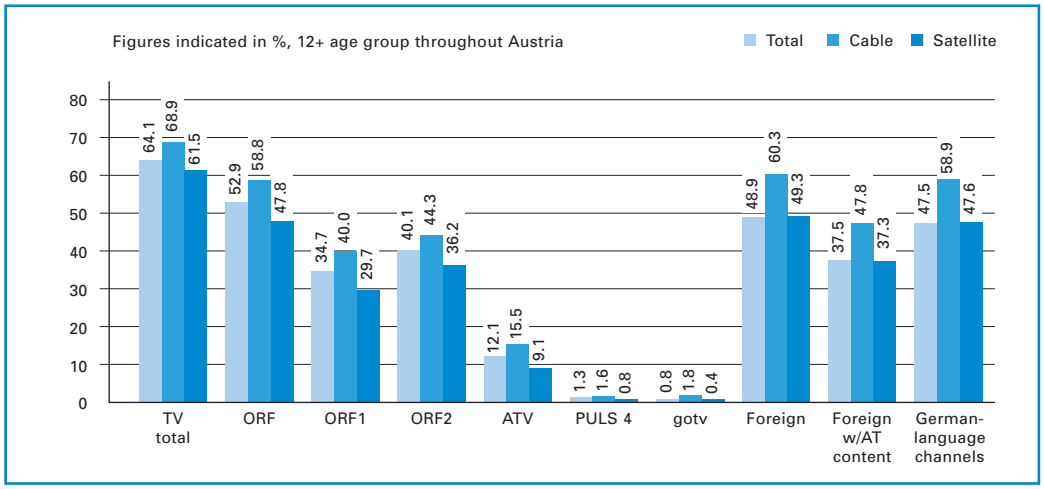
The viewing habits of Austrian television viewers are surveyed in what is known as the "Teletest." In 2007, a modified survey procedure was applied, and the surveys are now carried out by the "Teletest Association," which includes ORF as well as all of the relevant private TV marketers in Austria. Until 2006, the market research organization FESSEL-Gfk was hired to carry out the Teletest by ORF alone.

Daily reach, a measure which indicates the percentage of people over the age of 12 who watched one of the channels on the market for at least one minute per day on an annual average, came to 64.1% in 2007. This represents a decline of 2.8 percentage points compared to 2006. For the first time, this decrease affected ORF more heavily than its largest competitors, the German channels which offer partly Austria-specific content (taken as a whole): While ORF saw a significant decline from 57.3% to 52.9% (-4.4 percentage points), the reach of channels which offer partly Austria-specific content (RTL, RTL II, Super RTL, ProSieben, SAT.1, Kabel 1 and VOX) only dropped 0.6 percentage points, from 38.1% to 37.5%.

Reach of channels which offer partly Austria-specific content is highest in cable households.

In cable households, the foreign channels which offer partly Austria-specific content have long since overtaken the two ORF channels. In 2007, their reach was already 47.8%, while ORF1 and ORF2 recorded figures of 40.0% and 44.3%, respectively. Among satellite households, the foreign channels with partly Austria-specific content have a reach of 37.3% and are thus well ahead of ORF1 (29.7%); at 36.2%, ORF2 is not as far behind the foreign channels (1.1 percentage points), although the station's reach did increase by 0.7 percentage points compared to 2006.

Figure 21: Daily reach of television channels in 2007

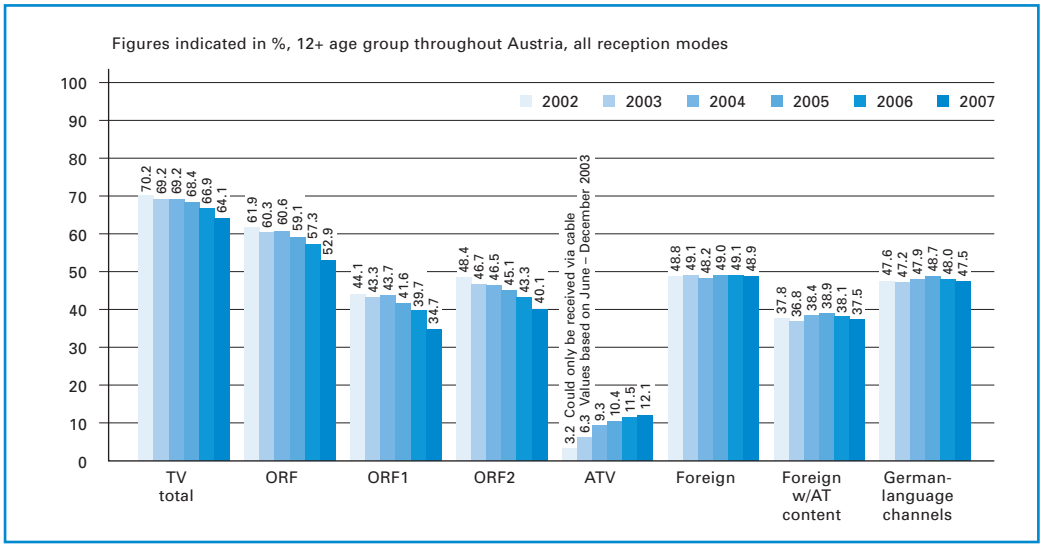


Source: Teletest 2007

If we consider the long-term development of daily reach figures in Austria, it quickly becomes clear that the reach of the foreign channels which offer partly Austria-specific content has remained fairly constant around 38% since 2002, while ORF2's reach has been declining gradually from a higher level. It is also striking that ORF1, which is designed for similar target groups as the foreign channels which offer partly Austria-specific content, was able to maintain its reach at around 44% until 2004 but has been losing steadily since 2005. Between 2006 and 2007 alone, this decline came to 5 percentage points.

Once again, the Austrian private station ATV was able to expand its reach, this time from 11.5% in 2006 to 12.1% in 2007. This means that ATV, now in its fourth year as a nationwide television station, has not only managed to overtake Super RTL but has also widened its lead on RTL II and Kabel 1. ATV is now only 0.6 percentage points behind VOX. ATV is thus still in fifth place (behind RTL, SAT.1, ProSieben and VOX) among the private television stations in Austria.

Figure 22: Long-term development of daily reach figures

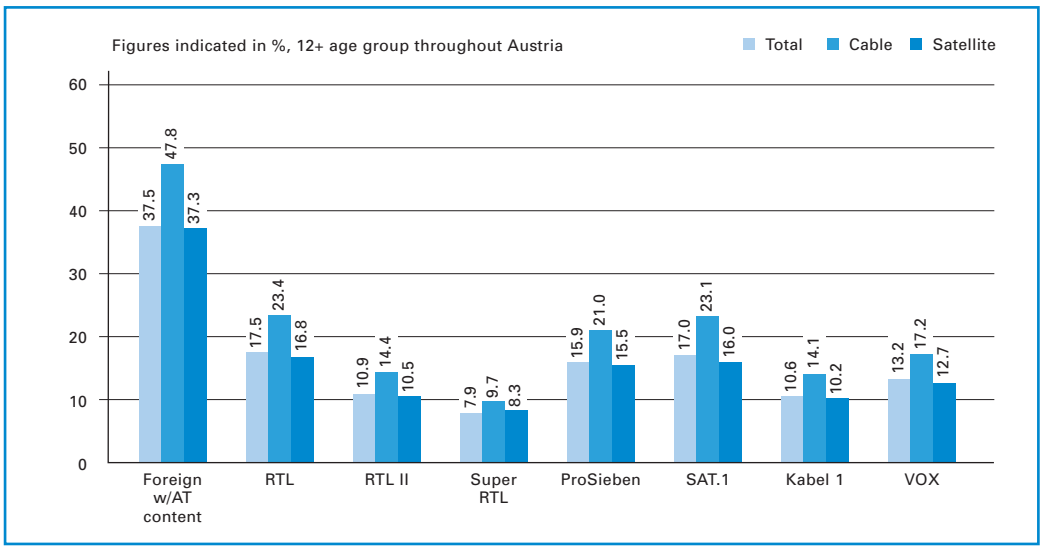


Source: Teletest

Among the foreign channels which offer partly Austria-specific content, RTL once again saw the highest daily reach in 2007 at 17.5% (-0.8), followed by SAT.1 with 17.0% (-0.8) and ProSieben with 15.9% (-0.6).

RTL enjoys the highest reach among foreign channels which offer partly Austria-specific content.

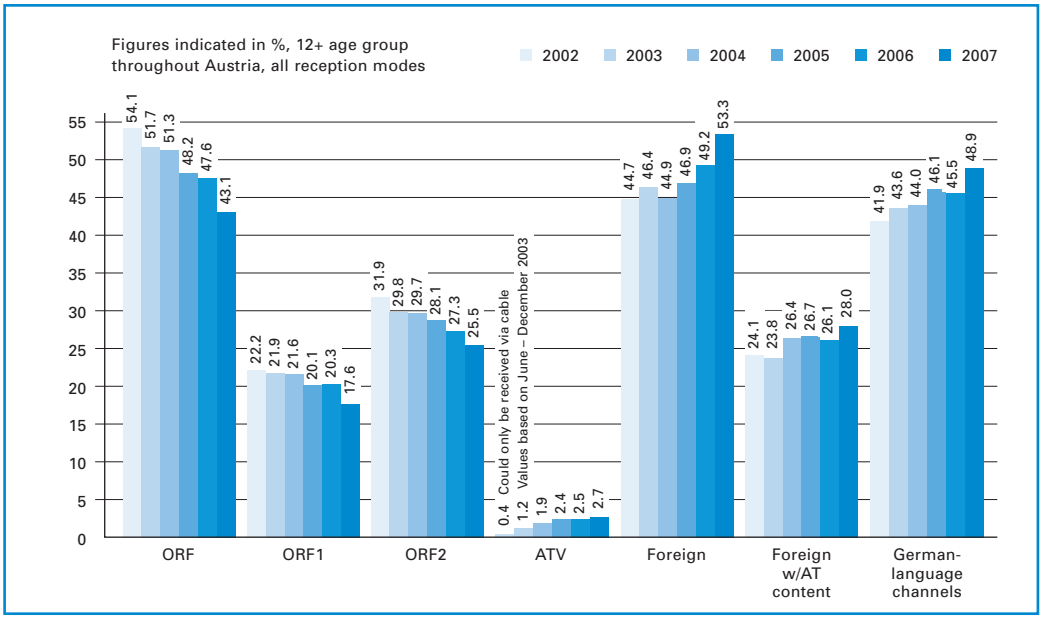
Figure 23: Daily reach of channels with partly Austria-specific content in 2007



Source: Teletest 2007

Market share is the second indicator examined in the Teletest survey, which measures the relative market shares of each channel. Based on the overall Austrian population over the age of 12, ORF's market share came to 43.1% in 2007, which represents a decline of 4.5 percentage points compared to the previous year. Thus ORF continued the relatively noticeable decline observed since 2004. This development can mainly be attributed to the decline of ORF's channels (ORF2: 1.8 percentage points, ORF1: 2.7 percentage points) in favor of foreign channels, which enjoyed a combined market share of 53.3% in 2007. This figure represents a substantial increase of 4.1 percentage points compared to 2006.

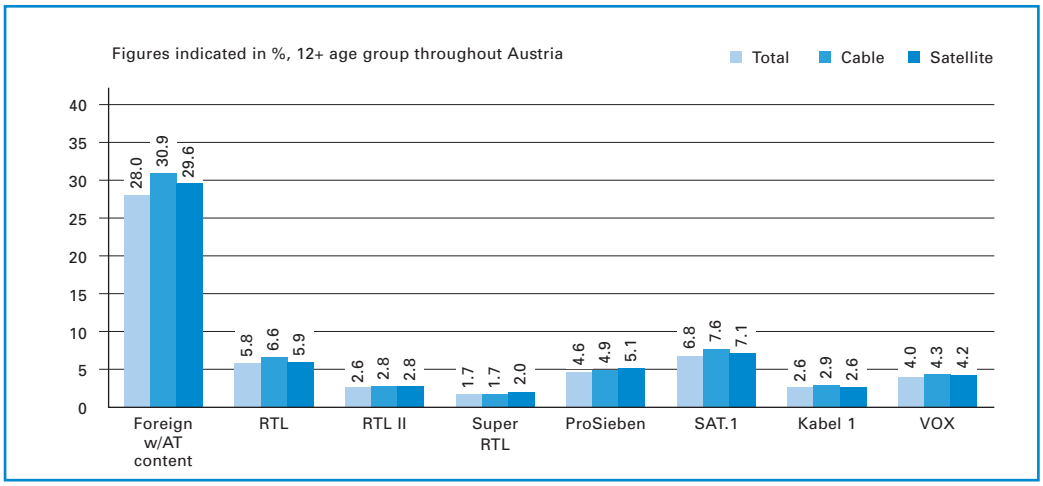
Figure 24: Long-term development of market shares



Source: Teletest

ATV once again recorded a slightly higher market share of 2.7%, thus surpassing Super RTL (as was already the case in 2006). ATV is now nearly even with RTL II and Kabel 1, but still relatively far behind SAT.1 and RTL, the leading foreign channels which offer partly Austria-specific content. As regards competition for market share among the foreign channels, SAT.1 is once again clearly in the lead: With an overall market share of 6.8%, SAT.1 was again just ahead of RTL (5.8%) among foreign channels which offer Austria-specific content.

Figure 25: Market shares of channels with partly Austria-specific content in 2007



Source: Teletest 2007

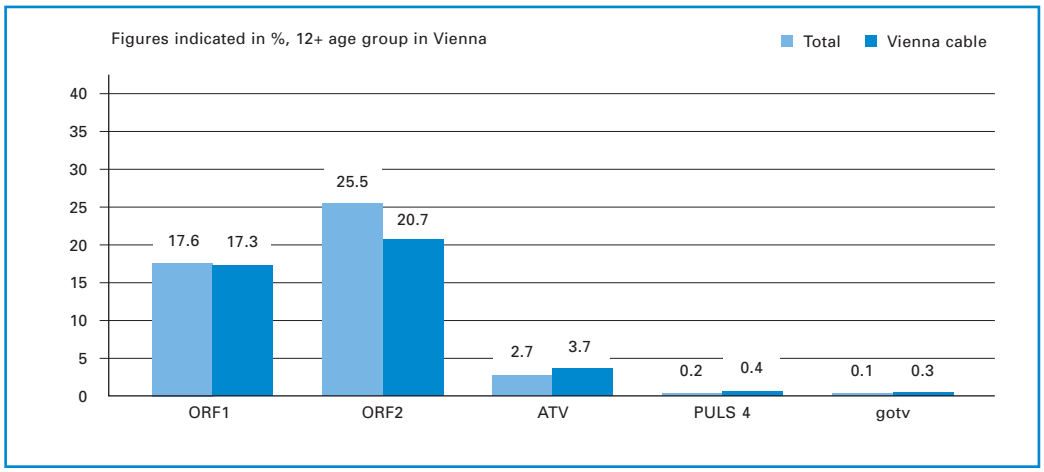
ATV steadily increasing its reach

In Vienna's cable households, ATV's market share came to 3.7% in 2007, which is significantly higher than the channel's market share on Austria's overall television market (2.7%). In contrast, the channels ORF1 and ORF2 have lower market shares among cable households in Vienna (17.3% and 20.7%, respectively) compared to the nationwide market (ORF1: 17.6%; ORF2: 25.5%).

Formerly a regional station for Vienna, PULS TV (Vienna cable market share: 0.4%) became part of the ProSieben/SAT.1 Group in May 2007 and is now also broadcast via DVB-T throughout Austria. However, the chart below does not include this transmission mode, meaning that we can assume that the channel will enjoy a substantially higher share of Austria's overall broadcasting market in the future.

Go TV, which has operated as a regional channel in Vienna since 2000, has a market share of 0.3% among Vienna's cable households and has been broadcast via satellite since 2004. Go TV's share of Austria's overall television market came to 0.1% in 2007.

Figure 26: Market shares in cable households in Vienna (2007)



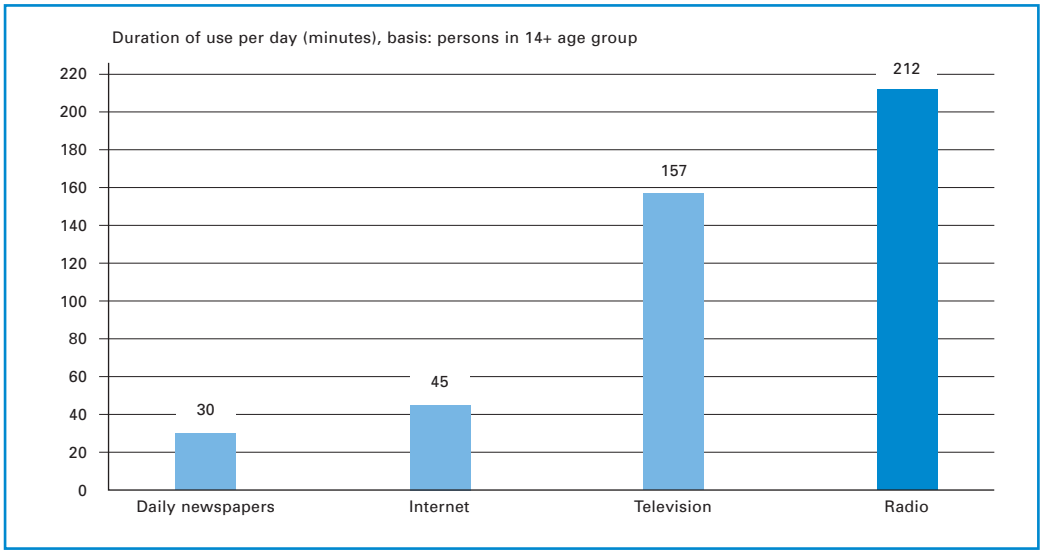
Source: Teletest 2007

5.1.4 Radio

Daily radio listening time still highest among Austrian media

Over the last ten years, two developments have become especially conspicuous in Austrian radio broadcasting: First – in contrast to the television market, on which competition is mainly between Austrian channels (especially those of the ORF) and Germany's public and private stations – competition in radio broadcasting is between Austrian stations, or rather between ORF's radio stations and the private radio broadcasters, which have now been licensed throughout Austria for ten years. Second, it is especially striking that average radio listening time per day has increased substantially since the launch of the private radio stations and the resulting increase in programming diversity, especially at the regional and local level. The Radiotest from the year 1997 – when only two private radio stations, Antenne Steiermark (Styria) and Radio Melody (Salzburg), were on the air – reports an average daily listening time of 186 minutes among all target groups over the age of ten. By 2007, those target groups were listening to public and private radio stations for an average of 205 minutes per day.

Figure 27: Media usage time per day



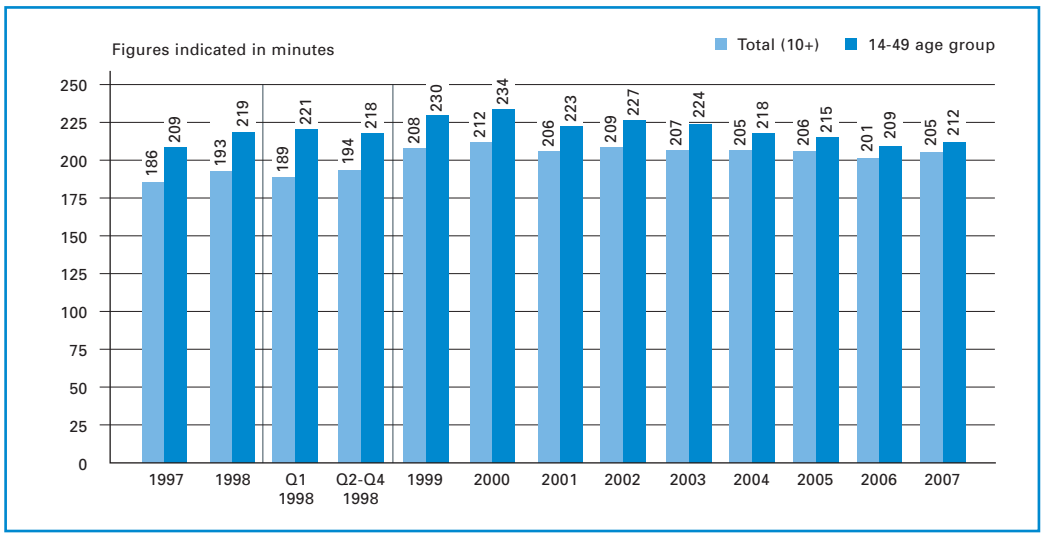
Source: Radiotest 2007, Teletest 2007, MTUs, AIM Q1 2007

Once again, this field did not undergo any major changes in the year 2007: Ö3 and ORF's provincial radio stations continued to dominate the market in various age groups, while the large number of private radio stations made only slight progress, increasing their combined market share from 22% to 23% in the 14 to 49 age group.

The instrument used to measure overall radio consumption as well as the reach and market shares of each broadcaster is based on the Radiotest, a well-established market research survey which has been carried out for several years by the market research organization FESSEL-GfK on the basis of at least 24,000 telephone interviews commissioned jointly by ORF and Austria's private radio stations. The Radiotest indicates that radio is still the most heavily used medium in Austria: The average daily listening time (among persons over 14 years of age, according to the Austrian Media Analysis) in Austria comes to 212 minutes, while the average television viewing time only amounts to 157 minutes. In recent years, Internet usage – which includes reading the news online – has clearly surpassed the use of daily newspapers: While the Internet showed an average daily usage time of 29 minutes in 2004, this figure had risen more than 50% to 45 minutes by 2007. The average reading time for daily newspapers in 2007 amounted to 30 minutes.

In the last few years, radio listening time has exhibited a rather stable trend and only changed insignificantly, as radio usage saw its most substantial increases ten years ago. In the 14 to 49 age group, daily radio listening time came to 212 minutes in 2007 (2006: 209 minutes); among all listeners over the age of ten, daily listening time was 205 minutes (2006: 201 minutes). However, especially in the younger age groups, for example among 14 to 25-year-olds, we have noted a certain decline in traditional radio usage in favor of media and mp3 players. However, this also applies to other media, such as conventional television or newspapers being replaced by online services.

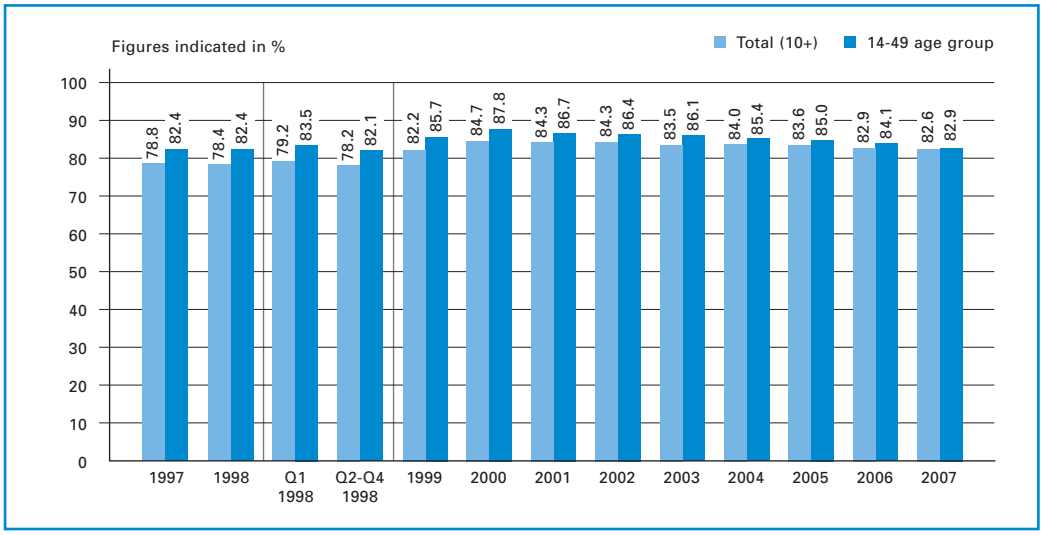
Figure 28: Development of listening time



Source: Radiotest

Radio not only reaches its listeners for a very long time, it also reaches the largest share of the population. The number of people in all age groups who listened to a radio station for at least 15 minutes per day rose to 82.6% (up 10 percentage points) in 2007; this reach figure was approximately the same as that of the 14 to 49 age group (82.9%). In this respect, the daily reach figures – that is, the percentage of Austria's population which is reached by at least one radio station on a daily basis – has remained stable above 80% over the last six to seven years.

Figure 29: Development of radio's daily reach



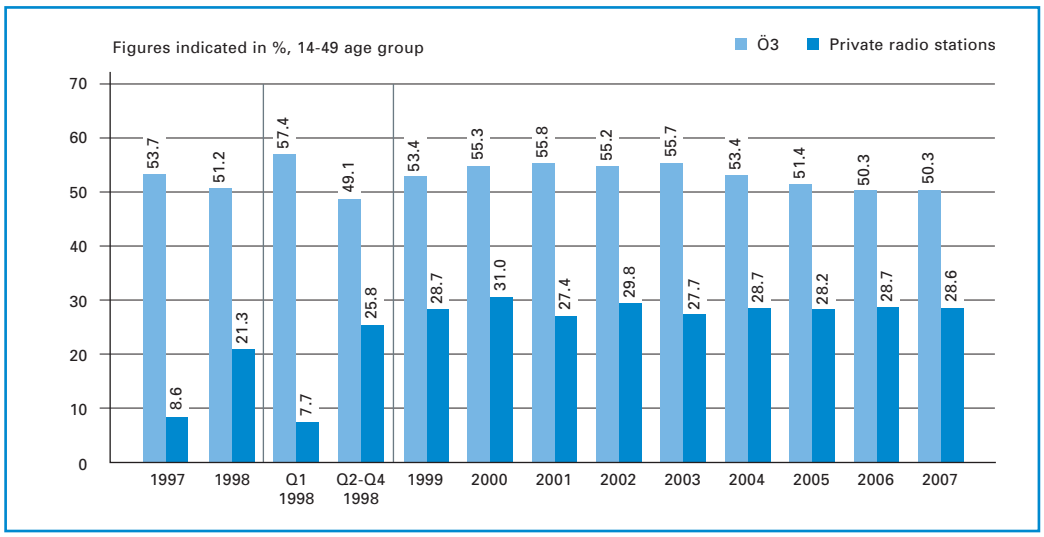
Source: Radiotest

As mentioned above, the recent history of Austrian radio in particular has been dominated by competition between Ö3, which is ORF's large station for younger listeners, and the private radio stations, which generally also target younger age groups. Ö3, which has remained especially successful, attained its highest reach levels among listeners over 10 years of age and in the 14 to 49 age group in the years 2000 to 2002, but in the meantime the station's reach has declined slightly: While Ö3's reach was at or just over 41% in all age groups (10 years and older) from 2000 to 2002, its reach had declined to 37.9% by 2007; in the 14 to 49 age group, Ö3's reach also dropped from just over 55% to 50.3%. At the same time, however, the daily reach of private radio stations has not increased markedly, as those stations have attained a reach level of 22.7% in all age groups (10 years and older) and 28.6% in the 14 to 49 age group, just over half of Ö3's reach figure.

Ö3 remains undisputed market leader.

However, in this context it is necessary to note that the total number of radio frequencies available to private radio stations (296) is rather close to the number of frequencies available to Ö3 (263).

Figure 30: Development of daily reach, Ö3 vs. private radio stations



Source: Radiotest

ORF's nine provincial channels (known as "Ö2" within the ORF organization) reached a total of 35.8% of the 10+ age group in 2007; this represents a stable development compared to the previous year. In 2006, 35.6% of that age group listened to one of ORF's regional channels. The two stations which showed the highest reach levels in 2007 were Radio Burgenland (42.6%) and Radio Kärnten (42.7%). Radio Oberösterreich saw a markedly lower reach level of 29.9%, as did the provincial channels for Vienna and Lower Austria; however, two of ORF's regional channels have higher reach levels in those two provinces (due to the geographical situation, Radio Wien and Radio Niederösterreich can be received in both provinces).

Kronehit's reach: 5.5% nationwide

A large number of local and regional radio licenses have been issued in Austria, but only one of the country's private radio stations – Kronehit – has received a nationwide broadcasting license, which was issued by KommAustria in 2004. The Kronehit station has been able to increase its reach markedly since it launched nationwide broadcasting, with an increase from 4.5% in 2005 to 5% in 2006 and 5.5% in 2007 among all age groups (10 years and older).

Table 9: Daily reach of radio stations in Austria

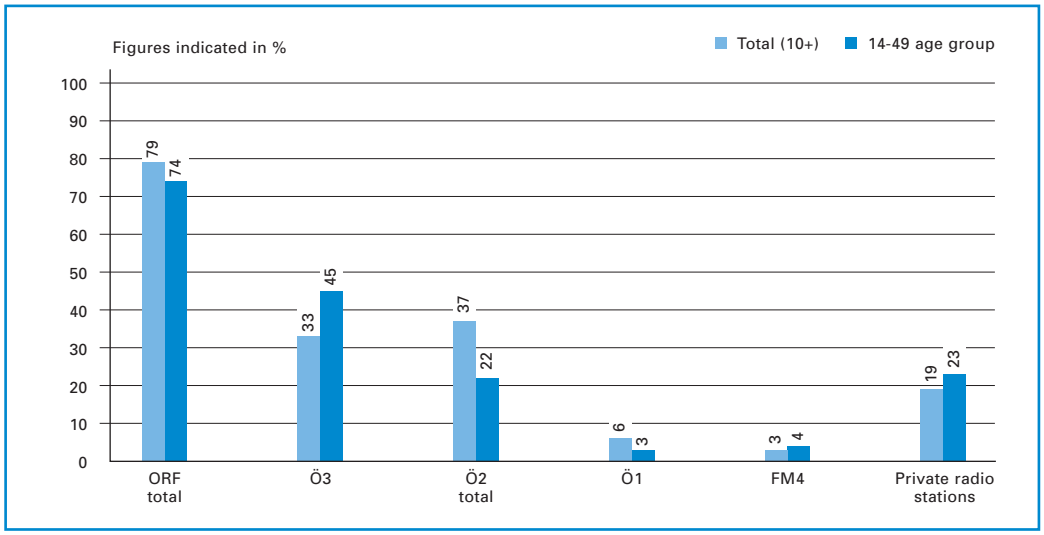
	Total	Vienna	Lower Austria	Burgenland	Styria	Carinthia	Upper Austria	Salzburg	Tyrol (including Eastern Tyrol)	Vorarlberg
Total number of cases (unweighted)	**26,597**	**3,399**	**3,819**	**2,442**	**3,577**	**2,427**	**3,103**	**2,463**	**2,936**	**2,431**
Total daily reach										
Radio total	82.6	77.1	84.5	84.3	84.0	83.6	84.2	83.4	83.6	82.1
ORF total	72.4	62.9	75.8	78.3	75.2	76.8	73.4	73.2	72.9	73.4
Austrian private BC total	22.7	26.0	21.2	17.1	24.0	19.9	24.0	20.1	23.2	16.4
Other stations total	25.8	28.5	22.9	18.6	26.1	22.2	28.3	25.3	27.6	24.7
Minor stations total	4.0	3.3	2.4	1.8	2.8	2.8	5.3	6.4	5.6	10.0
Other minor stations	3.0	3.3	2.4	1.8	2.8	2.8	3.1	3.7	3.3	4.3
ORF's daily reach										
Ö1	9.1	12.9	8.9	7.0	7.9	7.7	8.7	8.8	7.2	6.5
Ö3	37.9	30.9	40.6	38.5	39.4	39.3	39.8	37.5	40.2	39.7
FM4	4.3	5.4	3.6	3.1	3.0	2.7	5.5	4.8	4.1	4.8
ORF regional stations total	35.8	26.7	39.8	47.7	39.0	43.0	32.3	37.2	36.8	37.3
Radio Wien	5.4	17.9	8.8	3.8	-	-	-	-	-	-
Radio Niederösterreich	7.6	7.7	29.8	3.7	0.5	-	1.1	-	-	-
Radio Burgenland	2.6	3.2	2.1	42.6	1.0	-	-	-	-	-
Radio Steiermark	5.9	-	0.5	3.0	38.0	0.7	0.0	0.5	-	-
Radio Kärnten	3.1	-	-	-	0.6	42.7	-	0.1	0.6	-
Radio Oberösterreich	5.5	-	1.7	-	0.2	-	29.9	1.6	-	-
Radio Salzburg	2.8	-	-	-	0.4	0.0	2.8	36.1	0.4	-
Radio Tirol	3.1	-	-	-	-	0.1	-	0.4	36.3	0.4
Radio Vorarlberg	1.6	-	-	-	-	-	-	-	0.2	37.2
Daily reach of private radio stations										
RMS Top	22.3	24.5	20.9	16.9	23.9	19.3	23.9	20.0	23.2	16.4
Kronehit	5.5	5.1	8.8	8.6	4.3	2.7	6.4	3.4	3.4	1.3
Radio Arabella (V/LA/B/UA)	3.4	10.2	5.1	1.6	-	-	2.1	-	-	-
HiT FM/Party FM	1.0	0.2	4.3	3.9	0.2	-	0.0	-	-	-
88.6 Wir spielen was wir wollen	1.8	5.6	3.2	1.8	-	-	-	-	-	-
Antenne Wien - Das Cityradio	0.4	1.6	0.5	0.4	-	-	-	-	-	-
Radio Arabella (V/LA/B)	3.1	10.2	5.1	1.6	-	-	-	-	-	-
Radio Energy 104.2	1.2	4.9	1.0	0.6	-	-	-	-	-	-
Antenne Steiermark	2.6	-	0.2	3.1	16.1	0.3	0.2	0.2	-	-
A1 Radio	0.1	-	-	-	0.4	-	-	-	-	-
89.6 Das Musikradio	0.1	-	-	-	1.0	-	-	-	-	-
Soundportal	0.3	-	-	-	2.1	-	-	-	-	-
Radio West	0.0	-	-	-	0.2	-	-	-	-	-
Antenne Kärnten	0.9	-	-	-	0.2	12.7	-	0.1	0.0	-
Radio Harmonie	0.3	-	-	-	0.2	4.6	-	-	-	-
Life Radio (UA)	2.6	-	0.4	-	0.1	0.1	14.6	0.2	-	-
Antenne Wels	0.1	-	-	-	-	-	0.8	-	-	-
Radio Arabella (UA)	0.4	-	-	-	-	-	2.1	-	-	-
Antenne Salzburg	1.1	-	-	-	0.1	0.1	1.1	14.0	0.1	-
Welle 1 total (Sbg./UA)	0.5	-	0.2	-	-	-	1.1	4.2	-	-
Life Radio (Tyrol)	0.6	-	-	-	-	-	-	-	7.1	0.1
Antenne Tirol	0.3	-	-	-	-	-	-	-	3.9	-
Radio Osttirol	0.2	-	-	-	-	0.6	-	-	1.7	-
Radio Unterland/U1	0.6	-	-	-	-	-	-	-	6.8	-
Welle (Tyrol)	0.2	-	-	-	-	-	-	-	2.0	-
Antenne Vorarlberg	0.6	-	-	-	-	-	-	-	0.2	13.9
Radio Arabella (Vbg.)	0.1	-	-	-	-	-	-	-	-	1.6

Source: Radiotest 2007; vertical percentages, persons in 10+ age group

Combined market share of all private radio stations: 23%

Aside from daily reach figures, the statistics which interest the advertising industry most are market shares. These figures show the percentage of total radio listening time which can be attributed to each radio station during a given period. In 2007, Ö3 attained a market share of 45% in the 14 to 49 age group (2006: also 45%). In the same age group, Ö2's market share came to 22% (2006: 23%). Naturally, this station's market share in all age groups was substantially higher (37%). Taken together, all of Austria's private radio stations attained a market share of 23% among listeners aged 14 to 49 in 2007. Measured across all age groups, the respective shares of ORF's radio stations and the private stations are 79% and 19%, respectively.

Figure 31: Radio market shares in 2007



Source: Radiotest 2007

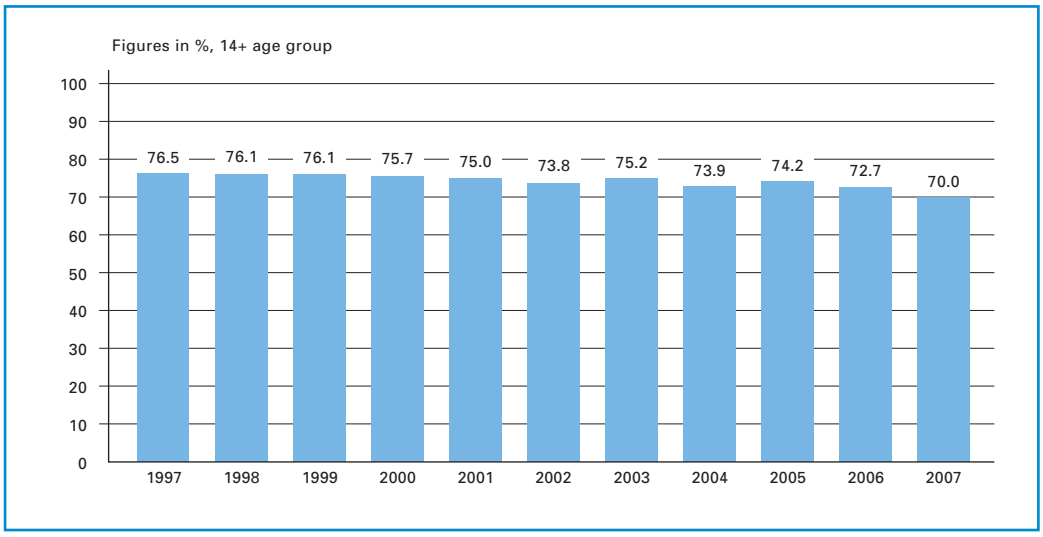
In addition to ORF's stations and the commercial private radio stations, there are also 12 non-commercial radio stations ("free radio stations") which make a substantial contribution to the diversity of opinions Austria, especially at the regional level. However, statistics on the non-commercial broadcasters are not collected in the Radiotest.

There have been various discussions on the future of radio broadcasting in Europe, and one example is the issue of radio digitization. Digital radio was introduced in Germany ten years ago, but it only actually reaches a very small number of daily listeners (no more than one to two percent). Austria has not yet undertaken this especially cost-intensive additional project, but RTR will continue to monitor developments in key European countries in order to promote and where necessary support the transition from FM to digital radio at the right time. For example, RTR has commissioned two studies on digital radio and plans to present the results to the public in mid-2008.

5.1.5 Print media

In the Austrian print media field, the year 2007 once again saw a slight decline among Austrian daily newspapers. The total daily reach of all daily newspapers surveyed in the Austrian Media Analysis slipped from 74.2% of all Austrians over the age of 14 in 2005 to 72.7% in 2006 and 70% in 2007. This can be explained in part by the fact that daily Internet usage now takes up more time than that of daily newspapers; Internet usage has risen to 45 minutes, while daily newspapers account for 30 minutes per day. Naturally, in this context it is also necessary to note that daily newspapers in particular are heavily promoting the online presence of their media brands in order to compensate for declining circulation figures. Moreover, when presenting the results of the Austrian Media Analysis for 2007, the president of the Media Analysis organization, Wolfgang Bretschko, pointed out that newspapers not yet included in the survey as well as free newspapers have brought about changes in print media usage. Mr. Bretschko was referring to the daily newspaper *Österreich* (Austria) as well as *Heute* (Today), a free newspaper in Vienna.

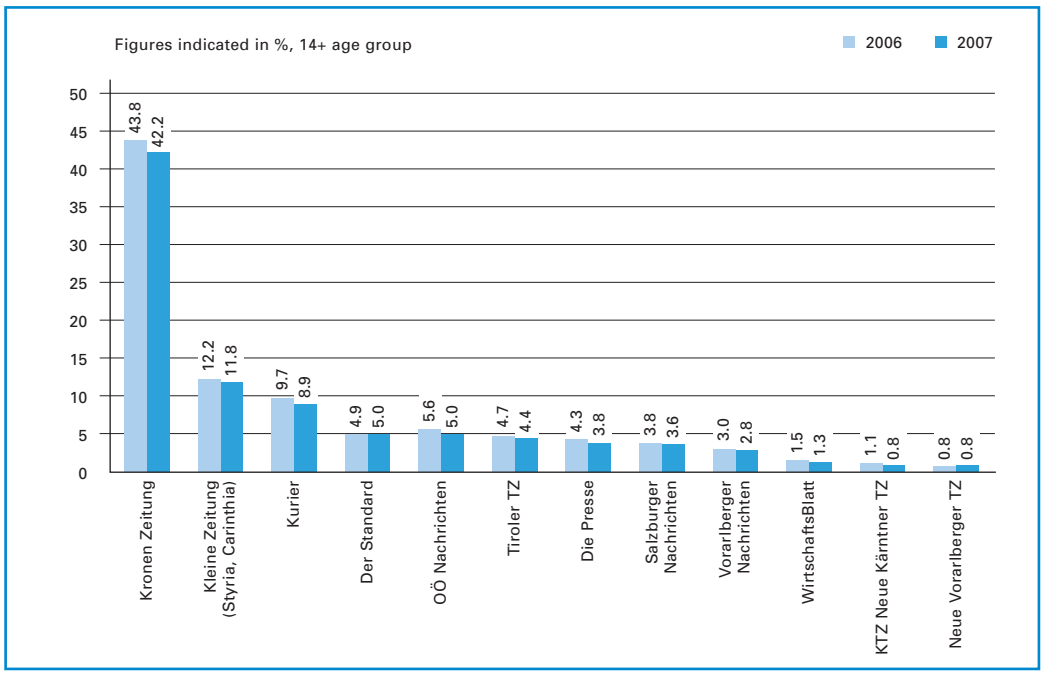
Figure 32: Development of daily reach among Austrian daily newspapers



Source: Austrian Media Analysis

Among the various newspapers in the survey, the following daily newspapers suffered significant losses in daily reach: *Kronen Zeitung* dropped from 43.8% in 2006 to 42.2% in 2007, while *Kurier* fell from 9.7% to 8.9%. The daily reach of *Die Presse* decreased from 4.3% to 3.8%, *KTZ – Neue Kärntner Tageszeitung* from 1.1% to 0.8%, and *Oberösterreichische Nachrichten* dropped from 5.6% to 5.0%. Further decreases were observed in the television supplements *Tele* (37% to 31.3%) and *TV-Woche* (37.3% to 33.8%). Most weekly magazines, such as *Die Ganze Woche* as well as the magazines of the NEWS publishing group (*NEWS*, *TV-Media*, *FORMAT* and *Profil*), also saw their reach figures decline.

Figure 33: Development of national daily newspapers' reach



Source: Austrian Media Analysis

The year 2007 also brought a number of relevant ownership changes in the print media sector. On January 31, 2007, the publishing house "Athesia" in South Tyrol (Alto Adige) gave up its stake in Moser Holding, a Tyrolean media group. Athesia's 50% stake has been reacquired by the Moser family, which also previously held the other half of the shares in Moser Holding. On April 4, 2007, Moser Holding took over Printzeitungsverlag GmbH, the publisher of Austria's district newspapers. After Styria Medien AG acquired all of the shares in the regional magazine group Kärntner Regionalmedien on October 16, 2007, Styria Medien AG and Moser Holding bundled their weekly newspaper operations toward the end of the year (December 20, 2007): The two media companies agreed to spin off their respective free weekly newspaper operations into a newly established company, Regionalmedien Austria AG. Given approval under cartel law, the two partners will each hold a 50% stake in the new company.

Vienna-based Styria Multimedia AG merged its periodicals operations with the sports magazine publishing group headed by Herbert Pinzolits on May 2, 2007. In July 2007, the free newspapers in Graz and Klagenfurt were canceled: After just over one year, Styria Medien AG discontinued the free newspaper *o.k.*, and at the same time the competing product *Heute* was also discontinued in Graz. *Heute* plans to use the capacity and resources made available by this move to expand its presence in the provinces of Lower Austria and Upper Austria.

Moser Holding took another major step into a new regional market on July 16, 2007 by taking a majority stake in the *Oberösterreichische Rundschau*. The Federal Competition Authority approved the Tyrolean media company's acquisition of 51% of this Upper Austrian weekly newspaper.

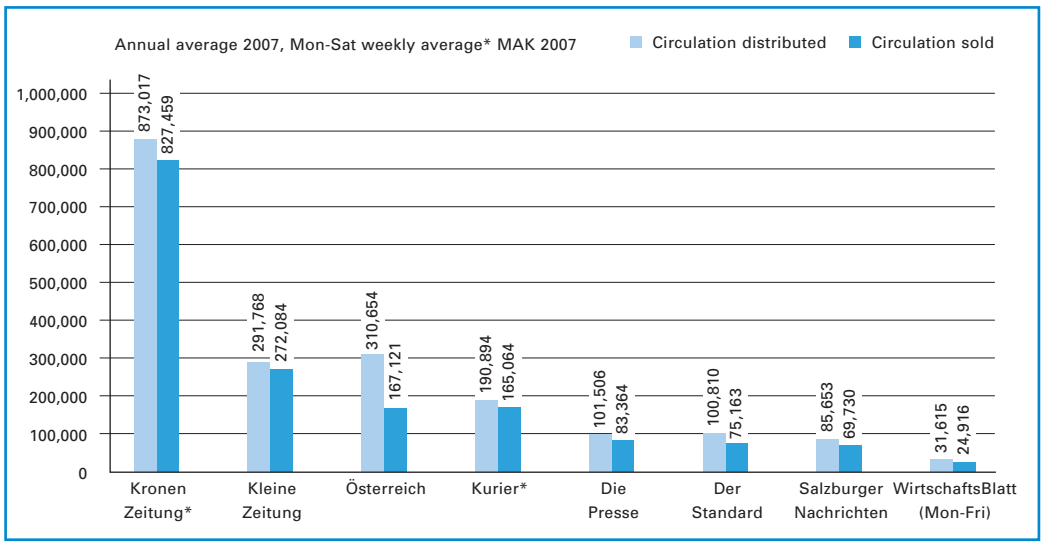
A change in the ownership of the *Österreich* daily newspaper also saw a great deal of media attention, as Fritz Fellner, father of *Österreich* publishers Wolfgang and Helmut Fellner, became co-owner of the newspaper. Along with his son Wolfgang Fellner, Fritz Fellner owns shares in WF-Beteiligungs-GmbH, which itself owns 95% of Fellner Medien GmbH (the company behind *Österreich*).

On October 14, 2007, Moser Holding established the free Sunday newspaper *Tirol am Sonntag*. In 2008, Moser Holding's second daily newspaper, *Neue Zeitung für Tirol*, was discontinued. Moser Holding's main daily newspaper in Tyrol remains the *Tiroler Tageszeitung*, which did not suffer any significant losses in 2007 according to the Media Analysis: its daily reach (based on all of Austria) edged down from 4.7% in 2006 to 4.4% in 2007.

Austria's daily newspapers are ranked as follows: The daily reach of the *Kronen Zeitung*, which is linked to the *Kurier* via Mediaprint in the fields of marketing, administration, printing and distribution (the German WAZ Group holds stakes in the *Kronen Zeitung* [50%] as well as the *Kurier* daily newspaper (49.4%) and thus also an indirect stake in the Mediaprint distribution company), came to 42.2% in 2007. The *Kleine Zeitung* took second place with a daily reach of 11.8%, followed by the *Kurier* at 8.9%. As mentioned above, the daily newspaper *Österreich* has not yet been included in the Media Analysis.

The year 2007 also saw serious discussions regarding the Austrian Circulation Survey (ÖAK). The daily newspaper *Österreich* was included in the data for the first time in the fourth quarter of 2006, after which the *Kronen Zeitung* and *Kurier* dailies announced their withdrawal from the ÖAK in March 2007. In justifying this move, the two major daily newspapers cited a "massive dilution of quality criteria" at ÖAK in connection with the reporting of circulation figures for the *Österreich* daily newspaper. According to the *Kronen Zeitung* and *Kurier*, *Österreich* can be described as a "combination of a paid and free newspaper." As to the future orientation of the Austrian Circulation Survey, this conflict gave rise to heated debates which did not end until April 2008. All daily newspapers are now included in the Austrian Circulation Survey. The figure below shows the distributed and paid circulation of several of Austria's leading daily newspapers. The chart clearly illustrates the enormous difference between distribution and paid circulation, as *Österreich* is partly distributed for free.

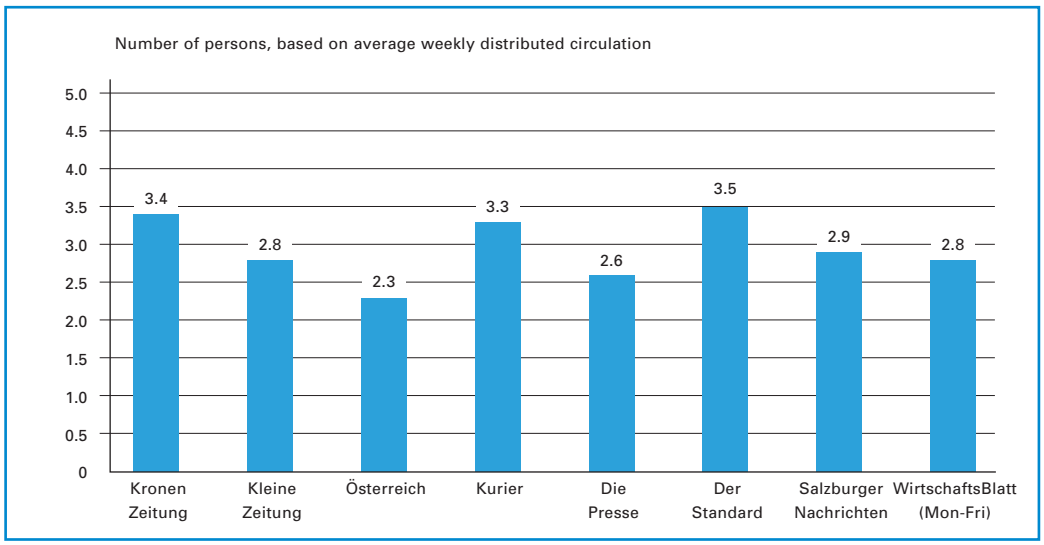
Figure 34: Circulation of national daily newspapers



Source: ÖAK
*Figures for *Kronen Zeitung* and *Kurier* taken from MAK 2007.

Statistics on readers per copy compiled by the Media Analysis reveal how many people over 14 years of age read each copy of a newspaper sold. In 2007, *Der Standard* was the forerunner in this area with 3.5 readers per copy, followed by the *Kronen Zeitung* and *Kurier* with 3.4 and 3.3, respectively.

Figure 35: National daily newspapers: Readers per copy



Source: MA / Medienradar 2007; ÖAK and MAK (Kronen Zeitung/Kurier) 2007

5.2 Development of the Austrian telecommunications markets

Periodic and comprehensive market evaluations under the legal framework introduced in 2002

The EU's legal framework for electronic communications markets was implemented in Austria by means of the Telecommunications Act 2003 and the accompanying ordinances. As regards experience in (inter)national implementation, Austria can be described as one of the "early birds" in the implementation of the EU's legal framework from 2002. The second round of market analysis procedures was largely completed in the course of the year 2007 (cf. Section 4.2.1). The market analysis procedures carried out by the Austrian regulatory authority were completed quickly, efficiently, and – due to very early and extensive preparations – without external support from consulting services.

The data underlying the descriptions and explanations provided in the sections below is derived from the operator surveys carried out by RTR in the past as well as complementary quarterly data collected under the Communications Survey Ordinance (KEV). In addition, the discussion is also based on supplementary data derived from international experience as well as other studies and reports.

5.2.1 General market development

Stagnation and decline in retail revenues during later stages of liberalization

In contrast to its rapid overall growth since the start of liberalization, the Austrian telecommunications market saw a slight decline in overall retail communications revenues for the first time in 2006. This trend also continued in 2007. Specifically, while net retail revenues on the Austrian telecommunications market remained fairly stable between 2005 and 2006 (-0.5%), they dropped 3.2% in 2007 (from EUR 4.72 billion to EUR 4.57 billion). These revenues can be attributed to the individual business segments as follows:

Table 10: Overall development of retail telecommunications revenues

	2005 EUR (millions)	2006 EUR (millions)	2007 EUR (millions)	Change in % 2005 - 2006	Change in % 2006 - 2007	Share of total revenues in %, 2005	Share of total revenues in %, 2006	Share of total revenues in %, 2007
Fixed-link network	1,523	1,401	1,243	-8.0	-11.3	32.1	29.7	27.2
Mobile	2,680	2,708	2,668	1.0	-1.5	56.5	57.4	58.4
Broadband*	440	520	574	18.2	10.4	9.3	11.0	12.6
Leased lines	102	90	85	-11.8	-5.6	2.1	1.9	1.9
Total	**4,745**	**4,719**	**4,570**	**-0.5**	**-3.2**			

Source: RTR survey

* Data on mobile broadband was unavailable.

Table 11: Development of traffic volumes on retail communications markets

	Unit*	2005	2006	2007	Change in % 2005 - 2006	Change in % 2006 - 2007
Fixed-link network**	Call minutes	10,132,124,067	9,195,308,029	7,948,381,523	-9.3	-13.6
	Lines	3,009,962	2,918,324	2,786,975	-3.0	-4.5
Mobile***	Call minutes	11,681,671,603	13,728,427,108	16,977,195,161	17.5	23.7
	Subscribers (post- und prepaid)	8,647,315	9,254,265	9,855,338	7.1	6.3
Broadband	Fixed-link connections	1,054,985	1,334,228	1,559,113	26.5	16.9
	Mobile connections	45,490	153,182	411,552	236.7	168.7
Leased lines****	Number of 64 kbit/s equivalents	756,353	994,390	1,408,539	31.5	41.7

Source: RTR survey

* In the case of stock values, the annual average based on quarterly values is used as an aggregate function.

** Minutes excluding dial-up, including public telephones

*** Due to subsequent corrections by the network operators, the values for 2005 and 2006 differ slightly from those indicated in the 2006 Communications Report.

**** Due to a lack of available data, values for international leased lines are not shown here (in contrast to Table 10).

If we compare the development of revenues in individual business segments with the corresponding developments in traffic volumes, it also becomes clear that traffic volumes have increased drastically in certain areas, with the notable exception of fixed-link communications (cf. Table 11). While prices in the fixed-link segment have essentially stagnated, we have observed significant price reductions on the markets for broadband, mobile communications and leased lines. Due to the increasing prevalence of bundled offers (i.e., combinations of different retail services) in recent years, consumer prices have continued to decline, in some cases quite substantially. Taken together, these price reductions can also be regarded as the actual reason for the decline in overall revenues on the telecommunications market. Moreover, the stagnation in mobile revenues must be interpreted against the backdrop of a very high national penetration rate, with some 9 million active subscriber numbers in Austria.

Rapid growth in mobile broadband

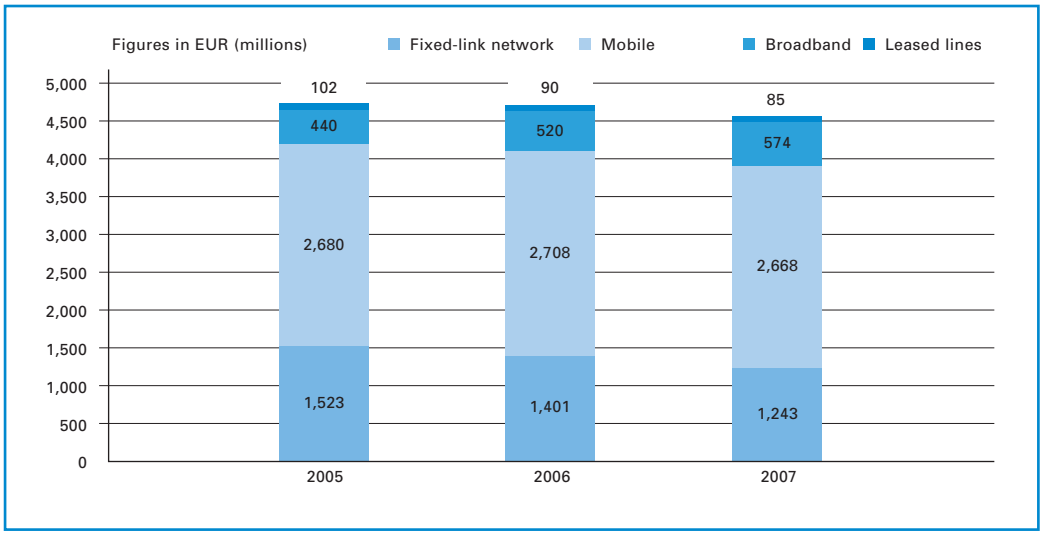
In the field of mobile communications, it is also important to consider the growth in mobile broadband connections, which is not shown in Table 10 but was especially high (approximately 170% in 2007 alone).

Broadband as a key growth factor

Despite a lack of growth in traditional mobile services, more than half of overall telecommunications revenues can be attributed to mobile communications, and this share increased from 57.4% in 2006 to 58.4% in 2006 (cf. also Figure 36). For the first time, however, mobile services did not contribute to growth in revenues on the retail communications markets in 2007; instead, a slight decrease could be observed (-1.5%). Therefore, the main driver of growth was the development of broadband services, an area in which revenues increased – despite additional price reductions – from EUR 520 million in 2006 to EUR 574 million in 2007, mainly due to the increasing rate of broadband penetration in Austria. This represents an

increase of approximately 10.4%. As mentioned above, growth in the broadband sector since early 2006 can be attributed specifically to the rapid increase in the use of mobile data cards. Due to a lack of available data, this development – which is highly significant in terms of volume (cf. Table 11) – cannot be depicted, and revenues from mobile broadband connections are not included in Table 10. The overall development of revenues for the years 2006 and 2007 would thus have to be increased accordingly.

Figure 36: Development and distribution of retail revenues



Source: RTR

In recent years, mobile networks have become the most formidable competitor to the fixed-link network in Austria (cf. in particular the development of call minutes in Table 11). This now applies to both narrowband and broadband communications services. This effect has been compounded by increasing migration toward IP-based voice solutions, which are not classified as relevant markets in this context. Specifically, the use of Voice over Internet (VoI) by residential customers and the realization of private networks (PNs) by business customers have led to corresponding outflows from the traditional retail communications markets. However, the resulting decline in classic fixed-link network revenues was partly offset by increases in broadband revenues.

Table 12 provides a qualitative overview of the major factors influencing market developments. For more detailed information, please refer to the sections indicated below.

Table 12: Trends on retail markets in 2007

Service	Revenues	Traffic volumes	Rates	Remarks	cf. Section
Fixed-link voice telephony	Decreasing	Decreasing	Stagnating/ decreasing	Partial substitution with mobile telephony, VoI and PNs	5.2.2
Mobile communications	Decreasing/ stagnating	Increasing	Decreasing	Share of data services rising quickly; introduction of flat rates	5.2.3
Broadband	Increasing	Increasing	Decreasing	Declining significance of narrowband Internet access	5.2.4
Leased lines	Decreasing	Increasing/ stagnating	Stagnating	Declining significance of low bit-rate leased lines	5.2.5

The sections that follow give an overview of market developments and selected indicators, but in no way should this discussion be considered exhaustive. Instead, it only serves to illustrate the complexity of market relationships and to report on key figures of general interest.

In terms of structure, this overview is essentially based on the relevant markets defined in the most recent review of the TKMVO 2003; in this context, the markets are merged to form various clusters. The cluster approach generally applied in RTR's market analyses is motivated by practical considerations as well as the existing (horizontal and vertical) links between individual markets. These links can only be presented adequately in a comprehensive overview. At the same time, this discussion is not exclusively confined to the relevant markets defined under the TKVMO 2003. As mentioned above, in defining the focal points of this market overview, we also paid special attention to the potential interests of our readers.

5.2.2 Fixed-link voice telephony

5.2.2.1 Introduction

At the start of market liberalization in 1997-1998, the fixed-link markets for telephone services saw substantial reductions in prices. Fierce price competition in recent years has led to a convergence of rates among the providers. For example, Telekom Austria – which is still the largest provider by far – has been forced to reduce its rates repeatedly. However, competition also appears to have driven an increasing number of alternative network operators (ANOs) to their lower pricing limits, as their margins largely depend on prevailing wholesale costs. After a large number of new market entries in the first stage of liberalization, the fixed-link market has been undergoing a process of consolidation for several years now; this is consistent with international developments as well as the current discussions regarding market phases. In particular, this refers to mergers and acquisitions among the largest alternative operators: As

early as 2004, Tele2 (the largest alternative provider in the residential segment) acquired UTA, one of the most important unbundling partners apart from Inode. UPC Telekabel took over Inode in early 2006 and Telesystem Tirol in late 2007. eTel, an operator which is primarily active in the business customer segment, has acquired numerous smaller companies in recent years, especially Internet providers (RSL-Com, MCN, European Telecom, Tera Com, yc net:works, KPNQwest, Tiscali and Nextra), and eTel itself was taken over by Telekom Austria in late 2006. The takeover then received regulatory approval in the first half of 2007.

Increasing market consolidation

Depending on the type and scope of the network infrastructure used, different business models can be distinguished:

- As the former monopolist, Telekom Austria plays an especially important role because it is the only telecommunications enterprise with nationwide infrastructure and because it still holds the largest market share by far, especially in the access market. As Telekom Austria's market power would allow the company to prevent alternative providers from gaining access to customers and thus to frustrate or even prevent competition, Telekom Austria has been identified as having significant market power (SMP) up to now and under the requirements of the framework from the year 2002. As a result, Telekom Austria is subject to special regulations regarding its prices as well as its terms and conditions of business. The company is also obligated to grant other competitors non-discriminatory access to certain parts of its network. The local access networks, for example, are still characterized by a subadditive cost structure, meaning that one infrastructure provider could actually handle the overall demand for subscriber lines more cost-effectively than two or more providers (for empirical data regarding the state of national and European access markets, please see Sections 5.2.2.2.1 and 5.2.2.2.3.1).

Quasi-monopolist structures on the local access market

- Several of Austria's alternative telecommunications providers have their own carrier networks and/or regionally limited access networks. In order to reach subscribers in other networks, however, they are forced to rely on the interconnection services of Telekom Austria (and in some cases other operators). As separate infrastructure ensures a greater degree of independence from the SMP operator's wholesale services and makes it possible to provide a wider range of services and greater product flexibility compared to carrier network operators alone, communications network operators certainly have incentives to develop new networks and to expand existing ones.

Potentially competitive structures in the carrier segment

- On the fixed-link market, carrier selection at first proved to be a very effective means of promoting competition. This can be attributed to the relative ease of market entry due to lower investment expenses compared to building separate access networks, which has resulted in a large number of applications. The competitive stimulus created by those market entries also put pressure on Telekom Austria to lower its prices, thus bringing about a decline in rates throughout the industry.

  Carrier network operators accept incoming calls from the originating network and deliver them to the terminating network. Origination and termination may also take place in the same network. As existing infrastructure is used, it is not necessary for these operators to maintain separate originating and terminating access networks which extend all the way to the customer. Instead, the operator's carrier network is usually interconnected with the incumbent operator's telecommunications network and selected by the subscriber using a

four-digit carrier selection code. The carrier network operator collects the charges directly from the subscriber and is required to compensate the other operator(s) for the origination, transit and termination services used. In carrier selection, it is necessary to distinguish between call-by-call (CbC) and carrier pre-selection (CPS) arrangements. Call-by-call means that the caller selects a specific carrier network operator for each call by dialing a specific network operator code. If the subscriber does not do so, the call is handled and billed by Telekom Austria. In carrier pre-selection, all of a subscriber's traffic – with the exception of calls to value-added services and public service numbers – is routed via the selected carrier network using a permanently pre-set carrier network code. This allows the subscriber to use a specific carrier network constantly without having to dial a specific network operator code for each call. In addition to alternative operators with their own network infrastructure CPS and CbC-based access is essential, especially for pure resellers which do not have their own infrastructure. Among the resellers, the creation of added value is confined to the retail level. In addition to focusing on different business areas, the forms of reselling which can be observed on the market essentially differ in terms of the different "dial-in" options offered to the customer.

Table 13 provides an overview of the business models described above as they are found on the Austrian market. For the sake of typified classification, combined forms of these business models are not shown.

Table 13: Business models for fixed-link voice telephony on the Austrian market

Incumbent / former monopolist	Telekom Austria as the only nationwide, fully vertically integrated company		
(Alternative) communications network or service provider (types)	**Purchased services (esp. from incumbent operator)**	**Self-provided services**	**Investment requirements**
Access network operator	▪ Interconnection ▪ Poss. leased lines ▪ Poss. unbundling	▪ Operation of access and core network (e.g., local loops, transmission and switching facilities) ▪ Service design ▪ Pricing ▪ Sales/billing	High
Carrier network operator	▪ Interconnection ▪ Poss. leased lines	▪ Operation of core network (e.g., transmission and switching facilities) ▪ (Service design) ▪ Pricing ▪ Sales/billing	Medium
Resellers (access network) (regulated, but not required to date)	▪ Resale of access services	▪ Service design ▪ Pricing ▪ Sales/billing	Medium / low
Resellers (carrier network) (provision of CPS/CBC using a separate dialing code or via the carrier network partner)	▪ Connection minutes	▪ Pricing ▪ Sales/billing	Low
Resellers (other) (e.g., calling cards, telephone shops, dial-in telephone service)	▪ Connection minutes	▪ Pricing ▪ Sales/billing	Low
Combined forms	Combinations of the alternative business models above		

Source: RTR

VoIP as a technology with high innovative potential

Another major development is Voice over Internet Protocol (VoIP), which is becoming an increasingly powerful factor influencing the entire fixed-link sector. VoIP refers to a technology which allows voice communication via IP-based networks. This technology is expected to generate drastic changes in or even replace traditional circuit-switched voice telephony. At present, however, two main types can be identified among the numerous potential VoIP services, and this distinction is certainly relevant for regulatory purposes: VoB (Voice over Broadband) and VoI (Voice over Internet). In VoB, telephone access is offered together with Internet access, whereas in VoI a (broadband) Internet connection already exists and the VoIP services are used via the public Internet. Providers of VoB in Austria include Tele2, Inode (UPC) and Silver Server, while VoI is offered by Skype or Sipgate, for example. The current significance of VoIP has to be assessed specifically for each segment (e.g., on the basis of characteristics such as residential and non-residential markets), but in principle it still impacts all of the business models outlined in Table 13. For further information on classifications and regulatory developments, please refer to Section 4.2.17.

Whereas fixed-link markets were previously regarded as a whole, the retail and wholesale markets are now described separately below in line with the delineation of markets in the TKMVO 2003 and the European Commission's Relevant Markets Recommendation.

As mentioned in the introduction, the relevant individual markets are not discussed point by point, but on the basis of specific focus areas.

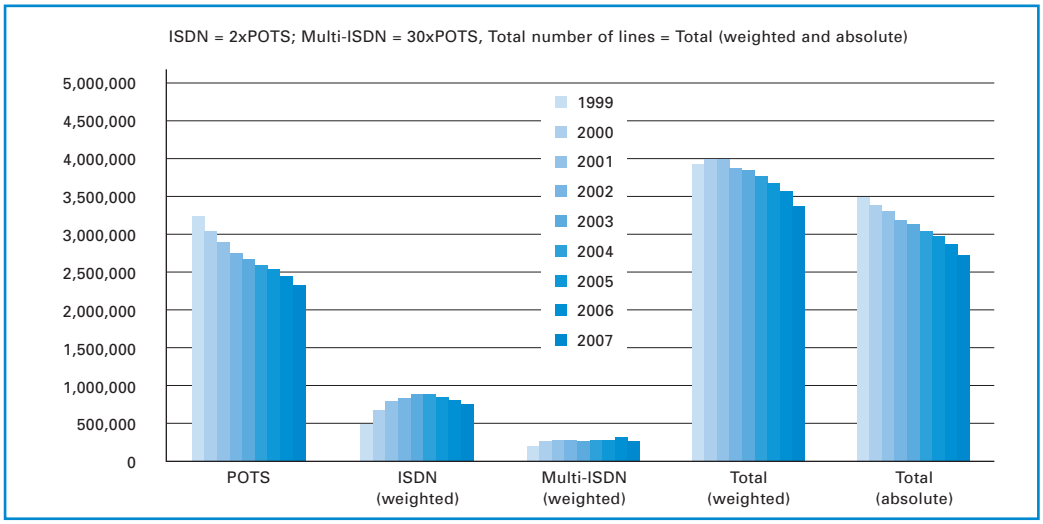
5.2.2.2 Retail markets

5.2.2.2.1 Structural developments on the fixed-link market

Balanced decline in access revenues and volume

In the past, rapid growth in the number of subscribers on the mobile communications market in particular led to a steady decline in total revenues from fixed-link voice telephony (cf. Table 10 and Figure 38). Measured in 64 kbit/s equivalents, however, this decrease was significantly less pronounced during the reference period (1999 to 2007). Upon closer examination, it becomes clear that the changes differ substantially depending on the line access technology in question. The steady decline in analog POTS (plain old telephone service) lines was at least partly offset by the increase in ISDN lines and the relatively stable development in multi-ISDN lines, each measured in 64 kbit/s equivalents. However, a steady decline in ISDN lines has also been underway since 2005, meaning that the largest decrease in the number of POTS lines to date (2007: -5.64%) also impacted the overall development accordingly (-4.91% in 2007). At the retail level, therefore, mobile telephony is (as expected) used more often as a substitute for the fixed-link network among residential users with analog lines. This has been complemented by the sharply declining development in narrowband Internet lines, which has led to the corresponding decline in ISDN technology among residential as well as business customers.

Figure 37: Development of line types in 64 kbit/s equivalents



Source: RTR

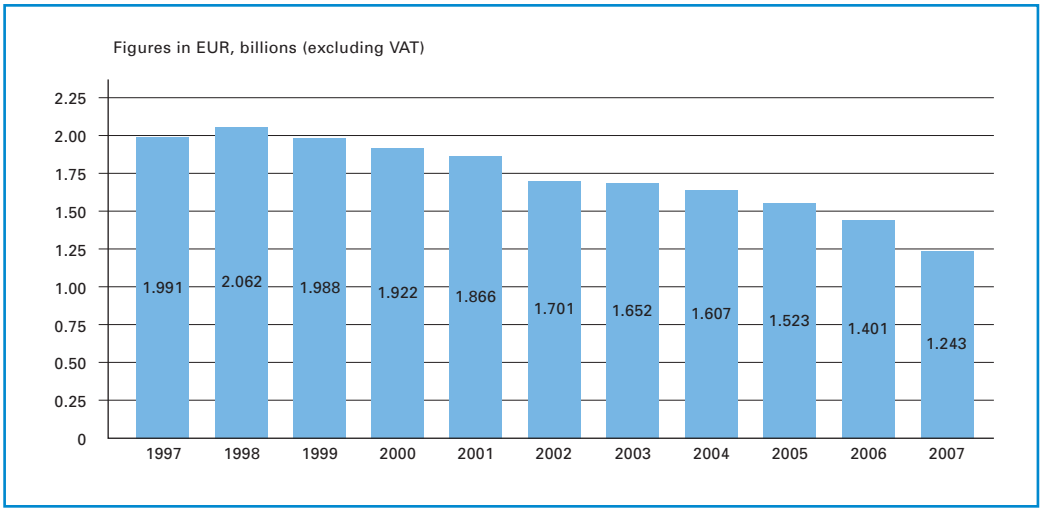
Although revenues on the overall fixed-link retail market still showed an upward trend in 1998 (+3.6%), they dropped steadily over the rest of the observation period (1999 to 2007), losing as much as 11% in 2007 (see Figure 38). This general decrease can be seen (albeit to different degrees) in revenues as well as traffic volumes.

Calculation of revenues on the fixed-link retail market is based on the following income:

- Connection charges for local calls within Austria;
- Connection charges for long-distance calls within Austria;
- Connection charges for calls to Austrian mobile networks;
- Connection charges for international calls;
- Connection charges from public pay telephones;
- Connection charges for online services;
- Revenues from the sale of cards and minutes to resellers;
- Monthly base fees;
- Charges for special coverage services;
- Connection setup charges.

Figure 38: Development of revenues on the fixed-link retail market

Substantial declines in overall fixed-link revenues

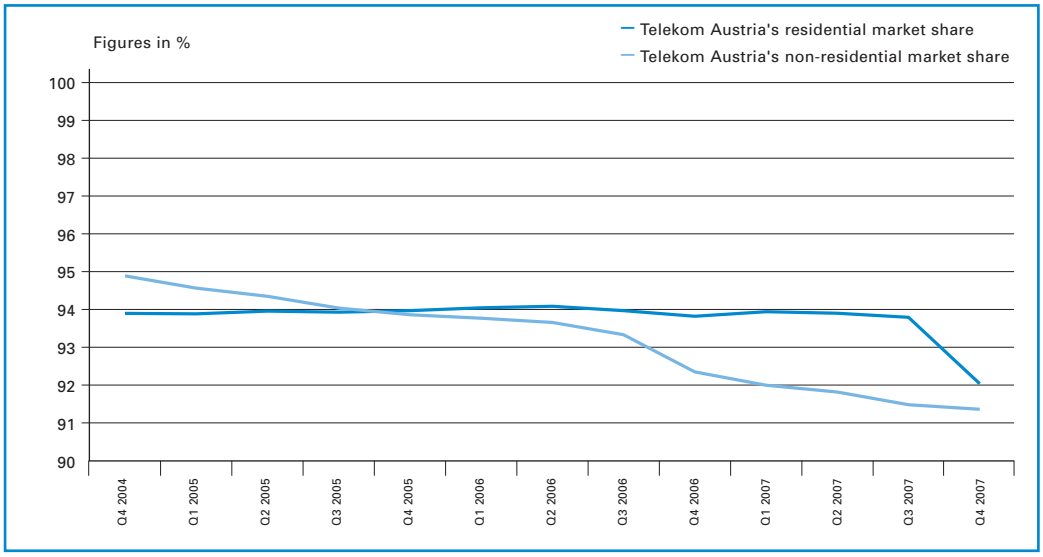


Source: RTR

Quasi-monopoly in POTS and ISDN; alternative operators saw gains in multi-ISDN segment.

The market share levels of Telekom Austria also provide an indirect indication of the success of alternative network operators (access and carrier network operators) in the individual fixed-link telephony segments. In terms of the absolute number of subscriber lines, Telekom Austria still holds a relatively high and stable market share (cf. Figure 39). The high concentration in terms of connected subscribers is not surprising, as the vast majority of subscriber lines are handled by Telekom Austria and only few alternative network operators have their own access network to connect subscribers directly. This shows that even after ten years of liberalization, the Austrian market is still in effect characterized by a monopolistic market structure in terms of access. However, Figure 39 also shows that slightly more competitive developments can be observed in the business customer segment (especially in multi-ISDN lines, which are not shown). At the same time, these competitive stimuli only had a minor impact on the overall access segment due to the relatively low diffusion of multi-ISDN lines (cf. Figure 37).

Figure 39: Telekom Austria's market share for access services by customer segment



Source: RTR

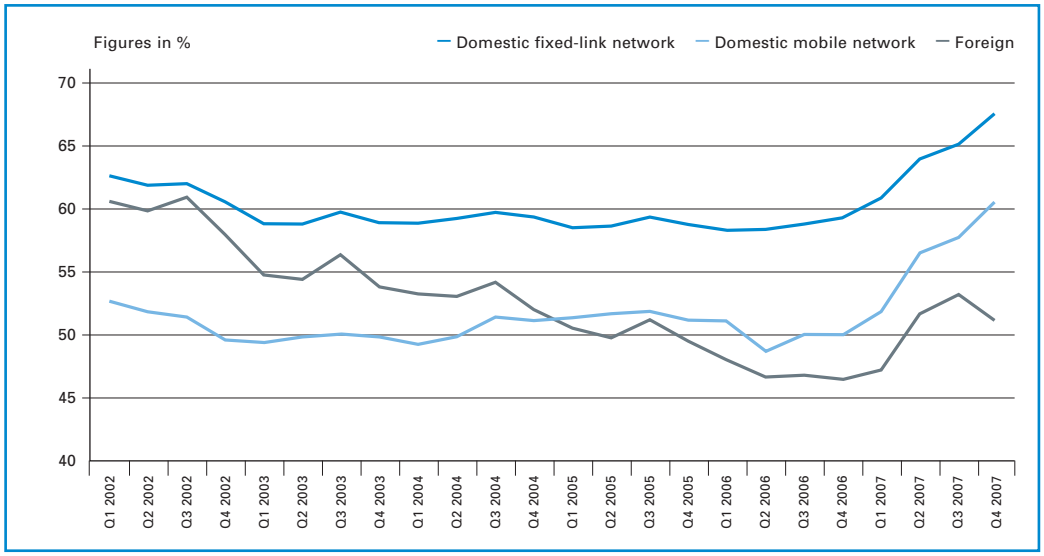
Incumbent regaining market share in carrier services since 2006

In contrast, the alternative network operators were able to take substantially larger market shares in the national and international voice telephony segments of the market for carrier services. Here it becomes clear that the gains in the field of international telephony were significantly higher at the end of the observation period (cf. Figure 40). In line with the results of the corresponding market analyses, the most competitive market structure can be found in the market for international telephone services for residential customers (not reported separately), which is why this call market was already deregulated completely in 2005. In national calls, on the other hand, we have again been able to observe a significant increase in Telekom Austria's market share since mid-2006. A substantial part of this development can be attributed to Telekom Austria's acquisition of eTel; this effect is included in the data from Q2 2007 onward. However, this still only explains approximately half of the overall increase (up to 10%) in the incumbent's market share based on revenues since 2006. Apparently, it is becoming increasingly difficult for conventional carrier network operators to sustain their positions on the market in times of narrowing profit margins as well as increasing competition in bundled products, which of course go beyond the scope of classic carrier services.

In addition, the distinction between conventional voice telephony minutes and Internet dial-up minutes should be pointed out in the fixed-link segment. In this area, we have observed a vast decline in narrowband Internet usage in recent years. At first, this development could be put down to the unlimited flat-rate product offered by Telekom Austria, "Aon Complete," which generated a very large number of dial-up traffic minutes. However, due to capacity problems, the potential usage of "Aon Complete" was then gradually reduced. At the same time, the

development of narrowband Internet usage can also be explained by the general trend toward increasing broadband penetration in recent years. Therefore, the dial-in traffic category can be expected to become empirically negligible overall, which is why it is no longer included in the corresponding market share calculations (Figure 40).

Figure 40: Telekom Austria's market share for carrier services



Source: RTR

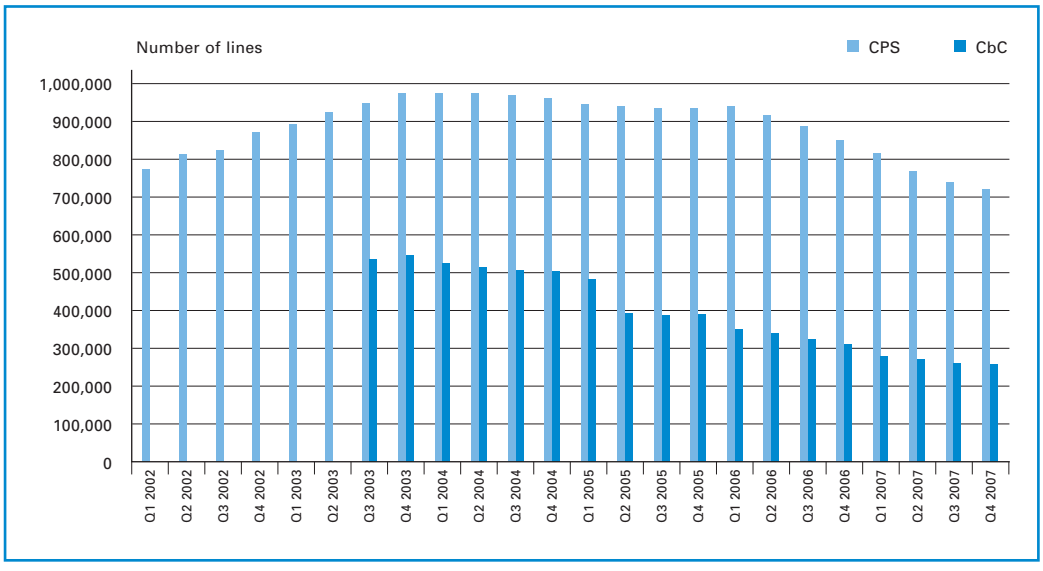
Carrier (pre-) selection still essential, but declining

The development of carrier services among alternative network operators as shown in Figure 40 is closely linked to the development of the market for call-by-call (CbC) and carrier pre-selection (CPS) services. As shown in Figure 41, CPS in particular was very well received in the course of liberalization, although this segment has shown a slow but steadily declining trend over the last two years. Still, by the end of the reporting period more than 720,000 subscribers in Austria had decided to have all of their calls handled by an alternative network operator. This is complemented by CbC services, for which data is more difficult to collect and is therefore only reported in a sufficiently consistent form from July 2003 onward (i.e., the start of the observation period for the Operator Survey 2006). At present, we can estimate a basic level of just over 250,000 CbC customers per quarter. In general, CbC services have shown a more pronounced decline. The decline in CPS services can also be explained by the alternative network operators' increasing transition from carrier pre-selection to subscriber network operation in line with the "ladder of investment." This situation is probably also affected by the trend

toward "one-stop shopping." As CbC is sometimes also used in combination with CPS, it is not possible to calculate simple totals. However, we can state that the two forms of access are used on approximately 30% of all lines at fixed locations (cf. Table 11). Moreover, the CPS and CbC levels shown reflect the respective aggregate values for residential as well as non-residential customers. However, regulatory experience clearly indicates that a very large share of CbC usage can be attributed to residential customers.

In any event, the figures suggest that these special access obligations were among the most important liberalization instruments in the fixed-link market and still represent an essential form of basic regulation at the wholesale level. This is because they quickly enabled competition and the market entry of alternative network operators which at first did not (and in some cases still do not) have their own local access infrastructure. Allowing these operators to use Telekom Austria's existing infrastructure allowed them to provide their services throughout Austria within a very short time without requiring them to go through the difficult process of building their own (nationwide) networks. Over time, these measures have served to enable alternative network operators to make the transition to more sustainable business models (i.e., to move up the ladder of investment), which has also manifested itself in the very sharp increase in unbundling activities in recent years (cf. Section 5.2.4.6 on unbundling).

Figure 41: Development in number of CPS and CbC customers



Source: RTR

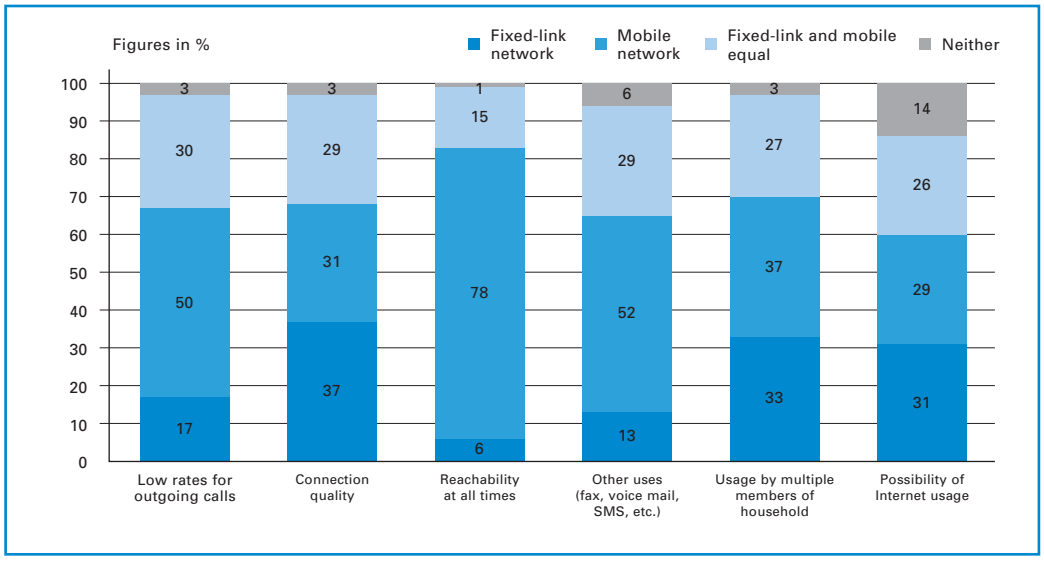
5.2.2.2.2 Market structure and intermodal competition

Major differences between customer groups in fixed-link/mobile substitution

As mentioned in the discussion above, the decreases identified in carrier and access services can mainly be attributed to intermodal competition emanating from the mobile communications sector. This competition is far stronger in carrier services, especially national calls. The (absolute) number of subscriber lines in the fixed-link network only saw a moderate decline (cf. also Figure 37 for relative values) compared to call minutes. Roughly the same applies to the developments in revenues. However, the development of revenues in particular also shows major differences between specific customer groups, especially as the decrease among business customers is clearly less pronounced than in the case of residential customers (for empirical data, please refer to the RTR Telecom Monitor 4/2007, Sections 1 and 4).

The intermodal competitive pressure observed specifically in carrier services can be detected in price-related as well as non-price-related attributes which are highly significant in the eyes of retail customers. In several categories, residential customers assigned higher ratings to the mobile network than to the fixed-link network (cf. Figure 42). This was not the case with Internet usage and with connection quality, a category in which 6% more residential customers rate the fixed-link network higher. Mobile networks received clearly better ratings for features such as constant reachability, other possible uses (such as SMS, MMS, etc.) as well as low rates for outgoing calls.

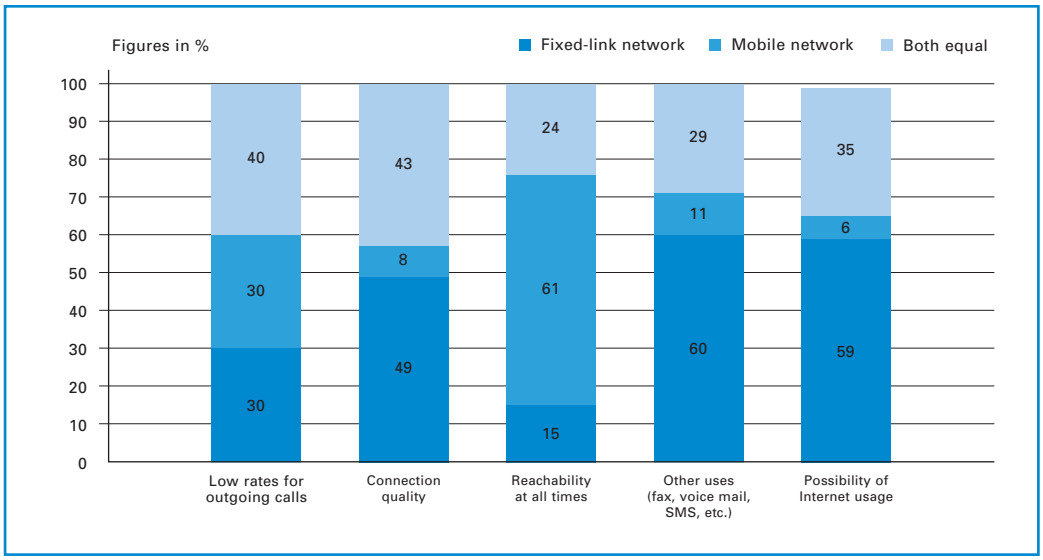
Figure 42: Residential customers' telephony criteria – Comparison of fixed-link and mobile networks



Source: RTR study: "The Austrian telecommunications market from the demand-side perspective in 2007"

In line with their decreased willingness to give up the fixed-link network, a larger share of businesses rate the fixed-link network better than the mobile network. Figure 43 clearly shows that the fixed-link network is rated better in terms of voice quality (49%) as well as the possibility of Internet usage (58%). Businesses also considered the fixed-link network more suitable than the mobile network in terms of other possible uses. This can be attributed to the fact that businesses use the Internet and faxes more frequently (in contrast to residential customers, who use SMS or MMS more often). As expected, the mobile network was only given higher ratings for the criterion of constant reachability (61%). The network types were tied with regard to the criterion of low rates for outgoing calls.

Figure 43: Business customers' telephony criteria – Comparison of fixed-link and mobile networks



Source: RTR study: "The Austrian telecommunications market from the demand-side perspective in 2007"

In general, the most important features cited with regard to telephony were connection quality, constant reachability and low rates for outgoing calls (not shown).

5.2.2.2.3 International comparison

In this section, international statistics are used as a benchmark against which the results on the Austrian market for fixed-link voice telephony can be measured. In this context, key indicators mainly refer to market structure and market share distribution as well as rates and rate developments.

One problem inherent to international comparisons is the heterogeneous nature of rate models, billing structures, market structures, etc. Therefore, the figures and country rankings indicated here must be interpreted with some degree of caution.

The body of data used for this comparison was the 13th Implementation Report published by the European Commission (Progress Report on the Single European Electronic Communications Market, SEC[2008] 356).

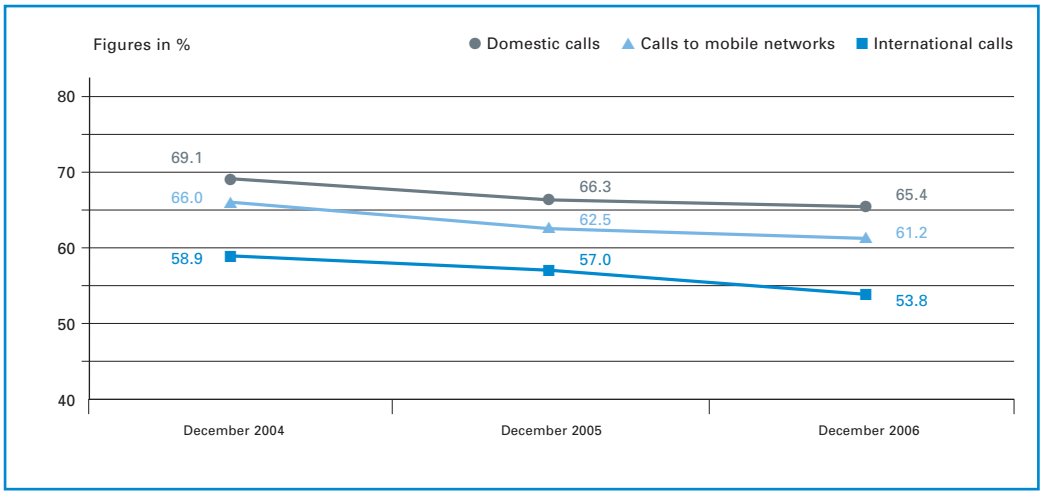
5.2.2.2.3.1 Market shares

In the Implementation Report mentioned above, the European Commission also voiced criticism with regard to the fact that the incumbent enterprise Telekom Austria still held a relatively strong position on the market (Press Fact Sheet No. 9.1). Therefore, the figures below show the most important market share comparisons.

Figure 44 shows the average market shares of incumbent operators in terms of revenues in individual call segments. A comparison with Telekom Austria's national market share (cf. Figure 40) reveals that the company's market share was substantially lower than the averages reported for the reference period (until the end of 2006). Only in early 2007 did Telekom Austria's market share figures begin to shift upward, a development which was partly due to the takeover of eTel (cf. Figure 40).

The fact that the European Commission still expressed criticism specifically with regard to the situation on Austria's markets for calls at fixed locations is especially remarkable in light of its most recent markets recommendation (2007/879/EC). However, it remains questionable whether the heavily criticized expectation expressed in the recommendation (that markets for calls would no longer require regulation in the future) will be confirmed by the actual circumstances.

Figure 44: Average market share of incumbent operators on the EU voice telephony market (by revenues)

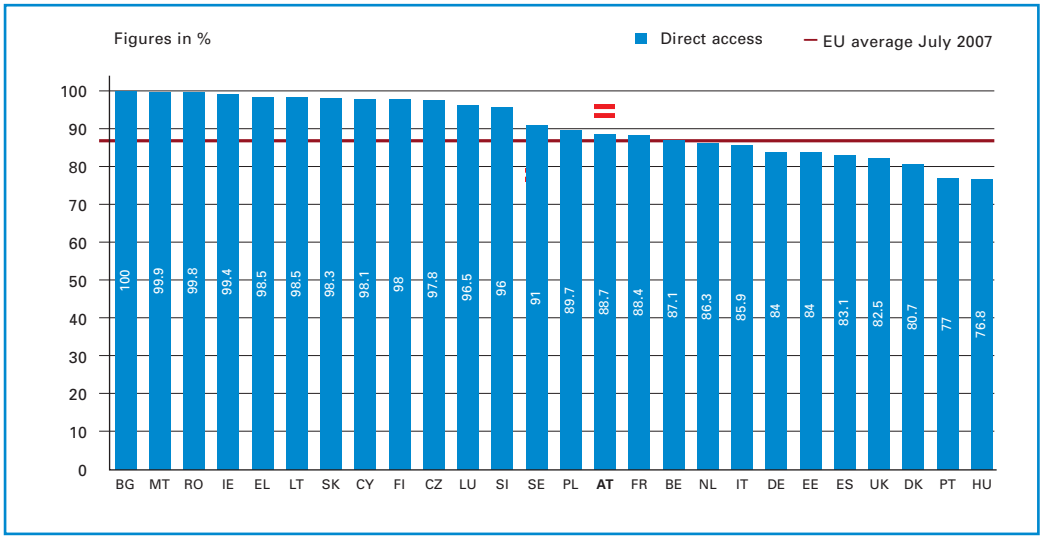


Source: 13th Implementation Report of the European Commission

Incumbent's fixed-link market share close to European average

With regard to access services, it is necessary to rely on numbers of subscribers for the purpose of international comparisons. Figure 45 shows that the value reported for Austria's national incumbent is just slightly over the European average (86.5%). The market shares shown in Figure 39 are only comparable to a limited extent; Figure 45 may contain differences with regard to revenues, which are more relevant to competition.

Figure 45: Percentage of access subscribers with the incumbent



Source: 13th Implementation Report of the European Commission

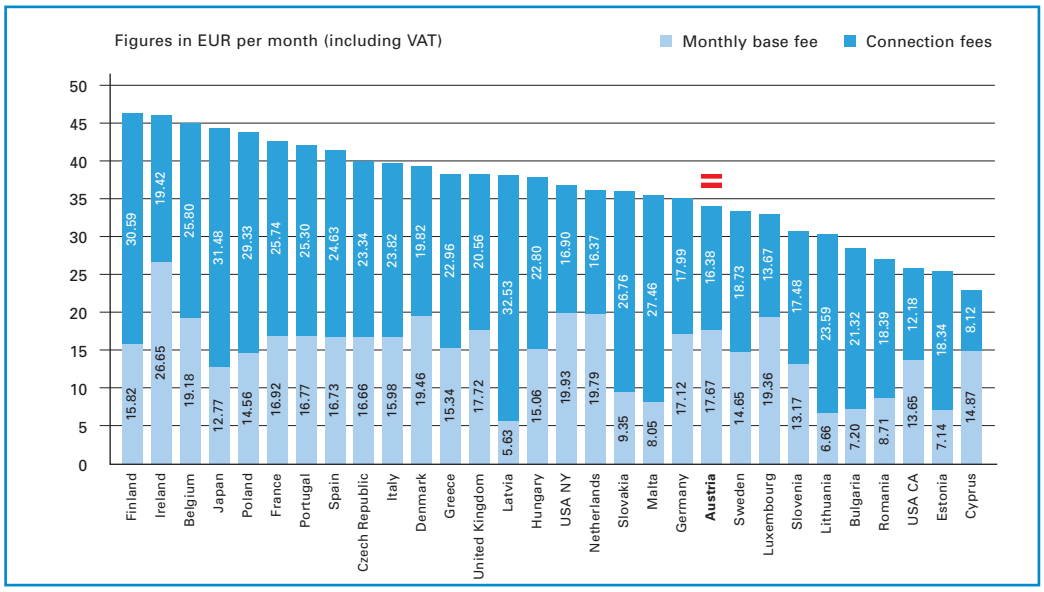
In any case, the international comparison of market structures shows that the situation on the Austrian market for narrowband fixed-link telephony can be described as "average" with regard to competition.

5.2.2.2.3.2 Rates

Austrian residential rates in the lower middle range by European comparison

In general, this comparison only uses the standard rates of each incumbent operator. As this selection completely disregards the rates offered by alternative operators, it creates distortions which become even greater as the incumbent's market share becomes smaller and that of its competitors (which, as experience has shown, are often far less expensive) becomes larger. Such rate comparisons are subject to an additional limitation due to the various forms of price differentiation among incumbent operators. Details on the composition of the basket for the rate comparisons reported here can be found in the Implementation Report, SEC(2008) 356, p. 63.

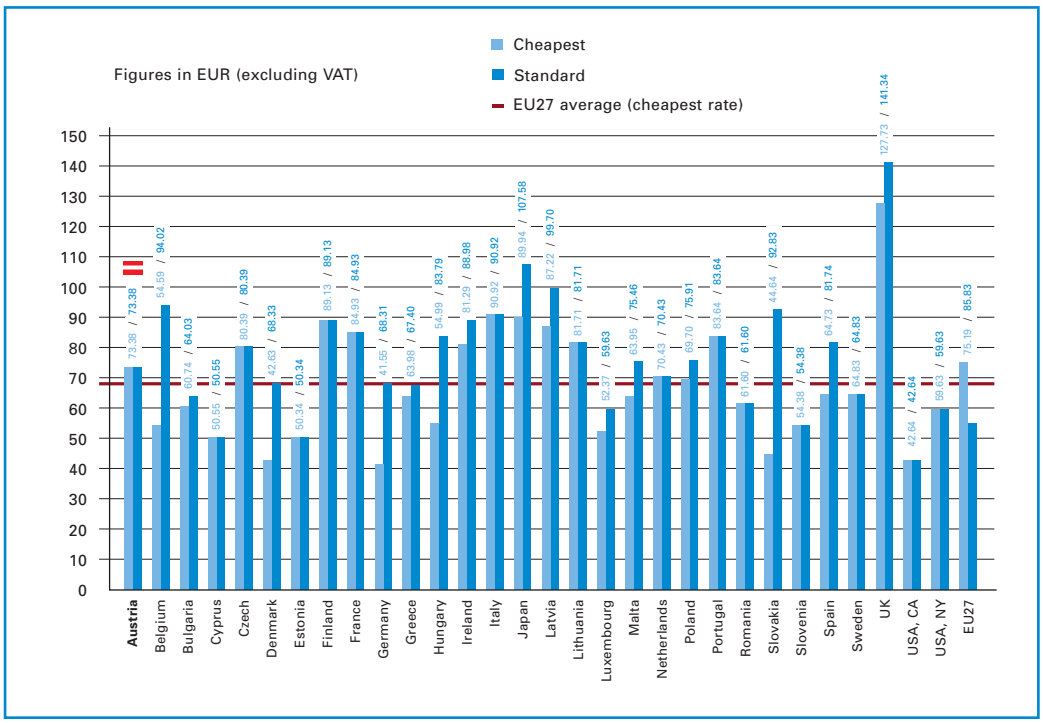
Figure 46: Residential customers: Average monthly expenditure (September 2007)



Source: 13th Implementation Report of the European Commission

With regard to the monthly base fee, the Telekom Austria rate package used in the comparison ("TikTak Privat") is just above the EU average. However, this relatively high monthly base fee is offset by low connection rates, which is why Telekom Austria is placed in the lower middle range among operators based on a basket of services (see Figure 46). This basket includes the monthly base fee, the connection setup charge, national calls over various distances, international calls as well as calls to mobile networks. Demand behavior and weighting factors are designed to reflect a "standard European residential user."

Figure 47: Business customers: Average monthly expenditure (September 2007)



Austrian business rates and charges also in the middle range by European comparison

Source: 13th Implementation Report of the European Commission

Figure 47 shows the incumbents' monthly base fees and connection charges for business customers as of September 2007. In order to reflect a representative "European business user," the basket not only includes the base fee and the setup charge but also national calls over various distances, international calls, and calls to mobile networks. With regard to fixed charges, a distinction based on standard rates and the cheapest rate options was also made for the first time.

As in the case of residential customers, Telekom Austria is again in the middle range among European operators (measured on the basis of a price basket).

5.2.2.3 Wholesale markets

In order to offer products on the retail markets, operators also rely on wholesale services provided by other operators. Although these markets are not (or only hardly) perceived by the consumer, they represent a key element in functional competition. The advantage lies in the fact that network operators do not have to construct all of the infrastructure in parallel, but can instead purchase services from other operators. This substantially reduces barriers to market entry. Naturally, there is a close link between the wholesale and retail markets, as services

High interdependence of retail and wholesale markets

purchased on the wholesale market are ultimately included in retail products. As a result, the size and development of the wholesale markets are closely linked to those of the retail markets.

Since RTR published the TKMVO 2003, three wholesale markets have been considered relevant in the fixed-link networks:

- The market for call origination on the public telephone network provided at a fixed location (origination);
- The market for call termination on individual public telephone networks provided at a fixed location (termination);
- The market for transit services in the fixed-link public telephone network (transit).

The vertical relationships along the value chain between retail and wholesale markets can be illustrated by describing the process of handling a telephone call:

- In order to make a telephone call (or, more generally, a connection), the retail customer first requires access, which is provided in the form of a line at a fixed location. This can generally be provided in two ways: i) the provider itself can install the required access to the subscriber, or ii) the provider can use the access infrastructure of another provider (subscriber network operator).
- The situation is similar when the retail customer wishes to make outgoing calls. Such calls can be offered by an integrated operator using its own infrastructure or provided by a third party who uses the existing infrastructure to offer services for customers (carrier network operation).
- It is also highly important that telecommunications services are end-to-end relationships, that is, it is necessary to establish connections between subscribers in different networks at the same time. This requires mutual terminating access to all other networks (or subscribers). In order to create retail products, therefore, the providers must offer the corresponding origination and termination services. In contrast, transit services are used increasingly seldom or are only required in cases where the operator or its networks are not directly interconnected (indirect interconnection).

5.2.2.3.1 Origination

The service of origination refers to the transmission of voice and data traffic from the subscriber to the first interconnectable exchange in the source network. The first interconnectable exchange generally refers to the exchange where at least one network operator is interconnected with the source network and at which traffic can be handed over closest to the source.

Origination as an essential wholesale service for competition at the retail level

Depending on its infrastructure, the operator will deliver calls to the exchange using its own infrastructure or purchase the necessary services on the wholesale markets. If an operator has customers connected directly to its network using its own (or leased) infrastructure, the operator provides the origination service itself and does not generate revenues at the wholesale level. This is the case in a vast majority of calls. If an operator does not have infrastructure extending all the way to the customer (and thus operates as a carrier network operator), then the operator will have to pay for origination services within the framework of carrier (pre-) selection. At present, Telekom Austria is the only network operator to offer this service, as the company is obligated to offer origination services due to its position of significant market power on the access markets for voice telephony at fixed locations.

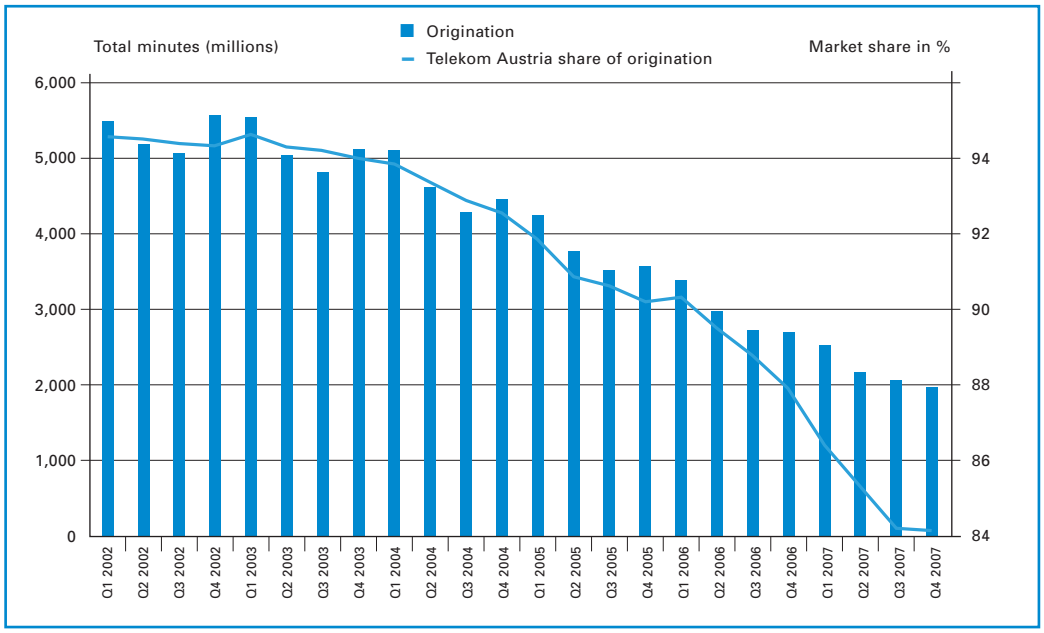
In addition to those origination services, the service of origination to target network-priced service numbers is also provided on the origination market. The latter service is provided in cases where retail customers make calls to toll-free numbers, numbers with regulated maximum prices, and value-added service numbers. In the case of calls to toll-free numbers, the access network operator does not collect any fees from the retail customer. For the other types of numbers, the access network operator passes on the retail fee (collected from the subscriber) to the target network operator but also receives a fee for its origination services.

In line with the development on the retail markets, the overall number of origination minutes has declined steadily and substantially. One of the main reasons for this development is the sharp decline in the significance of narrowband Internet dial-up services discussed above in connection with retail markets.

As for its relative position on the market, Telekom Austria still has a market share of approximately 85% (cf. Figure 48), which has only decreased slightly – but to a greater extent than in retail access – in the years since the market was opened up in Austria. The sharper decrease in market share on the origination market can again be attributed to the development of dial-up Internet access, as narrowband Internet connections used to generate high traffic volumes for Telekom Austria in particular. Aside from that trend, however, the origination market will develop in parallel to the availability of local loops and the competitive situation on the retail access markets.

Competitive situation in origination mirrors retail access markets

Figure 48: Telekom Austria: Development of overall origination minutes and market share



Source: RTR

As mentioned above, Telekom Austria is subject to special price regulations on the origination market. Table 14 shows Telekom Austria's origination charges during peak and off-peak times. On all wholesale markets, peak times are from Monday to Friday (business days) from 8:00 am to 6:00 pm, while all other times are considered to be off-peak.

Table 14: Telekom Austria's origination charges as of December 31, 2007 in EUR cents (excluding VAT)

Origination	Peak	Off-peak
Telekom Austria to carrier network operators and service numbers	0.82	0.48

Source: RTR

5.2.2.3.2 Termination

Termination is a wholesale service provided by every subscriber network operator in which incoming traffic is transported to the subscriber's network termination point from the last interconnectable exchange before that termination point.

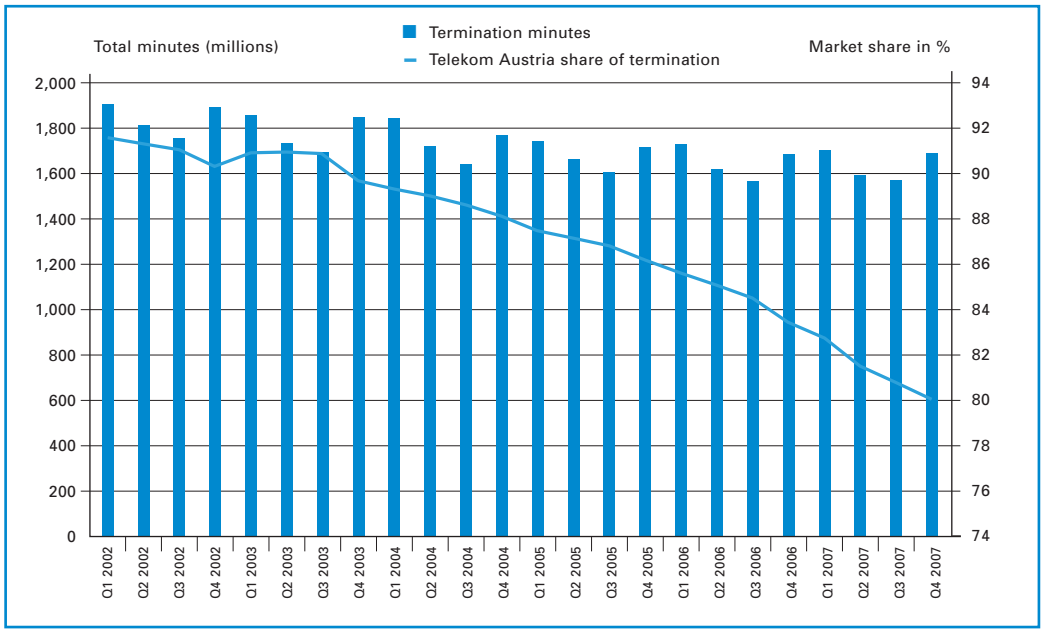
Termination monopoly and operator-specific market power upheld

The unique feature in the definition of termination markets is that they are specific to each network operator, and therefore each operator of a subscriber network has its own termination market as defined under Art. 1 No. 8 TKMVO 2003. Termination services can only be rendered by the provider network to which the subscriber is connected, which implies that each operator has a 100% market share on its respective individual market.

Figure 49 shows structural developments on a hypothetical overall multi-operator termination market for fixed-link voice telephony. In Austria's fixed-link networks, a total of approximately 6.5 billion minutes were terminated for other operators in 2007. Figure 49 only shows fixed-link termination provided for other operators (i.e., as a service with the corresponding revenues). In contrast to origination (Figure 48), it was not possible to include internally provided termination services for the years 2002 to 2007.

Both traffic minutes as well as the corresponding termination revenues (not shown) have declined in recent years. In contrast to the origination market, however, the overall number of termination minutes has remained relatively stable over time. This is due to the fact that the decline in dial-up services has not affected this area, and this has essentially been the case with fixed-link/mobile substitution as well.

Figure 49: Telekom Austria: Development of termination minutes and market share



Source: RTR

Termination in Telekom Austria's network remains the most important termination service in Austria's fixed-link networks, as Telekom Austria has the largest number of directly connected customers and terminates several times more call minutes than the other operators. Telekom Austria's "hypothetical" share of the overall market across all fixed-link subscriber networks was approximately 80% at the end of the observation period. This wholesale service is required by almost all network operators.

Due to its large number of connected subscribers, its size and its power on other markets, Telekom Austria would bring about different competition problems than smaller network operators in the absence of regulation. These problems require regulatory remedies such as obligations to provide a reference interconnection offer (RIO), to maintain accounting separation, to ensure non-discrimination and to charge cost-oriented prices based on FL-LRAIC.

Table 15 gives an overview of regulated termination charges at peak times.

Table 15: Termination charges of Telekom Austria and ANOs as of December 31, 2007 in EUR cents (excluding VAT)

Termination	Regional	Local
Telekom Austria	1.28	0.82
ANB	1.28	1.28

Source: RTR

Due to its number of connected subscribers, Telekabel (UPC), which operates in certain regions of Austria, handles the largest number of termination minutes among the alternative operators, followed by Tele2. The other fixed-link network operators handle substantially fewer termination minutes. Alternative network operators which provide termination services and collect a fee in return are required to comply with regulated maximum limits for termination charges in order to address the competition problem identified in their case (i.e., excessively high pricing).

5.2.2.3.3 Transit

Transit services refer to carrying traffic between two exchanges which are interconnectable with different networks or between two zones around interconnectable exchanges. These services are therefore provided by communications network operators in order to cover certain line sections and cannot be regarded as origination or termination as described above.

Operators which transport traffic out of their own networks provide transit services.

All network operators which transport traffic from one exchange to another provide services on the transit market. This service can be provided within as well as beyond the boundaries of the operator's own network. The operators which offer services on this market are thus subscriber network operators and "pure" transit network operators (as well as carrier network operators) which receive traffic from other networks and forward it to still other networks. Whereas subscriber network operators provide transit services predominantly in the form of bundled products which include origination and termination, transit network operators ensure that other networks can be reached even if they are not directly interconnected. In addition, these transit network operators offer national and international termination services for other operators. Carrier network operators as well as all other companies which are directly interconnected offer transit services as part of direct interconnection via joining links. When traffic flows via a joining link, a transit service is provided from one network to another, which replaces a previously external transit service. As traffic via joining links is a (possible) substitute for transit services, it can be assigned to this market. Naturally, a company can offer more than one type of transit service at the same time.

Deregulation of transit market now also confirmed by EC

With regard to the competitive situation, the regulatory authority identified sufficiently competitive structures on the transit market for the second time. The European Commission disagreed with the first market analysis decision and therefore vetoed the draft in 2004. However, in the meantime the European Commission has issued a new markets recommendation in which it determined that the transit market is no longer considered relevant to sector-specific ex ante regulation (for information on specific decisions, please refer to Section 4.2.1.2). The corresponding transit fees are therefore subject to the forces of the market.

5.2.3 Mobile communications market

5.2.3.1 Market participants

4 MNOs, 1 MVNO, 4 airtime resellers

In the reporting period, participants in the Austrian mobile communications market included four mobile network operators (MNOs) which have been granted the corresponding frequency usage rights; one mobile virtual network operator (MVNO) which does not have its own radio communications network but operates essential elements of the core network; and four airtime resellers which do not operate their own telecommunications infrastructure.

In this context, it is important to note that only one airtime reseller is independent of the MNOs in terms of ownership. YESSS! and eety are subsidiaries of ONE, and eTel is owned by Telekom Austria. The only MVNO operating on the Austrian market (Tele2) was also taken over in 2007, and the acquisition has now received approval from Austrian competition authorities. Table 16 shows the providers which operate on the Austrian market and had notified mobile communications services to RTR within the framework of general approvals as of the end of 2007, as well as the year in which each operator entered the market. All four MNOs offer UMTS services, with Hutchison 3G operating an exclusively UMTS-based network.

Table 16: Active providers and year of market entry

	Type	Market entry
mobilkom austria	MNO	1994
T-Mobile	MNO	1996
One	MNO	1998
Hutchison	MNO	2003
Tele2	MVNO	2003
DIALOG telekom	Airtime reseller	2003
eTel	Airtime reseller	2004
YESSS!	Airtime reseller	2005
eety	Airtime reseller	2006

Source: RTR

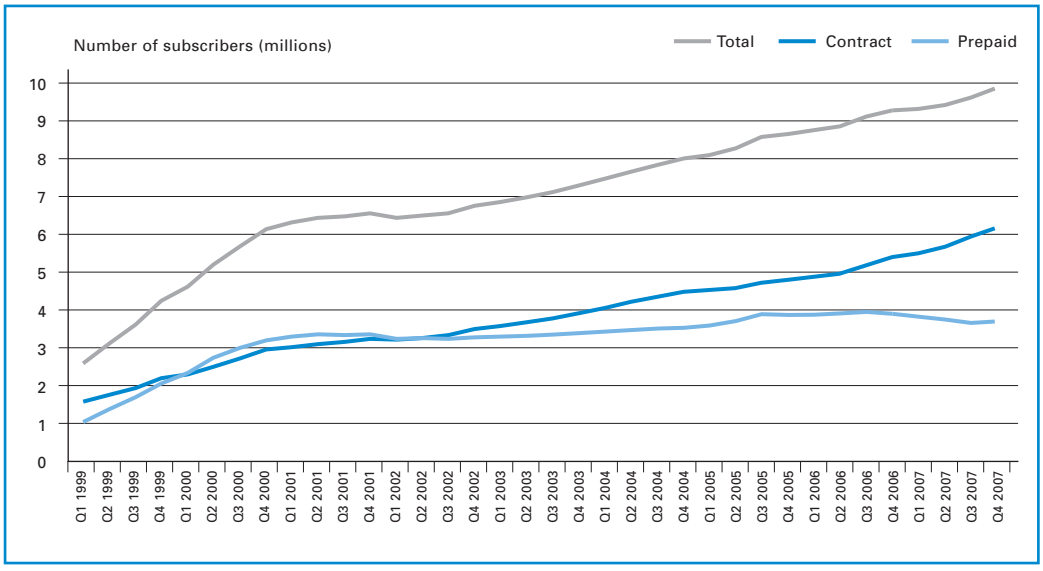
5.2.3.2 Market development

5.2.3.2.1 Development of number of subscribers and penetration rates

Mobile penetration at 118%

The number of activated subscriber numbers has continued to increase steadily. While this increase has been especially pronounced among contract customers, the number of prepaid customers has decreased slightly in the last two years. Austria's mobile penetration rate, which is calculated as the number of activated subscriber numbers divided by population, had reached 118% by the end of 2007. At the end of the third quarter of 2007, the EU average was 112% (source: 13th Implementation Report of the European Commission). With a penetration rate of 115% at that time, Austria was above the EU average.

Figure 50: Development of activated subscriber numbers

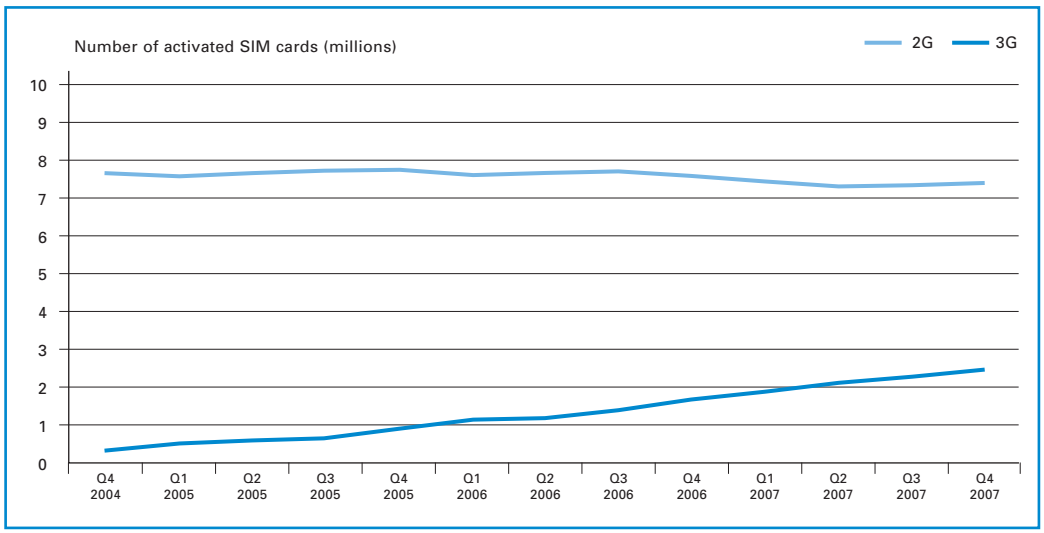


Source: RTR
NB: Data interpolated between Q4 2003 and Q3 2004

5.2.3.2.2 Number of 2G vs. 3G-compatible SIM cards

Figure 51 shows the number of 2G and 3G-compatible SIM cards in Austria. The total of these two numbers is not necessarily the same as the number of subscriber numbers in use shown in Figure 50, as multiple numbers may be assigned to one SIM card; conversely, multiple SIM cards may also be assigned to the same number. The figure shows that the number of 3G-compatible SIM cards is rising, while the number of 2G-compatible SIM cards is declining. This development can be attributed to the fact that most mobile network operators are now only issuing 3G-compatible SIM cards – even in cases where the subscriber only uses GSM services – and that there has been a very sharp rise in the number of mobile data cards and data modems.

Figure 51: 2G and 3G-compatible SIM cards



Source: RTR

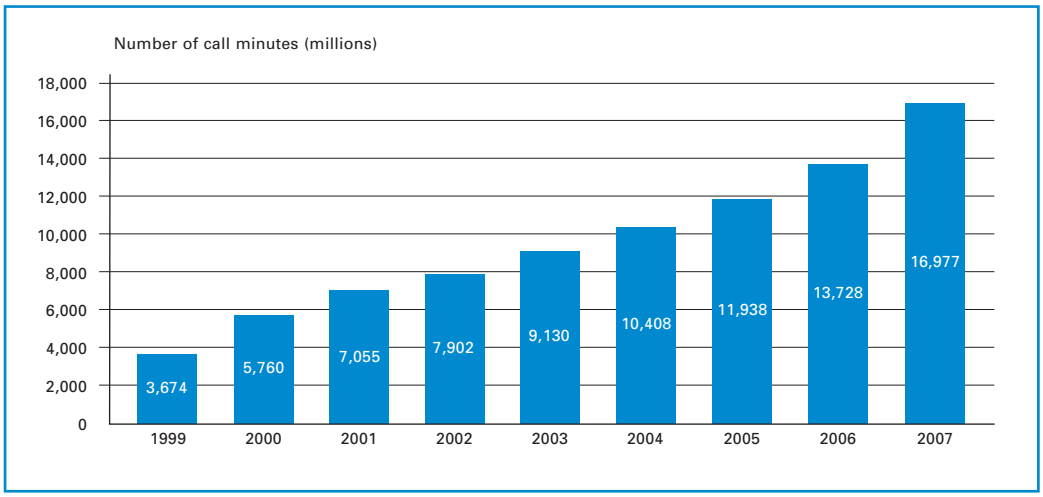
5.2.3.2.3 Development of call minutes and text messages

Rapid growth in traffic volumes due to new pricing models

The number of call minutes as well as text messages showed enormous increases in 2007. While call minutes exhibited steady growth of approximately 15% per year from 2003 to 2006, their growth rate jumped to 23% in 2007. The increase in the number of text messages sent was even more pronounced, with the number of messages sent rising by nearly 60% from 2006 to 2007.

This rapid increase in traffic volumes can largely be attributed to the new pricing models used by mobile operators, as they have begun to offer more and more flat-rate products (cf. Section 5.2.3.4 on rates) which include a very large number of call minutes and text messages.

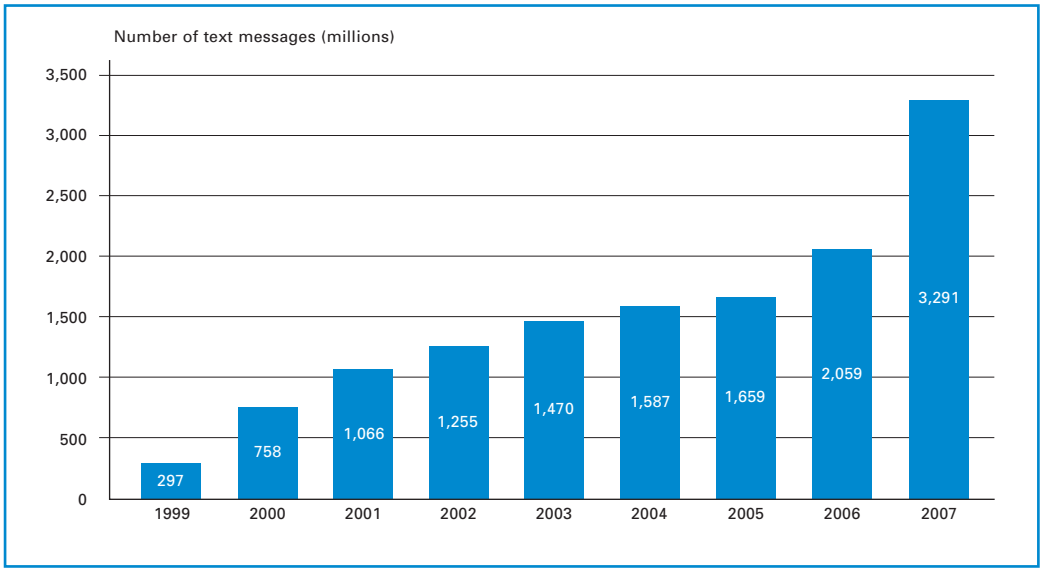
Figure 52: Call minutes on the retail market (technical measurement*)



Source: RTR

* These minutes refer to the actual time retail customers spent talking on their mobile phones. In contrast, billed call minutes refer to the number of call minutes charged to retail customers.

Figure 53: Number of text messages on the retail market (technical measurement*)



Source: RTR

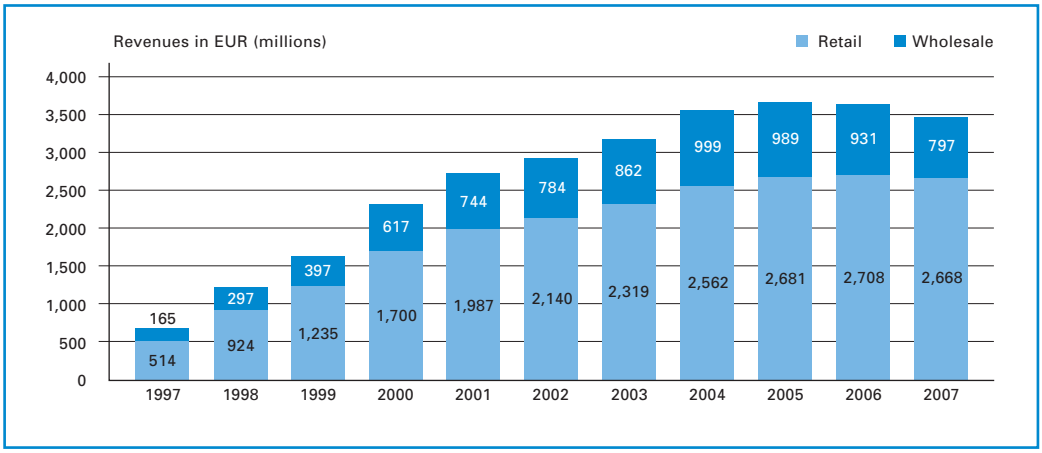
* This figure refers to the actual number of text messages sent by retail customers. In contrast, billed text messages refer to the number of text messages charged to retail customers.

5.2.3.2.4 Development of revenues

Decline in revenues especially pronounced at the wholesale level

Despite increasing numbers of subscribers and traffic volumes, revenues in the mobile segment decreased by nearly 5% in 2007. These revenues consist of retail and wholesale revenues (revenues from voice termination and text messaging as well as revenues from international roaming). The decline in revenues was especially visible at the wholesale level, where a decrease of more than 14% was recorded. This can be attributed to the reduction of termination charges ordered by the regulatory authority (cf. Section 4.2.1.2 on market analyses) and the implementation of the EU Roaming Regulation as of June 30, 2007 (cf. Section 4.2.14 and Section 5.2.3.5 on international roaming), which provides for a maximum fee for international roaming within the EU/EEA at the wholesale level (among other things).

Figure 54: Development of revenues in mobile communications

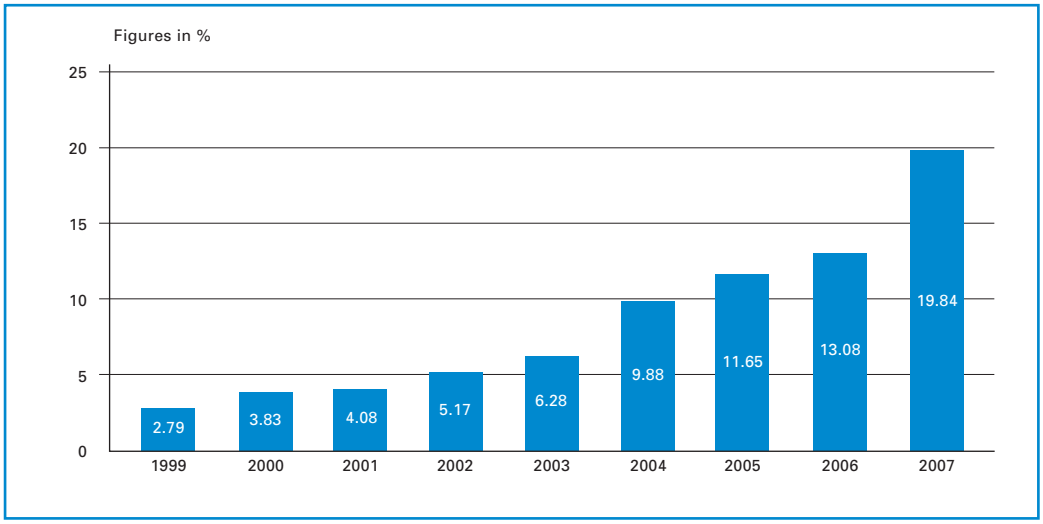


Source: RTR

Data services gaining importance

In the field of data services, the mobile operators have continued to see high rates of revenue growth. The revenues generated by data and value-added data services (including SMS and MMS) came to nearly 20% of overall retail revenues in 2007. This can mainly be attributed to rapid growth in the number of mobile broadband users. According to the RTR study "The Austrian telecommunications market from the demand-side perspective in 2007," nearly one quarter of all households with Internet access (almost exclusively) used mobile broadband in the fall of 2007.

Figure 55: Share of data and value-added data services (including SMS and MMS) in overall retail revenues

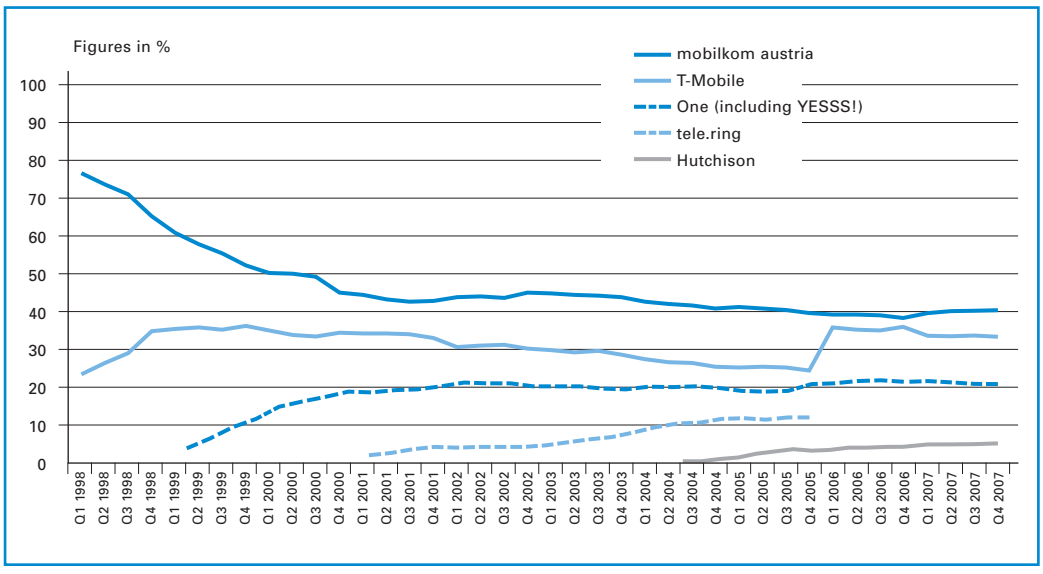


Source: RTR

5.2.3.3 Market shares and concentration

Figure 56 below shows the market shares of mobile network operators in terms of subscribers (not including service providers).

Figure 56: Development of market shares (basis: number of subscribers)



Source: Mobile Communications and information from operators for the RTR web site

The development of the graph shows that the market shares of the two largest providers slowly converged over the year 2006 due to the takeover of tele.ring by T-Mobile (which is reflected in the statistics from April 2006, the time at which the competition authorities approved the takeover) and were nearly identical at the end of that year. In 2007, the opposite trend could be observed: The market shares of the two largest operators began to diverge once again, with Mobilkom's share of the market exceeding 40% for the first time since the fourth quarter of 2005. The market share of the smallest MNO, Hutchison, has continued to see consistently slow growth, finishing 2007 at just over 5%, while the market share held by One (including YESSS!) appears to have stabilized at approximately 20%.

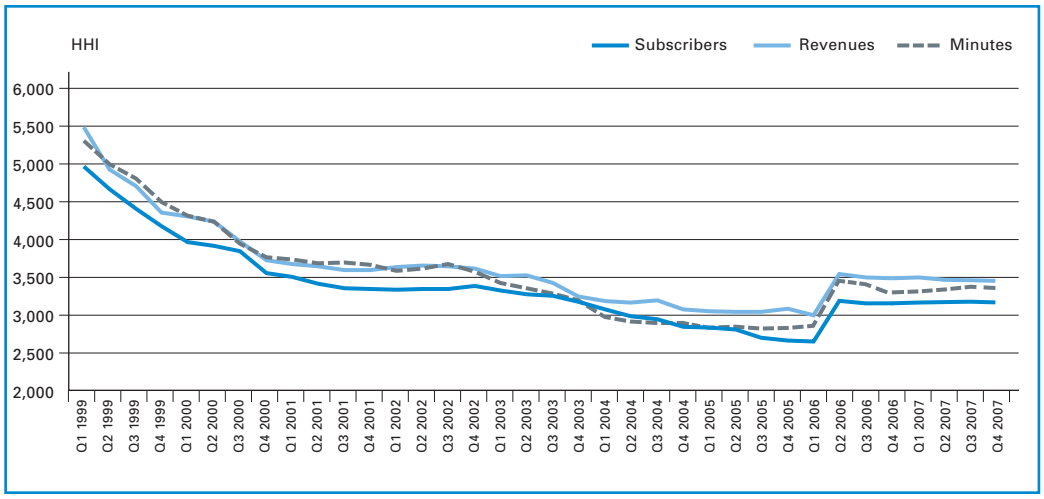
Hirschman-Herfindahl-Index

One of the most common measures of concentration is the Hirschman-Herfindahl Index (HHI), which is calculated as the sum of squares of specific parameter values (in this case market share percentages). The value of this index is thus between 0 and 10,000. A value close to zero indicates low concentration and appears in cases where the market has a large number of participants of roughly similar size. The highest value of the index (10,000) indicates that there is a monopolist provider and thus 100% concentration in the parameter value.

HHI stable since T-Mobile's takeover of tele.ring

Due to the market entries of One and tele.ring, the Hirschman-Herfindahl Index dropped steadily until 2001 (cf. Figure 57). Another downward shift can be observed upon the entry of Austria's fifth mobile operator, 3 (Hutchison 3G Austria), in 2003. Not surprisingly, T-Mobile's acquisition of tele.ring, which was approved by competition authorities in mid-April 2006 and included in the data from the second quarter of 2006 onward, led to a sharp increase in Austria's HHI. In contrast, Telekom Austria's takeover of eTel, which is reflected in the data from the first quarter of 2007 onward, did not have a noticeable effect on the HHI. Thus the index has remained relatively stable since the second quarter of 2006, showing values between 3,150 (based on subscribers) and 3,440 (based on retail revenues), depending on which characteristic is used as a basis for the calculation. Austria's HHI is highest in the case of revenues, which indicates that the largest companies also have the customers which generate the highest revenues.

Figure 57: HHI for the retail mobile communications market



Source: Mobile Communications, RTR

5.2.3.4 Rates

5.2.3.4.1 European comparison

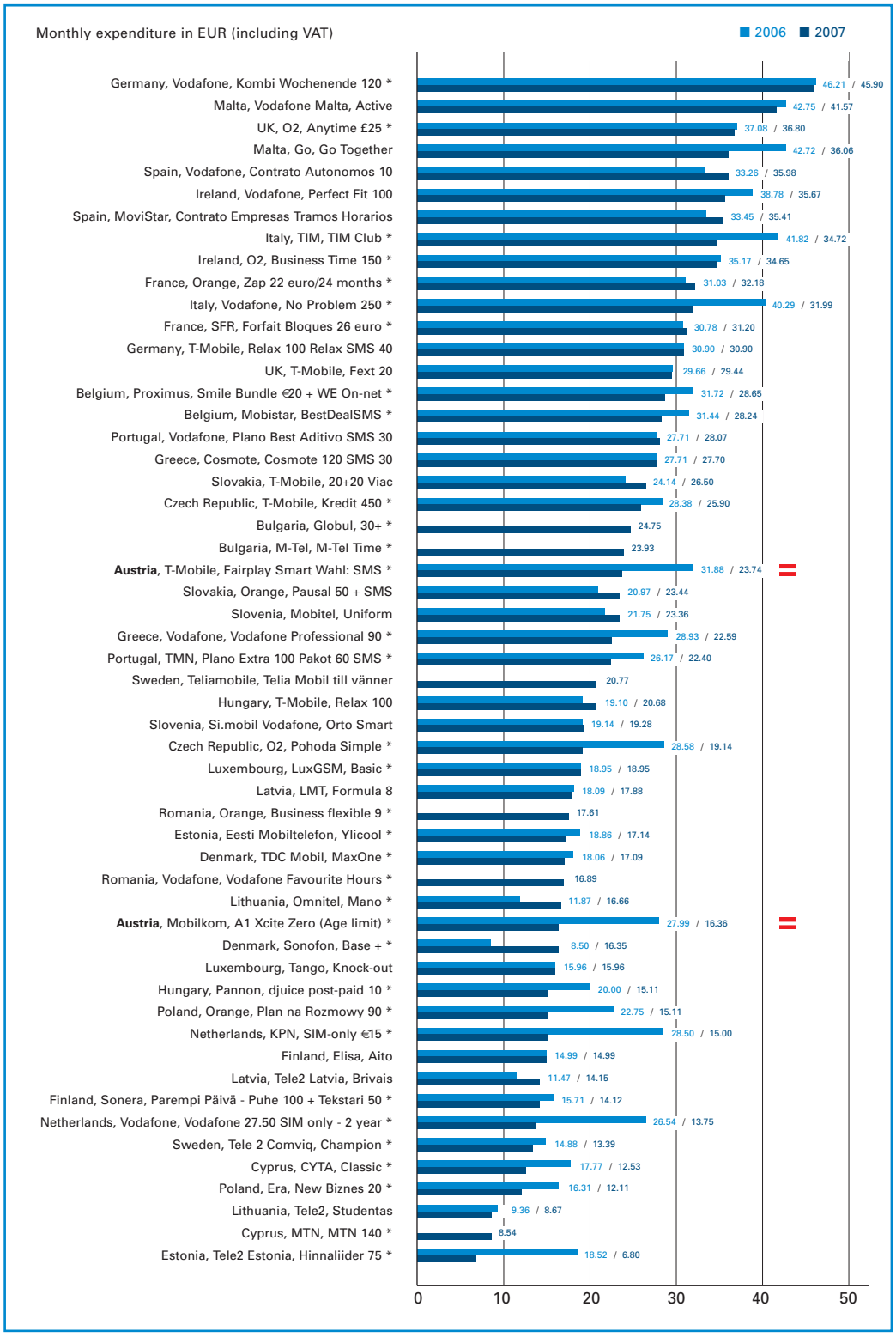
In the Implementation Report, the European Commission regularly publishes rate comparisons between individual EU countries based on baskets of services. The three OECD baskets are intended to reflect different usage profiles (low, medium and high intensity of telephone usage). As an example, the results from the basket for a medium-usage mobile subscriber are shown here (cf. Figure 58). This basket is composed of 65 outgoing calls and 50 text messages per month. 21% of those calls are made to the fixed-link network, 48% to the subscriber's own mobile network, 24% to another mobile network, and 7% to the subscriber's voice mail. The duration of calls ranges from 0.8 minutes for voice mail calls to 1.9 minutes for calls to the subscriber's own network. The calculation is based on the lowest contract rate offered by one of the two largest mobile network operators in each country (based on the number of subscribers). In Austria, this refers to Mobilkom and T-Mobile, and only the main brands (A1 and T-Mobile) of those operators were taken into account. Their discount brands (bob and tele.ring) were not included in the charts published in the Implementation Report.

Austria in lower middle range in EU-wide comparison

As Austria placed 16th and 32nd (out of 54), it is in the lower middle range as regards mobile rates. Compared to 2006 (28th and 39th place), Austria has moved up several places. If the discount brands' rates had also been taken into account, then the amount would have come to approximately EUR 10.00 per month for an average user. With such a result, Austria would be placed among the top five.

The situation is similar for the high-intensity basket (16th or 25th place). With regard to the low-intensity basket, Austria places worst compared to the other two usage profiles (38th and 42nd place).

Figure 58: EU-wide comparison of rates for the OECD's average user basket in 2007



Source: 13th Implementation Report of the European Commission

The asterisk (*) following the package name means that the package name and its structure changed between 2006 and 2007.

5.2.3.4.2 Flat rates

Since the year 2006, two major developments have arisen in mobile providers' pricing models. First, providers have begun to offer rates without network-based price discrimination (for a more detailed explanation, please refer to the 2006 Communications Report). Second, the providers also began to offer flat rates in 2007; these rate packages offer services at a fixed price, regardless of the actual frequency and duration of use. Examples of such rates include One's Große Plaudertasche, T-Mobile's Fairplay, Mobilkom's A1 Zero Tarife and Hutchison 3G Austria's 3 NoLimits.

One of the main reasons behind these developments was the regulatory reduction of termination charges (cf. Section 4.2.1.2), which substantially reduced the operators' risk of having to make large net payments to their competitors.

5.2.3.5 International roaming

After years of investigation, the European Commission introduced price regulations at the wholesale and retail level when it implemented the regulation on roaming in public mobile telephone networks within the Community on June 30, 2007 (cf. Section 4.2.14). Under the new regulation, national regulatory authorities are required to monitor compliance with the new rules, which is why a semi-annual data survey is carried out. The results of the first data survey, which covered the second and third quarters of 2007, are shown in the figures below.

In this context, it is important to note that the retail "Eurotariff" was not yet compulsory during the survey period. The figures only include data on those subscribers who either were switched over to the "Eurotariff" by the operators voluntarily or actively decided for the new rates. At the wholesale level, the new price regulations had to be applied as of August 30, 2007.

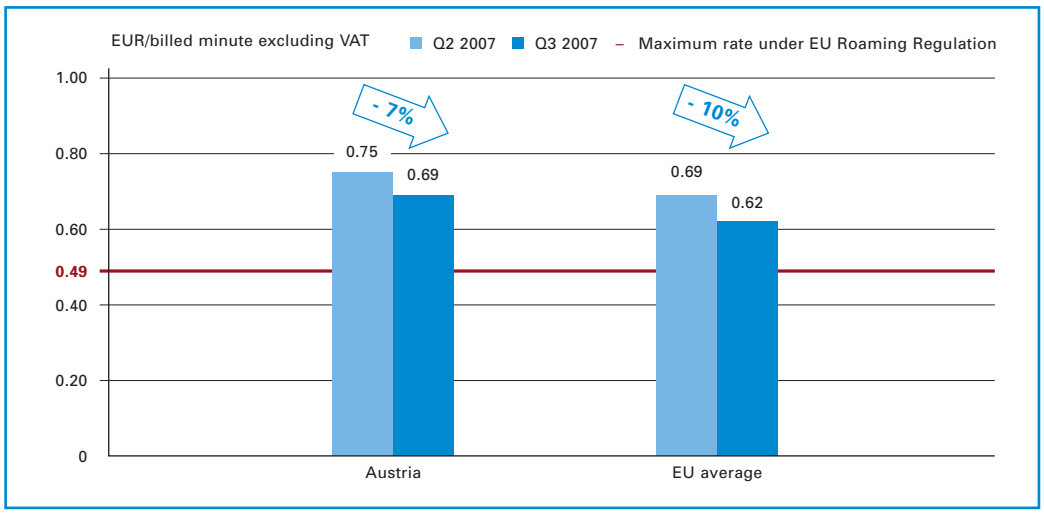
The figures show average rates per billed minute (excluding VAT). Here it is necessary to note that conclusions drawn from this information with regard to rate developments are associated with substantial imprecision due to very sharp seasonal fluctuations.

5.2.3.5.1 Retail level

Retail roaming fees within the EU/EEA have already declined.

Figure 59 shows the average roaming rates at the retail level for outgoing calls within the EU/EEA. These rates decreased by 7% to EUR 0.69 per minute between the second and third quarter, but they were still substantially higher than the upper limit of EUR 0.49 per minute prescribed in the new regulation. In the third quarter of 2007, therefore, Austria was above the EU average of EUR 0.62 per minute.

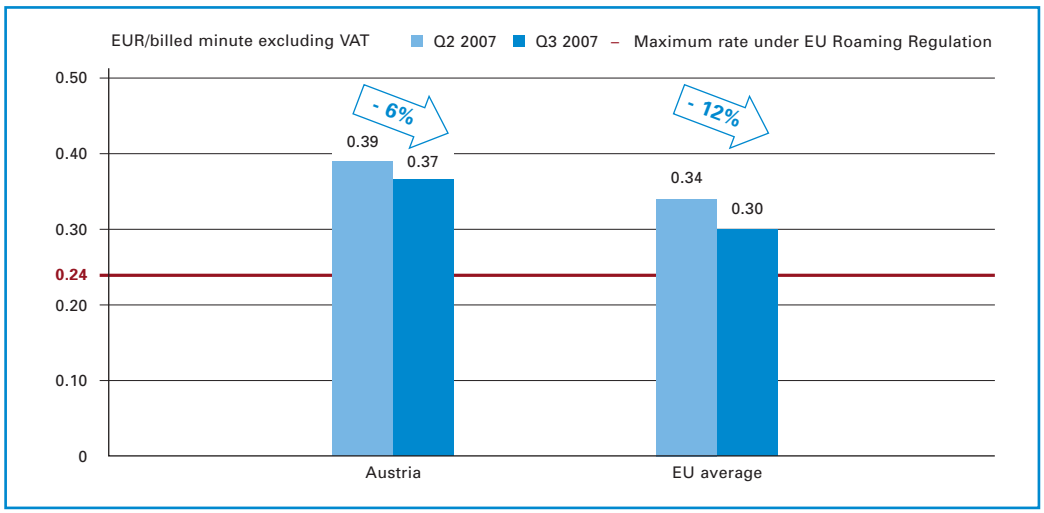
Figure 59: Average retail roaming rates for outgoing calls within the EU/EEA



Source: International Roaming – ERG benchmark data report for April to September 2007; RTR

The rates for incoming calls within the EU/EEA also decreased due to the European Commission's Roaming Regulation. As in the case of outgoing calls, Austria's average rate of EUR 0.37 per minute in the third quarter of 2007 was above the EU average (EUR 0.30 per minute). In the third quarter of 2007, these rates had not yet been adapted to the maximum level of EUR 0.24 per minute for incoming calls as defined in the new regulation.

Figure 60: Average retail roaming rates for incoming calls within the EU/EEA

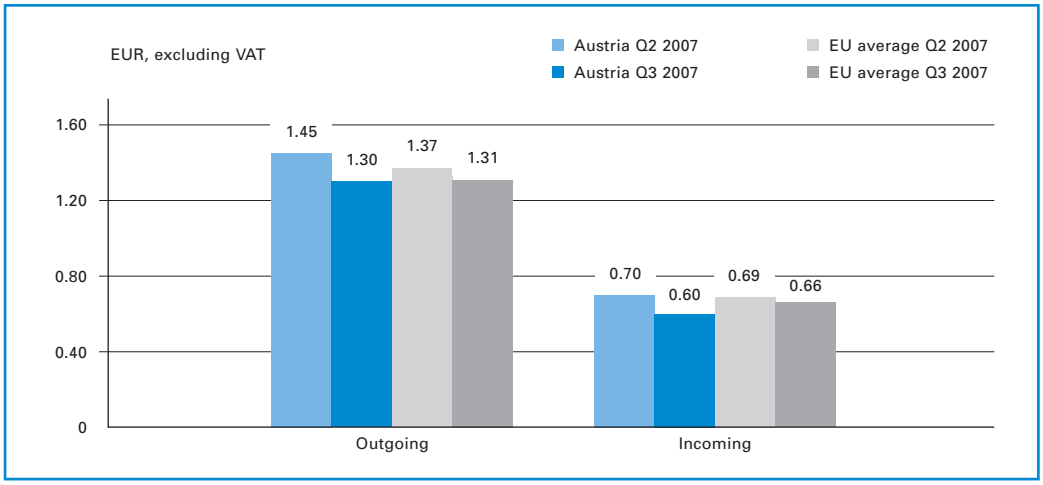


Source: International Roaming – ERG benchmark data report for April to September 2007; RTR

Figure 61 shows a comparison of rates for outgoing and incoming roaming calls between the second and third quarter of 2007 as well as a comparison of Austria's average rate with the EU average. With due attention to the imprecision arising from seasonal fluctuations (which are especially pronounced in countries outside the EU/EEA), the figure shows that the EU Roaming Regulation did not exert upward pressure on the average roaming rates in those countries. In the third quarter of 2007, Austria's average rates came to EUR 1.30 per minute for outgoing calls and EUR 0.70 per minute for incoming calls, thus placing Austria just below the EU averages of EUR 1.31 and EUR 0.66 per minute.

Average rates for outgoing and incoming roaming calls outside the EU/EEA have also declined.

Figure 61: Average retail roaming rates for outgoing and incoming calls outside the EU/EEA



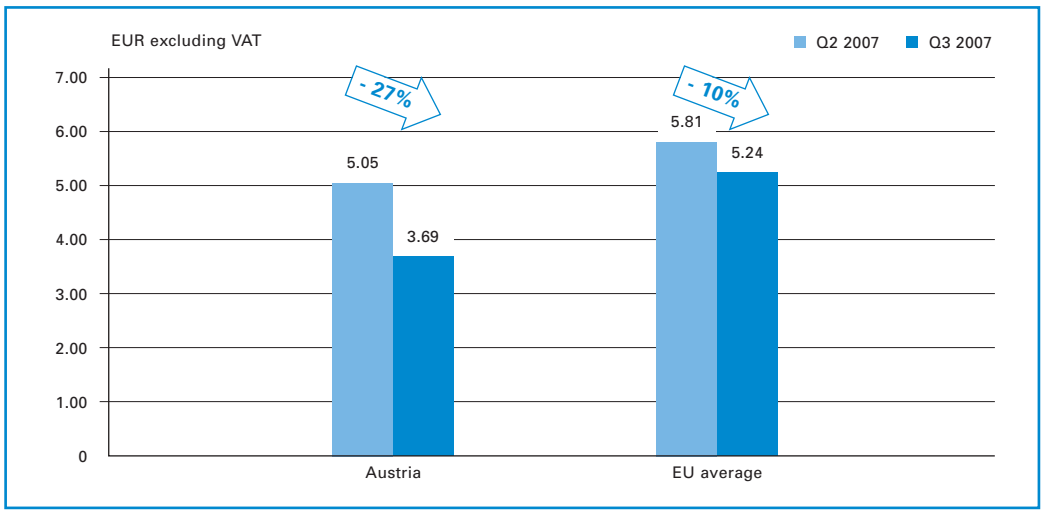
Source: International Roaming – ERG benchmark data report for April to September 2007; RTR

The new regulation does not provide for price regulations on text messages and data roaming; however, those services are being monitored by the national regulatory authorities, which is why revenues and traffic volumes for these services are also included in the data surveys. In addition, the European Commission has also been paying greater attention to price developments in those areas. Should the operators not substantially reduce prices for text messages and data roaming at the retail and wholesale levels by July 1, 2008, the European Commission will also consider including those services in the Roaming Regulation and subjecting them to price regulations.

Text messages and data roaming under observation by regulatory authorities and European Commission

While the prices of text messages at the retail level remained the same at approximately EUR 0.24 per message, the average prices for one megabyte in data roaming within the EU/EEA dropped 27% to EUR 3.69 per megabyte between the second and third quarter of 2007 (see Figure 62). Therefore, Austria was clearly below the EU average of EUR 5.24 per megabyte.

Figure 62: Retail data roaming rates within the EU/EEA (per megabyte)



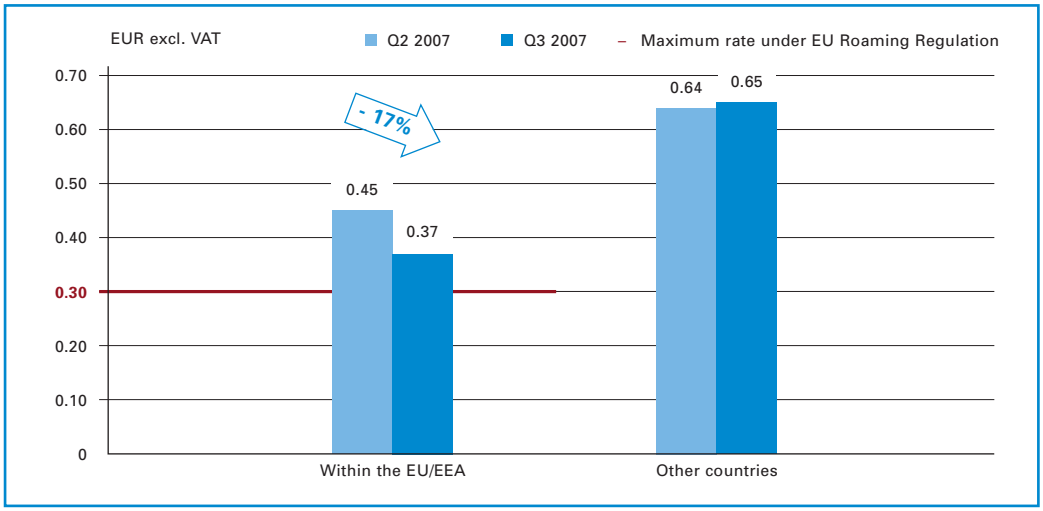
Source: International Roaming – ERG benchmark data report for April to September 2007; RTR

5.2.3.5.2 Wholesale level

Figure 63 shows the average wholesale rates for calls within the EU/EEA for non-group traffic.[8] The average values for the second and third quarters of 2007 are still above the maximum rate of EUR 0.30 per minute prescribed in the regulation (annual average from August 30, 2007 to August 30, 2008). While the average wholesale rate per minute for calls within the EU/EEA dropped by 17%, the rate for calls in countries outside the EU/EEA remained approximately the same. Therefore, the "EU/EEA Roaming Regulation" did not exert upward pressure on the average prices charged to mobile operators from countries outside the EU (once again noting the imprecision arising from seasonal fluctuations).

[8] "Non-group" is used to denote revenues/traffic volumes generated with operators which do not belong to the same group. In this context, "group" refers to all entities in which the group holds 100% or a majority of shares.

Figure 63: Average wholesale rate within the EU/EEA – non-group traffic



Source: RTR

5.2.3.5.3 Outlook

Until the Roaming Regulation expires on June 30, 2010, a data survey will be conducted on a semi-annual basis (in the second and fourth quarter of each year). Also at semi-annual intervals, the ERG will publish a report on price developments on its web site (http://www.erg.eu.int) using the results of those data surveys as a basis. At the end of 2008, a report on the effectiveness of this regulation will be presented to the European Parliament and Council. The Parliament and Council will then assess whether the goals of the regulation have been attained and whether the regulation should be extended beyond its current period of validity or even expanded to include text messaging and data roaming services.

5.2.4 Broadband

5.2.4.1 Introduction

An alternative network operator or Internet service provider (ISP) might implement broadband access for retail customers using self-operated access technologies such as fiber optics (fiber to the home, or FTTH), power lines (via power line networks; PLC), radio networks (W-LAN) and cable television networks (CATV), or by using Telekom Austria's unbundled (copper wire) access network and purchasing bitstreaming as a wholesale service from Telekom Austria or a third party.

Bitstreaming is generally associated with DSL services (ADSL, SDSL, etc.). The provision of technical systems for DSL access and generally also the routing of traffic to a network interconnection point (at which the bitstream is transferred to the alternative operator) are handled by the wholesale provider. One example is Telekom Austria's wholesale DSL offer (the "ISPA offer"). The term "open access" is used for a comparable product in cable television networks.

Unbundling and bitstreaming: Wholesale services at different levels of the value chain

Unbundling refers to an arrangement in which alternative network operators and other unbundling partners such as ISPs or leased line operators are not required to set up their own infrastructure to connect end-users directly, but instead use Telekom Austria's copper-wire access network (local loops). The term "local loop" refers to the physical/electrical connection from the end-user to the switching facilities of the telecommunications network operator. This line, usually a copper wire pair, connects the network termination point at the subscriber's premises to the network operator's main distribution frame (MDF).

Most unbundled local loops are used for broadband access (xDSL), while voice telephony lines using unbundled local loops now play an increasingly subordinate role (7% at the end of 2007). Local loop unbundling can be (and is) used by alternative providers in order to provide bitstreaming services. This fact makes it clear that unbundling and bitstreaming are provided at different levels of the value chain.

In addition to broadband connections using the fixed-link network technologies mentioned above, mobile broadband access (3G/UMTS) in particular also gained a great deal of significance in 2007.

5.2.4.2 Broadband Internet

At the retail level, three main types of Internet access are currently implemented:

- Dial-in access (dial-in modem via PSTN/ISDN);
- Broadband access by means of digital subscriber line technologies (xDSL via own or unbundled local loops) or cable modem (cable TV networks/HFC);
- Leased lines;
- Mobile broadband access (3G/UMTS; not included in the wholesale broadband market).

These forms of Internet access differ in terms of bandwidth, prices, pricing categories (e.g. depending on data transmission volume) and quality.

The typical characteristics of broadband Internet access which set it apart from narrowband Internet access are as follows:

- Broadband access provides downstream capacity greater than 144 kbit/s (corresponds to 2 x ISDN B-channel + D channel) and

- Broadband access enables "always on" service.

With regard to data rates, there is no (internationally) accepted standard definition of broadband access. Voice telephony can clearly be classified as a narrowband service. A conventional voice channel has a data rate of 64 kbit/s, while an ISDN line has 144 kbit/s (2 x ISDN B channel + D channel). The regulatory authority has defined this data rate as the upper limit for narrowband services. Therefore, transmission speeds above that level are considered broadband.[9]

5.2.4.3 Transmission technologies

Various technologies used for broadband internet access

- Digital subscriber line (DSL): DSL is a technical means of implementing high bit-rate services on a conventional telephone line. One of the best-known designs is available on the market by the name of "ADSL" (Asymmetric Digital Subscriber Line). The term "asymmetric" points to the difference in transmission rates in the downlink (to the subscriber, high bit-rate) and in the uplink (to the switching exchange, low bit-rate). In addition to asymmetric transmission methods, there are also symmetric technologies (e.g. SDSL) in which the entire frequency spectrum on the subscriber line is used for high bit-rate data transmission.

- Cable modem (CATV/HFC network): Broadband access via cable modems takes an approach that is similar to DSL (shared capacity as opposed to dedicated capacity with leased lines). In this context, the infrastructure (or bandwidth) is not dedicated exclusively to each customer, even in the final section of the line to the customer (in contrast to DSL). Advertising, pricing, and response behavior in the case of product changes/expansions as well as bandwidths indicate that xDSL and cable modem access are substitutes at the retail level in both technical and economic terms.

- 3G: All of the mobile network operators active in Austria operate UMTS networks. Using HSDPA technology, the operators promise bandwidths of up to 7.2 Mbit/s. Mobile broadband access in particular saw strong growth in the year 2007. In the future, it will be necessary to monitor the extent to which this technology can be regarded as a substitute for line-based Internet access or is used for this purpose (for further details on mobile broadband, see Section 5.2.4.7).

[9] A transmission speed of 144 kbit/s cannot be described as "fast Internet access." However, this value serves as a means of delineating broadband from narrowband dial-up Internet, which cannot support data transmission rates above 144 kbit/s. Therefore, bandwidths above that level are assigned to the broadband category. Most of the products currently offered on the market support speeds of 2 Mbit/s or higher.

- Leased lines: Although broadband access (also to the Internet) can be implemented using leased lines (depending on the capacity), the characteristics of these lines differ from those of DSL services and Internet access via cable modem. In contrast to DSL services, leased lines provide dedicated capacity for exclusive use by the customer. In the case of DSL services, this dedicated capacity is only available in the local loop. Broadband Internet access via leased lines is in higher demand among large companies and is not included in Figure 64 below.

- W-LAN/WiFi/WiMAX: These wireless access technologies have seen a certain degree of proliferation in Austria and are used for quasi-mobile ("nomadic")[10] broadband access at hot spots (airports, train stations, cafés) and as an alternative to line-based broadband Internet access in rural areas where such services are not available (fixed wireless access, or FWA). Although FWA is spreading fast, the absolute number of end users is still relatively low (an estimated 40,000 at the end of 2007).

- PLC (power lines): This technology has basically not progressed beyond the experimental stage. Pilot operations were partly discontinued after several years. In this technology, problems arose in connection with frequency interference, for example in the frequency band used by amateur radio operators.

- Fiber to the home (FTTH): At the moment, broadband access based on fiber optics is only used in a few individual cases in Austria. In Vienna, the power company Wienstrom provides a few thousand FTTH connections (Blizznet) under an open access model (i.e., retail customers receive broadband services from a provider which itself obtains FTTH access from Wienstrom). The provider Infotech Ried has connected several customers in its vicinity using FTTH, and for several years now Telekom Austria has been carrying out a trial project in Arnoldstein, a town in the province of Carinthia.

Other access technologies such as satellite play a secondary role in Austria.

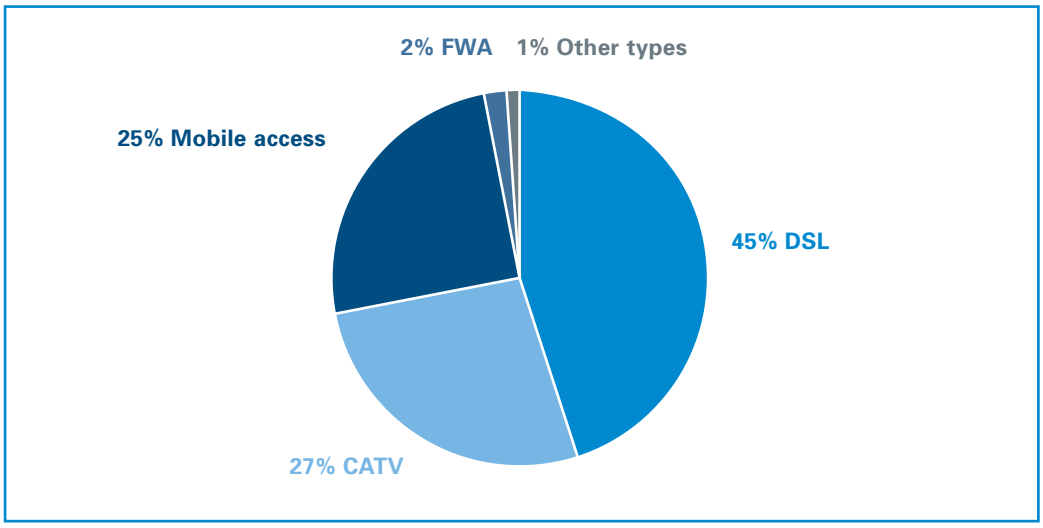
[10] i.e., not meeting all mobility requirements such as full coverage, handover, etc.

5.2.4.4 Retail market for broadband Internet

At the end of 2007, line-based broadband Internet connections were available for almost all households in Austria (over 96%), and more than 45% of households had taken advantage of such offers. This comparison makes it clear that the services are offered by the network operators, but the customers' use of the services is nowhere near their full potential. If mobile broadband access is also included, more than 60% of households have broadband service.

The figure below shows the distribution of technologies used on the retail consumer market.

Figure 64: Types of broadband access (end of 2007)



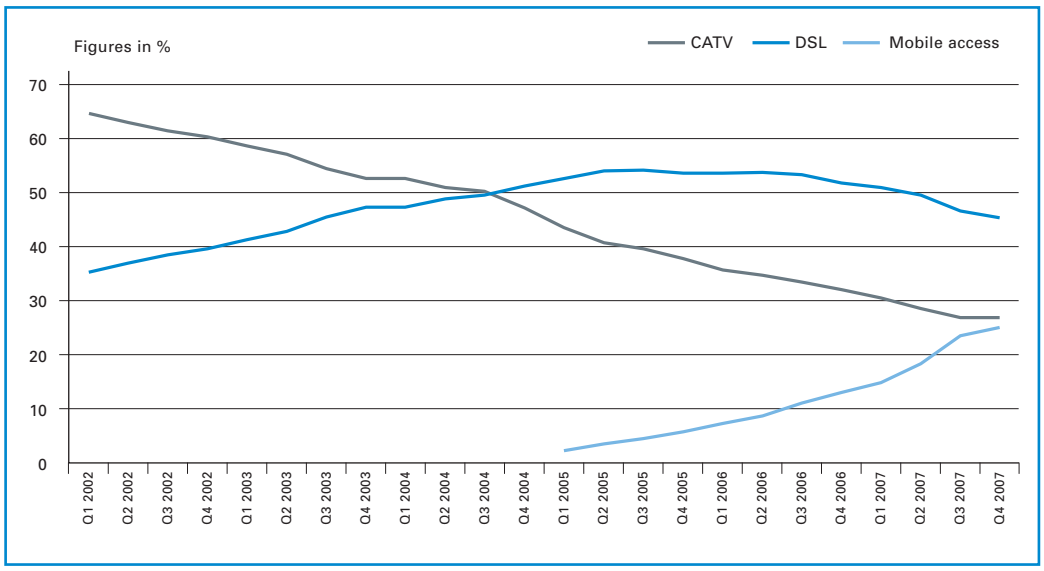
Source: RTR (KEV)

Less than half of all broadband Internet access is provided using DSL.

This depiction makes it clear that 45% of broadband connections are provided using DSL access technology.

The figure below shows the development of the most important access technologies – DSL, cable networks (CATV, coaxial cable, HFC) and mobile broadband (3G, UMTS, HSDPA) – over time. In the third quarter of 2004, DSL connections surpassed coaxial cable-based broadband connections and have shown more rapid growth ever since. By the end of 2007, mobile broadband was already close to surpassing CATV broadband connections.

Figure 65: Development of DSL, coaxial cable and mobile broadband



Source: RTR (KEV)

5.2.4.5 Wholesale market for bitstreaming

In November 1999, Telekom Austria launched an ADSL-based Internet service for its own retail customers. After the regulatory authority intervened and the Association of Austrian Internet Service Providers (ISPA) and Telekom Austria held negotiations, an agreement regarding a wholesale reference offer was reached in March 2000.

In addition to Telekom Austria's reference wholesale offer, ISPs also provide bitstreaming products via unbundled lines, and numerous wholesale products are offered by cable television operators which are either not vertically integrated as regards broadband and therefore do not provide Internet access services (including Internet connectivity) themselves, or which enable customers to obtain services from other ISPs in addition to offering their own broadband services.

The wholesale service known as "bitstreaming" based on DSL technology is predominantly provided by Telekom Austria (over 85%). Unbundling partners also offer wholesale broadband services such as bitstreaming to other ISPs via unbundled local loops. In addition, a significant number of wholesale broadband connections (more than 10,000, not including universities) are also provided by cable network operators.

In order to properly account for the vast regional differences in competitive conditions on the wholesale broadband market in Austria, a number of talks with representatives of the European Commission (Art. 7 Task Force) have been held in recent years. As a result of those talks, the Telekom-Control Commission provided for a regional differentiation of regulatory measures in its last draft decision on the analysis of the broadband market (M 1/07). This was justified by the fact that broadband Internet connections are provided using various parallel types of infrastructure in areas of high population density, which also affects competitive conditions. In such areas, Telekom Austria has a market share of less than 30%. In contrast, Telekom Austria holds a market share of over 70% in other regions.

Draft decision provides for geographical distinction in regulatory measures.

The obligation imposed on Telekom Austria to offer bitstreaming services in areas of high population density can therefore be removed. On the other hand, the obligation to offer bitstreaming in areas of high population density only concerns approximately 20,000 bitstreaming connections among a total of some 2.2 million broadband connections (including mobile broadband).

The opinion issued by the European Commission did not express any objections to the draft decision. However, the final decision will be delayed because a ruling issued by the Austrian Administrative Court provides for the involvement of the companies affected, and in order to protect their rights as parties, those companies have been granted the right to submit comments and opinions in addition to the consultation carried out on the draft decision.

5.2.4.6 Wholesale unbundling market

Unbundling has been available in Austria since mid-1999. Since that time, its potential uses have been expanded repeatedly and the relevant provisions have been refined in Telekom-Control Commission decisions. For example, since 2000 unbundling has not only been available for alternative providers of fixed-link voice telephony services, but also for Internet service providers and leased-line operators on the same terms and conditions. In the market analysis decision M 12/06, Telekom Austria – which practically has a market share of 100% on the unbundling market – was ordered to offer unbundled subscriber lines on non-discriminating terms and at cost-oriented prices.

Unbundling generated decisive incentives to offer low-priced and innovative broadband services, especially in the Internet segment. Inode, Tele2/UTA as well as numerous regional providers have taken advantage of these incentives (in some cases quite intensively), and by the end of 2007 more than 10% of all Telekom Austria's lines had actually been unbundled. Unbundled lines are primarily used for broadband Internet access.

Over 90% of unbundled lines are used for broadband access.

[11] See M 1/07-22, Draft measure pursuant to Art. 128 Par. 1 TKG 2003 (http://www.rtr.at/de/komp/Konsultation3KEMVNovS/M_1_07_Konsultationsdokument.pdf, in German)

The coverage situation can generally be inferred from the number of collocations in operation as well as the areas which those collocations could cover with ULLs. If at least one unbundling partner has a collocation at a Telekom Austria MDF, then the households in that MDF's local loop area are considered to be potential unbundling candidates. RTR carried out statistical calculations to determine the potential ULL coverage level with due attention to the coverage areas of all Telekom Austria MDFs as well as the population density in each area. However, the actual maximum number of households which can be unbundled by an unbundling partner in an MDF's local loop area depends on various underlying conditions, such as the collocation resources available at the MDF and the capacity of the unbundling partner's infrastructure (e.g., backbone capacity).

Especially in Austria's provincial capitals, multiple unbundling partners often have a simultaneous presence, meaning that retail customers can choose one of various unbundling partners (up to seven) as their primary broadband access provider (in addition to Telekom Austria and a local cable network operator).

65% of households are potential unbundling candidates.

The local loop areas covered by unbundling partners represent approximately 65% of Austrian households which could be unbundled at present (100% in Vienna). These figures make it clear that this market has enormous potential, although only about 288,000 of the 2 million potential households have been unbundled.

5.2.4.7 Mobile broadband

Rapid growth in mobile broadband in 2007

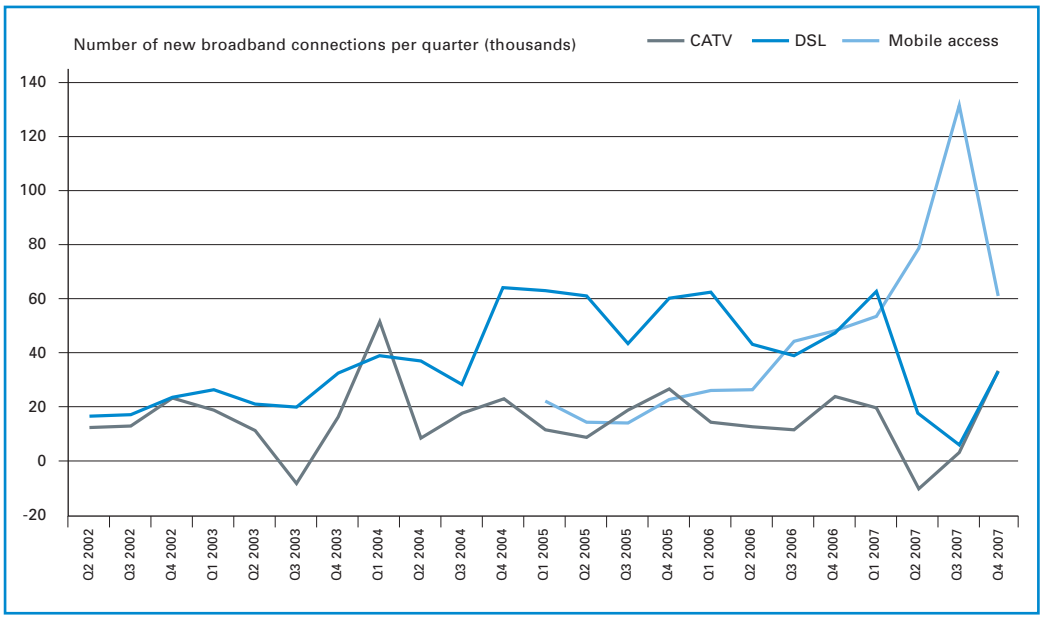
In 2007, mobile providers recorded high growth rates by offering new and attractively priced broadband products based on faster technologies (HSDPA) which promise speeds of up to 7.2 Mbit/s. For the first time, prices were based on those of fixed-link introductory products. Compared to the rest of Europe, Austria has taken a leading position in the diffusion of mobile broadband.

Whereas in the past mobile broadband connections were mainly used by business customers and highly tech-friendly residential customers as a complement to fixed-link broadband access (complementary usage – substitutive usage could not be demonstrated at that time), the boom in mobile broadband is now having an adverse effect on the development of fixed-link broadband access. By the end of 2007, mobile broadband was already close to surpassing CATV broadband connections.

Telekom Austria responded to this development by offering a combination package around the holiday season, and in this way the company was able to halt the decline in the growth of broadband (and thus also fixed-link) connections, at least temporarily. At the same time, broadband access via CATV networks saw growth once again.

The figure below shows the development of broadband access on a quarterly basis.

Figure 66: Growth in broadband access by quarter



Source: RTR (KEV)

In light of these recent developments, the question arises whether mobile broadband connections should be included in the definition of the wholesale broadband market. This would be justified if customers perceived and used mobile broadband as a substitute for fixed-link broadband connections to a sufficient extent. At present (late 2007 / early 2008), no reliable statements can be made in this regard. Bandwidths of up to 7.2 Mbit/s are promised, but at the same time it is necessary to note that many base stations are not connected with sufficient backhaul capacity in order to provide customers with such bandwidths.

The rapid growth in mobile broadband has also brought about a situation in which less bandwidth is available for each individual customer. Moreover, mobile broadband connections are interrupted more frequently than fixed-link connections.

All of these circumstances make it appear justified to observe these developments carefully in order to make a well-founded decision on whether to include mobile broadband in the wholesale broadband market.

5.2.5 Leased lines

5.2.5.1 Introduction

Leased lines are required mainly by communications service providers and network operators as well as businesses.

Many communications services and other business activities (e.g., logistics) would not be possible without leased lines. Communications service providers and network operators which do not have (sufficient) infrastructure of their own rely on leased lines to build or supplement their networks. For example, leased lines can be used to connect mobile radio transmitter antennas to a higher network level or to connect subscribers to a network. Because communications service providers and network operators in turn offer retail communications services (e.g., mobile communications, Internet connections) using leased lines, they are referred to as wholesale customers for leased lines. On the retail side, companies generally use leased lines to network two or more business locations, for example in order to connect a branch and headquarters (intranet) or to connect business partners, suppliers and customers (extranet). Depending on how they are used, leased lines might be required with various bandwidths, ranging from 64 kbit/s to 2 Mbit/s and even 155 Mbit/s or more.

Leased lines are exclusive lines for data transmission.

Leased lines support voice, audio, video and data transmissions. Due to their specific characteristics, leased lines differ from other services such as the Internet or fixed-link voice telephony, which can also be used to transfer voice, audio, video and data. Leased lines create a symmetrical, bidirectional point-to-point connection, providing transparent transmission capacity between two network termination points in Austria, but they do not allow on-demand switching (i.e., the user does not have individual control capabilities; the data is always exchanged between the same two predefined termination points). Leased lines are thus made available to the customer as exclusive and constant (24-hour/365-day) point-to-point connections with a guaranteed minimum bandwidth.

In principle, the technology used to realize a leased line is irrelevant for the purpose of this classification. Leased lines can be realized using radio connections, copper-wire pairs, coaxial and fiber cables. What is decisive in this context is the function for the user, not the technical implementation between the two customer interfaces or the product's name on the market. Therefore, a leased line is also a transmission line realized using ATM technology with a customer-side SDH or PDH interface, a wavelength service with customer-side SDH interfaces, or a product with user-side Ethernet interfaces which fulfills the relevant requirements.

According to the system of market definitions in the TKMVO 2003 and the European Commission's relevant markets recommendation from 2003, there are three relevant leased line markets:

Three relevant leased line markets

- Trunk segments of leased lines (wholesale market);
- Terminating segments of leased lines (wholesale market);
- The minimum set of leased lines, which comprises specified types of leased lines up to and including 2 Mbit/s (retail market).

Trunk segments refer to those leased lines and sections thereof which generally do not reach the subscriber's network termination point but serve to link interconnection points in those 28 Austrian towns where Telekom Austria has realized points of interconnection (POIs) for the telephone network. In contrast, terminating segments refer to all leased lines (or sections thereof) at the wholesale level which are not classified as trunk segments.

In the course of the last market analysis procedure, effective competition was identified on the market for trunk segments of leased lines because no company possesses significant market power in that area. The market is therefore not subject to sector-specific ex ante regulation. On the other hand, Telekom Austria possesses significant market power on the markets for terminating segments and for retail leased lines up to and including 2 Mbit/s; as a result, this company has been subjected to the appropriate regulatory remedies.

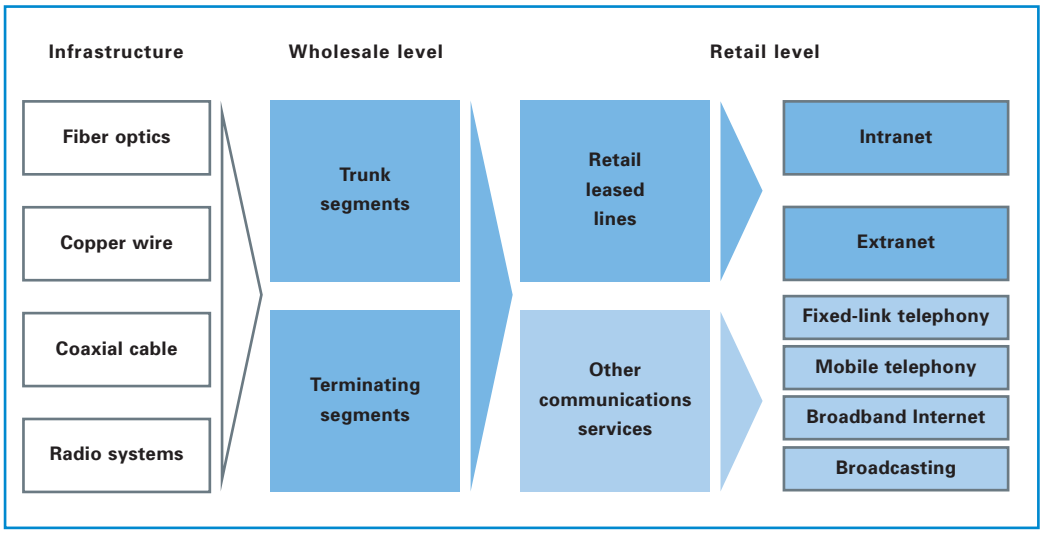
New markets recommendation in 2007

The wholesale market for trunk segments of leased lines and the market for retail leased lines up to and including 2 Mbit/s are no longer included in the new Commission recommendation on relevant product and service markets from the year 2007. However, as Telekom Austria possesses significant market power on the retail market, it must still be subjected to reviews.

Retail leased lines with bandwidths higher than 2 Mbit/s and international leased lines were not considered relevant to the delineation of markets (even in the past), thus they were not subjected to sector-specific regulation.

The figure below illustrates the relationship between wholesale leased lines and retail leased lines as well as other communications services.

Figure 67: Levels of value creation in leased lines



Source: RTR

In the sections that follow, the development of the leased line sector in Austria (and by international comparison) is discussed in detail.

[12] http://ec.europa.eu/information_society/policy/ecomm/doc/library/proposals/rec_markets_en.pdf

[13] For the sake of clarity, only the previously mentioned technologies for the provision of infrastructure or retail usage are included. The self-provision of communications services using one's own infrastructure or reseller chains at the wholesale level are likewise omitted.

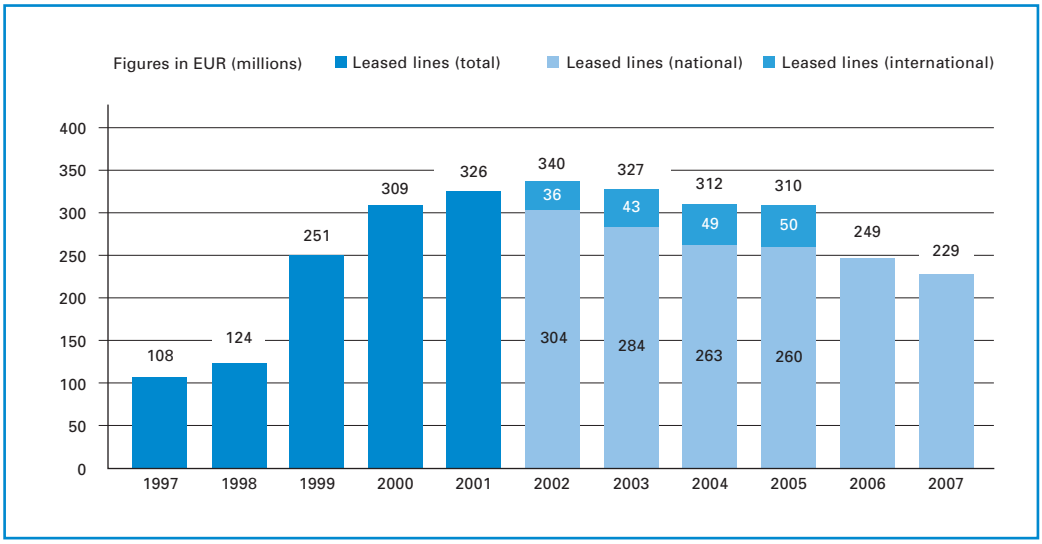
5.2.5.2 Market data

5.2.5.2.1 Development of revenues

Decline in revenues continued in 2007.

As in previous years, the declining trend in revenues from national leased lines also continued in 2007. This can be attributed in part to decreasing prices and in part to substitution using other services. The figure below provides an overview of the development of revenues from national leased lines since 1997, including both wholesale and retail leased lines. In 2007, national leased lines generated revenues of approximately EUR 230 million, which represents a decrease of 8% compared to the previous year's figure. Unfortunately, no data on international leased lines is available from 2006 onward.

Figure 68: Development of revenues from leased lines



Source: RTR

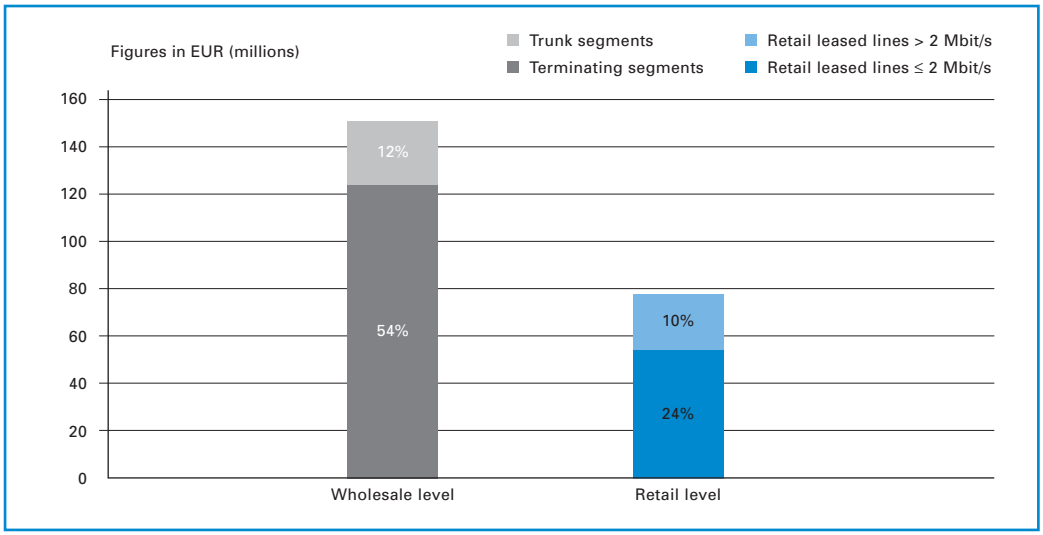
Revenues from retail leased lines > 2 Mbit/s increasing

The relevant markets for leased lines as defined in the markets recommendation have shown a declining tendency for several years now; this trend is most visible in retail leased lines with bandwidths up to and including 2 Mbit/s. In contrast, the demand for retail leased lines with higher bandwidths (> 2 Mbit/s) has been rising since the year 2003. The original use of leased lines to transmit voice and data, for which lower bandwidths are also sufficient, is increasingly giving way to services which require higher bandwidths. The trend toward higher demand for these leased lines is being met by intensifying the expansion of high bit-rate leased line offers and by developing regional and nationwide fiber optic networks.

Most of the revenues from national leased lines are generated at the wholesale level, in particular by terminating segments (54%). The retail market accounts for 34% of the revenues from national leased lines; as shown in the figure below, there is primarily (still) demand for leased lines with bandwidths up to and including 2 Mbit/s in this segment. The large share of revenues from national wholesale leased lines makes it clear that the development of communications infrastructure – especially through terminating segments at the local level – is a major determinant of demand for leased lines.

Highest demand generated at the wholesale level

Figure 69: Revenues by area in 2007



Source: RTR

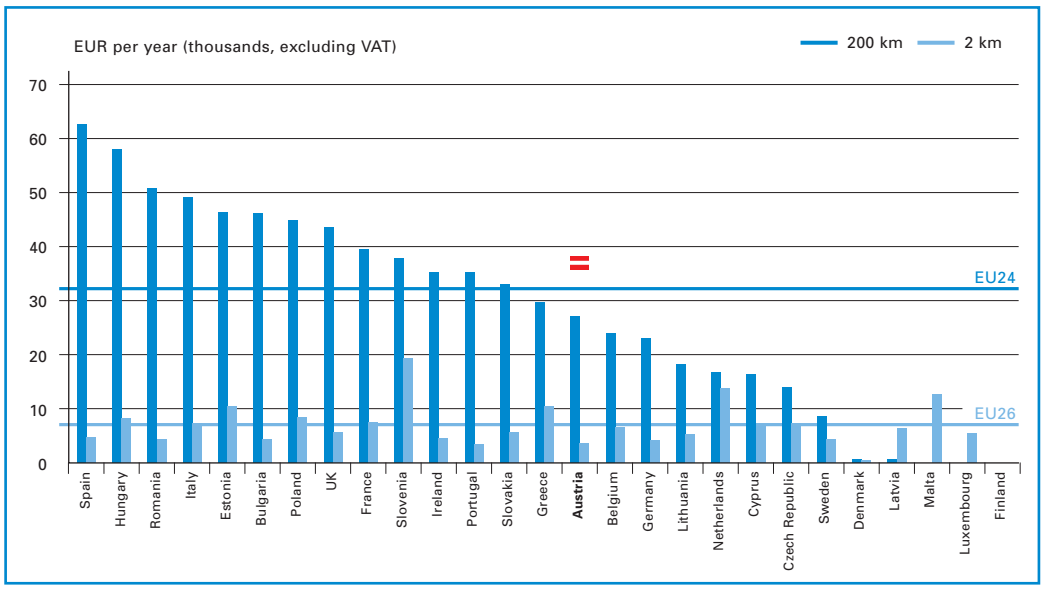
5.2.5.2.2 International comparison of rates

The Implementation Report published regularly by the European Commission contains detailed international comparisons of leased line prices and compares the annual expenditure (excluding setup charges and taxes) of retail customers for national leased lines with bandwidths of 64 kbit/s, 2 Mbit/s, 34 Mbit/s and 140/155 Mbit/s over distances of 2 km and 200 km from the respective incumbent operator.

The figure below provides an overview of the prices charged for 2Mbit/s leased lines throughout Europe. When interpreting this data, it is important to note that rate packages, billing structures, market structures, etc. are not homogeneous, which may lead to a certain degree of imprecision. Moreover, data in all of the categories examined was not available for all 27 EU member states, which may also lead to distortions in the calculation of averages.

Rate comparisons to be interpreted with caution

Figure 70: International leased line prices (2 Mbit/s), 2007



Source: 13th Implementation Report of the European Commission (Volume 2), data provided by European Commission (EU24: EU member states except Malta, Finland and Luxembourg; EU26: EU member states except Finland)

Austrian prices below EU average

This comparison makes it clear that Austria's prices (based on Telekom Austria's offers) are well below the EU average for 2 Mbit/s leased lines over distances of 2 km as well as 200 km; for short 2 Mbit/s leased lines, Austria's prices are among the lowest in Europe, along with those in Portugal and Denmark. The 13th Implementation Report also reveals that Telekom Austria's rates are well below the EU average for short 64 kbit/s, short 155 Mbit/s and all of the 34 Mbit/s retail leased lines compared. The charge for longer 64 kbit/s and 155 Mbit/s retail lines is just above the EU average, but demand for 64 kbit/s leased lines (especially over long distances) is very low in Austria.

For an overview of leased line price developments since 1998, please refer to the 2006 Communications Report.

5.3 The markets for electronic signatures

Among the services offered in the field of electronic signatures, those of the certification service providers are discussed first in this section. Fourteen providers of certification services were active on the Austrian market in 2007:

- Arge Daten - Österreichische Gesellschaft für Datenschutz (Austrian association for data protection);
- A-Trust Gesellschaft für Sicherheitssysteme im elektronischen Datenverkehr GmbH;
- The Austrian Federal Office of Metrology and Surveying;
- The Austrian Federal Ministry of Health and Women's Affairs, called the Federal Ministry of Health, Family and Youth Affairs since the amendment to the Austrian Act on Federal Ministries (BMG) went into effect on March 1, 2007;
- Energie-Control, the Austrian regulatory authority for energy;
- Generali IT-Solutions GmbH;
- Main Association of Austrian Social Security Institutions;
- Institute for Applied Information Processing and Communications Technology (IAIK);
- City Administration of Vienna;
- mobilkom austria AG (which stopped issuing certificates on October 16, 2007);
- Steiermärkische Krankenanstaltengesellschaft m.b.H. (since December 1, 2007);
- Telekom Austria AG, or Telekom Austria TA AG since July 10, 2007, when the company's restructuring measures went into effect;
- xyzmo Software GmbH;
- XiCrypt Internetsicherheitslösungen GmbH.

The certification service providers mentioned above offered a total of 41 certification and time-stamp services covering the entire spectrum of certificates in 2007. In general, the services offered can be categorized as follows:

- **Qualified certificates for secure electronic signatures:**[14] These certificates are issued only after an identity check by means of an official photo ID, and only for keys stored on secure signature creation devices. As secure electronic signatures are to a large extent legally equivalent to handwritten signatures, these certificates are used in particular for legal transactions. Certificates for secure electronic signatures have been offered in Austria since early 2002. In 2007, A-Trust was the only company to provide such certificates.

- **Certificates for administrative signatures** using citizens' cards were considered equivalent to qualified certificates for secure electronic signatures until the end of 2007, but they did not have to fulfill all of the requirements applicable to qualified certificates for secure electronic signatures. Such certificates were offered by the Main Association of Austrian Social Security Institutions until December 31, 2007 and by mobilkom austria until October 16, 2007.

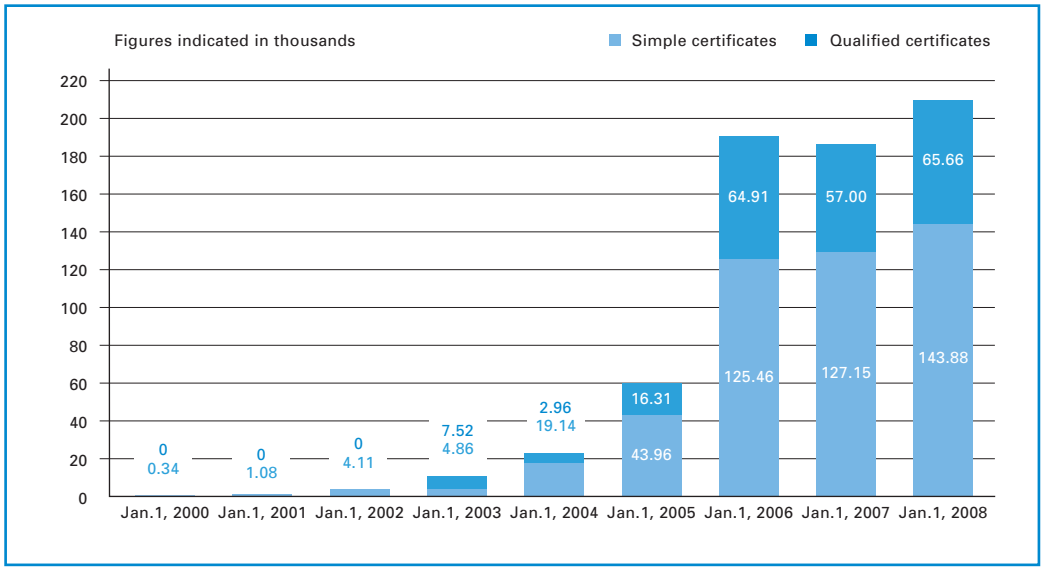
[14] Until the end of 2007, the term "secure electronic signature" was used to refer to the electronic equivalent of a handwritten signature. At the time of this publication, only a similar term – "qualified electronic signature" – was defined under Austrian law.

- **Certificates for "advanced" electronic signatures** are not necessarily qualified certificates and do not require secure signature creation devices. However, the electronic signatures must enable the identification of the signatory (among other things) and be created using devices over which the signatory can maintain exclusive control. These signatures are suitable for electronic invoicing, for example. Certification services of this type were provided by Arge Daten, A-Trust, E-Control, the City Administration of Vienna, Telekom Austria and xyzmo in 2007.

- **Certificates for simple electronic signatures:** These certificates only have to fulfill the minimum legal requirements (e.g., filing of a certification practice statement, maintenance of a revocation service and documentation by the certification service provider). An identity check is not necessary, nor is the signatory's exclusive control over the devices used for signature creation. These certification services are offered by almost all providers.

- **Timestamps** serve as certifications that specific data existed at a certain point in time. These services were provided by E-Control, XiCrypt and xyzmo in 2007. A secure timestamp service, in which the precision of time information and the signature creation device must fulfill certain legal requirements, was only provided by the Austrian Federal Office of Metrology and Surveying in 2007.

Figure 71: Number of certificates issued by Austrian providers



Source: RTR

Between 2000 and 2005, the number of certificates issued roughly tripled each year, but the market stagnated in 2006 and only saw weak growth in 2007. As of January 1, 2008, approximately 66,000 qualified certificates and 144,000 non-qualified[15] certificates existed in Austria, making for a total of around 210,000 certificates.

In addition to the certification service providers supervised by the TKK, there are also companies which offer products to support secure electronic signatures: smart cards, smart card readers and secure viewers.

The Austrian confirmation authority A-SIT had issued certifications for a total of 17 smart card types by the end of 2007. Practical applications mainly involved Philips and Infineon smart card processors using Giesecke & Devrient's STARCOS operating system (e-Card, among others), Siemens' CardOS, or Austria Card's ACOS (Maestro and MasterCard, among others).

Starting in 2005, it was no longer necessary to have smart card readers and secure viewers certified by a confirmation authority; instead, these devices only have to be indicated as "signature products used, provided and recommended" in the certification practice statements published by providers of qualified certificates. A-Trust recommends certain smart card readers made by Cherry, Kobil, Omnikey, Reiner, SCM Microsystems and Siemens.

Thus far, predominantly Austrian-developed secure viewers (i.e., programs which ensure the security of the signature creation process and in particular display the document to be signed in an inalterable form on screen) have been used in Austria, especially as several of these products support the functions of the Austria citizen's card: MBS-Sign and hot:Sign (BDC EDV Consulting GmbH) as well as trustview (IT Solution GmbH). The SecSigner product developed by SecCommerce Informationssysteme GmbH of Hamburg, Germany, is mainly used in online banking.

[15] This figure also includes those non-qualified certificates which are issued together with a qualified certificate on a smart card.

6 RTR's activities as a competence center

In accordance with Art. 9 Par. 2 KOG, RTR also performs duties as a competence center. The authority carries out these activities in accordance with the principles of economy, thrift and expedience. The annual expenses for competence center activities are limited to 10% of the total expenditures of each division (cf. Art. 9 Par. 1 KOG).

6.1 Broadcasting Division

6.1.1 Research Institute for Electronic Mass Media Law (REM)

Founded in early 2005, the Research Institute for Electronic Mass Media Law (*Forschungsinstitut für das Recht der elektronischen Massenmedien*, or REM) is dedicated to academic research on electronic mass media law at the Austrian and international levels.

The REM was established as a non-profit association within RTR. The REM Board of Directors comprises Prof. Walter Berka (University of Salzburg), Prof. Christoph Grabenwarter (Vienna University of Economics and Business Administration), Prof. Michael Holoubek (Vienna University of Economics and Business Administration), Alfred Grinschgl (RTR), Hans Peter Lehofer (Austrian Administrative Court), Michael Ogris (KommAustria) and Matthias Traimer (Austrian Federal Chancellery).

Broadcasting Forum 2007: "Broadcasting Financing Law"

Each year, the association organizes the Austrian Broadcasting Forum in order to support the exchange of ideas between academics, researchers and practitioners. In the fall of 2007, the Austrian Broadcasting Forum was entitled "Broadcasting Financing Law" and dealt with various aspects of financing for both private and public broadcasting organizations. In this context, Austrian as well as European perspectives were presented, and technological changes were discussed with regard to digitization and new financing models.

Workshop on "The Future of the Federal Constitutional Broadcasting Act"

In early 2007, the REM also organized a workshop on "The Future of the Federal Constitutional Broadcasting Act" for the first time. This series of events, which is intended to enable participants to discuss current topics in a smaller setting, will also continue in 2008.

REM publication series

In addition, the association also produces publications on the topics discussed at each year's Broadcasting Forum. The second volume of conference proceedings on "Community law and broadcasting – Revolution or adaptation?" was published in 2007. Another volume covering the subjects discussed during the third Austrian Broadcasting Forum is currently being compiled. Moreover, the REM also published "Competition regulation for Austrian broadcasting media" (Volume 3) in its publication series.

6.1.2 Scientific works commissioned by RTR

RTR publication on television station analysis

In early 2007, the first comprehensive analysis of television stations appeared in RTR's publication series. The study was commissioned by RTR and carried out by Jens Woelke of the University of Salzburg, and it contains a thorough comparison of leading German-language television stations.

The German public broadcasters ARD and ZDF as well as the stations in the RTL and ProSiebenSat.1 groups were subjected to a qualitative comparison with ORF1 and ORF2, ATV and the Swiss station SF1 and evaluated using scientific methods. The study examines the diversity of structure and content on the basis of technical production data. For the first time, it was also possible to include the television station analyses which have been carried out in Germany since 1998, thus enabling comprehensive data comparisons.

RTR publication on local television

In 2007, RTR commissioned Julia Wippersberg of Vienna University to conduct an explorative study on local television in Austria. The study was also published in the RTR publication series.

Only a handful of communication science studies of this type have been carried out on the local television stations which have emerged in Austria and other countries in recent years and are offered as local or regional cable television (and in some cases terrestrial television). This form of television broadcasting has been made possible by new technical and legal possibilities. The study presents the content of local television offerings on the basis of quality features and also discusses the use of stations and their contribution to the diversity of opinions in local and regional areas.

6.1.3 Involvement in training and education measures for broadcasters

Continuing education for Austria's private television stations

Since October 2005, *Privatsenderpraxis*, an association focusing on practical aspects in private broadcasting, has been organizing training and education programs for the employees of private radio and television broadcasters with the overarching goal of increasing the general quality – and thus also the competitiveness – of private broadcasting. RTR supports these education measures in accordance with its legal mandate defined in Art. 9 Par. 2 No. 3 KOG.

Each year, the association holds more than ten workshops which cover all relevant areas of broadcasting practice and are also open to licensed commercial broadcasters and their marketing organizations which do not belong to the association. Workshops are offered on the topics of program design, moderation, research, media law, sales, media planning, and presentation/camera presence training.

***Verband Freier Radios Österreichs* (Austrian association of free radio broadcasters) education program**

2007: 242 basic workshops

In the fall of 2005, RTR concluded its first grant agreement with the *Verband Freier Radios Österreichs* (VFRÖ) to provide training and continuing education for employees at Austria's free radio broadcasters in the year 2006. The VFRÖ organizes training and education events in Austria which focus on the needs of non-commercial broadcasters. In 2007, the VFRÖ held

approximately 242 basic workshops, specialist courses, target group workshops and editorial department simulations, with a total of 2,120 people taking part in these courses and workshops. Starting in May 2007, the association also offered special training courses for the employees of Okto TV.

6.2 Telecommunications Division

6.2.1 ICT – Information and communications technologies

In its activities as a competence center in 2007, RTR was also able to gain new insights on ICT in other countries as well as stimuli for the continuing development of Austria's ICT strategy.

Benchmarking study

Benchmarking study expanded to include Japan and Canada

As early as 2006, RTR began to conduct detailed analyses of leading ICT countries in order to generate more concrete results from the ICT Master Plan published in November 2005, and launched a publication series on "Best practices in ICT" on the countries of Denmark, Estonia, Finland, South Korea, Sweden and Switzerland. These analyses, which met with great interest from the general public and politicians, were continued in 2007 and the ICT strategies of Japan and Canada were investigated more closely in the course of the benchmarking study. For this purpose, stakeholders in the ICT field were interviewed on site about the success factors in their ICT strategies. These interviews focused on key framework conditions for the successful development of such a strategy. In addition to interviews and discussions with the institutions responsible for ICT strategies, extensive information on each country's ICT strategy was collected and analyzed.

In 2007, Austria was still in the process of raising awareness and sensitizing people to the importance of ICT, while the other countries have long since passed through these stages. Securing a top position for Austria will require a number of initiatives; examples of such measures are described in the ICT Master Plan.

Update of data basis for ICT Master Plan

Austrian ICT sector continues to grow

In 2007, the most important data for the ICT Master Plan was updated. The ICT sector has continued to grow, and its importance for the Austrian economy is increasing steadily. In 2006, revenues on the Austrian ICT market rose 2.9% to EUR 14.91 billion (source: European Information Technology Observatory 2007).

In the other indices, Austria saw slight improvements compared to other countries. For example, Austria placed seventh in the Lisbon Review Ranking (up from eighth place) and eleventh in the e-Readiness ranking (up from 14th place).

1st place for availability of e-government services

Austria recorded its greatest success in the online availability of e-government services. Through coordinated government initiatives and the systematic development of e-government services, Austria took first place ahead of Estonia and Malta. This achievement clearly shows that joint measures embedded in a master plan will enable significant improvements in the ICT sector, and that these efforts will manifest themselves in the relevant rankings (after approximately two years).

With regard to broadband infrastructure, preparations have been made for the creation of a broadband coverage map of Austria; this map will also provide information on the technologies available in each geographical area.

6.2.2 Future topics: NGNs and separation

To mark the 10th anniversary of telecoms liberalization and to address the far-reaching technological changes expected in Austria, RTR held a symposium on June 18, 2007 to launch a comprehensive discussion process on selected topics in competition regulation. Numerous comments were received from operators, interest groups and independent consultants on the discussion documents published in the wake of the symposium, specifically "Next Generation Networks – Regulation," "Next Generation Networks – Investment Incentives and Cost Accounting" and "Separation." These comments are also published on the RTR web site (http://www.rtr.at/de/komp/Symposium10y, in German). At the regulatory workshop on October 16, 2007, the results of these comments were discussed with stakeholders from the industry in order to identify focus areas for RTR's work in 2008, among other things.

6.2.2.1 NGNs – Investment incentives and cost accounting

The issue of infrastructure competition and (or versus) service competition was addressed in all comments in order to highlight different positions once again. With reference to existing alternative (mobile) infrastructure, some positions support infrastructure competition alone, while others see the topic in a more differentiated manner and advocate service competition without ruling out infrastructure competition. In this context, the participants in the discussion also question the "ladder of investment" and its validity in the past. While some demand access at all levels of the ladder of investment, others are more skeptical about the ladder and regard it as detrimental to investment.

6.2.2.2 NGNs – Regulation

Core regulatory topics identified

In the "Next Generation Networks – Regulation" field, RTR has identified four major subject areas which are examined in context extensively in the relevant discussion paper:

- Access to the "last mile";
- Interoperability;
- Interconnection; and
- Migration management.

By nature, the comments and opinions received reflect the position of each organization or person and are thus highly controversial; they primarily refer to the topics listed above.

6.2.2.3 Separation

With regard to "Separation," various comments included arguments for and against this potential new regulatory instrument:

Arguments against separation

The arguments against separation indicate that shifting infrastructure to a "separate company which is economically and organizationally independent of Telekom Austria's service operations" could bring about two possible scenarios:

(1) Without further regulation, the prices charged will exceed cost-based prices, and the company will profit. It will therefore become attractive to buyers and be bought up by foreign companies, meaning that control over telecommunications infrastructure would be shifted abroad.

(2) The company will be subjected to further price regulation or charge low prices due to "political pressure" in order to promote the "attraction of new industries and businesses." However, the infrastructure operator will only want or be able to invest very little (in NGNs, for example), meaning that government support will be necessary sooner or later; this would lead to a "re-nationalization" of the industry.

Arguments for separation

In contrast, the arguments for separation state that it would strengthen competition and be "extremely efficient" in eliminating the existing obstacles to competition in the last mile, meaning that retail customers would profit from highly competitive markets and Austrian economic growth would be secured by state-of-the-art communications systems in the future. In the case of structural separation, another advantage would be that the (currently undisclosed) payments between different parts of the formerly integrated company would be visible on the balance sheets, thus increasing transparency on the market. These arguments maintain that a negative impact on investment incentives would be unlikely. At the regulatory workshop on October 16, 2007, the close link between the topics of separation, next generation networks and next generation access were addressed specifically in the course of the discussion.

6.2.2.4 Follow-up activities

Regulatory workshop with industry professionals

In the course of the regulatory workshop on October 16, 2007, the discussion participants emphasized that information on Telekom Austria's expansion plans is indispensable to alternative providers and would have to be discussed with specific regard to current and future wholesale products. On the other hand, the question of the extent to which the alternative operators themselves also planned to invest in new infrastructure was also raised. In addition, workshop participants also pointed out the close intertwinement and mutual influences of fixed-link and mobile services (as well as regulation in this area), a phenomenon which will deserve more attention in the future. Specifically, participants expressed the desire to address fixed-link and mobile issues on a broader basis by holding discussions on mobile communications topics with fixed-link operators and vice versa. Finally, the suggestion was made to discuss the topics of NGNs and NGA not only from a technological or regulatory perspective, but also to focus more on the benefits of migrating to NGNs/NGA. On the future topic of separation, the close connection between this issue and the development of NGA and NGNs was also pointed out.

NGA/NGN work program 2008

Discussions with sector representatives

RTR has acted on the input from comments on the discussion documents and from the regulatory workshop, especially in compiling its working agenda for the year 2008. In line with international discussions, the regulatory authority will continue to address the topics of "next generation access" and "next generation core" and will even intensify its efforts in these areas by addressing three key focus areas.

First, RTR will promote its discussions with the sector even further by organizing events on selected topics related to NGA and NGNs (first focus area). To this end, RTR organized an event on January 31, 2008 which dealt with the regulatory implications of the migration to NGA on the basis of the ERG's Opinion on Regulatory Principles of NGA and the "Future Broadband" consultation document published by the UK regulatory authority Ofcom. Additional events of this kind are planned for the year 2008.

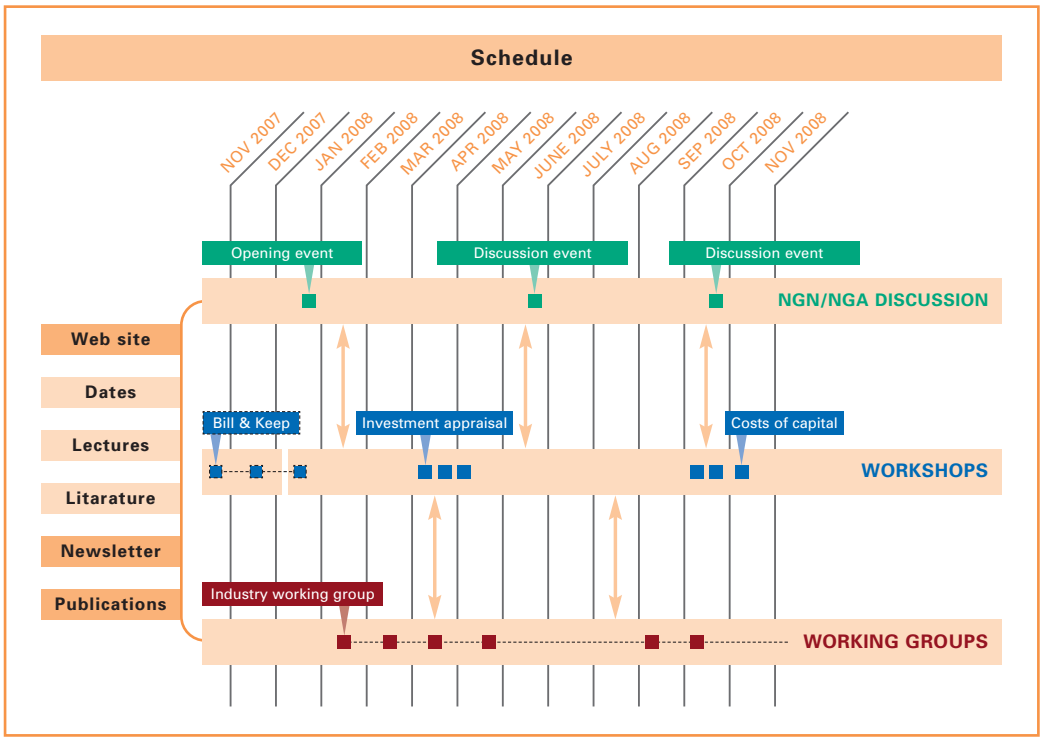
Industry working group

The second focus area will be the implementation of an industry working group to deal with topics related to NGA (and later also NGNs). This working group will serve as a platform for expert-level discourse on the topic. Meetings held roughly on a monthly basis will help clarify positions and encourage transparency on both sides with regard to NGA and NGN migration plans. In the fall of 2008, a regulatory workshop will be held in order to present the interim results attained by the working group and to define future steps and focus areas.

Lecture series

RTR also recognizes the significance of the ongoing discussion regarding investment risk and costs of capital in connection with the migration to new networks and services, and activities will also focus on these topics in 2008. Lecture series (with discussion forums) on the topics of investment appraisal (Q2 2008) and costs of capital (Q4 2008) will thus form the third focus area, which will primarily concern specialists interested in these topics. Additional information can be found on the RTR web site at http://www.rtr.at/de/tk/Schwerpunkte2008 (in German).

Figure 72: **Focus areas of the NGA/NGN work program 2008**



Source: RTR

6.3 The Review

On November 13, 2007, the European Commission presented the following documents on the new legal framework (review):

1. The Communication from the European Commission, COM(2007) 696, which contains the Report on the outcome of the Review of the EU regulatory framework for electronic communications networks and services in accordance with Directive 2002/21/EC as well as the Summary of the 2007 Reform Proposals;

2. The proposed Directive COM(2007) 697, which contains amendments to the Framework Directive, Access Directive and Authorisation Directive and the repeal of Regulation (EC) No. 2887/2000 ("Unbundling Regulation");

3. The proposed Directive COM(2007) 698, which contains amendments to the Universal Service Directive and the Directive on Privacy and Electronic Communications, and supplements Regulation (EC) No. 2006/2004 ("Regulation on consumer protection cooperation");

4. The proposed Regulation COM(2007) 699 on the establishment of the European Electronic Communications Market Authority (EECMA);

5. The communication document COM(2007) 700 on reaping the full benefits of the digital dividend in Europe, which contains a common approach to the use of the spectrum released by the digital switchover; and

6. The impact assessment and a summary of the assessment, SEC(2007) 1472 & 1473.

The European Commission defines the focuses of the review as follows:

1. Better regulation
   - Deregulation through a reduction in the number of relevant markets from 18 to 7;
   - Simplification of market review procedures;
   - Functional separation as a regulatory remedy.

2. Spectrum management in Europe
   - Simplification of access to spectrum (service and technology neutrality);
   - Removal of unnecessary restrictions on spectrum use.

3. Single Market
   - Establishment of the EECMA;
   - Veto power for the European Commission regarding the use of regulatory remedies.

4. Strengthening users' rights and consumer protection

5. Enhanced privacy and security

The texts of the actual directives will be drawn up in the Council working groups in the course of the year 2008, with the goal of reaching a common position by the end of the year.

6.4 Convergence

In its activities as a competence center, RTR continued its work in the field of convergence of broadcasting and telecommunications, completing the first stage of these efforts in 2007. Ongoing international monitoring shows a relatively clear trend in which more and more communications platforms – especially the Internet, but also mobile handsets and game consoles (which are developing into Internet access terminals) – are taking up an increasing share of people's time and audiovisual consumption. Younger age groups (under 30) are especially active in the new media field, which also tends to make them more difficult to reach by way of conventional television.

One of the most sensitive topics in connection with convergence is that of the "digital dividend." This discussion has arisen from the ongoing switchover from analog to digital television broadcasting throughout Europe (and in other parts of the world). In terms of frequency usage, digital transmission is generally more efficient by a factor of 3 to 5, meaning that three to five channels can be transmitted digitally in the frequency bandwidth (8 MHz) necessary for

a single analog television channel. In Austria, the bandwidth of a single analog channel is used to transmit three digital channels in order to prevent interference in transmissions and to support special uses of digital broadcasting (e.g., multitext MHP). In the current international discussion, the digital dividend refers to the additional frequencies made available by the digital broadcasting of content previously transmitted by analog means. The digital dividend thus refers to the "rewards" generated by the switchover from analog to digital broadcasting. The conventional broadcasting range is mainly considered valuable not only for broadcasting but also for bidirectional (and possibly also mobile) applications because the frequencies in this range demonstrate excellent propagation characteristics and at the same time the size of antennas on terminal devices can remain fairly small. The future use of this frequency range is therefore a subject of intense discussion, also at the international level.

At the end of the year under review, key decisions were discussed at the World Radio Conference (WRC), which takes place every four years. However, very different arrangements have been made in different regions. While the US has decided that it will no longer reserve parts of the broadcasting frequency range for broadcasting services and plans to make spectrum available for two-way communications (e.g. broadband Internet) immediately, such measures were only discussed for a small part of this frequency range in Europe and would only be considered equivalent to broadcasting usage in several years' time (2015). Ultimately, this issue is rooted in the political question of how this valuable asset can be best used in a nation's interest. In this context, it is difficult to define suitable benchmarks for "measurement" or "evaluation," as it is necessary to consider values such as the diversity of opinions and freedom of speech – which are important in the socio-political context but hardly measurable in monetary terms – and at the same time to consider the significant monetary benefits in cases where these frequencies are used for commercial purposes (frequency auctions).

In 2008, RTR will continue this work – including its monitoring of international developments – and more closely examine a number of focus areas which are yet to be specified definitively.

6.5 Public relations and service

The material work of KommAustria, the TKK and RTR, as well as the organization's activities as a competence center are a field of great interest to the public. In order to ensure transparency on a broad basis and to meet the public's information requirements, the regulatory authority undertook numerous public activities in the reporting period.

Web presence

http://www.rtr.at: barrier-free since October 2007

The regulatory authority's most important tool for communication with the outside world is its web site, which currently comprises more than 15,000 pages. RTR provides a comprehensive description of the regulatory authorities' activities as well as the development of markets in the fields of broadcasting, telecommunications, electronic signatures, grant funds and collecting societies at http://www.rtr.at. Ongoing in-house maintenance of the web site ensures that the content is kept up to date. In addition, numerous e-government services are offered for consumers as well as market participants.

As the Austrian E-Government Act (E-GovG) requires the web sites of public authorities to be barrier-free for people with disabilities as of January 1, 2008, the RTR web site was relaunched in 2007. In addition to accounting for the rules of barrier-free Web design, the site's content was structured more clearly in various areas and many functions were improved. The new Web site was launched in October 2007.

Publications

RTR's frequent publications are also a major component of the authority's public relations work. RTR's annual publications include the Communications Report as well as the activities reports of RTR's conciliation body, the Austrian Digitization Fund and the Austrian Television Fund. These publications fulfill legal reporting obligations and provide comprehensive documentation on RTR's material and regulatory activities.

RTR publication series: Four studies published

In addition, four volumes of RTR's publication series were produced in the year under review: two on topics related to broadcasting and two related to telecommunications. The authors of these publications include both in-house and external experts.

Table 17: Titles in RTR's publication series in 2007

Volume 1/2007	TV station analysis: "Television Stations in Austria 2006" (study conducted by Jens Woelke)
Volume 2/2007	10 years of telecoms liberalization in Austria (study conducted by Jörn Kruse)
Volume 3/2007	Information and communications technologies (ICT) in everyday life: Effects on individuals and society
Volume 4/2007	Local television in Austria (study conducted by Julia Wippersberg)

Source: RTR

RTR's broadcasting and telecommunications newsletters (*RTR Aktuell*) provide timely information on regulatory and international topics of interest on a monthly basis. RTR's Telecom Monitor, which has been published on a quarterly basis since November 2006, discusses developments on the telecommunications market and presents data on the fixed-link, mobile, leased line and broadband market clusters.

Events

The regulatory authority maintains a dialog with market participants and conveys relevant topics to a broader audience at the national and international level through the presentation activities of RTR's managing directors and selected employees, and by organizing numerous specialist conferences and discussion forums.

In the Broadcasting Division, highlights from the year 2007 included the events "Media Promotion – Models and Perspectives for Austria" and "The Future of Television Production in Austria."

To mark the 10-year anniversary of its establishment, RTR held the symposium "The Future after 10 Years of Telecom Liberalization," a retrospective of ten years of liberalization on the telecommunications markets in Austria and an outlook on future regulatory issues. The 8th Telecommunications Forum in Salzburg was devoted to regulatory challenges in the field of electronic communications.

Management of inquiries

Numerous telephone and written inquiries

RTR handles a large number of inquiries by telephone and in writing every day. In 2007, a total of 3,762 written inquiries were submitted to the e-mail address rtr@rtr.at. For the most part, these inquiries are answered individually, and the average processing time is two working days.

Table 18: Inquiries received and answered at the address rtr@rtr.at, 2005 to 2007

Year	2005	2006	2007
Number of inquiries	3,585	3,890	3,762

Source: RTR

In terms of content, the inquiries cover the entire scope of RTR's activities, with the bulk of inquiries (55%) involving end-consumer concerns. In addition to answering written inquiries, RTR's experts frequently provided advice by telephone.

Call center: Slight increase in call volume

In order to enhance the level of service provided for telephone inquiries, the RTR call center continued to provide initial advising for end-consumers. Information on DVB-T was provided by the 0810 511 711 hotline (subject to a charge). The 0810 511 811 hotline handled calls on topics such as objections to telephone bills, conciliation procedures and telephone number administration.

A total of 7,431 calls were handled in 2007. The slight increase in this number correlates with the stagnation in the number of written inquiries sent to the general address rtr@rtr.at.

Table 19: Number of inquiries handled at the RTR call center, 2005 to 2007

Year	2005	2006	2007
Calls	10,138	7,160	7,431

Source: RTR

33 press releases

Media relations

In order to provide the public with timely information on complex regulatory issues and decisions, RTR prepared 33 press releases and carried out seven press conferences with the media in 2007, in addition to numerous press inquiries and individual interviews with media representatives.

7. The company

7.1 Staff structure and development

RTR's personnel structure in 2007 was characterized by high employee turnover (16%) as well as numerous leaves of absence and maternity leaves.

Head count remains constant

As of December 31, 2007, RTR's staff comprised 94.4 full-time equivalents (FTEs), exactly the same number as one year earlier.

The allocation of FTEs to the individual divisions of the company largely remained the same. The changes which arose in the course of the business year can be attributed to shifts due to leaves of absence and maternity leaves.

In order to enable the allocation of individual work efforts to each relevant area, RTR employees enter their activities in a timesheet software system as well as a project-based work tracking system tailored to RTR's specific needs. This ensures that work activities can be delineated precisely in cost accounting.

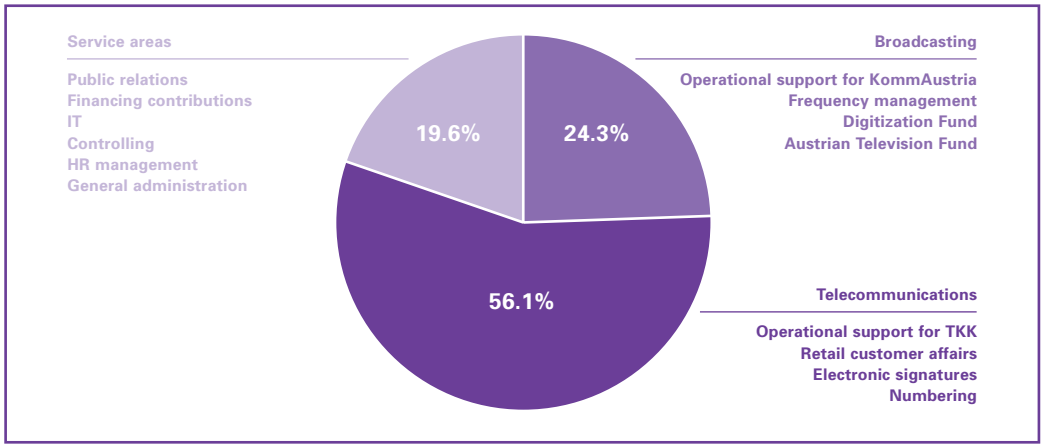
In order to ensure the efficient use of personnel resources, RTR's employees perform tasks in various areas of the company. Personnel resources in the service departments which can not be allocated directly to specific units are assigned as overhead to RTR's cost units according to their share of RTR's head count.

Allocation according to the "causer pays" principle

Services are also exchanged between RTR's divisions (e.g., the Broadcasting Division purchases the support services of economists from the Telecommunications Division); these services are charged at RTR's current hourly rates in internal accounting.

These measures ensure that RTR's personnel resources are used efficiently across the various areas of the company.

Figure 73: RTR's personnel structure in 2007



Source: RTR; as of December 31, 2007

7.2 RTR's financial statements for 2007

These financial statements were prepared in accordance with the Austrian Commercial Code (UGB) in its current version.

The external auditors at Leitner + Leitner have issued an unqualified audit certificate for RTR's financial statements for the 2007 business year (January 1, 2007 to December 31, 2007).

RTR's income statement and balance sheet from the 2006 financial statements are presented below.

The company's revenues consist of financing contributions from broadcasters located in Austria (Art. 10a Par. 2 KOG) and from the operators/providers of public communications networks and services (Art. 10 Par. 2 KOG), allocations from Austria's federal budget (Art. 10 Par. 1, Art. 10a Par. 1, Art. 9b Par. 9 and Art. 9f Par. 3 KOG), income from fees collected (Art. 13 Par. 4 SigG), and payments from the federal government for the activities of the supervisory authority for collecting societies (Art. 28 VerwGesRÄG). The latter revenues are raised by means of financing contributions which the supervisory authority receives from collecting societies (Art. 7 Par. 5 VerwGesG).

The company closed the business year (January 1, 2007 to December 31, 2007) with a deficit of EUR 1,719,376.66, which reflects a loss in the amount of 1,750,000.00 resulting from duties under the Telecommunications Act 2003 (TKG 2003) and a profit in the amount of EUR 30,623.34 arising from duties assigned to the company under the Signatures Act (SigG). The deficit arose from the need for a balance-sheet provision for an ongoing procedure initiated by a telecommunications operator which has filed suit with the Austrian Constitutional for the financing contributions paid in recent years due to alleged unconstitutionality.

Aside from this required provision (Item 5a) on the company's income statement, RTR's expenses have remained balanced compared to previous years.

Table 20: Income statement for the 2007 business year (January 1 to December 31, 2007)

		2007		2006	
		EUR		EUR ´000	
1.	Net revenues		10,704,257.37		9,964
2.	Other operating income				
	a) Income from the reversal of accruals	19,323.86		40	
	b) Other	94,314.09	113,637.95	81	121
3.	Personnel expenses				
	a) Salaries	-5,291,585.91		-5,146	
	b) Severance payment expenses	-415,331.66		-99	
	c) Cost of statutory social insurance contributions as well as remuneration-dependent charges and mandatory contributions	-1,305,389.73		-1,277	
	d) Pension insurance expenses	-162,890.55		-163	
	e) Voluntary benefit expenses	-95,395.59	-7,270,593.44	-101	-6,786
4.	Depreciation of tangible and intangible fixed assets		-212,237.67		-243
5.	Other operating expenses				
	a) Allocation to provision for anticipated losses	-1,750,000.00			
	b) Other	-3,491,091.92	-5,241,091.92		-3,220
6.	**Subtotal of Lines 1 to 5**		**-1,906,027.71**		**-164**
7.	Income from other securities held as investment assets		94,493.39		83
8.	Miscellaneous interest and similar income		138,081.26		89
9.	Expenses from financial assets				-11
	a) Depreciation of investment assets	-45,921.90	-45,921.90		
10.	Interest and similar expenses		-1.70		0
11.	**Sub-total of items 7 to 10**		**186,651.05**		**161**
12.	**Result from ordinary activities**				
	Net annual profit/loss		**-1,719,376.66**		**-3**
13.	Reversal of capital reserve		0.00		3
14.	**Accumulated loss**		**-1,719,376.66**		**0**

Table 21a: Balance sheet as of December 31, 2007 – Assets

Assets

		Dec. 31, 2007		Dec. 31, 2006	
		EUR		EUR ´000	
A.	**Fixed assets**				
I.	Intangible assets				
	1. Industrial property rights and similar rights	186,347.74		102	
	2. Prepayments and construction in progress	46,704.00	233,051.74	0	102
II.	Property, plant and equipment				
	1. Fixtures in rented buildings	24,048.45		53	
	2. Other fixed assets, furniture, fixtures and fittings	118,140.62		132	
	3. Prepayments and construction in progress	12,238.00	154,427.07	0	185
III.	Financial assets				
	1. Securities held as investment assets		3,288,843.56		2,830
			3,676,322.37		**3,117**
B.	**Current assets**				
I.	Receivables and miscellaneous assets				
	1. Trade accounts receivable	325,402.62		1,215	
	2. Other receivables and assets	179,365.43	504,768.05	26	1,241
II.	Cash on hand and at banks		4,069,294.61		3,300
			4,574,062.66		**4,541**
C.	**Prepaid expenses and deferred charges**		**58,660.42**		**43**
D.	**Trustee accounts / funds**		11,849,417.49		**11,534**
			20,158,462.94		**19,235**

Table 21b: Balance sheet as of December 31, 2007 – Liabilities

Liabilities

		Dec. 31, 2007		Dec. 31, 2006	
		EUR		EUR ´000	
A.	**Equity**				
I.	Capital stock	3,633,641.71		3,634	
II.	Appropriated capital	140,392.34		140	
III.	Accumulated profit/loss	-1,719,376.66	**2,054,657.39**	0	**3,774**
B.	**Provisions**				
	1. Provisions for severance payments	920,900.00		516	
	2. Other provisions	2,941,035.00	**3,861,935.00**	1,063	**1,579**
C.	**Liabilities**				
	1. Trade accounts payable	369,163.37		364	
	2. Other accounts payable	1,628,162.09	**1,997,325.46**	1,883	**2,247**
	(taxes payable: EUR 295,339.29 [2006: EUR 307,000]; Social security obligations: EUR 121,299.50 [2006: EUR 115,000]				
D.	**Prepaid expenses and deferred charges**		**0.00**		**9**
E.	**Trustee obligations / funds**		**12,244,545.09**		**11,626**
			20,158,462.94		**19,235**

Sector-specific expenses in the Broadcasting and Telecommunications Divisions

RTR's financial statements do not contain a breakdown of resource allocations by sector. For this reason, Table 22 below gives a breakdown of the main items in RTR's income statement for the Telecommunications (TC) and Broadcasting (BC) Divisions in order to ensure the transparency of sector-specific expenses. In the business year 2007, income and expenses were distributed as follows:

Table 22: RTR income statement by division

Amounts indicated in EUR (thousands)	BC	TC	Total
Net revenues	3,737	6,967	10,704
Other operating revenues	48	66	114
Personnel expenses	-2,242	-5,028	-7,270
Depreciation	-85	-127	-212
Other operating expenses	-1,523	-3,718	-5,241
Operating result	**-65**	**-1,840**	**-1,905**
Financial result	65	121	186
Result from ordinary activities	**0**	**-1,719**	**-1,719**
Accumulated profit/loss	**0**	**-1,719**	**-1,719**

Source: RTR

7.3 Notes on the structure of RTR financing

As of January 1, 2005, the amendment to the KommAustria Act (KOG) introduced new regulations governing the financing of both divisions of the regulatory authority.

The Broadcasting Division is allocated funds from the federal budget in the amount of EUR 750,000 per year (to be adjusted from 2007 onward), and the parties subject to the financing contribution requirement under the KommAustria Act (KOG) contribute a maximum of EUR 2.25 million (to be adjusted from 2007 onward).

The Telecommunications Division is allocated federal funds amounting to EUR 2 million per year (to be adjusted from 2007 onward), and the parties subject to the financing contribution requirement under the KommAustria Act (KOG) pay a maximum of EUR 6 million (to be adjusted from 2007 onward).

In an amendment to the KommAustria Act (KOG), the Austrian Digitization Fund and the Austrian Television Film Fund were established at RTR at the beginning of 2004; both are to be administered by the managing director of RTR's Broadcasting Division. In 2007, the Digitization Fund received an endowment of EUR 6.738 million (due to the adjustment of the federal government contribution to the Broadcasting Division), and the Television Fund was endowed with EUR 7.5 million. The Digitization Fund and Television Fund are financed using revenues from fees under Art. 3 Par. 1 of the Broadcasting Fees Act (RGG). These amounts are transferred in two equal installments as of January 30th and June 30th each year.

The legal basis for the funds is established in Articles 9a to 9g of the KommAustria Act (KOG). These legal provisions describe the purposes of grants and the means by which the funds are raised, as well as specific uses for the funds and guidelines for grant awards.

The expenses incurred in the administration of these funds are delineated by means of cost accounting and covered by the respective fund. By March 30th of each year, RTR is required to submit an annual report on the use of the funds to the Federal Minister for Women, Media and Civil Service, who must then present the report to the Austrian National Council.

When the Amendment to the Collecting Societies Act 2006 (VerwGesRÄG 2006) went into effect on July 1, 2006, KommAustria was assigned the function of supervisory authority for collecting societies under Art. 28 Par. 1 VerwGesRÄG. Pursuant to Art. 28 Par. 2 VerwGesRÄG, the Broadcasting Division at RTR is responsible for providing KommAustria with the necessary office space, including infrastructure, in exchange for reimbursement. In order to compensate the authority for performing these duties, the federal government makes an annual reimbursement contribution in the amount of EUR 100,000.00 plus value-added tax. For additional costs incurred by KommAustria in connection with its activities as the supervisory authority for collecting societies, the federal government provides a budget in the amount of EUR 20,000.00 plus value-added tax (for information on how the funds are raised, see Art. 7 Par. 5 VerwGesG).

The resources in the funds established within RTR developed as follows in the year 2007:

Table 23: Austrian Television Fund: Excerpt from 2007 financial statements

	EUR	EUR
Balance in trustee account as of December 31, 2006		2,187,827.95
Income		
Increase from credits in 2007	7,500,000.00	
Surplus from administrative expenses from 2006	104,367.10	
Interest	204,228.54	7,808,595.64
Payments		
Administrative expenses from 2007	-715,000.00	
Grant payments from 2004	-8,013.00	
Grant payments from 2005	-166,802.57	
Grant payments from 2006	-1,357,589.16	
Grant payments from 2007	-4,062,417.10	-6,309,821.83
Balance of initial funds, debits and credits in 2007 **= Balance in trustee account as of December 31, 2007**		**3,686,601.76**
Unpaid administrative expenses from 2007 to be paid out in 2008		161,725.69
= Balance of trustee obligations as of December 31, 2007		**3,848,317.45**
Grants approved but not yet paid out		-3,506,475.50
Funds available in 2008		341,841.95

Source: RTR

Table 24: Austrian Digitization Fund: Excerpt from 2007 financial statements

	EUR	EUR
Balance in trustee account as of December 31, 2006		9,345,880.78
Income		
Increase from credits in 2007	6,738,750.00	
Interest	376,037.18	7,114,787.18
Payments		
Administrative expenses from 2006	-12,184.18	
Administrative expenses and RTR's participation in projects in 2007	-1,250,000.00	
Grant payments from 2005	-1,595,199.41	
Grant payments from 2006	-3,563,874.16	
Device subsidies paid out in 2007	-1,876,594.48	-8,297,852.23
Balance of initial funds, debits and credits in 2007 **= Balance in trustee account as of December 31, 2007**		**8,162,815.73**
Unpaid administrative expenses to be paid out in 2008 and RTR's participation in projects in 2007		233,411.91
= Balance of trustee obligations as of December 31, 2007		**8,396,227.64**
Grants approved but not yet paid out		-4,301,928.98
Funds available in 2008		4,094,289.66

Source: RTR

For its activities under the Austrian Signatures Act (SigG), RTR charges fees to market participants. However, those fees do not cover the full costs of the authority's activities. The cost overrun is offset by an annual grant from the federal budget.

In the period from January 1, 2007 to December 31, 2007, RTR incurred total costs in the amount of EUR 223,816.00 in performing its duties pursuant to the Signatures Act. On the other side, revenues amounted to EUR 254,439.34 (including the grant from the federal budget). The profit in the amount of EUR 30,623.34 will be used in the year 2008.

As a result, the company's equity as of December 31, 2007 was as follows:

Table 25: Equity as of December 31, 2007

	EUR	EUR
Share capital as of December 31, 2007		3,633,641.71
Profit from the fulfillment of duties under the SigG, January 1 – December 31, 2007	30,623.34	
Loss incurred in the fulfillment of duties under the KOG, January 1 – December 31, 2007	-1,750,000.00	
Result from ordinary activities	-1,719,376.66	
Accumulated loss		-1,719,376.66
Capital reserve as of December 31, 2007		140,392.34
Equity as of December 31, 2007		**2,054,657.39**

Source: RTR

7.4 RTR Supervisory Board

As of December 2007, the RTR Supervisory Board consisted of the following members:

Josef Halbmayr (Member of the Management Board, ÖBB Personenverkehr AG), Chairman of the Supervisory Board

Franz Semmernegg (Member of the Management Board, Kapsch AG), Deputy Chairman of the Supervisory Board

Matthias Traimer (Head of Department V/4, Constitutional Service at the Federal Chancellery),

Johannes Strohmayer (Managing Director, European Capital Partners),

Brigitte Hohenecker (Member of the Works Council, RTR)

Martin Ulbing (Member of the Works Council, RTR)


8. Appendix

8.1 Tables and figures

Tables

Figures

8.2 Abbreviations

2G	2nd generation
3G	3rd generation

A

ABGB	General Civil Code (*Allgemeines Bürgerliches Gesetzbuch*)
ADR	Alternative Dispute Resolution
ADSL	Asymmetric Digital Subscriber Line
ANO	Alternative network operator
ATM	Asynchronous Transfer Mode
AVG	General Administrative Procedures Act (*Allgemeines Verwaltungsverfahrensgesetz*)

B

BKA	Federal Chancellery (*Bundeskanzleramt*)
BKS	Federal Communications Senate (*Bundeskommunikationssenat*)
BMVIT	Federal Ministry of Transport, Innovation and Technology (*Bundesministerium für Verkehr, Innovation und Technologie*)
B-VG	Federal Constitutional Act (*Bundes-Verfassungsgesetz*)

C

CATV	Cable television
CbC	Call-by-call
CEPT	European Conference of Postal and Telecommunications Administrations (*Conférence Européenne des Administrations des Postes et des Télécommunications*)
CoCom	Communications Committee
CPS	Carrier pre-selection

D

DSL	Digital Subscriber Line
DVB-C	Digital Video Broadcasting – Cable
DVB-H	Digital Video Broadcasting – Handheld
DVB-S	Digital Video Broadcasting – Satellite
DVB-T	Digital Video Broadcasting – Terrestrial

E

EC	European Commission
ECC	Electronic Communications Committee
ECG	E-Commerce Act (*E-Commerce-Gesetz*)
ECJ	European Court of Justice
ECS	Electronic Communication Service
EEA	European Economic Area (EU countries plus Iceland, Liechtenstein and Norway)
EECMA	European Electronic Communications Market Authority
E-GovG	E-Government Act (*E-Government-Gesetz*)
ENUM	Electronic Number Mapping
ERG	European Regulators Group

ETSI	European Telecommunication Standardisation Institute
EUR	Euro

F

FESA	Forum of European Supervisory Authorities for Electronic Signatures
FL-LRAIC	Forward Looking-Long Run Average Incremental Costs
FTE	Full-Time Equivalent
FTTH	Fiber to the Home
FWA	Fixed Wireless Access

G

GHz	Gigahertz
GSM	Global System for Mobile Communication

H

HDTV	High Definition Television
HFC	Hybrid Fiber Coax
HHI	Hirschman-Herfindahl Index
HSDPA	High Speed Downlink Packet Access

I

IC	Interconnection
ICT	Information and communications technologies
IMT	International Mobile Telecommunications
IP	Internet Protocol
IP	Internet Protocol
IP-TV	Internet Protocol Television
IRG	Independent Regulators Group
ISDN	Integrated Services Digital Network
ISP	Internet service provider
ISPA	Internet Service Providers Austria
ITU	International Telecommunication Union

K

KartG 2005	Cartels Act 2005 (*Kartellgesetz 2005*)
kbit/s	Kilobits per second
KEM-V	Communications Parameters, Fees and Value-Added Services Ordinance (*Kommunikationsparameter-, Entgelt- und Mehrwertdiensteverordnung*)
KEV	Communications Survey Ordinance (*Kommunikations-Erhebungs-Verordnung*)
KOA	KommAustria
KOG	KommAustria Act (*KommAustria-Gesetz*)
KommAustria	Austrian Communications Authority

L

LRAIC	Long-Run Average Incremental Cost

M

Mbit/s	Megabits per second
MDF	Main distribution frame
MHP	Multimedia Home Platform
MHz	Megahertz
MMS	Multimedia Messaging Service
MNO	Mobile network operator
MNP	Mobile number portability
MT	Mobile terminated
MUX	Multiplexer
MVNO	Mobile virtual network operator

N

NGA	Next Generation Access
NGN	Next Generation Network

O

ÖAK	Austrian Circulation Survey (*Österreichische Auflagenkontrolle*)
OECD	Organization for Economic Cooperation and Development
OGH	Austrian Supreme Court (*Oberster Gerichtshof*)
ORF	Austrian Broadcasting Corporation (*Österreichischer Rundfunk*)
ORF-G	ORF Act (*ORF-Gesetz*)

P

Par.	Paragraph
PATS	Publicly available telephone service
PDH	Plesio-synchronous digital hierarchy
PLC	Power line communication
PN	Private network
POTS	Plain old telephone service
PresseFG 2004	Press Subsidies Act 2004 (*Presseförderungsgesetz 2004*)
PrR-G	Private Radio Act (*Privatradiogesetz*)
PrTV-G	Private Television Act (*Privatfernsehgesetz*)
PSTN	Public switched telephone network
PubFG	Journalism Subsidies Act 1984 (*Publizistikförderungsgesetz 1984*)

R

REM	Research Institute for Electronic Mass Media Law (*Forschungsinstitut für das Recht der elektronischen Massenmedien*)
RFMVO 2004	Broadcasting Market Definition Ordinance 2004 (*Rundfunkmarktdefinitionsverordnung 2004*)
RGG	Broadcasting Fees Act (*Rundfunkgebührengesetz*)
RRC	Regional Radio Conference
RTR	Austrian Regulatory Authority for Broadcasting and Telecommunications (*Rundfunk und Telekom Regulierungs-GmbH*)

S

SDH	Synchronous digital hierarchy
SDSL	Symmetric Digital Subscriber Line

SigG	Signatures Act (*Signaturgesetz*)
SigV	Signatures Ordinance (*Signaturverordnung*)
SIM	Subscriber Identity Module
SMP	Significant market power
SMS	Short Message Service

T

T-DAB	Terrestrial Digital Audio Broadcasting
TKG (1997)	Telecommunications Act 1997 (*Telekommunikationsgesetz 1997*)
TKG 2003	Telecommunications Act 2003 (*Telekommunikationsgesetz 2003*)
TKK	Telekom-Control Commission
TKMVO 2003	Telecommunications Markets Ordinance 2003 (*Telekommunikationsmärkte-Verordnung 2003*)

U

UDV	Universal Service Ordinance (*Universaldienstverordnung*)
UGB	Austrian Commercial Code (*Unternehmensgesetzbuch*)
UHF	Ultra High Frequency
UMTS	Universal Mobile Telecommunication System
UVS	Independent Administrative Board (*Unabhängiger Verwaltungssenat*)

V

VerwGesG 2006	Collecting Societies Act 2006 (*Verwertungsgesellschaftengesetz 2006*)
VerwGesRÄG	Amendment to the Collecting Societies Act (*Verwertungsgesellschaftenänderungsgesetz*)
VfGH	Austrian Constitutional Court (*Verfassungsgerichtshof*)
VHF	Very High Frequency
VoB	Voice over Broadband
VoDSL	Voice over DSL
VoI	Voice over Internet
VoIP	Voice over Internet Protocol
VwGH	Austrian Administrative Court (*Verwaltungsgerichtshof*)

W

WARC	World Administrative Radio Conference
WiMAX	Worldwide Interoperability for Microwave Access
W-LAN	Wireless Local Area Network
WLL	Wireless local loop
WRC	World Radio Conference

X

xDSL	x Digital Subscriber Line

Z

ZIV	Access Control Systems and Interoperability Ordinance (*Zugangsberechtigungssysteme- und Interoperabilitätsverordnung*)
ZuKG	Access Control Act (*Zugangskontrollgesetz*)
ZVO	Interconnection Ordinance (*Zusammenschaltungsverordnung*)

8.3 Selection of relevant legal sources (as of December 31, 2007)

8.3.1 EU legislation

Access Directive	Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (OJ L 108 of 24 April 2002, p. 7).
Authorisation Directive	Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (OJ L 108 of 24 April 2002, p. 21).
Competition Directive	Commission Directive 2002/77/EC of 16 September 2002 on competition on the markets for electronic communications networks and services (OJ L 249 of 17 September 2002, p. 21).
Directive on Privacy and Electronic Communications	Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (OJ L 201, 31 July 2002, p. 37, as last amended by Directive 2006/24/EC).
EU Roaming Regulation	Regulation (EC) 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile telephone networks within the Community (OJ L171 of 29 June 2007).
Framework Directive	Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (OJ L 108 of 24 April 2002, p. 33).
Regulation on Consumer Protection Cooperation	Regulation (EC) No. 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (OJ L 364 of 9 December 2004, p. 1).
Signatures Directive	Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures (OJ L 13 of 19 January 2000, p. 12).
Television Directive	Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television

	broadcasting activities (OJ L 331 of 16 November 1989, p. 1, as last amended by Directive 97/36/EC, OJ L 202 of 30 July 1997, p. 60).
Universal Service Directive	Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (OJ L 108 of 24 April 2002, p. 51).

8.3.2 Austrian legislation

8.3.2.1 Laws

Access Control Act (ZuKG)	*(Zugangskontrollgesetz)* Federal Act on the Protection of Services Subject to Access Control, Federal Law Gazette No. 60/2000 as last amended by Federal Law Gazette I No. 32/2001
Administrative Penalties Act (VStG)	*(Verwaltungsstrafgesetz)* Administrative Penalties Act, Federal Law Gazette No. 52/1991 as last amended by Federal Law Gazette I No. 117/2002
Broadcasting Fees Act (RGG)	*(Rundfunkgebührengesetz)* Federal act enacting a law on broadcasting fees and amending the Telephone Rates Act, the Broadcasting Ordinance, the Telecommunications Act, the Broadcasting Act, and the Act on Contributions to the Promotion of the Arts, Federal Law Gazette I No. 159/1999 as last amended by Federal Law Gazette I No. 71/2003
Cartel Act 2005 (KartG 2005)	*(Kartellgesetz 2005)* Federal Act on Cartels and Other Restrictions on Competition, Federal Law Gazette I No. 61/2005
Collecting Societies Act 2006 (VerwGesG 2006)	*(Verwertungsgesellschaftengesetz 2006)* Federal Act on Collecting Societies, Federal Law Gazette I No. 9/2006 as last amended by Federal Law Gazette I No. 82/2006
Competition Act	*(Wettbewerbsgesetz)* Federal Act on the Establishment of a Federal Competition Authority, Federal Law Gazette No. 62/2002 as last amended by Federal Law Gazette I No. 62/2005 and Federal Law Gazette I No. 106/2006
Consumer Protection Act (KSchG)	*(Konsumentenschutzgesetz)* Federal Act Enacting Provisions for the Protection of Consumers, Federal Law Gazette 140/1979 as last amended by Federal Law Gazette I No. 60/2007

Cooperation of Consumer Protection Authorities Act (VBKG)	*(Verbraucherbehörden Kooperationsgesetz)* Federal Act on the Cooperation of Authorities in Consumer Protection, Federal Law Gazette I No. 148/2006
E-Commerce Act (ECG)	*(E-Commerce-Gesetz)* Federal Act on the Regulation of Specific Legal Aspects of Electronic Commerce, Amending the Signatures Act and the Civil Procedure Code, Federal Law Gazette I No. 152/2001
E-Government Act (E-GovG)	*(E-Government-Gesetz)* Federal Act Defining Regulations to Facilitate Electronic Correspondence with Public-Sector Authorities, Federal Law Gazette I No. 10/2004
Federal Constitutional Act (B-VG)	*(Bundes-Verfassungsgesetz)* Federal Constitutional Act, Federal Law Gazette No. 1/1930 as last amended by Federal Law Gazette I No. 27/2007
Federal Constitutional Broadcasting Act	*(BVG-Rundfunk)* Federal Act Ensuring the Independence of Broadcasting, Federal Law Gazette No. 396/1974
General Administrative Procedures Act (AVG)	*(Allgemeines Verwaltungsverfahrensgesetz)* General Administrative Procedures Act, Federal Law Gazette No. 51/1991 as last amended by Federal Law Gazette I No. 10/2004
Journalism Subsidies Act 1984 (PubFG)	*(Publizistikförderungsgesetz)* Federal Act on Subsidies for Political Educational Work and Journalism, Federal Law Gazette No. 369/1984 as last amended by Federal Law Gazette I No. 113/2003
KommAustria Act (KOG)	*(KommAustria-Gesetz)* Federal Act on the Creation of the Austrian Communications Authority (KommAustria) and the Federal Communications Senate, Federal Law Gazette I No. 32/2001 as last amended by Federal Law Gazette I No. 9/2006
ORF Act (ORF-G)	*(ORF-Gesetz)* Federal Act on the Austrian Broadcasting Corporation, Federal Law Gazette No. 379/1984 as last amended by Federal Law Gazette I No. 52/2007
Press Subsidies Act 2004 (PresseFG 2004)	*(Presseförderungsgesetz 2004)* Federal Act on Press Subsidies, Federal Law Gazette I No. 136/2003
Private Radio Act (PrR-G)	*(Privatradiogesetz)* Federal Act Enacting Provisions on Private Radio Broadcasting, Federal Law Gazette I No. 20/2001 as last amended by Federal Law Gazette I No. 169/2004

Private Television Act (PrTV-G)	*(Privatfernsehgesetz)* Federal Act Enacting Provisions on Private Television, Federal Law Gazette I No. 84/2001 as last amended by Federal Law Gazette I No. 52/2007
Signatures Act (SigG)	*(Signaturgesetz)* Federal Act on Electronic Signatures, Federal Law Gazette No. 190/1999 as last amended by Federal Law Gazette I No. 164/2005
Telecommunications Act 2003 (TKG 2003)	*(Telekommunikationsgesetz 2003)* Federal Act Enacting a Federal Law on Telecommunications and Amending the Federal Law on Traffic and Work Inspection as well as the KommAustria Act, Federal Law Gazette I No. 70/2003 as last amended by Federal Law Gazette I No. 133/2005

8.3.2.2 Ordinances

Broadcasting Market Definition Ordinance 2004 (RFMVO 2004)	*(Rundfunkmarktdefinitionsverordnung 2004)* 2nd Ordinance of the Austrian Communications Authority (KommAustria) on the relevant national markets for broadcasting transmission services for the provision of broadcasting content to end-users, subject to sector-specific regulation under the Telecommunications Act 2003 (TKG 2003, Federal Law Gazette I No. 70/2003)
Broadcasting Threshold Value Ordinance 2006 (SVO-RF 2006)	*(Schwellenwert-Verordnung Rundfunk 2004)* 9th Ordinance of the Austrian Communications Authority (KommAustria) defining a threshold value below which the revenues of a party subject to the financing contribution are not included in calculation of overall sector-specific revenues
Communications Parameters, Fees and Value-Added Service Ordinance (KEM-V)	*(Kommunikationsparameter-, Entgelt- und Mehrwertdiensteverordnung)* 6th RTR Ordinance defining regulations regarding communications parameters, fees and value-added services, as last amended by Federal Law Gazette II No. 389/2006
Communications Survey Ordinance (KEV)	*(Kommunikations-Erhebungs-Verordnung)* Ordinance of the Austrian Federal Minister of Transport, Innovation and Technology ordering statistical surveys in the field of communications, Federal Law Gazette II No. 219/2007.
Frequency Allocation Ordinance	*(Frequenzwidmungsverordnung)* Ordinance of the Austrian Federal Minister of Science, Transport and Arts allocating frequencies and frequency bands for harmonized European radio systems, Federal Law Gazette No. 313/1996
Frequency Utilization Ordinance (FNV)	(Frequenznutzungsverordnung) Ordinance of the Austrian Federal Minister of Transport, Innovation and Technology on frequency utilization, Federal Law Gazette II No. 307/2005 as last amended by Federal Law Gazette II No. 525/2006

Itemized Billing Ordinance (EEN-V)	*(Einzelentgeltnachweis-Verordnung)* 4th RTR Ordinance specifying the level of detail and the form of provision for itemized billing (http://www.rtr.at/een-v), Federal Law Gazette II No. 85/2006
KommAustria Reference Rate Ordinance (R-VO)	*(Richtsatzverordnung der KommAustria)* 3rd Ordinance of the Austrian Communications Authority (KommAustria) defining a uniform nationwide reference rate for one-off compensation for the use of lines or systems secured by rights, also for the installation, operation, expansion or replacement of communication lines by their owners
Monitoring Ordinance (ÜVO)	*(Überwachungsverordnung)* Ordinance of the Austrian Federal Minister of Transport, Innovation and Technology on the monitoring of telecommunications traffic, Federal Law Gazette II No. 418/2001 as last amended by Federal Law Gazette II No. 559/2003
RTR Reference Rate Ordinance (R-VO)	*(Richtsatzverordnung [R-VO])* der RTR-GmbH) 5th RTR Ordinance defining a uniform nationwide reference rate for one-off compensation for the use of lines or systems secured by rights, also for the installation, operation, expansion or replacement of communication lines by their owners
Signatures Ordinance (SigV)	*(Signaturverordnung)* Ordinance of the Austrian Federal Chancellor on electronic signatures, Federal Law Gazette II No. 30/2000 as last amended by Federal Law Gazette II No. 527/2004
Special Communications Parameters Ordinance (SKP-V)	*(Spezielle Kommunikationsparameter-Verordnung)* 2nd RTR Ordinance defining a partial plan for communications parameters
Telecommunications Markets Ordinance 2003 (TKMVO 2003)	1st RTR ordinance identifying the relevant national markets susceptible to sector-specific ex ante regulation in the telecommunications sector, as last amended by Federal Law Gazette II No. 117/2005
Telecommunications Threshold Value Ordinance 2006 (SVO-TK 2006)	*(Schwellenwert-Verordnung Telekommunikation 2006)* Ordinance of the Telekom-Control Commission (TKK) defining a threshold value below which the revenues of a party subject to the financing contribution are not included in calculation of overall sector-specific revenues
Universal Service Ordinance (UDV)	*(Universaldienstverordnung)* Ordinance of the Austrian Federal Minister of Science and Transport defining quality criteria for universal service, Federal Law Gazette II No. 192/1999 as last amended by Federal Law Gazette II No. 400/2006

8.4 Abbreviated company and association names

Abbreviation	Full name of company
agtt	Teletest working group *(Arbeitsgemeinschaft Teletest)*
atms	atms Telefon- und Marketing Services GmbH
A-Trust	A-Trust Gesellschaft für Sicherheitssysteme im elektronischen Datenverkehr GmbH
ATV	ATV Privat-TV Services AG
Deutsche Telekom	Deutsche Telekom AG
eety	eety-Telecommunications GmbH
enum.at	enum.at GmbH
EPI	Erich Pommer Institute
eTel	eTel Austria AG
GfK	Gesellschaft für Konsumforschung
Hutchison	Hutchison 3G Austria GmbH
Inode	Inode Telekommunikationsdienstleistungs GmbH, now UPC Austria GmbH
KRONEHIT	KRONEHIT Radio BetriebsgmbH.
Media Broadcast	Media Broadcast GmbH
Mobile TV Infrastruktur	Mobile TV-Infrastruktur GmbH
mobilkom austria	mobilkom austria AG
Multikom	Multikom Austria Telekom GmbH
net4you	net4you Internet GmbH
One	ONE GmbH
ORF	Austrian Broadcasting Corporation *(Österreichischer Rundfunk)*
ORS	Österreichischen Rundfunksender GmbH & Co KG
REM	Research Institute for Electronic Mass Media Law *(Forschungsinstitut für das Recht der elektronischen Massenmedien)*
SAG	Salzburg AG für Energie, Verkehr und Telekommunikation
SevenOne Media	SevenOne Media Austria GmbH
Silver Server	Silver Server GmbH
TDF	Télédiffusion de France
Tele2UTA	Tele2 Telecommunication GmbH (previously Tele2UTA Telecommunication GmbH)
Telekom Austria	Telekom Austria TA AG
Telesystem Tirol	UPC Austria Services GmbH
T-Mobile	T-Mobile Austria GmbH
T-Systems	T-Systems&Media Broadcast GmbH
UPC	UPC Austria GmbH
VFRÖ	*Verband Freier Radios Österreichs* (Austrian association of free radio broadcasters)
Wienstrom	WIENSTROM GmbH
YESSS!	YESSS! Telekommunikation GmbH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