Communications Report 2008

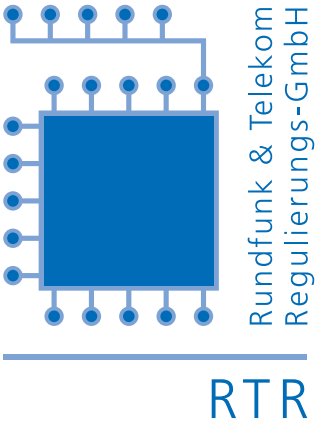


Table of contents

Preface

In order to promote Austria as a business location, the Austrian federal government included a large number of new stimuli and preparatory measures for the field of information and communication technologies (ICTs) in its program for the year 2008 and beyond. In this way, the government also defined new areas of emphasis for the activities of RTR, KommAustria and the Telekom-Control Commission (TKK) as regulatory institutions.

In the field of broadcasting, the government's stated objective is to maintain the diversity and competitiveness of the Austrian media landscape and to continue transforming Austria into a unique and attractive, "digital and innovative" media location. The projects planned include reinforcing the dual broadcasting system in Austria by promoting private commercial and non-commercial broadcasters, rapidly implementing digitization measures and developing a regulatory framework which is conducive to media convergence. Moreover, the government has already introduced legislation to increase the endowment of the Austrian Television Fund from EUR 7.5 million to EUR 13.5 million per year, and funds for media promotion will be increased to a total of EUR 6 million per year.

In the field of telecommunications, the federal government has defined the objective of advancing the expansion of infrastructure in the digitization process in order to position Austria among the top ICT nations worldwide. In this context, the government's philosophy has been "as much market as possible, as much government support as necessary." Specific measures for this purpose include an amendment to the Telecommunications Act which serves to improve the general conditions for broadband expansion, to update the definition of universal telecommunications services and to establish an expanded competence center for ICTs. Another focus of the government's program is the deregulation of the postal services market, which must be completed by 2011 under EU legislation.

As regulatory institutions, RTR, KommAustria and the TKK will support and carry out the efforts described above in line with their legal mandate and with due consideration of the overall situation, thus continuing to create forward-looking and stable general conditions for Austria's communications markets by ensuring continuity in regulatory activities and contributing high-level expertise. This report fulfills all reporting requirements set forth under the KommAustria Act (KOG) and the Austrian Telecommunications Act (TKG), documents the regulatory authorities' activities in the year 2008, and provides an overview of developments on the communications markets. In addition, the report contains a brief description of RTR as an organization managed according to private-sector principles and organized in such a way as to minimize total expenditure through the targeted deployment of available resources.

The report gives a number of important insights into our organization's activities and the development of the relevant markets. We sincerely hope that it provides you with interesting and informative reading.

Vienna, June 2009

Alfred Grinschgl
CEO Broadcasting
Austrian Regulatory Authority for
Broadcasting and Telecommunications

Georg Serentschy
CEO Telecommunications
Austrian Regulatory Authority for
Broadcasting and Telecommunications

1. Management summary

RTR committed to enhancing competition and media diversity

The 2008 Communications Report, which is devoted to the central theme of "more competition and media diversity," serves to meet all of RTR's legal reporting requirements under the KommAustria Act (KOG), the Austrian Telecommunications Act 2003 (TKG 2003), and the Postal Services Act (PostG):

Represented by its 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 and on the operational fulfillment of regulatory objectives in the interest of all market participants and for the benefit of consumers. 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 the organization's provision of services and its activities as a competence center.

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 the report must also include information on dishonest practices in the provision of value-added services as well as the measures taken to combat such practices.

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 duties and objectives in the interest of consumers and the economy during the reporting period.

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

The objectives to be pursued in the regulatory activities of the Austrian Communications Authority (KommAustria) and in the work of RTR's Broadcasting Division are defined as follows in Art. 2 Par. 2 of the KommAustria Act (Tasks and objectives of KommAustria):

1. to facilitate market access for new providers;

2. to ensure the diversity of opinions and promote quality in broadcasting programs, including the technical prerequisites for their dissemination;

3. to develop technical and economic plans for a dual broadcasting market 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 use of Austria's broadcasting frequency spectrum;

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 of KommAustria and RTR's Broadcasting Division in the year 2008 can be attributed to the duties defined in Art. 2 KOG or the additional duties of promoting digitization, supporting television film productions and operating a competence center for broadcasting industry affairs.

The main focus of the authority's regulatory duties is to enable more competition and media diversity in the interest of the entire Austrian population. In this respect, KommAustria's activities in 2008 included two key invitations to tender and the resulting decisions:

KommAustria awards license for mobile TV

- In regulatory terms, the award of the license for a multiplex platform for mobile terrestrial broadcasting based on the DVB-H standard (mobile TV) was a highly significant development. The license was awarded to the company MEDIA BROADCAST GmbH, which was chosen among several applicants. DVB-H operations were launched in Austria at the end of May 2008, shortly before the start of the Euro 2008 football championship. Austria's rapid and efficient implementation of DVB-H broadcasting, which accounted for the interests of the general public as well as those of broadcasters and mobile network operators even during the legislation stage, is regarded as exemplary throughout Europe.

Licenses for 16 digital MUX platforms

- In addition, the authority licensed 16 digital multiplex platforms for local and regional terrestrial television stations. These platforms will enable terrestrial broadcasting for television channels covering Vienna and the surrounding area as well as numerous regions of varying sizes in the other federal provinces of Austria. The resulting range of regional and local television channels offered using terrestrial broadcasting represents a major gain in terms of diversity of opinion, as those channels will not be viewed in lieu of broadcasts by the Austrian Broadcasting Corporation (ORF), ATV and foreign channels, but as a supplement to those programs.

As in every year, a number of additional licenses were issued in the fields of radio and television broadcasting. These activities included new licenses for private radio stations, expansions of radio coverage areas and new licenses for television channels broadcast by satellite or using digital terrestrial technology.

Most of these licenses were awarded on the basis of a selection procedure ("beauty contest") which ultimately serves to ensure the diversity of opinions in the relevant coverage area, among other things.

Active frequency planning is a key prerequisite for efficient licensing activities. In order to ensure that all of the technical prerequisites for broadcasting are fulfilled, it is indispensable to support the ongoing development of broadcasting frequency management at the national and international level. At the national level, applications are reviewed for compatibility with previously allocated frequencies. At the international level, this requirement refers to ongoing

coordination with frequency administrations in neighboring countries, either directly or within the framework of bilateral and multilateral conferences. In some cases, these conferences are also held at the European level. In addition to avoiding technical disruptions and interference, the purpose of these conferences is to optimize the use of the frequency spectrum. Broadcasting frequencies are a scarce commodity in any country, especially in a small one such as Austria.

As the legal supervisory authority for private television and radio broadcasters, KommAustria also performed its duty of reviewing broadcasters' compliance with legal regulations in 2008, thus (among other things) cooperating to ensure adherence to minimum European standards, especially in the interest of child, youth and consumer protection. In its supervision of advertising activities, KommAustria made a contribution to ensuring that violations of advertising regulations by private broadcasters and ORF are pursued. Moreover, the authority's legal supervision activities included several procedures due to violations of additional legal obligations as well as approval procedures for changes in programming and ownership.

Digitization Fund and Television Fund

Grant recipients included retail consumers

In accordance with Art. 9a KOG, RTR continued to award grants for digital transmission technologies and digital applications based on European standards in connection with broadcasting. Grants were also awarded to retail consumers, who were provided with vouchers to purchase DVB-T and DVB-C boxes at reduced prices, as well as broadcasters for simulcast coverage (simultaneous broadcasting of analog and digital television signals) and for the promotion of studies which aim to advance digitization.

Thanks to the rapid licensing procedures for digital broadcasting as well as the grants from the Digitization Fund, Austria has earned an outstanding rank among European countries in terms of digitization progress: Just over 50% of Austria's households now receive their television signals by digital means (as of late 2008).

Grants awarded for 37 television films, documentaries and series

Grants from the Austrian Television Fund (Articles 9f to 9h KOG) were awarded for a total of 37 television films, documentaries and series in 2008. The funds available totaled EUR 7.5 million, plus interest earned in the amount of EUR 235,695.76. All of the grant applicants in 2008 were Austrian television producers. The vast majority of television films and series were co-productions, especially between ORF and German television broadcasters.

Competence center

RTR publication series, cooperation in training and education activities

Under Art. 9 KOG, RTR is also responsible for acting as a competence center for broadcasting and telecommunications industry affairs. In the Broadcasting Division, expenditure for the activities of the competence center is limited to a maximum of 10% of overall expenditure for that industry. In 2008, these activities included RTR studies which were subsequently published in the regulatory authority's publication series, as well as cooperation in training and education activities for the employees of broadcasting organizations, such as private commercial broadcasters (in cooperation with the *Privatsenderpraxis* association) and the Austrian association of free radio broadcasters (VFRÖ).

1.2 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 2008, RTR was able to make substantial contributions to the attainment of these objectives.

In brief, the authority's activities all pursue the following objectives:

- to define 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.

A few examples of specific contributions in 2008 are described briefly in this section.

Promoting competition: The new Telecommunications Markets Ordinance 2008

TKMV 2008

The Telecommunications Markets Ordinance (TKMV), which defines the relevant markets for sectoral regulation, forms the basis of the market analyses to be carried out at regular intervals.

On December 17, 2007, the European Commission issued a new recommendation on relevant product and service markets within the electronic communications sector which may be susceptible to ex ante regulation (in the future).

This recommendation was transposed into Austrian law by the TKMV 2008, which went into effect on December 30, 2008. The new ordinance defines nine (instead of the previous 17) relevant markets for sectoral regulation, and in 2009 the regulatory authority will initiate a new wave of market analyses on the basis of the TKMV 2008.

Market analysis: Expansion of rights of affected parties

Expansion of parties' rights

In connection with a market analysis procedure, the ECJ and the Austrian Administrative Court ruled – in an extension of the TKG 2003 – that undertakings which compete with an SMP company must also be accorded the status of a party to the procedure. The courts arrived at this conclusion on the basis of the fact that those companies are also "affected" (as specified in Art. 4 of the Framework Directive) by decisions of the regulatory authority. Parties to a procedure have special rights, such as the right to inspect records and to involve the regulatory authority in negotiations, and the right to the issue and delivery of an official decision which can be legally contested.

The TKK was required to account for this new legal situation for the first time in the market analysis procedure regarding the wholesale market for broadband access: With the exception of pure resellers (call shops, Internet cafés), all operators or providers of telecommunications networks or services with a confirmation of complete notification pursuant to Art. 15 Par. 3 TKG 2003 or a license document pursuant to the TKG (1997) were accorded the rights of affected parties. As a result, over 500 companies were considered parties to the procedure.

In principle, the legal decision regarding the rights of affected parties is not limited to market analysis procedures; such a large number of parties may also be involved in legal supervisory procedures.

Wholesale market for broadband access: Specific obligations by geographical area

Market analysis procedure: Wholesale market for broadband access

In 2008, the regulatory authority imposed specific obligations for a wholesale market (i.e., the market for broadband access) which were differentiated by geographical area for the first time. In this context, the TKK decided that the identified SMP operator, Telekom Austria TA AG, would no longer be required to offer broadband bitstream access in areas of high population density from January 1, 2009 onward. From that time, Telekom Austria TA AG would only be required to offer such access in the remaining regions of Austria. The decision was based on the differing competitive conditions identified in areas of high population density and in other areas of the country; based on these differences, it did not appear reasonable to continue requiring the SMP operator to offer access in high-density areas.

In a ruling handed down on December 17, 2008, the Austrian Administrative Court overturned the TKK's order, essentially justifying its decision by the fact that obligations must be imposed on the basis of a corresponding market definition.

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.

In 2008, several procedures were carried out in this field, especially with regard to fees for SMS termination and origination, the definition of mobile termination fees and the issue of local loop unbundling.

Frequencies

In 2008, the TKK allocated frequencies in the 900 MHz and 3.5 GHz bands. The allocation procedure for frequencies in the 450 MHz band did not generate interest on the market, and as a result the procedure was discontinued without any frequency allocations in October 2008.

In addition to those allocation procedures, the regulatory authority also reviewed the fulfillment of coverage requirements in 2008 in connection with the 3.5 GHz frequencies awarded in November 2004. The regulatory authority concluded that the following companies had fulfilled the relevant coverage requirements: WiMAX Telecom GmbH, B-MAX Breitband GmbH and

Teleport Consulting und Systemmanagement GmbH. With regard to UPC Wireless GmbH, the regulatory authority determined that no services were offered in the frequency band in question, and therefore the company was required to pay a penalty in accordance with the provisions of the frequency allocation decision.

Mergers

As mentioned in the 2007 Communications Report, Telekom Austria TA AG acquired eTel Austria AG in 2007, a takeover which was subject to a number of conditions in order to minimize its adverse effects on competition. The takeover was completed with the legal merger of the two companies in 2008.

In addition, Tele2 Österreich's mobile communications division was also taken over by Telekom Austria TA AG.

Within the scope of its legal competences, the regulatory authority cooperated with the Federal Competition Authority in order to arrive at a joint assessment of the notified mergers.

Another change of ownership and name was notified in the case of One Austria GmbH, which was taken over and renamed Orange in 2008.

Supervisory procedures

Supervisory procedures were necessary in a wide variety of areas in order ensure compliance with the provisions of telecommunications law and with obligations imposed by way of official decisions. An overview of relevant topics from the year 2008 is provided below.

- Review of whether a product can be replicated by alternative operators without encountering discrimination or a margin squeeze on the retail market;
- Interference by transmission systems in upstream facilities (DSLAMs);
- Violation of non-discrimination obligations in connection with wholesale broadband products;
- Product bundling and discrimination;
- Suspected obstruction of number porting and charging of a deterrent porting fee.

RTR continues intensified dialog with market participants: Industry working group

Numerous workshops

The challenges presented by today's market, such as the general conditions for the expansion of NGNs/NGA, require an intensified dialog with market participants. In addition to topics relevant to NGNs/NGA, the regulatory authority also addressed the issue of alternative billing systems at the wholesale level in 2008. These RTR initiatives were well received by market participants and will also continue in the year 2009.

Adaptation of communications parameters

RTR preparing amendment to KEM-V

In addition to amending the Communications Parameters, Fees and Value-Added Services Ordinance (KEM-V) in 2008 to introduce additional telephone numbers for harmonized services in the 116 range, RTR launched a broad-based public discussion on the future development of the ordinance in early 2008, mainly in order to account for international developments, in particular the more flexible use of geographical telephone numbers in connection with VoIP. After conducting lengthy discussions with market participants and preparing several input documents, RTR finally launched a public consultation on a new version of the ordinance in November 2008. The consultation will come to an end in January 2009, and the (new) ordinance is slated to go into effect in the second quarter of 2009.

International roaming

During the reporting period, the international roaming regulation introduced at the European level in mid-2007 was subjected to a review procedure. In this procedure, the European Commission came to the conclusion that it is necessary to extend the regulation on voice roaming services and to expand the regulation to include text messaging (SMS) and mobile data services. The Commission has already prepared a draft of the amended regulation, but at the present time it is still not clear when the regulation will go into effect.

Cooperation in developing the regulatory framework at the European level

The proposals for the review of the EU's regulatory framework for electronic communications, which the European Commission had already submitted in 2007, were discussed in parallel by the European Council and European Parliament in 2008. RTR contributed actively to this process, submitting comments on all major issues within the framework of the European Regulators Group (ERG) and advising the Austrian Federal Ministry of Transport, Innovation and Technology (BMVIT).

Competence center

As mentioned in the section on broadcasting, Art. 9 KOG also assigns RTR responsibility for operating a competence center for broadcasting and telecommunications industry affairs. In the Telecommunications Division, expenditure for the activities of the competence center is limited to a maximum of 10% of overall expenditure for that industry.

Internet Offensive, ICT Factbook, ICT Task Force

In its capacity as a competence center, RTR provided the editorial team and was able to contribute its know-how to the efforts of the Austrian Internet Offensive. In its publication series, RTR also released an ICT Factbook containing a collection of data on information and communication technologies in Austria. In its capacity as a competence center, RTR has continued (and will continue) to maintain and update this information and to make it available to the public in an appropriate form. In addition, RTR continues to provide support for the Federal Chancellery, the Federal Ministry of Transport, Innovation and Technology (BMVIT), and the ICT Task Force.

1.3 Contribution to the achievement of objectives under the Postal Services Act (PostG)

The Postal Services Act (PostG) stipulates that postal services must be provided in a satisfactory manner for all users throughout the federal territory of Austria at a reasonable price and in accordance with equal principles. The act defines the basic criteria for the fulfillment of the universal service mandate as well as the general terms of competition in the field of postal services.

Therefore, in contrast to the KommAustria Act (KOG) and Telecommunications Act (TKG) 2003, the Postal Services Act does not provide for objectives to be attained through regulation, nor is it intended to liberalize markets; instead, the act defines obligatory activities and tolerance obligations for Österreichische Post AG. For those areas which are not reserved for exclusive service provision by Österreichische Post AG (reserved services), the act also stipulates general requirements for postal service providers.

Postal market liberalization to be completed by 2011

Community law calls for the complete liberalization of Austria's postal services by January 1, 2011. By that time, specific regulations are to be laid down in a new Postal Services Act or Postal Market Act. In this context, key issues will include market access, the provision and funding of universal service, and the scope of obligations imposed on the SMP company for the benefit of its competitors. It will also be necessary to define the role of the regulatory authority. It is beyond doubt that a "strong regulator" which can rely on independence, adequate human and material resources, expert knowledge and transparency obligations will be able to make a significant contribution to liberalization.

2. Regulatory authorities and environment

2.1 Regulatory authorities

Liberalization began with the establishment of the regulatory authorities.

In the implementation of 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 the regulatory authority for the broadcasting markets.

The duties and objectives of all regulatory authorities responsible for electronic communications markets are defined in the relevant laws, specifically in the Austrian Telecommunications Act 2003 (TKG 2003) and the KommAustria Act (KOG). For example, the Telecommunications Act 2003 calls for the creation of modern electronic infrastructure, ensuring equal opportunities and functional competition as well as promoting and protecting the interests of users. The KommAustria Act defines the specific duties of the regulatory authority as follows: issuing broadcasting licenses, conducting procedures regarding the shared use of broadcasting stations, issuing permits for the operation of broadcasting stations, frequency administration, legal supervision of private broadcasting organizations, preparing for the introduction of digital broadcasting, administering the resources in the Austrian Digitization Fund and Austrian Television Fund, and monitoring compliance with advertising regulations by private broadcasters as well as the Austrian Broadcasting Corporation (ORF).

The regulatory authority's objectives range from facilitating market access for new providers to creating and maintaining high-quality communications infrastructure, ensuring a diversity of opinions and promoting quality in broadcasting programs, developing technical and economic plans for a dual broadcasting market in Austria, and providing expert knowledge on convergence between audiovisual media and telecommunications.

2.1.1 Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR)

RTR wholly owned by the Austrian federal government

RTR is a convergent regulatory authority which is wholly owned by the Republic of Austria. The organization is headed by two managing directors.

In the year 2008, Alfred Grinschgl served as managing director of the Broadcasting Division, while Georg Serentschy was in charge of the Telecommunications Division.

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.

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 specific official duties in the Telecommunications Division (e.g., powers to issue ordinances and to carry out procedures in the field of numbering);
3. Activities 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).

2.1.2 Telekom-Control Commission (TKK/TKKP)

TKK not bound by instructions

The Telekom-Control Commission was set up as a panel authority with the powers of a court and makes major decisions in connection with the regulation of telecommunications and postal services. 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 TKK comprised the following members:

- 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.

As of January 1, 2008, a second committee was set up within the TKK under Art. 25a Par. 2 of the Postal Services Act (PostG) for the purpose of postal service regulation; in lieu of the commission member with relevant technical expertise, a member with expertise in postal services must belong to this committee.

The Postal Regulation Committee (TKKP) includes the following members:

- Elfriede Solé (Chairperson)
- Erhard Fürst
- Alfred Stratil
- Eckhard Hermann (Alternate Member)
- Mathias Grandosek (Alternate Member)
- Alfred Taudes (Alternate Member).

2.1.3 Austrian Communications Authority (KommAustria)

KommAustria is an authority which reports directly to the Austrian Federal Chancellor and has been headed by Michael Ogris since January 1, 2004. At the end of 2008, Mr. Ogris was confirmed for an additional five-year term. In its operations, KommAustria acts as an independent body and relies on RTR for operational support in the performance of its duties in broadcasting regulation.

Michael Ogris confirmed as head of KommAustria for another five-year term.

Within the scope of its official activities, the authority makes first-instance decisions – in some cases also acting as the investigative authority with the power to report violations – and performs its broadcasting regulation duties in accordance with the following laws:

- KommAustria Act (KOG)
- Private Radio Act (PrR-G)
- Private Television Act (PrTV-G)
- ORF Act (ORF-G)
- Telecommunications Act 2003 (TKG 2003)
- Access Control Act (ZuKG)
- Cooperation of Consumer Protection Authorities Act (VBKG).

Moreover, KommAustria has also been assigned official duties and responsibilities in private-sector administration for the federal government; in this context, 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.

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)

KommAustria is subordinate to the Federal Chancellery and acts as an independent body in its business operations, relying on RTR for operational support in the performance of its broadcasting regulation duties. KommAustria is bound by the instructions of the Federal Chancellery. On the basis of a resolution issued by the Austrian Federal President, KommAustria and RTR were bound by the instructions of the Federal Minister for Women, Media and Civil Service in their handling of matters related to broadcasting in 2008 (specifi-

KommAustria and RTR's Broadcasting Division report to the BKA.

cally from March 1, 2008 to December 1, 2008). 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)

Telecommunications Division subordinate to the 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., at the EU level), RTR advises the ministry on the development of this framework.

Telecommunications authorities

First-instance administrative penal authority

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. The telecommunications authorities are in charge of monitoring adherence to the technical parameters approved for such facilities.

Digital Platform Austria

Digital Platform Austria: More than 300 members

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 plan 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

Broadcasting Advisory Board advises KommAustria

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.

In its second six-year term (from May 30, 2007 onward), the board comprised the following members:

- 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)

BKS established within the Federal Chancellery

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

Close cooperation with the Federal Competition Authority

Due to certain parallels in sector-specific and general competition law and with due attention to the integrity of each authority's competences, it is necessary to ensure that the regulatory authorities cooperate closely with the Federal Competition Authority in matters related to general competition law on the basis of legally defined rights to submit comments and petitions. Austrian law and Community law provide for differing forms of cooperation between the general competition authority and sector-specific competition authorities.

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

Continued focus on harmonization

In the year 2008, the Independent Regulators Group (IRG) and the European Regulators Group (ERG) were able to contribute their regulatory experience in key areas in the ongoing development of the European regulatory framework and in day-to-day implementation. Specific examples such as the continuing convergence of mobile termination fees clearly indicate that harmonization using an EU-wide bottom-up approach – that is, through effective regulation within each individual national market – is a successful strategy. The harmonization process has also been supported by a strong commitment to common positions and the targeted monitoring of members' compliance with those positions.

Greater formalization

A number of important measures were taken in 2008 in order to increase internal efficiency and transparency. The Independent Regulators Group registered as an association under Belgian law in 2008. At the end of 2007, the IRG decided to make the transition from its previous status of an informal network to an association (ASBL, *Association sans but lucratif*). This measure is expected to further enhance the organization's professionalism and to create opportunities to leverage the combined resources of the regulatory authorities more efficiently. In order to facilitate coordination activities, the IRG set up a permanent secretariat in Brussels and relaunched the organization's web site (http://www.irg.eu) with a new layout, improved structure and stronger focus on the relevant subject-specific interests of the users.

Frequencies: New cooperation arrangement between the ERG and the Radio Spectrum Policy Group

New cooperation arrangements

For the first time, the ERG and the Radio Spectrum Policy Group met in the course of an ERG meeting. In addition to discussing current topics (especially with regard to the new regulatory framework), the groups decided to establish a joint working group comprising representatives from both groups and dedicated to the topic of frequencies.

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

3.1 Lines of command and levels of appeal

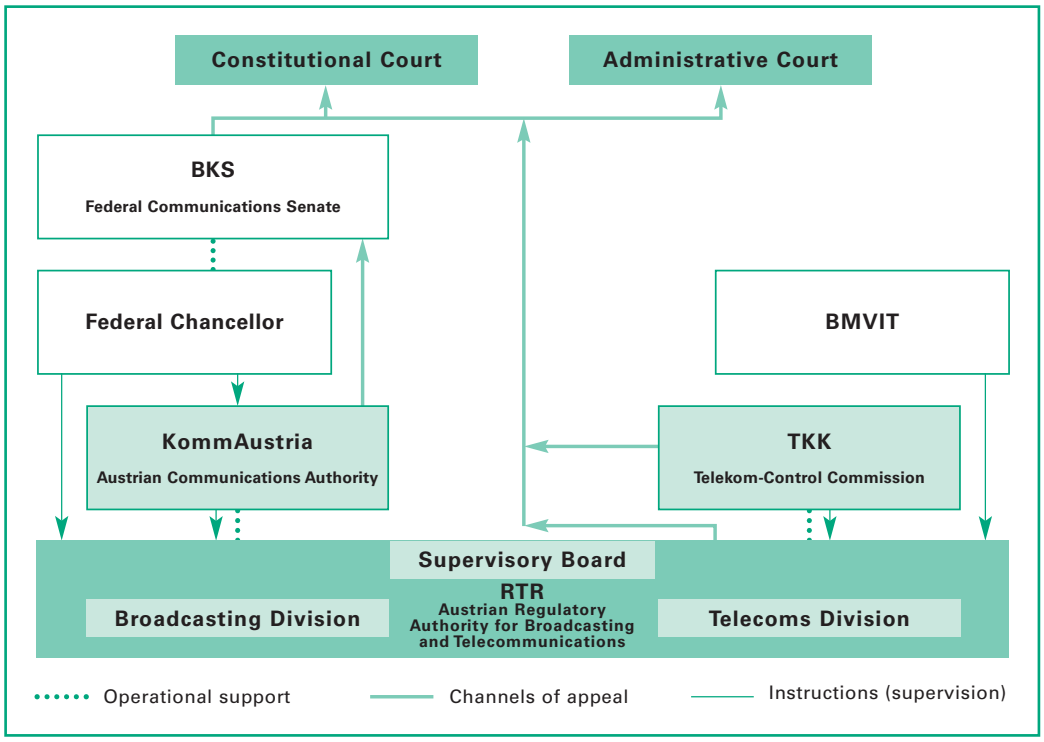
In the field of broadcasting, the Austrian Communications Authority (KommAustria) as well as the managing director of RTR's Broadcasting Division are bound by the instructions of the Federal Chancellor. All instructions must be issued in writing and justified accordingly.

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 the 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. In matters related to the supervision of ORF's advertising activities, KommAustria has the power to investigate and report violations to the BKS.

Figure 1: Lines of command and levels of appeal



Source: RTR

3.2 Broadcasting Division

3.2.1 Federal Communications Senate (BKS)

KommAustria's official decisions regarding broadcasting regulation issues can 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.

27 KommAustria decisions confirmed after appeals to the BKS

In the reporting period, the BKS issued 27 decisions in response to appeals, with 15 decisions pertaining to radio licenses or radio frequency allocations. In all of the cases, KommAustria's decisions were confirmed, including the new licenses in the "Linz 91.8 MHz" and "Linz, Wels and Steyr" coverage areas. The other decisions pertained to procedures conducted by KommAustria in connection with new radio broadcasting licenses and license renewals in cases where the ten-year legal validity period ended on March 31, 2008.

In the licensing procedure for the mobile terrestrial broadcasting multiplex (MUX D), at the end of March 2008 the BKS dismissed the appeal submitted by Mobile TV Infrastruktur GmbH, thus confirming the license awarded to MEDIA BROADCAST GmbH. Prior to that decision, the BKS had already confirmed the rejection of Österreichische Rundfunksender GmbH & Co KG's application, as it did not include any cooperation arrangements with program aggregators.

With regard to digitization, the BKS also confirmed the two official decisions in which KommAustria revoked the allocation of frequencies to ATV Privat TV GmbH & Co KG which were either put out of operation in the course of the digital switchover or had not been used in more than six years since the analog broadcasting license was issued.

In another case, the BKS confirmed a KommAustria decision on the lapse of a satellite broadcasting license. The BKS determined that Kanal Telemedial Privatrundfunk GmbH had not been established in Austria as specified in Art. 3 of the Private Television Act (PrTV-G) since at least March 2007 and had not carried out regular broadcasting operations for the "Kanal Telemedial" channel in accordance with the terms of its license over a continuous period of one year for reasons within the company's control.

In addition, the BKS issued rulings on KommAustria decisions in two cases related to advertising monitoring where violations were identified on the part of private broadcasters. In both cases, the official decisions issued by KommAustria were confirmed in their entirety.

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 4.1.8). In the period under review, 15 official decisions were issued in this regard, and violations of the ORF Act (ORF-G) were identified in 12 of those cases.

3.2.2 Proceedings before the Constitutional Court (VfGH)

Complaints regarding BKS decisions on appeals can also be filed with the Constitutional Court. No rulings on such complaints were issued during the reporting period.

3.2.3 Proceedings before the Administrative Court (VwGH)

Administrative Court reviews official decisions issued by 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 advertising and on five official decisions related to radio broadcasting licenses. In one case (pertaining to the Salzburg 94.0 MHz frequency allocation), the Administrative Court overturned the BKS decision, which meant that another procedure was required. Four additional rulings handed down by the Administrative Court pertained to the monitoring of ORF advertising on the basis of reports filed by KommAustria.

3.3 Telecommunications Division

3.3.1 Proceedings before the Constitutional Court (VfGH)

3 complaints submitted to Constitutional Court

During the reporting period, a total of three complaints regarding TKK decisions were filed with the Constitutional Court, with one complaint containing only a petition for suspensory effect for the underlying decision. The other two decisions concerned the financing contribution pursuant to Art. 10 KOG and a procedure in which a company was identified as possessing significant market power (SMP) and subjected to obligations pursuant to Articles 38 to 47 TKG 2003. In those two cases, the regulatory authority's activities involved preparing refutation documents. During the reporting period, the Constitutional Court discontinued the procedure in a total of eight cases because the underlying complaints were withdrawn. As of December 31, 2008, only one procedure was still pending.

Constitutional Court discontinued eight procedures.

3.3.2 Proceedings before the Administrative Court (VwGH)

22 complaints to the Administrative Court

A total of 22 complaints regarding TKK decisions were filed with the Administrative Court during the reporting period. These complaints pertained to two supervisory procedures under Art. 91 TKG 2003, 17 procedures in which a company was identified as possessing significant market power and subjected to obligations under Articles 38 to 47 TKG 2003, two interconnection procedures and one frequency allocation procedure under Art. 56 TKG 2003. In those cases, the regulatory authority's activities involved preparing refutation documents.

19 complaints pending as of December 31, 2008

The Administrative Court handed down a total of 35 decisions in the reporting period. Nearly all of the decisions were based on the Administrative Court's ruling on mobile termination, which states that it is not permissible to identify significant market power for past time periods. On the basis of these standards, the Administrative Court overturned decisions due to procedural violations in five cases and due to content-related violations in 19 cases. Five procedures were declared invalid and discontinued. Two complaints were dismissed as unfounded, two were rejected, and yet another two were discontinued because the complainant failed to remedy defects in due time. As of December 31, 2008, 19 complaints were pending with the Administrative Court.

4. RTR's activities in 2008

4.1 Broadcasting Division

In 2008, RTR's regulatory activities were once again dominated by the digitization of television broadcasting: After largely complex licensing procedures, the regulatory authority awarded licenses to operate multiplex platforms for mobile digital terrestrial television (MUX D) and for local and regional digital terrestrial television (MUX C).

In the field of radio broadcasting, RTR's activities in the first quarter of 2008 centered around the 21 licensing procedures for coverage areas in which the broadcasters' licenses expired on March 31, 2008, as some of those procedures were still pending at the beginning of the year.

4.1.1 Regulatory activities in radio broadcasting

4.1.1.1 Licensing procedures / Allocation of frequencies

Applications can be submitted at any time.

Applications for the allocation of new frequencies 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 frequencies in order to expand its coverage area.

These applications must indicate the essential technical parameters regarding planned use, 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 for the creation of a new coverage area is to be rejected in cases where the technical range extends 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 cannot reasonably expect radio broadcasting to be financially viable in the requested coverage area in the long term.

Invitation to tender

Otherwise, new frequencies 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 they are 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 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.

Priority of allocations

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

- The allocation of frequencies to ORF takes top priority, but only if such frequencies are actually required to meet coverage obligations pursuant to Art. 3 ORF-G.
- The next priority is the allocation of frequencies to improve coverage provided by previously licensed radio broadcasters. However, this does not include expanding their coverage areas.
- At the next level, frequencies are allocated for the purpose of expanding nationwide licenses.
- Finally, KommAustria has to review whether the requested frequency 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.

17 frequency allocations

In the year 2008, a total of 17 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 on the basis of 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 four frequencies were allocated to existing private broadcasters for the purpose of expanding their coverage areas.

In addition, a total of eight 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. One license application was rejected due to a failure to fulfill the relevant legal requirements.

Finally, another 18 allocation procedures were still pending at the end of the reporting period (not including the frequencies requested by the nationwide radio broadcaster for the purpose of expanding its coverage area).

4.1.1.2 Allocation of frequencies to create new coverage areas

Expiration of 21 radio licenses

At the start of the year 2008, activities in the field of radio broadcasting focused on the procedures required for 21 local and regional broadcasting licenses which were issued in 1997 and expired at the end of March 2008. The coverage areas in question had already been put out to public tender in 2007. In nearly all cases, the previous licensees re-applied for the frequencies.

Ten existing licenses renewed

Seven of the 21 procedures were completed in 2007, and the remaining 14 procedures were completed by means of official decisions by March 2008. In ten cases, the previous licensees were awarded radio broadcasting licenses in their respective coverage areas for the next ten years: The northern and middle regions of Burgenland, Oberwart district, parts of the Güssing district and Jennersdorf were allocated to Privatradio Burgenland GmbH; Aichfeld – Upper Murtal Valley to Privat-Radio Betriebs GmbH; Lower Inntal Valley (including Hall) to Antenne Österreich GmbH; Eastern Tyrol to Radio Osttirol GmbH; Tyrol to Regionalradio Tirol GmbH;

Köflach Area to WKK Lokal-TV der Weststeirischen Kabel-TV GmbH & Co KEG; Salzkammergut Region to Freies Radio Salzkammergut (FRS); Radenthein to Radiofreunde Radenthein; Melk District and Mostviertel Region to DIGI Hit Programm Consulting GmbH; and Spittal/Drau Area, Bad Kleinkirchheim and Radenthein to Lokalradio Gute Laune GmbH & Co KG.

Four new licensees

New radio broadcasters were awarded licenses in the regions of Spittal an der Drau and Central Upper Austria: In Spittal an der Drau, the license was awarded to the association Radio Maria Österreich (Radio Maria), and the license for Central Upper Austria went to On Air Privatradio GmbH (Radio Steyr). The previous licenses were not renewed due to the failure to broadcast in accordance with the license and unclear programming projections, especially on the basis of a comparison with the new applications submitted.

In two additional cases, the previous licensees did not re-apply for the licenses, which were then awarded to other broadcasters: One radio broadcasting license was awarded to Privat-Radio Betriebs GmbH ("A1 Radio") for the Leoben District and Eastern Liezen District coverage area, and Radio Osttirol GmbH ("Radio Osttirol") was awarded the license for Eastern Tyrol, Upper Mölltal Valley, Upper Gailtal Valley, Upper Drautal Valley, Hermagor and Weissensee to expand the station's existing coverage area (Eastern Tyrol).

4.1.1.3 Allocation of frequencies to expand existing coverage areas

In cases where a broadcaster applies for the expansion of its coverage area and the relevant frequency's technical range comprises a population of less than 50,000, the public invitation to tender can be restricted to existing radio broadcasters for the purpose of expanding existing coverage areas (Art. 13 Par. 3 PrR-G).

Four existing coverage areas expanded

In 2008, three procedures carried out on the basis of such a restricted invitation to tender under Art. 13 Par. 3 PrR-G led to the expansion of previously existing coverage areas:

- INZING 2, 94.2 MHz – Expansion of the existing coverage area "North Tyrol - Eastern Region" (Unterländer Lokalradio GmbH, now U1 Tirol Medien GmbH);
- MAYRHOFEN 3, 91.20 MHz – Expansion of the existing coverage area "Lower Inntal Valley (including Hall)" (Antenne Österreich GmbH; coverage area renamed "Lower Inntal Valley (including Hall and Zillertal)");
- PRAEGRATEN 2, 104.2 MHz – Expansion of the existing coverage area "Eastern Tyrol and Upper Carinthia" (Radio Osttirol GmbH).

Another procedure carried out after an unrestricted invitation to tender under Art. 12 in conjunction with Art. 10 PrR-G also led to the expansion of an existing coverage area (in the course of the tender procedures for the 21 radio licenses which expired in March 2008):

- KOETSCHACH, 102.2 MHz; MATREI OSTTIR 2, 101.7 MHz; SILLIAN, 103.9 MHz; and WINKLERN 2, 105.8 MHz – Expansion of the existing coverage area "Eastern Tyrol" (Radio Osttirol GmbH; coverage area renamed "Eastern Tyrol and Upper Carinthia").

4.1.1.4 Nationwide broadcasting license

Status at end of 2007

On December 6, 2004, KommAustria issued KRONEHIT Radio BetriebsgmbH the first license for nationwide private terrestrial radio broadcasting in Austria. On the basis of the 28 frequencies allocated in connection with the license award, the company was allocated seven additional frequencies in 2005, 15 in the year 2006 and ten in 2007. KRONEHIT Radio BetriebsgmbH. broadcasts its radio programs in adult contemporary format under the name "Kronehit".

Eight additional frequencies allocated in 2008

In 2008, the licensee was allocated the following eight frequencies to expand its coverage, and the license was amended accordingly:

- Radio broadcasting station: BAD ISCHL, location: Katrin Mittelstation, frequency: 107.9 MHz;
- Radio broadcasting station: OBDACH, location: Schupperer, frequency: 97.7 MHz;
- Radio broadcasting station: BADGASTEIN 1, location: Stubnerkogel, frequency: 106.6 MHz;
- Radio broadcasting station: FRIESACH, location: Lorenzenberg, frequency: 106.3 MHz;
- Radio broadcasting station: HUBEN 1, location: Brunnerberg, frequency: 100.5 MHz;
- Radio broadcasting station: BREGENZ 3, location: Gebhardsberg, frequency: 91.5 MHz;
- Radio broadcasting station: LOFER, location: Loderbichl, frequency: 103.7 MHz;
- Radio broadcasting station: MURAU, location: Stolzalpe, frequency: 107.7 MHz.

These frequency allocations served to reduce gaps in coverage, especially in the provinces of Vorarlberg, Salzburg and Styria.

Opportunity to apply for nationwide license in 2008-2009

In the period from October 20, 2008 to April 30, 2009, the regulatory authority invited interested parties to apply for another nationwide license pursuant to Art. 28b Par. 1 PrR-G.

4.1.1.5 Event and educational radio programs

Four licenses for event radio programs

Event radio refers to radio licenses which are granted for a maximum of three months under Art. 3 Par. 5 No. 1 PrR-G and which are used in the local area surrounding an independent public event during and around the time of the event.

In 2008, licenses were granted for the following event radio programs:

- Linz 2009 – Kulturhauptstadt Europas OrganisationsGmbH for radio broadcasting in the period from December 31, 2008 (11:30 pm) to January 1, 2009 (1:00 am) for the opening ceremony in connection with the "Linz 2009: European Capital of Culture" festivities;

- 92.9 HIT FM Radio GmbH for radio broadcasting from May 24, 2008 to July 13, 2008 for coverage of the Euro 2008 football championship (predominantly German-language 24-hour programming);

- Gerrit Voogd for radio broadcasting from June 19, 2008 to June 30, 2008 for coverage of the Euro 2008 football championship (Dutch-language 24-hour programming);

- Wolfgang Struber for radio broadcasting from August 18, 2008 to September 21, 2008 for coverage of the *Donauinselfest* (Danube Island Festival) 2008.

Pursuant to Art. 3 Par. 5 No. 2 PrR-G, 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.

Four licenses for educational radio programs

The following educational radio licenses were granted in 2008:

- An educational radio license was granted to a secondary school in Freistadt which had applied for a self-produced radio station for pupils, teachers and parents, comprising music broadcasts, projects of the lower and upper grades, interviews, news broadcasts as well as contributions from parents and teachers.

- One educational radio license was granted to "Freies Radio B-138," an associated established to promote independent, non-commercial radio projects in the Krems Valley; the station's core programming features are open access as a special means of promoting local citizens' participation and high involvement of schools in the region.

- One license for an educational radio program was issued to the Basic Vocal association in the HLW Media education program at the HLW Deutschlandsberg secondary school.

- One license was granted for an independent campus radio association's educational radio program, which in particular involves the Simulation-Assisted Communications Technology, Telecommunications and Media, Media Management and Social Work courses at the university of applied sciences (FH) in St. Pölten.

4.1.1.6 Procedures under telecommunications law in the field of radio broadcasting

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 the TKG 2003 for the construction and operation of a new radio system also refers to the allocation of a new frequency to the broadcaster, a tender procedure under Articles 12 and 13 PrR-G is initiated.

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

All such applications are reviewed by RTR's Broadcasting Frequency Management department in order to ensure technical compatibility with existing domestic and foreign transmitters. In most cases, this requires an international coordination procedure, in the course of 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. For applications which also include a broadcasting permit, the respective procedure provided for under broadcasting law is continued and the telecommunications permit is issued together with the final broadcasting permit.

19 changes to radio systems approved

In 2008, KommAustria approved 19 changes to radio systems for private broadcasters; one application under telecommunications law was disputed and withdrawn in the year 2008. At the end of the year, another twelve applications were still pending.

As the authority is in charge of issuing broadcasting permits for broadcasting transmitter stations, KommAustria also handles matters involving the Austrian Broadcasting Corporation (ORF).

In 2008, the authority approved ORF's application to carry out temporary VHF pilot broadcasts. In the reporting period, ORF submitted – and later withdrew – one application for a permit to operate a VHF tunnel radio system. In the field of analog short-wave broadcasting, one application from ORF was still pending at the end of the year.

4.1.2 Regulatory activities in television broadcasting

4.1.2.1 Digital terrestrial television

16 decisions concerning 85 transmitter stations

After the nationwide launch of digital terrestrial television in 2006, activities in the reporting period focused on the continued expansion of MUX A. In a total of 16 telecommunications decisions concerning 85 transmitter stations, KommAustria issued the permits necessary for this purpose in a timely manner. At the end of 2008, MUX A provided coverage for approximately 91% of Austria's population.

MUX B is now on the air in the capital cities of Austria's federal provinces and in many other densely populated areas. On this platform (which, along with MUX A, was licensed to ORS in 2006), viewers can receive the channels 3sat, ORF Sport Plus and PULS 4 in densely populated areas. MUX B's technical range came to 81% of the resident population at the end of 2007. The MUX B platform was not expanded in 2008.

Five pilot broadcasting permits

In addition, the pilot broadcasting permits for digital terrestrial television issued to ATV Aichfeld Film- und Videoproduktion GmbH, LT 1 Privatfernsehen GmbH and Christian Parzer (BAD ISCHL 2, Channel 30) were renewed during the reporting period. P3-Kabel-news GmbH and Christian Parzer (BAD ISCHL 3, Channel 30) were also issued a permit for pilot broadcasts of their television content.

4.1.2.2 Local digital terrestrial television

As digitization has enabled a more efficient use of frequencies, the regulatory authority was also able to allocate terrestrial frequencies for local and regional television channels. As Austria's local and regional television channels, which were previously broadcast almost exclusively in local cable networks and occasionally using analog terrestrial transmission, were largely interested in digital terrestrial transmission, KommAustria included a digital frequency coverage layer for local and regional broadcasters in the 2007 Digitization Plan. This platform was put out to public tender as "MUX C" in the fall of 2007.

29 applications for regional TV on MUX C

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 self-defined coverage areas; these platforms allow local channels to be broadcast with a minimum of frequency utilization based on robust modulation procedures. KommAustria received a total of 29 applications for different regions throughout Austria.

Licensing procedure completed in 2008

All of the applications were reviewed for completeness, compliance with legal requirements, and technical feasibility. As only one coverage layer was available, it was necessary to conduct a comprehensive review of the extent to which the individual regions requested could be implemented simultaneously in terms of frequency engineering. Where multiple applications were received for overlapping coverage areas and not all requests could be fulfilled with the available frequency resources, it was necessary to carry out a selection procedure among the applicants. This was the case in five regions. In another eleven procedures, only one applicant applied for the respective region and therefore received the allocation. The corresponding licenses were issued in the fourth quarter of 2008.

Requirements for multiplex operators

Up to four digital television channels can be broadcast via one regional terrestrial multiplex platform. In this context, the channel lineup must be arranged according to specific criteria (e.g., priority for existing analog terrestrial stations and cable broadcasting stations; priority for local stations). In addition, when selecting the digital stations to be broadcast via the platform, the multiplex operator is also required to account for the diversity of opinions and to ensure non-discriminatory and equal access to terrestrial transmission platforms for broadcasters. KommAustria reviews the operator's compliance with these license conditions.

As soon as the relevant applications have been received, KommAustria will issue licenses for the stations to be broadcast on each of the local or regional multiplex platforms. This will serve to further enrich the range of terrestrial channels offered on Austria's multiplex platforms.

4.1.2.3 Mobile TV

Invitation to tender for DVB-H

In the fall of 2007, the availability of additional frequency resources under the Geneva Frequency Plan due to ongoing analog switchoffs in terrestrial television broadcasting made it possible to carry out an invitation to tender for the first nationwide multiplex platform for mobile terrestrial broadcasting (MUX D), thus facilitating the introduction of mobile terrestrial television based on the DVB-H standard.

Four DVB-H applications

KommAustria received four applications during the submission period, which ended on December 14, 2007. Once the applications from Österreichische Rundfunksender GmbH & Co KG (ORS) and Telekom Austria TA AG had been rejected, a selection procedure was carried out between MEDIA BROADCAST GmbH (formerly T-Systems Media&Broadcast GmbH) and Mobile TV-Infrastruktur GmbH. The legally defined selection criteria for this purpose had already been detailed in the Multiplex Operator Selection Principles Ordinance.

In a decision issued on February 29, 2008, KommAustria awarded MEDIA BROADCAST GmbH the license to operate a multiplex platform for mobile terrestrial broadcasting. This decision was confirmed in its entirety when the BKS issued an official decision on March 31, 2008 rejecting the appeal submitted by Mobile TV-Infrastruktur GmbH.

DVB-H launched in time for Euro 2008 football championship

MEDIA BROADCAST GmbH put MUX D into operation in the provincial capital cities of Vienna, Innsbruck, Salzburg and Klagenfurt according to plan and in time for the start of the Euro 2008 football championship, which was held in Austria and Switzerland in June 2008. Since then, mobile television has reached a coverage level of more than 50% of Austria's population.

At the time of this publication, Hutchison 3G Austria GmbH, One GmbH and mobilkom austria AG were operating as program aggregators (i.e., the companies – typically mobile network operators – which assemble program channels and sell them to retail customers). The current channel packages broadcast include 15 television stations (ORF1, ORF2, ATV, PULS 4, Pro7 Austria, RTL, Sat1Österreich, VOX, LAOLA1.tv, LaLaTV, Red Bull, RTL2, N24, Super RTL and KroneTV) and five radio stations (Ö3, FM4, Kronehit, Ö1 and LoungeFM).

4.1.3 Activities in the Digital Platform Austria working group

The Digital Platform Austria working group was established by the Austrian legislature in 2001 with the objective of supporting the regulatory authority in the development of broadcasting digitization plans. 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.

Plenary assembly on June 23, 2008

An RTR study (prepared in cooperation with the Salzburg University of Applied Sciences) on the costs of launching and operating digital terrestrial radio systems in Austria was presented at the plenary assembly of the Digital Platform Austria in 2008. In the study, the authors compare the projected costs of introducing and operating the T-DAB/DAB+ and HD Radio™ technology variants. Overall, the findings show that the costs of broadcasting radio signals using DAB+ are significantly lower than those of VHF broadcasting.

Markus Morgen of LS telcom presented the study "Digital Radio in Europe," which was commissioned by the Austrian Federal Chancellery and RTR. According to Morgen, there is a tendency toward different standards in each country.

Guest speaker Michael Weber of the BMW Group explained the DAB services already on offer in the automotive industry. Weber commented that further developments toward new standards such as DAB+ or DMB have already begun, but due to development times in the industry these standards will only be supported on a broad basis from 2012 onward.

Yes to digital radio, but only in several years' time.

In summary, the event showed that digital radio will be accepted, but it will only be implemented in several years' time. Both August Reschreiter, a media economics advisor to Media Minister Doris Bures, as well as Alfred Grinschgl, Managing Director of RTR's Broadcasting Division, mentioned that Austria is ready for digital radio, but that proper timing and the existence of uniform European standards will ultimately be decisive in this context.

4.1.4 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 (PrTV-G).

New satellite broadcasting licenses for 15 channels

In 2008, KommAustria granted new satellite broadcasting licenses for a total of 15 television channels:

- Deep Space Media GmbH: Licenses were issued for the four specialized teleshopping channels "Action XXX TV," "Multitainment TV," "Spass im TV" and "Visit-X.TV." In addition, the company received licenses for the channels "Multi Channel 1," "Multi Channel 3," "Multi Mobile," "Multi Info," "Entertainment Interactive," "Multi Channel 2," "Multi Mobile 2," "Info Interactive" and "Interactive Live." All of the channels are unencrypted specialty teleshopping channels which present direct offers of services and goods, especially value-added voice and text message services, 24 hours per day. All of the channels comply with the provisions regarding the protection of minors as set forth in Art. 32 PrTV-G.

- StarSat Werbevertriebs GmbH: The channel "Hotel SAT" is an unencrypted 24-hour teleshopping channel which advertises travel and hotel offers.

- Salzburg TV Fernsehgesellschaft m.b.H.: The channel licensed, "Salzburg TV" (to be renamed "Servus TV" from April 1, 2009), is a specialized 24-hour channel which targets a multinational and multilingual community and focuses on the fields of news and trends, events, sports, travel, culinary enjoyment, culture, technical innovations and people.

Substantial changes in satellite channels are subject to approval under Art. 6 PrTV-G. Within the scope of its legal supervisory activities, KommAustria approved a number of changes in 2008. For details, please refer to Section 4.1.8.5.

4.1.5 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. Regardless of their place of incorporation, all communications service providers which render these services in Austria 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 related services. In the reporting period, KommAustria issued 18 confirmations under Art. 15 Par. 3 TKG 2003 for cable network operators. In some cases, KommAustria did not issue a confirmation because the cases did not involve broadcasting transmissions or because incomplete reports were not supplemented appropriately.

Competition regulation for broadcasting networks

Under the TKG 2003, public communications networks and services for broadcasting are also subject to competition regulation by KommAustria. The regulatory authority's activities in the context of market analysis are described in the next section.

4.1.6 Broadcasting market analysis

Market definition and 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").

New markets recommendation from European Commission

On December 28, 2007, the European Commission adopted a new Recommendation on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services. The original version of the Commission's recommendation from 2003 also included the market for broadcasting transmission services to deliver broadcast content to end-users, which is no longer mentioned in the new recommendation. In the transitional provisions of this recommendation, however, the Commission suggests that national regulatory authorities (NRAs) should carry out market analyses in order to determine the extent to which obligations should be maintained, amended or lifted; this should be done regardless of whether or not the relevant market is included in the new recommendation.

Review of relevant markets ordinance

In accordance with Art. 36 Par. 1 TKG 2003, the regulatory authority initiated a review of the ordinance identifying relevant markets susceptible to sector-specific regulation (RFMVO 2004). For this purpose, an extensive data survey was conducted among market participants.

The data collected was 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. The following three markets were identified as relevant:

1. The market for analog terrestrial transmission of FM radio broadcasting signals to end-users;

2. The market for access and the digital terrestrial transmission of television signals to end-users using the MUX A and MUX B multiplex platforms;

3. The market for access to transmission facilities and the digital terrestrial transmission of television signals to end-users.

In geographical terms, each of these markets comprises the entire federal territory of the Republic of Austria. A national consultation and EU-level coordination of the results of the market delineation process will follow in the year 2009.

4.1.7 Broadcasting frequency management and frequency coordination

Use of a Geneva 2006 coverage layer for local and regional terrestrial television

During the reporting period, one focus area in frequency management activities was the frequency planning necessary for the local and regional DVB-T multiplex platform (MUX C). Once the regulatory authority had received the applications, the main task was to determine how to allocate the frequencies in such a way as to fulfill as many applications as possible. It was also necessary to account for the ancillary condition that only one coverage layer from the Geneva 2006 plan could be used. In the planning process, the authority also made an effort to

avoid the frequency channels above channel 60 (frequency range: 790 MHz to 862 MHz), which was largely successful. It was necessary to allocate channels above channel 60 for temporary use in only a few cases.

ORS's planning and launch activities for MUX A, which have to be carried out in cooperation with RTR under the PrTV-G, continued to progress rapidly in the reporting period. For small and very small converters, which account for the bulk of television broadcasting transmitter locations in Austria, it is necessary to allocate a suitable channel which does not bring about usage restrictions under the Geneva 2006 plan in Austria or abroad and also does not limit further expansion possibilities.

DVB-H mobile TV launched

MUX D (DVB-H) frequencies were planned jointly by the licensee MEDIA BROADCAST and RTR. For some television channels, it was also necessary to use temporary channels because certain target channels are still blocked by a number of analog television transmitters in Austria and abroad.

For wireless microphones and other radio services which are essential to sports and cultural events (such as the Bregenz Festival) and which use the same frequency range as television transmitters, it is already becoming difficult to find suitable frequencies due to the utilization of the digital dividend. RTR's frequency management team supports the Austrian Federal Ministry of Transport, Innovation and Technology, which is responsible for this type of radio service, with information on the DVB-T transmitters to be launched in Austria and abroad in the coming years and the frequencies which will no longer be available for wireless microphones as a result.

With regard to the implementation of DVB-T in Austria's neighboring countries, we can generally observe that Germany and Switzerland have made great progress in the transition from analog terrestrial broadcasting (Germany switched off its last analog television transmitter at the end of 2008), while the neighboring countries to the east still lag far behind. Those countries are expected to launch regular DVB-T operations in 2009, as otherwise they will not be able to carry out the analog turn-off (ATO) targeted by EU member states in 2012. If additional DVB-T coverage layers are launched in Austria in the coming years, the slow pace of digitization in those countries could very well hinder progress in Austria.

Evaluating uses of the digital dividend for mobile communications

The activities of the international working groups in the European Conference of Postal and Telecommunications Administrations (CEPT) and the International Telecommunication Union (ITU), in which RTR's Frequency Management department participated, were primarily devoted to the potential use of the digital dividend for mobile communications services in the future. The working groups have begun to evaluate all of the different mutual impacts which may arise between different services and systems in the same frequency range with a view to defining mutual limits and ensuring interference-free operation.

4.1.7.1 Frequency coordination procedures

Coordination procedures in order to open up new frequencies

According to the relevant international treaties, any launches or changes in the operation of existing terrestrial frequencies require a frequency coordination procedure with the countries affected. The frequency coordination procedures to make these frequencies available generally last three to six months.

The table below shows the number of coordination procedures carried out in 2008. The table reflects both new and amended plans for the relevant frequencies.

Table 1: Number of coordination procedures

Country	Analog radio	Digital radio	Analog television	Digital television
Austria	36	-	-	43
Germany	20	17	-	39
France	127	-	-	4
Croatia	11	-	33	3
Poland	16	-	-	1
Switzerland	23	89	-	5
Slovakia	16	-	-	-
Slovenia	17	-	-	1
Czech Republic	63	-	-	14
Hungary	7	-	-	-
TOTAL	**336**	**106**	**33**	**110**

Source: RTR

In general, digital transmission technologies (DVB-T and T-DAB) have simplified frequency coordination to some extent by enabling the construction of single-frequency networks. In particular, this has been the case in procedures involving Germany and Switzerland, where the results of the RRC 06 conference have been implemented with up to six coverage layers based on single-frequency networks in densely populated areas.

Short simulcast phase enables rapid construction of digital TV networks.

After a brief simulcast period, the rapid expansion of digital broadcasting via MUX A in Austria enabled numerous analog switch-offs, which have in turn enabled the rapid development of digital television networks at the national as well as the international level.

One major challenge in frequency coordination was Germany's plan to realize a digital radio coverage layer in the VHF range throughout the country. For this purpose, one DVB-T coverage layer was used, and at the same time efforts were made to use the existing white spaces in the frequency spectrum for broader planning changes. In the year under review, it was not possible to complete the replanning process and the creation of a nationwide coverage layer in Germany which is compatible with Austria's requirements, and as a result those activities will continue in 2009.

4.1.7.2 Participation in licensing and allocation procedures

With regard to licensing activities under the PrR-G, the regulatory authority received a large number of applications for technical changes in the year under review. In this context, it is especially worth mentioning the expansion of the nationwide radio broadcaster's coverage. Moreover, new licenses were awarded for the provincial capitals Graz, St. Pölten and Innsbruck; these license awards were preceded by extensive technical reviews.

Burgenland, Vorarlberg and Vienna are already completely digitized with DVB-T.

The expansion of MUX A was carried out more quickly than originally planned. As of the end of 2008, 110 DVB-T transmitters were already in operation, affording a coverage level of approximately 91% of the population. In addition to the province of Vienna, the Vorarlberg and Burgenland provinces were completely digitized.

In the allocation procedure for a nationwide multiplex license for mobile terrestrial broadcasting (DVB-H), the technical review was completed at the end of January 2008. In order to resolve the sometimes very detailed and complex technical issues, it was necessary to hold extensive meetings with each applicant.

18 DVB-H transmitters put into operation

In rolling out its transmitter network, the licensee (MEDIA BROADCAST) complied with the expansion plans laid down in the course of the procedure. As early as the end of May 2008, permits were issued for the first transmitters at the locations of the Euro 2008 football championship. By the end of 2008, 18 digital transmitters were in operation. This means that all of the capital cities of Austria's nine federal provinces are technically covered with DVB-H, which represents a range of just over 50% of Austria's population.

In the licensing procedure for the operation of local/regional terrestrial multiplex platforms (MUX C), a technical review was carried out in order to address the question of simultaneous feasibility. In this way, it was possible to subdivide the plans submitted into twelve different regions and to handle them in separate procedures.

Use of white spaces for local and regional DVB-T multiplexes

For the purpose of further frequency engineering analyses, a technical report was prepared for each of those regions. In particular, those reports addressed the question of whether sufficient frequency resources – especially from the use of white spaces – were available in each region. For most of the plans submitted, it was possible to develop a viable solution in terms of frequencies.

By the end of 2008, 31 DVB-T transmitter sites in ten regions had been approved for the digital transmission of local/regional channels.

4.1.7.3 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.

This data is also available to the public in the form of tables and a graphic transmitter map on the RTR web site (http://www.rtr.at).

In the reporting period, the frequency pool was added as an important part of the frequency register. This pool contains the DVB-T frequency resources under the GE06 plan which have not yet been used.

DVB-T frequency pool added to frequency register

4.1.7.4 Measurement activities

In the year under review, RTR carried out some 36 measurement assignments, approximately half of which were devoted to coverage measurements for VHF radio transmitter networks, either for the purpose of planning future technical changes or as check measurements after technical changes had been introduced. For the Euro 2008 football championship alone, at least one event radio station was set up in each city where the matches were held, and the feasibility of those projects was verified using RTR's measurement vehicle. In addition, numerous measurements were taken in connection with CEPT Working Group FM PT22, which deals with the hub and multiplex power values of VHF transmitters. A number of measurements were carried out in the course of DVB-T implementation, which also involved cooperation with measurement teams from neighboring countries.

Measurements enabled event radio broadcasts for the Euro 2008 championship.

4.1.7.5 Participation in international working groups

Frequency Management Project Team 45 (FM PT45)

A meeting of the FM PT45 working group was held in Copenhagen in July 2008. The tasks of the working group were again revised slightly at the WG FM meeting in Baku (September 2008); the main topics addressed are the possible digitization of Band II (VHF broadcasting band) as well as the general technical conditions for the launch of digital transmissions based on the DRM standard in the long, medium and short wave ranges. Moreover, topics such as the additional use of the L-Band (1452-1479.5 MHz) for wireless microphones and other multimedia services were also placed on the agenda. An initial report to the Electronic Communications Committee (ECC) is to be completed by August 2009. For this purpose, the FM PT45 Working Group will hold several meetings in the year 2009.

CEPT working group examining possible digitization of Band II

ECC Task Group 4 (ECC TG4)

At the beginning of 2008, a third CEPT study on the use of white spaces in the 470-862 MHz frequency range was completed in the ECC TG4 working group. In the process of preparing the report, it became clear that certain clarifications of technical issues were not included in the European Commission's mandate and that additional studies would be necessary as a result.

In April, the working group received a second mandate from the European Commission. As a follow-up to the first mandate, the second mandate was subdivided into three sub-reports with different deadlines. The sub-reports will be completed by the end of summer 2009.

EU Commission issues mandate to CEPT working group

The first sub-report focuses on the cross-border coordination issues based on the assumption that the frequencies will be used by broadcasting and mobile services. In this context, the guard bands required and the maximum permissible field strengths are among the most important issues.

The second sub-report will discuss different band plans in the 790-862 MHz frequency band. For this purpose, the advantages and disadvantages of specific plans will be identified. In addition, the report will also identify harmonization options within Europe wherever possible.

The third sub-report is to identify the possible use of wireless microphones (as well as comparable services) in the 470-862 frequency band if parts of the spectrum are no longer available due to new mobile services. In particular, the group is making efforts to find a uniform solution for wireless microphones throughout Europe.

In the year under review, the group held a total of five meetings for the purpose of preparing the three sub-reports. Close cooperation between RTR's Frequency Management department and Section III of the Federal Ministry of Transport, Innovation and Technology (BMVIT) is especially necessary in the fields of broadcasting and mobile communications.

Joint Task Group 5-6 (JTG 5-6)

Sharing studies in the 790 – 862 MHz frequency band

The JTG 5-6 group, which was deployed in the context of ITU-R in 2008, was founded on the basis of a decision made at the World Radio Conference 2007 (WRC 07). Resolution 224 from WRC 07 stated that a study on a wide variety of scenarios for the co-primary use of the 790-862 MHz frequency band by broadcasting and mobile services is to be presented for WRC 11. The JTG 5-6 working group convened twice in the reporting period. The table of contents and the structure of the study as well as the division of tasks among the various sub-groups have now been defined. The extensive "sharing studies" will be launched in the course of the next year. The study will be highly comprehensive, as all of the primary radio services in the regions mentioned (which include Europe, Africa and Asia), the radio services mentioned above (broadcasting and mobile communications) as well as aircraft radio navigation services and existing fixed radio services have to be taken into account.

4.1.8 Legal supervision

4.1.8.1 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 the advertising provisions of Austrian broadcasting law.

KommAustria is responsible for decisions with regard 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 response to reports from KommAustria. 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 evaluated every month.

Austrian Broadcasting Corporation (ORF) channels reviewed multiple times

Among the ORF's channels, the regional radio stations for Lower Austria, Burgenland, and Tyrol, as well as Ö3 (twice), Ö1 and the television channels ORF1 (four times, once for 24 consecutive hours) and ORF2 in Vienna, Carinthia, Salzburg, Tyrol and Burgenland were reviewed without violations being identified in 2008.

One procedure regarding ORF1 is pending with the BKS. The BKS identified legal violations in the case of the radio station Ö3 and the television channels ORF1, ORF2 and the ORF2 regional channels for Lower Austria, Upper Austria, Carinthia, Styria and Vorarlberg.

Five legal violations identified on the part of private broadcasters

Among the private radio broadcasters, the following broadcasters' channels were evaluated in addition to the nationwide radio broadcaster KRONEHIT: Carinthia: Antenne Kärnten Regionalradio GmbH & Co KG; Lower Austria: Radio Maria Österreich and Digi Hit Programm Consulting GmbH; Upper Austria: Privatradio Arabella GmbH & Co KG; Salzburg: Radio Alpina Chytra KEG and Köp Michael; Styria: Radio – TV Grün Weiss Betriebs GmbH Nfg. KEG and IQ – Plus Medien GmbH; Tyrol: U1 Tirol Medien GmbH; Vorarlberg: Vorarlberger Regionalradio GmbH; Vienna: Superfly Radio GmbH. Violations of advertising regulations (or of the obligation to provide recordings) were identified by KommAustria in only two cases. An appeal filed against one of those decisions was still pending when this report was published. Three procedures had not yet been completed at the end of the reporting period.

Among the private television broadcasters, programs broadcast by ATV Privat TV GmbH & Co KG, PULS 4 TV GmbH & Co KG, Community TV-GmbH, B.G.P Medien GmbH, TELE1VISION Video und Fernsehproduktion GesmbH, INNSAT.TV GmbH (twice), Sat.1 Austria/ProSieben Austria GmbH, Deep Space Media GmbH and ATV Aichfeld Film- und Videoproduktions GmbH were selected for evaluation. Violations of advertising regulations (or of the obligation to provide recordings) were identified in three cases. One procedure had not been completed at the end of the reporting period.

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

As in the previous year, the BKS completed a large number of legal supervisory procedures initiated on the basis of KommAustria reports on ORF as well as procedures involving those private broadcasters which appealed against KommAustria's identification of advertising violations during the reporting period. Once again, the BKS – as the legal supervisory authority and authority for appeals – essentially maintained its interpretation of advertising regulations and concurred with KommAustria's legal views regarding advertising violations in a vast majority of cases.

BKS decisions on teleshopping and on the separation of event announcements and advertising

In this context, it is especially worth mentioning the BKS decisions on the definition of the term "teleshopping" in the procedures which were resumed after the ECJ delivered a preliminary ruling on October 18, 2007 in case C-195/06, KommAustria vs. ORF (e.g., BKS Sept. 1, 2008, 611.009/0042-BKS/2007 – "QuizExpress"). In addition, significant specifications were introduced for the purpose of separating event announcements and advertising (e.g., BKS Oct. 20, 2008, 611.009/0012-BKS/2008 – "NovaRock"). Finally, it is also important to note explicitly that the Austrian Administrative Court (VwGH) confirmed the regulatory authorities' legal interpretations in a number of decisions (e.g., VwGH Feb. 29, 2008, 2005/04/0275 [PrTV-G] or Nov. 19, 2008, 2005/04/0172 [ORF-G]).

4.1.8.3 Legal violations

Procedures based on complaints

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.

Ex officio legal supervision

During the reporting period, seven complaints regarding broadcasters were lodged; however, four of the complaints were subsequently rejected or withdrawn because formal requirements were not fulfilled. In one case, a revocation procedure was initiated due to violations of legal provisions for the protection of minors (Art. 32 PrTV-G). Two complaints were submitted in late 2008 and had therefore not been completed by the end of the year.

During the reporting period, ex officio supervision largely focused on reviewing adherence to advertising regulations (see Section 4.1.8.1) as well as the associated violation procedures due to failures to provide recordings for the purpose of advertising monitoring. In the year under review, KommAustria initiated legal violation procedures against three television broadcasters due to their failure to provide recordings. The official decisions on legal violations issued in those cases have gone into legal effect.

In another procedure, KommAustria determined that the broadcaster had changed its programming scope and had thus violated applicable law. In addition, KommAustria initiated legal violation procedures in two cases due to a failure to report changes in the transmission of channels via satellite (Art. 6 PrTV-G) and completed both procedures with legal effect. Finally, KommAustria initiated revocation procedures in three cases involving satellite broadcasters due to violations of legal provisions for the protection of minors (Art. 32 PrTV-G), with one legal violation identified by KommAustria in the joint procedures. The official decision had not yet taken legal effect at the end of 2008. The complaint procedure due to a violation of legal provisions for the protection of minors was completed with the legally effective identification of a violation. One procedure initiated due to a cable information channel's failure to provide recordings of its broadcast programs was not completed with legal effect.

Five penal procedures

In connection with the legal violation procedures, KommAustria carried out five penal procedures, all of which were completed with a penal order. Two procedures had not yet been completed with legal effect at the end of the reporting period.

Lapse of three satellite broadcasting licenses

In three cases in 2008, KommAustria ascertained the lapse of satellite broadcasting licenses because the licensees had not carried out regular broadcasting operations in accordance with the terms of their licenses over a continuous period of one year for reasons within the licensees' control. Another procedure was still pending at the end of the reporting period.

4.1.8.4 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. These activities are intended to ensure that the legal requirements for broadcasting (Art. 5 Par. 3 and Articles 7 to 9 PrR-G, and Art. 4 Par. 3 and Articles 10 and 11 PrTV-G), such as professional, financial and organizational 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.

Broadcasters' notification requirements

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 shareholders acquire more than 50% of the shares in a radio broadcaster, Art. 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 Art. 5 Par. 3 and Articles 7 to 9 PrR-G.

Changes subject to approval

Similarly, Art. 10 Par. 6 PrTV-G also 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, before the shares are transferred it is also necessary to obtain an official assessment from KommAustria as to whether the changed structure will still comply with legal requirements (Art. 10 Par. 7 PrTV-G). During the reporting period, the regulatory authority received several reports on changes in ownership structure under Art. 22 Par. 4 PrR-G which did not exceed the 50% threshold. For example, the changes involved the demerger of Radio Arabella Salzburg from Radio Arabella GmbH in order to merge the subsidiary into Arabella Privatradio GmbH. In this way, the radio broadcasting license for the Salzburg 102.5 MHz coverage area was transferred from Radio Arabella GmbH to Arabella Privatradio GmbH by way of partial universal succession.

In connection with the provision under Art. 22 Par. 5 PrR-G, it is worth mentioning one procedure in which the provisions of Art. 5 Par. 3 as well as Articles 7 to 9 PrR-G were not violated even after the assignment of 96.45% of the shares in HiT FM NÖ Süd Radiobetriebsges.m.b.H. (licensee for the "Wiener Neustadt and Neunkirchen districts, Wiener Neustadt town" coverage area) to Medien Union GmbH Wien, Lokalradio Burgenland GmbH and Perikles Beteiligungs- und Vertriebsgesellschaft mbH.

In addition, the regulatory authority also received several notifications under Art. 10 Par. 6 PrTV-G, including one regarding the transfer of shares within the group SevenOne Media Austria GmbH, SAT. 1 Privatrundfunk und Programmgesellschaft m.b.H., ProSieben Austria GmbH and PULS 4 TV GmbH & Co KG.

In this context, it is also necessary to mention the reorganization of Puls City TV GmbH as PULS 4 TV GmbH & Co KG, which came about after multiple restructuring steps.

In the reporting period, three assessment decisions were issued on the basis of the provisions of Art. 10 Par. 7 PrTV-G. In this context, one procedure concerned the assignment of 49.4% of the shares in gotv Fernseh Ges.m.b.H. to IKIB Mittelstandsfinanzierungs AG. Moreover, official decisions were issued with regard to the assignment of a limited partner's 52% share in ATV Privat TV GmbH & Co KG to HKL Medienbeteiligungs GmbH & Co KG as well as the assignment of 100% of the shares in Deep Space Media GmbH to Four Star Limited (Liechtenstein). In all of those cases, the regulatory authority determined that the transfers would not violate the provisions of Art. 4 Par. 2 and 3 PrTV-G.

4.1.8.5 Programming changes

Approval procedures for programming changes in radio broadcasting (PrR-G)

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), under Art. 28a Par. 2 PrR-G private analog terrestrial radio broadcasters are allowed to request an official assessment decision from KommAustria on whether or not planned programming changes can be considered fundamental changes. The question of whether a change in programming can be considered fundamental is to be assessed 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 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 relevant circumstances external 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.

In the reporting period, Radio Oberland GmbH and Außerferner Medien GmbH each requested an assessment as to whether planned changes in their programming could be considered fundamental. In both cases, KommAustria determined that the plans involved fundamental changes to the nature of the broadcaster's programming. Subsequently, the radio broadcasters requested approval of a fundamental change in the nature of programming pursuant to Art. 28a Par. 3 PrR-G in the form of a change in music formats. KommAustria approved both of the programming changes.

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 analog terrestrial broadcasting 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, after which 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.

Approval procedures for programming changes in satellite broadcasting and digital terrestrial broadcasting

Broadcasters which hold licenses for satellite broadcasting and digital terrestrial broadcasting pursuant to Art. 28 PrTV-G are subject to the procedure defined in Art. 6 PrTV-G.

Programming changes in satellite and digital terrestrial broadcasting

As licenses are issued without an official selection procedure in these cases, the range of permissible programming changes is somewhat broader than in the case of analog terrestrial radio and television, which make use of limited frequency resources. Licensees for satellite and digital terrestrial channels are required to notify the regulatory authority in advance of any major changes in their programming category, program duration, number and duration of "window" programs as well as the transmission of channels using different satellites or additional terrestrial multiplex platforms. These changes are to be approved by the regulatory authority as long as compliance with the provisions of Sections 3 and 7 of the Private Television Act is ensured.

If changes of this kind are made without advance regulatory approval, an administrative penal procedure is to be initiated.

7 approval procedures for changes

In the reporting period, a total of seven procedures for the approval of changes pursuant to Art. 6 PrTV-G were carried out; one of those procedures was still pending at the end of the reporting period, while another was withdrawn by the applicant. The procedures were predominantly related to changes in programming and program duration, and in one case the regulatory authority approved a switch to a different satellite.

4.1.9 Austrian Digitization Fund

In 2008, the Austrian Digitization Fund received an endowment of EUR 6.722 million (based on the adjustment of the federal government contribution to the Broadcasting Division). These funds are derived from Austrian broadcasting fees which are collected jointly with ORF programming fees but are generally allocated to the federal budget.

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

Digitization Fund activities

One focus of the fund's activities in 2008 was a campaign developed in cooperation with the Austrian Federal Economic Chamber (WKÖ) to provide subsidies for devices which support digital cable broadcasting (DVB-C) reception. The campaign, which had begun in early 2007, was extended until December 31, 2008 and targeted consumers who switch to digital cable reception early 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.

In another measure to promote the digitization of cable infrastructure, consumers were offered subsidies for the early adoption of digital broadcasting reception using HD-compatible DVB-C devices. Up to now, subsidies from the Digitization Fund have benefited customers of the UPC group.

The allocation of subsidies intended to assist disadvantaged consumers in purchasing MHP-compatible devices necessary for the terrestrial reception of digital broadcasts (DVB-T) was prolonged until December 31, 2008. This subsidy, which covers up to 50% of the price of the receiver, benefits customers in the DVB-T switchover regions who are exempt from the broadcasting fees collected by GIS.

With regard to the DVB-H platform, RTR commissioned an international comparison study of existing mobile television offerings with regard to advertising financing. The objective of the study is to prepare an international comparison of existing mobile television offerings with regard to advertising financing and to research the potential implementation of results previously attained in advertising-financed mobile television on the Austrian market.

In addition, RTR commissioned a study analyzing the need for digital radio in Austria. With the launch of DVB-T, television digitization has now reached all conventional platforms in Austria, and therefore it is necessary to survey the need for the launch of digital radio in Austria with the help of an expert panel. The results of this study will be presented in the second half of 2009.

Finally, RTR also supported or financed the following projects using resources from the Digitization Fund in 2008:

- Continuation of the three-year project to finance the additional costs arising from simultaneous analog and digital broadcasting (simulcast operation) for ORF and ATV;
- Construction and operation of a cable multiplex platform;
- Ongoing development of ORF's MultiText as an additional service in digital broadcasting in terms of operability, application speed and automated information content;
- Preparation of a feasibility study on the transmission and display of additional MultiText content by the broadcasters ORF and ATV on UPC set-top boxes (UPC Media Boxes).

In 2008, the Digitization Fund received an endowment of EUR 6,722,002.50. In addition, funds from previous years in the amount of EUR 8,162,815.73 were available (cf. excerpt from the 2008 accounts, Table 25).

The funds transferred to the Digitization Fund by the Federal Ministry of Finance as of January 30, 2008 and June 30, 2008 were deposited in a separate account at Kommunalkredit Depotbank AG and earned interest in the amount of EUR 460,606.01 in the year under review. The interest paid on funds in the account with Raiffeisen (settlement account for DVB-T device subsidies) came to EUR 1,824.73. In addition, the fund earned EUR 28,304.67 in interest on the repayment of unused grants. As a result, the Digitization Fund's interest income totaled EUR 490,735.41 in the year 2008. Including the repayment of unused grants in the amount of EUR 86,178.47 and the repayment of administrative expenses from 2007 (EUR 233,411.91), total credits to the fund came to EUR 7,532,328.29 in the year 2008.

Therefore, the Digitization Fund had a total of EUR 15,695,144.02 at its disposal in 2008, and the funds were used as follows:

- EUR 842,500 was used to cover RTR's administrative activities, participation in projects as well as expert reports and studies commissioned in connection with broadcasting digitization.

- Grant payouts from the years 2006 and 2007 came to EUR 3,280,206.39, of which EUR 2,736,023.16 was used for simulcast grants, EUR 239,928.03 for DVB-H pilot projects, and EUR 304,255.20 for the continued development of MultiText. Grant payouts from the year 2008 amounted to EUR 391,212.72, with which the following projects were supported: MHP-compatible receivers for digital cable television (EUR 117,282.72), cable MUX (EUR 133,330.00), ORF MultiText on UPC Media Box feasibility study (EUR 15,000.00), costs arising from device subsidies for disadvantaged consumers (EUR 75,600.00) and simulcast grants in 2008 (EUR 50,000.00).

- A total of EUR 934,360.00 was paid out in subsidies for consumers who made an early transition to digital terrestrial television reception (DVB-T) and for device subsidies for disadvantaged consumers.

Total of EUR 4.606 million paid out from Digitization Fund in 2008

Grants paid out in 2008 thus amounted to EUR 4,605,779.11, while administrative expenses and RTR's participation in projects came to EUR 842,500.00. Therefore, the fund paid out a total of EUR 5,448,279.11 in the year under review.

The remaining amount of EUR 10,537,971.18 (including the EUR 291,106.27 returned to the fund as it was not required for administrative activities and participation in projects) has been carried forward to the year 2009. Of that amount, EUR 3,910,680.00 is earmarked for previously awarded grants which had not yet been paid out in 2008.

As a result of the economic and expedient use of resources, additional funds in the amount of EUR 6,627,291.18 are still available for the year 2009.

4.1.10 Austrian Television Fund

EUR 7.5 million for the Austrian film industry

The legal basis for the Austrian Television Fund is defined in the relevant articles of the KommAustria Act (Articles 9f to 9g in conjunction with Articles 9c to 9e KOG). Those provisions describe the objectives of the grants, how the funds are raised, and the fundamental decision-making basis for grant awards. The grant guidelines for the Austrian Television Fund, which had to be notified to the European Commission in Brussels, contain provisions governing the objectives of the grants, fundable project costs, personal and material qualifications, etc. In 2008, the fund received an endowment of EUR 7.5 million from fees collected in accordance with Art. 3 Par. 1 of the Austrian Broadcasting Fees Act (RGG) and allocated to the federal budget.

The relevant legal regulations stipulate that the grants awarded by the Austrian Television Fund must contribute to enhancing the quality of television production and the capacity of the Austrian film industry. The objective of the fund's grant activities is to strengthen Austria as a media location and to ensure its diverse cultural landscape. Another objective of the Austrian Television Fund is to contribute to strengthening the audiovisual sector in Europe, especially in Austria.

Grant decisions are made by the managing director of RTR's Broadcasting Division, Alfred Grinschgl, on the basis of the grant guidelines and after due consideration of the review board's comments. In 2008, the review board included Chairman Andreas Hruza (Andreas Hruza AV Medienbüro GmbH), Bettina Leidl (Managing Director, Kunsthalle Wien), Werner Müller (Austrian Federal Economic Chamber), Gerlinde Seitner (Austrian Film Institute) and Matthias Settele (SetTele Entertainment GmbH).

In 2007, the guidelines for grants from the Austrian Television Fund were approved by the European Commission for the period ending on June 30, 2013. No changes were made to the guidelines in the year 2008. The current version of the guidelines can be found on the Austrian Television Fund's web site (http://www.fernsehfonds.at).

4.1.10.1 Projects supported

There were four application dates in 2008, and a total of 68 grant applications were submitted for the production of television films, series and documentaries.

Four application dates: 37 projects supported

Of those project applications, eight were withdrawn, while 22 were rejected because at the time of submission they did not fulfill the grants' purpose requirements as defined in the guidelines and the KommAustria Act (KOG), or because they were considered less worthy of funding compared to the other projects submitted. A total of 38 applications were approved, with one project receiving an increase in funding.

In 2008, a total of 37 projects (16 television films, 1 television series and 20 television documentaries) were supported with grants totaling EUR 7,412,783.00.

The grant decisions of the Austrian Television Fund can be viewed at http://www.fernseh-fonds.at (in German).

4.1.10.2 Events

The Austrian Television Fund makes efforts to support Austrian producers not only by providing funding for projects, but also by providing a platform for professional development and the exchange of ideas with other professionals from the industry.

Seminar: "Digital Content Distribution – Legal, Regulatory and Commercial Developments in New Media"

With the support of the Austrian Television Fund and the EU's MEDIA program, the Erich Pommer Institute (EPI) organizes an annual English-language seminar series entitled "ESSENTIAL LEGAL FRAMEWORK."

Austrian Television Fund promotes continuing education for producers.

In this series, a seminar on digital content distribution was held in Baden from September 24 to 28, 2008 and was attended by a number of international experts. The seminar focused on the general legal and technical conditions for new film distribution media and on the changes which have become necessary due to recent developments. The participants in the seminar came from 13 different European countries and were introduced to the fundamentals of the Directive on Audiovisual Media Services and its effects on the distribution of content over the Internet as well as new copyright problems which have arisen in the digital world, among other topics.

Seminar: "Austrian television films and distribution – Traditional and new challenges"

In cooperation with the Erich Pommer Institute, the Austrian Television Fund offered Austrian film producers a seminar about film distribution on December 4, 2008. At the seminar, speakers from Germany, Switzerland and Austria identified the problems as well as the opportunities associated with new digital distribution modes.

The seminar attracted a total of 45 participants, which more than fulfilled the organizers' expectations. In order to facilitate access to specialized continuing education for Austria's future film producers, students and instructors from the Film Academy and the Adult Education Center for Creative Professions were able to attend the event free of charge.

4.1.11 Press and journalism subsidies

4.1.11.1 Press subsidies

Applications and budget

2008: 138 applications for subsidies

In 2008, KommAustria received a total of 138 applications for financial support pursuant to the Press Subsidies Act 2004 (PresseFG 2004; Federal Law Gazette I No. 136/2003). KommAustria granted subsidies in 129 cases, while nine applications had to be rejected because they did not fulfill the relevant legal requirements for subsidies.

The number of applicants decreased compared to the year 2007 for several reasons: No applications were submitted for the daily newspaper *Neue Tiroler Zeitung*, which was discontinued at the end of March 2008. Similarly, no applications were submitted for two weekly newspapers which had received subsidies for many years but no longer fulfilled the relevant requirements due to decisions on the part of their publishers.

Increased approval rate

The sharp decrease in the number of grant applications for research projects pursuant to Art. 11 Par. 3 PresseFG 2004 was especially striking: Whereas nine applications of this kind were submitted in 2007, only two were received in 2008. At the same time, the approval rate rose significantly: While only two of the nine applications were approved in 2007, funding was granted for one of the two applications submitted in 2008.

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

Table 2: Development of subsidy amounts, applications and approval rates since 2004

	Subsidy amount in EUR	Number of applications	Number of approvals	Approval 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
2008	12,837,999.70	138	129	93.5
Total	**64,824,194.98**	**724**	**651**	**ø 89.96**

Source: RTR

Press Subsidies Commission

Commission members appointed for the 2008/2009 term

In its grant decisions, KommAustria is supported by the Press Subsidies Commission, which consists of six members and one chairperson. At the beginning of 2008, new commission members were appointed for a two-year term. The commission now includes Samo Kobenter (Head of the Austrian Federal Press Service), Alexandra Knell (attorney at law); Walter Schaffelhofer and Gerald Grünberger (the previous and current managing directors of the Association of Austrian Newspapers), Gisela Vorrath and Fritz Wendl (Head of ORF Radio's editorial office for consumer affairs and Chairman of the ORF Editors' Board). At the founding meeting on May 6, 2008, these six members again elected Otto Oberhammer as their chairman. Oberhammer, the former head of ORF and Section Head in the Federal Ministry of Justice, has been elected chairman in every vote since 1999.

The commission can look back on a tradition of long-standing chairmen: Since its establishment in 1975, the commission has only had two other chairmen, Franz Größl (Federal Press Service) from 1975 to 1984 and Josef Riedler (then editor-in-chief of the "Neue Zeit" daily newspaper) from 1985 to mid-1999.

4.1.11.2 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 journalism which serves the purpose of educating citizens." The purpose of these subsidies is to preserve the diversity and multitude of print periodicals.

Since January 1, 2004, KommAustria has been responsible for allocating journalism subsidies in accordance with the PubFG 1984 (Federal Law Gazette I No. 136/2003).

KommAustria makes decisions on these subsidies with the support of the Journalism Subsidies Advisory Board.

The 19 members of this board, who are appointed by Austria's Federal Chancellor for a term of three years, 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 also have the right to submit proposals.

The amount of the subsidies granted is determined by KommAustria on a case-by-case basis with due attention to the Advisory Board's recommendation and the scope, circulation, resources and financial situation of each print periodical.

In 2008, grants totaling EUR 360,999.00 were paid out in support of 93 print periodicals.

93 print periodicals supported

Five applications were rejected because they did not fulfill the grant prerequisites defined in Section II of the Journalism Subsidies Act 1984.

4.2 Telecommunications Division

4.2.1 Market definition and analysis

4.2.1.1 Telecommunications Markets Ordinance 2008 (TKMV 2008)

Basis of competition regulation

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

1. Market definition;
2. Market analysis and, if necessary, identification of significant market power;
3. Imposition of specific obligations.

Art. 36 Par. 1 TKG 2003 requires RTR to review and define the relevant national markets subject to sector-specific regulation at regular intervals (at least every two years) 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 ordinances under Art. 36 TKG 2003 as necessary.

European Commission issues new markets recommendation

On December 17, 2007, the European Commission issued a new recommendation on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC.

Once this recommendation had been published in the Official Journal of the European Union on December 28, 2007, RTR began preparing to transpose the recommendation into Austrian law under Art. 36 TKG 2003.

TKMV 2008 in effect since December 30, 2008

After a public consultation procedure was carried out in order to provide interested market participants with an opportunity to submit comments and opinions, the TKMV 2008 went into effect on December 30, 2008. The Telecommunications Markets Ordinance of 2003, which provided for 17 relevant markets, was thus abrogated with regard to the TKMV 2008's scope of application.

Number of markets reduced from 17 to 9

The TKMV 2008 defines the following markets as relevant to sector-specific regulation under telecommunications law:

1. Access to the public telephone network at a fixed location for residential customers (retail market);
2. Access to the public telephone network at a fixed location for non-residential customers (retail market);
3. Physical access to network infrastructure (wholesale market);
4. Call origination on the public telephone network provided at a fixed location (wholesale market);
5. Call termination on individual public telephone networks provided at a fixed location (wholesale market);
6. Retail leased lines up to and including 2.048 Mbit/s (retail market);
7. Terminating segments of leased lines with low bandwidths up to and including 2.048 Mbit/s (wholesale market);
8. Terminating segments of leased lines with high bandwidths over 2.048 Mbit/s up to and including 155.52 Mbit/s (wholesale market);
9. Termination on individual public mobile telephone networks (wholesale market).

With the exception of the market for terminating segments of leased lines with high bandwidths over 2.048 Mbit/s up to and including 155.52 Mbit/s (No. 8), the geographical area covered by the markets listed above is the entire federal territory of the Republic of Austria.

The wholesale market for terminating segments of leased lines with high bandwidths includes all products on the market except where both ends of the line are located within one of the following Austrian municipalities: Vienna, Linz, Graz, Salzburg, Innsbruck, Wels, St. Pölten, Feldkirch, Steyr, Klagenfurt, Dornbirn, Bregenz and Hallein.

4.2.1.2 Market analysis

4.2.1.2.1 Extension of party status to include all competitors affected by market analysis decisions

ECJ and VwGH rulings

On February 21, 2008, the ECJ issued a preliminary judgment in Case C-426/05 as requested by the Austrian Administrative Court (VwGH), stating that "[...] it is for the national court to ensure that national procedural law guarantees the safeguarding of the rights which users and undertakings in competition with an undertaking (formerly) having significant power on the relevant market derive from the Community legal order in a manner which is not less favourable than that in which comparable domestic rights are safeguarded and which does not prejudice the effectiveness of the legal protection of those users and undertakings guaranteed in Article 4 of Directive 2002/21."

After receiving the preliminary judgment requested from the ECJ, the Administrative Court issued a ruling on Case No. 2008/03/0020 on March 26, 2008, stating that parties affected by the outcome of a market analysis procedure must be allowed to contest an official decision regarding the existence or non-existence of a position of significant market power or regarding the imposition of specific obligations under Section 5 of the Austrian Telecommunications Act (TKG) 2003.

Party status extended to include all affected competitors, in contrast to Art. 37 Par. 5 TKG 2003

On the basis of the ECJ and VwGH rulings discussed above, the provision under Art. 37 Par. 5 TKG 2003, which states that only the company on which specific obligations are imposed, amended or lifted has the status of a party to a market analysis procedure, is no longer applicable within such narrow limits in market analysis procedures pursuant to Art. 37 TKG 2003.

The TKK was first required to account for this legal interpretation in the market analysis procedure regarding the wholesale market for broadband access: With the exception of pure resellers (call shops, Internet cafés), all operators or providers of telecommunications networks or services with a confirmation of complete notification pursuant to Art. 15 Par. 3 TKG 2003 or a license document pursuant to the TKG (1997) were accorded the rights of affected parties.

In the analysis procedure concerning the wholesale market for broadband access mentioned above, the TKK already made an effort to carry out the pending procedure using electronic communications wherever possible.

High administrative effort

In order to ensure the right to be heard in legal proceedings (Art. 45 Par. 3 AVG) for all parties known to the TKK and in the interest of conducting an efficient procedure, all known parties were therefore asked to provide a company e-mail address for the delivery of documents relevant to the case. The relevant documents were then delivered electronically to all parties to the procedure.

In order to identify any additional parties and to announce major steps in the procedure (such as a public negotiation meeting for up to 530 parties), the appropriate announcements were published on RTR's web site as well as the official bulletins of the City of Vienna.

4.2.1.2.2 Analysis of the wholesale market for broadband access

Broadband access

On the basis of a TKK resolution adopted on May 14, 2007, Procedure M 1/07 regarding the wholesale market for broadband access was initiated in accordance with Art. 37 TKG 2003.

The objective of this procedure was to determine whether effective competition prevails on this telecommunications market or whether one or more companies possess significant market power (Art. 37 TKG 2003).

This procedure was the first market analysis procedure carried out with the involvement of all affected competitors in accordance with the relevant rulings of the high courts.

Coordination

The procedure involved intensive discussions with European Commission departments over a period of more than two months. The discussions were necessary in order to ensure that the coordination procedure under Art. 129 TKG 2003 could be completed as quickly as possible.

After carrying out a comprehensive investigation procedure, the TKK then issued Decision M 1/07-534 on July 4, 2008.

Differing obligations according to competitive conditions

In some cases, this decision was criticized quite heavily by the industry, especially due to the planned geographical differentiation of obligations to be imposed: In contrast to the preceding decision in Procedure M 1/05, the TKK decided that the identified SMP operator, Telekom Austria, would no longer be required to offer broadband bitstream access in areas of high population density from January 1, 2009 onward. From that point in time, Telekom Austria TA AG would only be required to offer such access in the remaining regions of Austria. The decision was motivated by the differing competitive conditions identified in areas of high population density and in other areas of the country; based on these differences, it did not appear reasonable to continue requiring the SMP operator to offer access in high-density areas.

Administrative Court ruling

The decision was overturned by the Administrative Court in a ruling issued on December 17, 2008. Therefore, the TKK's official decision on Procedure M 1/05 has gone back into effect for the wholesale market for broadband access. At present, the regulatory authority is carrying out preliminary work for a re-definition of the wholesale market for broadband access. Once the market has been defined, a market analysis procedure will be initiated.

4.2.1.2.3 Analysis of mobile termination market

In rulings issued on June 25, 2008 (No. 2007/03/0211 and others), the Administrative Court overturned the substitute decisions issued on October 15, 2007 in the market analysis procedures for mobile termination due to legal violations in their content.

Administrative Court: "Retroactive" market analysis not possible

While the Administrative Court confirmed a number of considerations cited by the TKK – such as the need to account for market power indicators sufficiently, the reconfirmation of the "modified greenfield approach," in which the regulation of individual companies (such as Telekom Austria) is to be included, and the fact that market analyses must "necessarily rely on forecasts and hypotheses" due to their ex ante perspective – the court justified overturning the decisions due to legal violations in their content as follows: The market analysis procedure under Articles 37 et seq. TKG 2003 is designed to analyze the conditions on the markets in question in a forward-looking manner. The Administrative Court did not accept the TKK's argument that the retroactive imposition of obligations is (only) possible in substitute procedures because the original period of validity must be covered.

The Administrative Court essentially justified this legal interpretation by citing various statements from the SMP guidelines as well as the provision under Art. 133 Par. 7 TKG 2003, which contained transitional provisions for the period after the TKG 2003 went into effect (i.e., the sustained effect of the previous regulatory regime until the first market analysis). The Administrative Court's abrogation of the initial decisions only signified that the legal violations identified (non-compliance with the European Commission's opinion, insufficient examination of countervailing buyer power, and lack of precision in the definition of fee obligations) were to be remedied, but only with effect in the future.

"Inextricable link"

In line with its interpretation of an "inextricable link," the Administrative Court overturned not only the points referring to the past, but also that part of the decision which concerned the period after the decision was issued (October 15, 2007) and thus did not involve a retroactive effect. Where applicable in specific procedures, the Administrative Court referred to its previous rulings and overturned a provision in which party status was not granted in procedures concerning other operators.

In light of this ruling, the TKK decided on September 1, 2008 to discontinue the market analysis procedures, which were once again underway. At the same time, the TKK initiated a new market analysis procedure (M 1/08) in which analyses of the wholesale markets for termination in individual public mobile telephone networks will be carried out for a future time period.

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.

Interconnection as a means of network access

Under Art. 48 Par. 1 TKG 2003, each operator of a public communications network is required to provide a reference offer for other operators of such networks upon request. 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 these operators be unable to reach an agreement on interconnection in accordance with Art. 48 TKG 2003, then any party involved can call upon the regulatory authority (Art. 50 Par. 1 TKG 2003).

Reasonable fees for SMS termination and mobile origination

Resolution of dispute between Hutchison and mobilkom

On November 24 and December 9, 2008, the TKK issued official decisions regarding fees for mutual short message service (SMS) termination services and for mobile origination services between Hutchison 3G Austria GmbH (Hutchison) and mobilkom austria AG (mobilkom). As the two companies were unable to independently resolve their dispute regarding the amount of fees for SMS termination and for mobile origination, Hutchison submitted requests to the TKK for official decisions in lieu of the agreements which could not be reached. In the course of the mandatory dispute resolution procedure to be carried out in cooperation with RTR, the parties were unable to reach a mutually acceptable agreement.

Interconnection: SMS termination

The service of SMS termination is not assigned to a market susceptible to sector-specific ex ante regulation; neither the Telecommunications Market Ordinance 2003 (TKMVO 2003) nor the current Telecommunications Market Ordinance 2008 (TKMV 2008) provides for such a market or includes this service in one of the defined markets. As a result, no company can be deemed to possess significant market power as defined in Articles 35 and 37 TKG 2003 with regard to SMS termination.

As for the service of mobile origination, the TKMVO 2003 did define a market ("Access and origination on public mobile telephone networks") to which this service is assigned. However, the market for access and origination in mobile networks is no longer considered relevant in the TKMV 2008. Moreover, no company has been identified as possessing significant market power on this wholesale market.

No operators with SMP; fees to be set at a "reasonable level"

Against this backdrop, it was necessary to set the fees at a "reasonable level" in order to resolve the dispute. In order to assess what can be considered "reasonable" fees, the regulatory authority surveyed the actual operator-specific costs of the service in question as well as the fees currently prevailing on the market. In addition, the SMS termination fees charged by mobile operators in other countries in the European Union were examined. Structural deficits in competition such as those found in mobile voice termination services could not be identified in SMS termination or mobile origination services.

Reciprocal fees

On this basis and within the scope of its discretion, the TKK ordered fees for past time periods in the amount which had been agreed upon under private law by Hutchison and mobilkom and charged in the past: For SMS termination, the fee was set at 4.2 euro cents on both sides, while the charge for mobile origination was set at 19.62 euro cents for Hutchison and 10.28 euro cents for mobilkom. For the period starting on December 1, 2008, the TKK decided to fulfill the request for a reduction of SMS termination fees, again to a reciprocal level of 3.88 euro cents. Mobile origination charges were lowered to 9.5 euro cents (also reciprocal) from January 1, 2009 onward.

Decisions Z 1/08 (mobile origination) and Z 2/08 (SMS termination) can be downloaded from the RTR web site.

Definition of mobile termination fees

As mentioned above, in rulings issued on June 25, 2008 (No. 2007/03/0211 and others), the Administrative Court overturned the substitute decisions issued on October 15, 2007 in the market analysis procedures for mobile termination due to legal violations in their content.

The Administrative Court essentially justified its decision to overturn the TKK's official decisions by arguing that the market analysis procedure under Articles 37 et seq. TKG 2003 is designed to analyze the conditions on the markets in question in a forward-looking manner; as a result, it is not possible to identify significant market power retroactively and to impose specific obligations for a time period in the past.

In further rulings, the Administrative Court also overturned the TKK's official decision of October 29, 2007 (among others) in which the TKK ordered the exact mobile termination fees defined in the market analysis ("glide path") for bilateral relationships. The Administrative Court justified its decision to overturn those official decisions based the abrogation of the underlying market analysis decisions for the mobile termination market ("inextricable link").

In contrast to the market analysis, in the interconnection procedures now underway (involving mobilkom, T-Mobile, One [now Orange], Hutchison, Tele2, UPC and Multikom as parties at the time), the TKK must define the terms of interconnection, in particular mobile termination fees, for past time periods as well. In this context, a formally imposed specific obligation (e.g., cost-based pricing for companies with significant market power) is now missing due to the abrogation of the market analysis decisions.

Retroactive effect of interconnection orders

On the issue of retroactive effect, in its ruling on the market analysis the Administrative Court indicated that "in the case of a dispute regarding the terms of interconnection – including fees – there is no doubt that the decision to be made by the relevant authority can include the time periods disputed by the parties."

The interconnection procedures for the purpose of defining mobile termination fees for (primarily past) time periods were still underway at the end of the reporting period.

New terms for unbundling

Unbundling as a means of network access

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 and conditions be redefined with regard to the unbundling of local loops. These requests included the calculation of the monthly rental fee, subscriber line fault elimination and planning. In this context, the following two groups of procedures were carried out:

Fees for unbundling services

New fees for unbundling

In its session on October 27, 2008, the TKK issued an official decision in response to a request from Tele2 in Procedure Z 6/07 regarding the fees for Telekom Austria's unbundling services. The regulatory authority was required to redefine unbundling fees, in part retroactively, because the agreement regarding the fees ordered in the preceding decision (Procedure Z 7/04) had been terminated by Tele2 and the parties were unable to reach a private-law agreement establishing follow-up regulations.

Prevention of a margin squeeze

In the procedure, the TKK had RTR's official experts calculate the costs to Telekom Austria under the FL-LRAIC approach (forward-looking long-run average incremental costs) and compare the results of that calculation with their review of the difference between retail and wholesale charges at the levels of bitstream access and unbundling (in order to identify a possible margin squeeze). This comparison showed that in light of the retail fees actually offered and forecast by Telekom Austria, ordering costs on the basis of FL-LRAIC at the wholesale level would have brought about an inadmissible margin squeeze. The monthly rental fee for local loops therefore had to be set at a lower level compared to the FL-LRAIC costs, which were calculated at EUR 11.99, for the entire validity period of the decision – from March 2007 to the end of 2008, according to Tele2's request – as shown in the table below.

Table 3: Monthly rental fees for local loops

Period	Monthly fee (EUR)
March 1, 2007 to November 14, 2007	10.70
November 15, 2007 to December 31, 2007	10.44
January 1, 2008 to December 31, 2008	9.33

Source: RTR

The fees for one-time services such as setup or cut-over, the regulations pertaining to the monthly rental fees for Telekom Austria's collocation spaces as well as the general regulations on fee settlement (e.g., invoicing, payment due dates) largely correspond to the previous (and proven) regulations, with several adaptations required due to the specific request and material circumstances.

New terms for local-loop unbundling

New overall unbundling order

In its session on December 22, 2008, the TKK issued draft measures under Art. 128 TKG 2003 in Procedures Z 5, 8, 10, 11/07 as well as Z 5/08 in order to establish a new overall unbundling order.

The key changes compared to the previous order, which was issued in TKK Procedure Z 15/00, concern the precise definition of the service to be provided and the associated regulations regarding fault elimination (Annex 7), upstream DSLAM locations (Annex 9) and ordering processes (Annex 4), as well as the integration of regulations pertaining to open collocation from Procedure Z 1/07 (Annex 6). Parts of other regulations were amended, albeit not to the same extent as those mentioned above.

Once the consultation and coordination procedures pursuant to Articles 128 et seq. TKG 2003 have been completed, the TKK will issue final official decisions with due attention to the comments and opinions received.

Access to ducts and dark fiber

Access to ducts

In September 2008, Silver Server GmbH requested a partial unbundling order pursuant to Art. 50 TKG 2003 vis-à-vis Telekom Austria for the definition of conditions for the rental of ducts and dark fiber. The procedure is still pending.

Partial bilateral agreement on mobile number porting

Number porting as a means of enhancing competition

In Procedures Z 16/03, Z 24/03 and Z 1/04, the TKK issued official decisions on March 6, 2006 in response to the requests submitted by Hutchison 3G Austria GmbH, mobilkom austria AG and T-Mobile Austria GmbH.

Administrative Court ruling

In several rulings (Nos. 2006/03/0079 and 0081 of September 3, 2008 and No. 2006/03/0080 of October 23, 2008), the Administrative Court overturned the TKK's official decisions on mobile number porting due to procedural violations. Those rulings were essentially justified by the argument that in connection with mobile number porting, the concept of cost-based pricing cannot be interpreted in such a way that the porting fee can be set exclusively on the basis of the "(historical) full costs" if those costs are higher than those required for the efficient execution of the porting process. However, the fees ordered were based on such (historical) full costs, and the Administrative Court argued that no transparent review of efficiency had been carried out in order to determine whether the processes used by the operators were designed efficiently.

Procedures Z 16/03 and Z 1/04 were discontinued in December 2008, once the parties had reached an agreement under private law and withdrawn their requests. In terms of content, the agreement was largely similar to the official decision issued on March 6, 2006.

Private-law agreement

In Procedure Z 1/04, most of the parties likewise withdrew their requests. As in Procedures Z 16/03 and Z 1/04, the content of the private-law agreement reached was largely based on the official decision of March 6, 2006. The procedure concerning the other requests had not yet been completed at the end of the reporting period.

4.2.3 Shared use of communication lines and site sharing

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

In the reporting period, no procedures pursuant to Section 2 TKG 2003 were carried out.

4.2.4 Conciliation procedures

4.2.4.1 Retail conciliation procedures under Art. 122 Par. 1 No. 1 TKG 2003

Conciliation cases reach an all-time high.

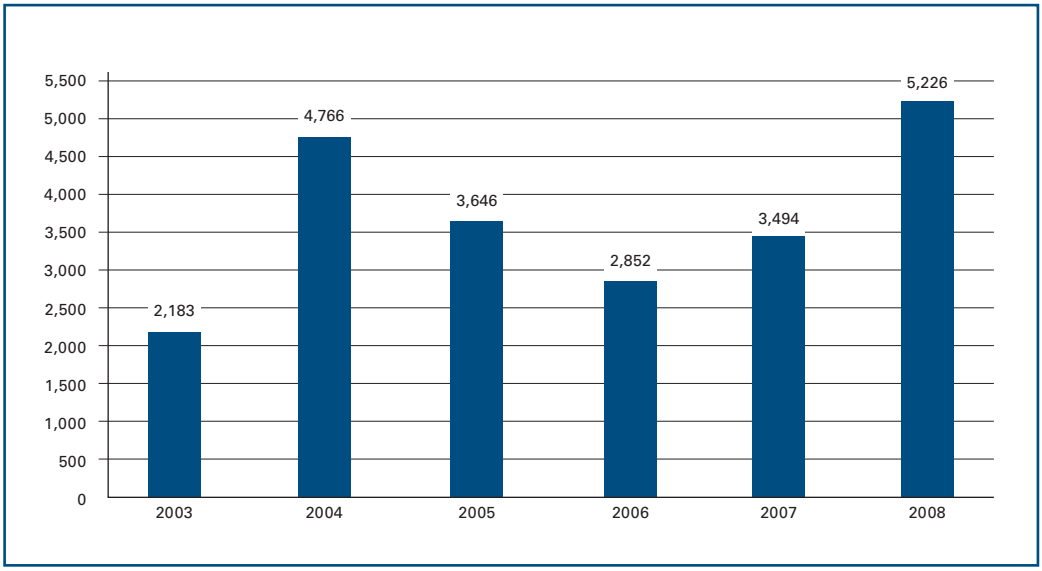
Since the very start of liberalization, conciliation activities between retail customers and operators have been among RTR's core activities. Over the years, this alternative form of legal protection has been used with increasing frequency, starting with relatively few procedures in the year 1998 and reaching a new high of 5,226 requests received in 2008.

2008: 5,226 cases

Naturally, communications services will bring about dissatisfaction among some users. Again and again, suspected errors in billing or other problems such as service disruptions, etc. can bring about customer disputes with operators. Obviously, this potential for conflict has grown rapidly in recent years, especially as more and more people use multiple services simultaneously. Whereas a simple fixed-link telephone line was sufficient just a few years ago, additional services – such as mobile phones, Internet connections, etc. – have been added continuously. Increasingly fierce competition has also led to more frequent deficiencies in customer service, and in some cases to highly aggressive sales techniques. Similarly, the launch of new services nearly always gives rise to new types of complaints, as recent problems with mobile Internet connections have aptly demonstrated.

These circumstances are probably the main reasons why more and more customers are turning to RTR's conciliation body for assistance.

Figure 2: Conciliation cases per year, 2003 to 2008



Source: RTR

From a legal standpoint, any and all complaints related to a communications service can be submitted to the conciliation body. The procedure to be followed in this context is governed by Art. 122 TKG 2003, while further details are set out in the procedural guidelines for RTR and its conciliation body. The main prerequisite for a conciliation procedure is that the customer has previously attempted to reach an agreement with the operator. Under Austrian legislation, the conciliation procedure should thus only be possible once users are no longer able to proceed using their own means.

New, simplified procedural guidelines

The procedural guidelines were thoroughly revised and re-issued in 2008. This was done mainly for the sake of simplification and brevity; for example, the guidelines were reduced in length from nine to four pages. In wording the guidelines, the authors made an effort to use clear and generally understandable language in order to facilitate access to the conciliation body for people without legal expertise. In addition to those aspects, the new guidelines also form the basis for contacting the conciliation body via a web-based form. On the one hand, this interface enables timely, rapid and structured communication for the user, and on the other hand it has increased processing efficiency even further thanks to a connection to RTR's internal working database. The regulatory authority's efforts to increase user friendliness and efficiency were also supported by the introduction of mandatory web-based forms, which likewise facilitate downstream processing considerably.

Launch of web-based form

In terms of content, the guidelines changed only slightly compared to the previous version. For example, the period within which a case must be submitted to the conciliation body was shortened to one year after the cause of the dispute. On the other hand, disputes arising from value-added services are now subject to far more comprehensive review standards. Until the new procedural guidelines went into effect, such cases were only reviewed for technical and accounting-related criteria as well as specific criteria under telecommunications law. However, relevant questions such as whether the disputed value-added services were used by the

subscriber associated with the line or other persons who had access to the line, were not taken into account. Now the conciliation body also reviews such cases on the basis of all applicable legislation where the facts in the case can be established with sufficient certainty.

Mobile data services

Regarding the content of the cases, two major negative trends could be identified in 2008: The enormous success of mobile data services (via mobile phones or using a modem on a computer) generated a large number of complaints and billing disputes. In particular, the high charges incurred when subscribers exceeded the data volumes generally included in their contracts often led to unpleasant surprises when users received their bills. Data roaming has also led to a large number of procedures. When subscribers (knowingly or unknowingly) used a mobile Internet connection abroad, the charges – which in some cases are extremely high compared to those incurred for domestic use – can lead to shocking and sometimes even unaffordable bills. In this context, operators are required to take suitable precautionary measures, be it through active and improved information or technical services such as roaming deactivation, etc.

Aggressive sales techniques are primary cause for complaints.

One major new focus of conciliation activities is aggressive direct sales techniques. In particular, one relatively new operator drew attention to itself because many users were angered by its sales techniques. It is well known that direct telephone marketing has always brought about more conflicts than when a user contacts a provider on his or her own initiative. In the year 2008, this type of complaint – in which users often believed that they had not concluded a contract or that they had been coaxed into an agreement by unlawful means – reached previously unseen levels in terms of the quantity and nature of cases.

In contrast, cases concerning value-added services and dialer programs showed more positive developments. The improvements in this area can probably be attributed to the measures taken in the Communications Parameters, Fees and Value-Added Services Ordinance (KEM-V). Despite the increased number of new procedures in absolute terms, complaints of this type continue to decline.

4.2.4.2 Conciliation procedures under Art. 122 Par. 1 No. 2 TKG 2003

Under Art. 122 Par. 1 TKG 2003, RTR can be called in as a conciliation body in cases where disputes between a customer and an operator cannot 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, communications network operators or service providers, or interest groups.

On the basis of 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 such conciliation procedures. By law, KommAustria has placed RTR in charge of conducting these procedures.

In general, RTR's duty in these procedures is to negotiate an amicable solution or communicate its opinion on the case in question to the parties.

Conciliation procedure due to prevention of number porting

Number porting dispute

This case concerned a dispute between two companies regarding a request to have a telephone number ported. In October, RTR initiated a conciliation procedure in accordance with Art. 122 Par. 1 No. 2 TKG 2003. The parties were unable to reach a mutually acceptable agreement, therefore RTR communicated its opinion on the case in question in December 2008.

Under Art. 23 Par. 1 TKG 2003, providers of public telephone services must ensure that their subscribers have access to the possibility of number porting. According to this definition, the company from which number porting had been requested is a provider of public telephone services and the other company a subscriber, thus it was necessary to enable the number porting process.

Once the conciliation procedure had been completed, the TKK initiated a supervisory procedure pursuant to Art. 91 TKG 2003; however, this procedure had not yet been completed at the end of the reporting period.

4.2.4.3 Alternative dispute resolution (ADR)

ADR creates "win-win" situations.

Art. 115 Par. 3 TKG 2003 defines a mechanism for out-of-court conflict resolution (alternative dispute resolution, or ADR) which is becoming more and more common in business practice. Under this provision, RTR may be called upon to take part in negotiations regarding disagreements arising from the TKG 2003 on the basis of criteria to be published by RTR. Such a request is to be submitted to RTR in writing by all parties involved.

As a prerequisite for receiving RTR's support in finding a resolution to the dispute, the parties must have first attempted to resolve the conflict on their own before calling upon the regulatory authority. The topic of the dispute must result from the TKG 2003 or the associated ordinances, as well as being related to the field of communications services. In addition, disputes are only eligible if they have not been the subject of an ADR procedure in the past and have not been decided upon with legal effect. As retail users have different out-of-court settlement options at their disposal (conciliation procedures under Art. 122 TKG 2003), the ADR process can only be used by companies or interest groups which are not retail users. In order to call upon RTR for such a procedure, interested parties are required to fill out the ADR questionnaire, which can be downloaded from RTR's web site (http://www.rtr.at).

ADR has been offered to market participants since 2003. In 2008, such a procedure was suggested once, but the dispute was ultimately resolved without the involvement of RTR.

4.2.5 Competition monitoring

Even closer monitoring of market developments

In light of the changing conditions on the market and the accompanying deregulation process (e.g., in the Telecommunications Markets Ordinance of 2008, which now defines 9 instead of 17 markets susceptible to sector-specific regulation), RTR has decided to monitor market developments more closely in the future. In this context, the authority will focus heavily on the wholesale unbundling markets for broadband access.

For this purpose, RTR has established systematic and individual monitoring in order to ascertain whether and the extent to which companies with significant market power adhere to the specific obligations imposed on them in market analysis procedures under Art. 37 TKG 2003.

Under Art. 90 TKG 2003, communications network operators as well as service providers are required to provide the regulatory authority with all information required for the purpose of reviewing compliance with those obligations where such information is necessary for the enforcement of the TKG 2003. In particular, this includes the information required for systematic or individual reviews of compliance with obligations, regardless of whether a complaint has been received or the regulatory authority suspects a violation of obligations for other reasons. Therefore, RTR can conduct investigations on its own behalf.

Single point of contact

In addition, RTR has set up a uniform point of contact to which competition-related violations (e.g., violations of specific obligations imposed due to the identification of significant market power) are to be reported. Interested parties can contact RTR at a dedicated e-mail address (wettbewerbsmonitor@rtr.at) in order to report potential competition-related violations and to provide any relevant documentation on such violations. The regulatory authority makes every effort to ascertain and evaluate the facts in each case as quickly as possible and to remedy competition-related violations in a timely manner within the scope of its abilities.

The regulatory authority invites all interested parties to report suspected violations of competition law.

4.2.6 Supervisory procedures

Opportunity to submit comments or remedy the violation within one month

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. In the course of RTR's supervisory procedures (Art. 91 TKG 2003), market participants who violate the relevant regulations are first informed about the (suspected) violation and are simultaneously given an opportunity to submit comments regarding the allegation or to restore legal compliance within one month. This time period may be shortened in the case of repeated violations.

Official decision in case of persisting violations

In the second step, if those instructions are not followed, the regulatory authority may issue an official decision ordering the company/companies in question to take or prevent the relevant measures or actions (e.g., restoring network access after an illegal disruption, introducing processes to ensure legally compliant processes, etc.). In the third and final step, the regulatory authority may suspend or revoke the company's right to operate or provide communications networks or services, and allocations of frequencies and communications parameters may be revoked.

Section 7 of the TKG 2003 also includes specific provisions regarding the revocation of allocated telephone numbers and other communications parameters. In any case, the supervisory process described above applies to any procedures carried out in this context.

In the reporting period, supervisory procedures initiated against Telekom Austria due to violations of its access and non-discrimination obligations and the creation of disadvantages for wholesale partners in the sale of DSL lines were conspicuously frequent.

Increased competition monitoring

Violations can be reported to the regulatory authority's dedicated e-mail address (wettbewerbsmonitor@rtr.at; see also Section 4.2.5).

Supervisory procedure against Telekom Austria due to the setup of a retail SDSL connection after refusal to establish a wholesale connection

Refusal to set up a connection for a wholesale partner

Acting on a suggestion from UPC, the TKK conducted investigations in a case in which Telekom Austria refused to set up a customer's SDSL connection for a wholesale partner and then proceeded to set up a retail SDSL connection on the same line several months later. Telekom Austria essentially argued that the line length and the parallel switching of DSL customers on the cable in question made it appear unlikely that an SDSL connection could be realized with sufficient quality at the time when the wholesale partner ordered the connection. It was possible for Telekom Austria to set up the connection later because several customers on the cable bundle in question had canceled their DSL service with Telekom Austria. In the past, such cases had also arisen to Telekom Austria's disadvantage, with the connection setup being rejected for TA Retail and later realized by an alternative ISP. Telekom Austria only allowed an inspection of documentation on the relevant processes after multiple requests. This inspection showed that incoming orders for broadband products are reviewed for technical feasibility, but the results of such reviews are not recorded. As the values displayed by the system can fluctuate sharply over time (even within a span of days), a positive assessment or rejection on the basis of this technical feasibility review depends heavily on the time of the query. As a violation of the access and non-discrimination obligations imposed on Telekom Austria on the wholesale broadband market could not be proven, the procedure was discontinued on August 4, 2008.

Retail connection later established on the same line

Procedure discontinued

Supervisory procedure against Telekom Austria due to failure to set up wholesale broadband connections with simultaneous use of aonTV

General refusal to set up wholesale DSL connections for aonTV users

In Procedure R 3/08, which was initiated on February 4, 2008 at the request of various competitors and after a preceding request for information, the TKK reviewed cases where Telekom Austria had generally refused to set up DSL connections for wholesale partners, citing the simultaneous provision of its own "aonTV" service for the retail customers in question. In another case involving a customer whose DSL connection was provided by an alternative service provider, Telekom Austria had made the setup of its aonTV service contingent on using

Telekom Austria's DSL service, thus demanding that the customer switch DSL service providers. However, the terms and conditions for subscribing to the aonTV service only mention the need for a telecommunications line and do not require the service to be coupled with a Telekom Austria broadband connection. Both cases were reviewed for violations of the access and non-discrimination obligations imposed on Telekom Austria on the wholesale broadband market.

Setup of aonTV for wholesale DSL users only after switching DSL providers

In its comments on the case, Telekom Austria first explained that if aonTV and the DSL service were used simultaneously, bandwidth problems could arise in the customer's broadband service due to a lack of more efficient compression techniques for aonTV and the bandwidth required as a result. Telekom Austria also stated that for some retail customers it was possible to resolve this problem in the sales process (by reducing the bandwidth for the broadband service), but that with wholesale partners such a step could lead to considerable penalties, as the high transmission quality required for aonTV was not a valid argument for limiting the bandwidth provided for alternative ISPs. Telekom Austria concluded that offering aonTV for ISP customers or wholesale DSL for aonTV customers was not possible in technical or legal terms. Telekom Austria later discontinued its general refusal to set up DSL connections for wholesale partners in cases where the retail customer used aonTV and declared that it planned to review the feasibility of DSL connections for wholesale partners on a case-by-case basis in the future. In response, the TKK ordered that the number of wholesale DSL lines set up and rejected given the simultaneous use of aonTV be monitored for several weeks. As those monitoring activities did not reveal any further suspicions of selective discrimination, the TKK also discontinued this procedure on August 4, 2008.

Bandwidth limitations due to aonTV

Monitoring of lines set up and rejected

Procedure discontinued

Supervisory procedure against Telekom Austria due to failure to offer fault elimination for wholesale ADSL connections

Another procedure was initiated against Telekom Austria on March 17, 2008 after a preceding request for information; in this case, a competitor had submitted a complaint regarding Telekom Austria's failure to offer fault elimination services for ADSL connections used by wholesale partners. Telekom Austria first rejected the obligation to offer fault elimination services with the reasoning that fault elimination refers only to the line itself (and not to specific services) and was part of the voice telephony connection offered simultaneously with ADSL connections; for this reason, fault elimination services could only be provided within the retail customer relationship with Telekom Austria. In light of the fact that service disruption reports from subscribers generally refer to the non-availability of a service and not to the line itself, this argument did not appear valid, especially as the reason for the disruption does not necessarily have to be related to the line; moreover, wholesale DSL partners are frequently placed at a disadvantage when bidding on broadband communications projects because they cannot offer their own fault elimination services. This often prevents buyers from awarding contracts to wholesale DSL partners. In addition, the base fee for voice telephony only covers basic fault elimination, while an additional fee is to be paid for fault elimination in the other three service classes; this fee can be charged to the wholesale DSL partner. Telekom Austria did not provide valid technical reasons why fault elimination services cannot be provided for wholesale DSL partners. In the course of further meetings, however, Telekom Austria declared

Failure to offer fault elimination services for ADSL connections used by wholesale partners

No valid technical reasons cited

Telekom Austria offers fault elimination without an official order from the TKK.

that it was willing to prepare an offer for fault elimination services for ADSL services without being ordered to do so by means of an official decision. The procedure was discontinued on September 22, 2008, after Telekom Austria had sent its wholesale partners an announcement on July 15, 2008 indicating that network service categories could also be ordered for wholesale ADSL connections from September 1, 2008 onward, and once the company had published the corresponding amendment to its reference offer for broadband Internet access.

Supervisory procedure against mobilkom austria AG concerning number porting

After receiving suggestions from various operators, the TKK decided to review whether mobilkom had violated its legal obligation to allow number porting under Art. 23 TKG 2003.

mobilkom's terms and conditions of mobile service provide for an extraordinary termination of the agreement by mobilkom in cases where the customer wishes to have his or her number ported to a different operator.

mobilkom charges "deinstallation fee."

This led to a situation in which business customers who had chosen "A1 Network" rate plans in connection with certain additional packages and then wished to have their numbers ported were required to pay mobilkom a "deinstallation fee." This fee was charged in addition to any residual charges incurred. Although the "deinstallation fee" – as a flat reimbursement for the early termination of the agreement – was not only charged in the case of number porting, the fee generally applied when customers requested number porting under the above-mentioned rate plan in connection with certain additional services.

However, fees for the early termination of the agreement were already included in the residual charges billed to the customer. In contrast to the residual charges, the deinstallation fee did not refer to any discernible service provided by mobilkom. Moreover, the amount of the deinstallation fee – again in contrast to the residual charges – remained the same regardless of the time at which the early termination was requested.

In light of the fact that number porting is intended to promote competition, charging customers such a deinstallation fee conflicts with the intention of number porting.

Supervisory measures

In an official supervisory decision issued on December 22, 2008, the TKK prohibited mobilkom from charging a deinstallation fee to customers who wish to have their numbers ported to a different operator, especially subscribers who have chosen or choose an A1 Network rate plan with various additional services.

Telekom Austria's *aonKombi* offer

Product bundle

As in the combination package offered in 2007, Telekom Austria also carried out a Christmas sales campaign in 2008, offering a package of fixed-link voice and broadband products with the additional option of a mobile voice product.

The *aonKombi* offer in 2008 was reviewed by the TKK in order to ensure that the product could be replicated by alternative operators on the retail market without encountering discrimination or a margin squeeze.

Priced at EUR 19.90 per month for new customers and EUR 29.90 per month for existing customers (and consisting of a "TikTak Privat" connection, a broadband Internet connection with a data transmission rate of 8 Mbit/786 Kbit/s [flat rate] and up to three SIM cards for mobile service with a call rate of 5 euro cents to all networks), the design of this combination package was similar to the one Telekom Austria had offered in late 2007.

The objective of the procedure was to ensure that Telekom Austria was not granting discounts to retail customers which would have exposed alternative providers of those products to a margin squeeze. In this context, special attention was paid to Telekom Austria's obligation to offer its wholesale products to alternative providers in such a way that they could offer products equivalent to the aonKombi package without being subjected to discrimination or a margin squeeze.

Telekom Austria's Christmas sales campaign replicable without discrimination

As the relevant investigations showed that alternative providers are, in fact, able to offer a package equivalent to aonKombi on the terms described, the procedure was discontinued.

Telekom Austria: Review of possible margin squeeze

In September 2008, a procedure was initiated to review a possible margin squeeze by Telekom Austria by examining the difference between the company's retail and wholesale fees at the value creation levels of bitstream access and unbundling.

This review appeared necessary because in its combination package (*Kombipaket*; November 15, 2007 to January 15, 2008) as well as its voice combination package (*Sprachkombi*; May 2, 2008 to July 11, 2008), Telekom Austria had offered considerably lower prices compared to earlier retail sales campaigns and reduced the corresponding wholesale fees at the same time. By examining the difference between retail and wholesale fees at the levels of bitstream access and unbundling in order to identify any severe changes, the regulatory authority intended to ensure that alternative providers were not subjected to a margin squeeze.

Ensuring absence of margin squeeze

In the procedure, the regulatory authority determined that alternative providers were not exposed to a margin squeeze at the level of the wholesale broadband market compared to the retail market nor at the level of the unbundling market compared to the wholesale broadband market in 2008. On the basis of plan data, no margin squeeze could be identified between the unbundling market and retail market for the year 2008 overall.

"Upstream DSLAMs"

Disruptions reported

Starting in the summer of 2007, an increasing number of disruptions were reported by broadband customers who used the services of alternative telecommunications providers on unbundled lines. The complaints referred to reductions in available transmission bandwidths as well as complete interruptions of broadband services which had previously functioned in a stable manner. Based on measurements taken in response to the problem, various alternative telecommunications service providers believed that the reason for the increased occurrence of

Broadband modems

disruptions was that Telekom Austria had put upstream DSLAMs (digital subscriber line access multiplexers) into operation on more and more main distribution frames. DSLAMs refer to broadband modems installed at Telekom Austria's serving area interfaces and thus closer to the end-user than the alternative providers' (comparable) modems, which are installed on the main distribution frames. As Telekom Austria's DSLAMs transmit at least partly in the same frequency ranges (but at higher levels) than the modems used by alternative service providers, the DSLAMs were causing the interference encountered in broadband connections.

At six different locations in Carinthia which were investigated in a supervisory procedure initiated in response to a report from UPC Austria, the TKK thus identified new upstream DSLAMs put into operation by Telekom Austria (TA) as the cause of the disruptions. Specifically, the TKK determined that by using this upstream equipment and causing disruptions for alternative service providers, the SMP operator Telekom Austria had violated the regulatory obligations imposed by the TKK. Telekom Austria was therefore instructed to reconfigure the DSLAMs in such a way that they are not able to transmit signals in the frequency range used by the relevant alternative service providers with a view to preventing further disruptions.

In response to a report submitted by another Telekom Austria unbundling partner, the TKK is investigating whether a similar situation has arisen on another main distribution frame.

Discussions in working groups

The industry working group (http://www.rtr.at/de/tk/ngn_kalender) organized by RTR is currently discussing possible strategies to avoid such problems in the future, and parts of those strategies have been included in the draft measures for new unbundling regulations (Procedure Z 5/07 et seq.), which are currently undergoing public consultation.

Review of Telekom Austria's cost accounting system

The procedures carried out with regard to significant market power and effective competition in which Telekom Austria has been identified as possessing significant market power are as follows:

M 1/05	Market for broadband access;
M 1/06 – M 4, 6/06	Fixed-link retail markets (with the exception of the retail market for international telephone services for residential customers);
M 7/06	Fixed-link origination;
M 8a/03	Fixed-link termination;
M 9/06	Minimum set of leased lines;
M 11/06	Terminating segments of leased lines;
M 12/06	Unbundling.

In each of those procedures, one of the obligations imposed on Telekom Austria was to break down costs and earnings in accordance with the market definitions set forth in the Telecommunications Markets Ordinance 2003 in order to prevent inadmissible cross-subsidies between regulated and unregulated areas of activity.

In accordance with Art. 42 Par. 3 TKG 2003, the TKK reviewed the cost accounting system to be maintained by Telekom Austria pursuant to the decisions cited above for the year 2007.

Telekom Austria's cost accounting system fulfills imposed obligations.

After conducting on-site inspections, the official experts appointed by the TKK came to the conclusion that the cost accounting system used by Telekom Austria in the year 2007 is suitable for fulfilling the requirements of Art. 40, Art. 42 Par. 3 and Art. 43 Par. 4 TKG 2003 as well as the obligations imposed on Telekom Austria in the TKK decisions mentioned above.

Supervisory procedure against mobilkom austria due to deterrent porting fees

"Deterrent" number porting fee

On January 23, 2008, mobilkom austria submitted a notification pursuant to Art. 25 TKG 2003 indicating that subscribers who wish to have their numbers ported when switching to another telephone service provider would be charged a porting fee in the amount of EUR 25.00 (plus EUR 4.00 for the Number Porting Ordinance confirmation and information). In its session on January 28, 2008, the TKK initiated a supervisory procedure due to its suspicion that a porting fee of EUR 25.00 might be considered "deterrent" in accordance with Art. 23 Par. 2 (second sentence) TKG 2003. The TKK's suspicions were confirmed in the course of the procedure, and as a result mobilkom austria was ordered in Decision R 02/08-20 of March 17, 2008 to refrain from charging a "deterrent fee" in excess of EUR 19.00 (including the EUR 4.00 for the Number Porting Ordinance confirmation and information) to subscribers who wish to use the service of number porting.

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

KEM-V: Fundamental regulations on the provision of value-added services

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 (KEM-V), which was passed in mid-2004 and amended in October 2006, August 2007 and February 2008, is especially important in this context. On November 13, 2008, RTR published the draft version of the KEM-V 2009 for public consultation in accordance with Art. 128 TKG 2003. The new version of the ordinance accounts for international developments, the changing market situation in Austria and experience gained in recent years. For further details on the ordinance, please refer to the relevant Communications Reports from previous years and (with specific reference to the KEM-V 2009) to Section 4.2.15.2 of this report.

Dialer problems have all but disappeared.

After a sharp decline in complaints due to the enhanced consumer protection provisions in the KEM-V, problems related to dialer services all but disappeared in the reporting period; this was also the case with dialer services using foreign telephone numbers. In addition, only very few complaints were received with regard to "event-based" charges, where a fixed amount is charged per call regardless of its duration.

Decreasing number of complaints regarding value-added text message services

After a drastic increase in 2007, the number of complaints regarding value-added text messages declined in the year 2008. However, the problem of "MT-billed" text message services (in which charges are not incurred for value-added text messages sent by the user but for those received by the user) still frequently prompted users to contact RTR for the purpose of a conciliation procedure pursuant to Art. 122 TKG 2003. In this way, the regulatory authority was able to provide those users with effective assistance.

Value-added services using geographical telephone numbers

In addition, a trend has been observed recently in which service providers attempt to circumvent the strict regulations applying to the provision of value-added services by illegally advertising and offering services using geographical telephone numbers (where customers might be able to join an erotic chat after dialing the relevant number and pressing a certain key). In this context, one particular problem is the consumers' lack of awareness with regard to the high costs which can be incurred by a call to a geographical telephone number. RTR has also taken measures in this regard and will continue to monitor the situation closely.

Monitoring of value-added services

Closer monitoring of value-added services

Due to the growing number of conciliation cases submitted in the year 2007, in particular with regard to value-added text messages, RTR created an internal interface in early 2008 for the coordination and bundling of measures intended to combat the misuse of value-added services. To this end, the regulatory authority began to maintain closer contact with the relevant organizations (operators, consumer protection organizations, telecommunications authorities and the public prosecutor's office). In addition, a web-based complaint form was developed in order to enable information to be entered and captured quickly; this form has been online since April 2008 and has been used regularly by consumers, with the number of complaints remaining relatively constant (approximately 500 complaints by the end of 2008). Up to now, most of the complaints submitted have concerned MT-billed text message services. The complaints were analyzed, and in the case of conspicuously high frequencies the network operators were informed in order to find timely solutions in the interest of the consumers (e.g., by blocking telephone numbers). These solutions were often implemented very quickly.

Inability to pursue service providers established abroad

Moreover, clear tendencies could be identified in connection with certain providers and platform operators. As a result, numerous supervisory procedures were also initiated. In this context, one problem was the inability to pursue allocation holders established abroad, as in such cases the telecommunications authorities could not take action because no relevant treaties are in place. Nevertheless, the regulatory authority was able to cooperate effectively with the telecommunications offices. In the end, RTR was able to take the appropriate measures in response to nearly 50% of all complaints submitted via the web-based form.

Reasons for amending the regulations in the KEM-V

The authorities' inability to pursue providers established abroad and the sometimes unclear scope of protection regulations also prompted the regulatory authority to adapt the provisions regarding value-added services in the amendment to the Communications Parameters, Fees and Value-Added Services Ordinance (KEM-V 2009) in such a way that platform operators will be required to comply with consumer protection provisions more closely. As the platform operators are usually established in Austria, these measures could enable the telecommunications authorities to prosecute cases of misuse more effectively in the future.

Consistent monitoring and countermeasures

In the year 2008, RTR continued to monitor compliance with the provisions regarding value-added services in the KEM-V consistently and to take appropriate measures wherever necessary. For example, RTR reviewed whether erotic services are offered in the (0)900 range and the 118 range for directory assistance services, and whether fee information requirements are fulfilled to a sufficient extent. In this regard, the authority's numerous supervisory measures generally produced satisfactory results. With the past amendments to the KEM-V, the continued monitoring of compliance with its provisions and the adaptation in the KEM-V 2009, the regulatory authority was (and will be) able to continue on the path it has taken thus far.

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

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. When a company subject to this requirement requests approval for its rates and charges, it is necessary to ensure that the rates meet the standard of cost-based pricing. In the approval of general terms and conditions, the regulatory authority reviews their compatibility 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.

Notification requirement with possibility of TKK objections

In addition to the conventional ex ante approval process, it is also possible to provide for milder obligations, such as notification requirements in which the TKK is allowed to raise objections within eight weeks of notification.

In the year 2008, Telekom Austria as well as mobilkom austria and eTel were subject to specific obligations.

Ex ante approval obligation

An ex ante approval requirement was only imposed on the markets for access to the public telephone network at a fixed location for residential and non-residential customers in 2008.

Providers on the markets for international telephone services for non-residential customers and for domestic telephone services for residential and non-residential customers were only subject to a notification requirement in which the TKK is allowed to raise objections within eight weeks of notification.

The following procedures from the year 2008 are worth mentioning in particular:

Telekom Austria bonus packages

In response to the changes notified by Telekom Austria with regard to service descriptions as well as rates and charges for several bonus packages in which new customers were no longer allowed to order the services after May 2, 2008 (i.e., the services were "frozen"), the TKK decided not to raise an objection.

Automatic message for calls to "0664/73" numbers

In Decision G 148/07-08 of December 20, 2007, the TKK raised an objection to the "A1 Total" conditions regarding rates and charges notified by mobilkom austria, as those provisions differentiated charges for calls to numbers starting with "0664/73" (in contrast to all other telephone numbers starting with "0664"). The TKK deemed those terms to be disadvantageous provisions with unusual content as specified in Art. 864a of the Austrian General Civil Code (ABGB). At the beginning of the year 2008, mobilkom austria revised its conditions regarding rates and charges and included a provision requiring the subscribers themselves to activate a recorded message which alerts callers that dialing a number in the "0664/73" range establishes a call to an "aonMobil" line, which is not charged as a call to the A1 network. mobilkom austria responded appropriately to the concerns expressed by the TKK in Decision G 148/07-08, meaning that it was not necessary to raise an objection to those conditions.

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

Notification requirement pursuant to Art. 25 Par. 1 and 2 TKG 2003

Operators/providers of (tele)communications networks and services are obligated to draw up general terms and conditions as well as conditions regarding rates and charges, and to notify the regulatory authority of those conditions in accordance with Art. 25 TKG 2003. Similarly, Art. 25 Par. 2 TKG 2003 stipulates that any changes in general terms and conditions or in conditions regarding rates and charges must be reported to the regulatory authority.

Under Art. 25 Par. 6 TKG 2003, the TKK is to raise objections to notified general terms and conditions (including service descriptions) if they are not in line with the review standards stipulated in Art. 25 Par. 6 TKG 2003. In this context, the review standards include the provisions of the TKG 2003, the ordinances issued on the basis of the TKG 2003, and the provisions of the Austrian General Civil Code (ABGB) and Consumer Protection Act (KSchG).

In cases where the TKK raises an objection, the operator or provider is no longer allowed to apply the general terms and conditions in question. However, the operator or provider can adapt the terms and conditions accordingly and to submit a new notification.

182 notification procedures

A total of 182 procedures under Art. 25 Par. 6 TKG 2003 were conducted in the year 2008. In 102 of those procedures, the initially notified general terms and conditions (or service descriptions) complied with the review standards defined in the TKG 2003. These notifications largely concerned changes in general terms and conditions as well as service descriptions pursuant to Art. 25 Par. 2 TKG 2003.

In 75 procedures, the operators or providers revised questionable provisions in due course, thus eliminating the need for an official decision objecting to the terms and conditions.

TKK objection decisions

In only five procedures, the operators or providers failed to amend the questionable provisions, meaning that the TKK was required to object to the general terms and conditions under Art. 25 TKG 2003.

With regard to reviews of general terms and conditions, it is important to emphasize the change in the TKK's legal interpretation in connection with special termination rights under Art. 25 TKG 2003:

Change of legal interpretation with regard to Art. 25 TKG 2003

According to Art. 25 TKG 2003, operators and providers of telecommunications networks and services are allowed to change their general terms and conditions as well as their conditions regarding rates and charges to the detriment of subscribers unilaterally under certain conditions. At the same time, Art. 25 Par. 3 TKG 2003 stipulates that subscribers have the right to terminate the contractual relationship free of charge before the amended terms and conditions go into effect. In their general terms and conditions, several providers reserved the right to reverse the changes after the fact (within different periods of time, ranging from seven business days to four weeks), thus rendering the subscriber's termination ineffective.

A ruling handed down by the Vienna Commercial Court (Ruling 19 Cg 46/08y of June 17, 2008) prompted the TKK to rethink its previous legal interpretation in this context. In consideration of the Commercial Court's arguments, the TKK came to the conclusion that an interpretation to the maximum detriment of the customer would bring about an unacceptable "state of

suspense" which must be considered a severe disadvantage in accordance with Art. 879 Par. 3 of the Austrian General Civil Code (ABGB). The TKK also considered the fact that merely shortening the period for rejecting changes to contractual terms cannot eliminate this unacceptable state of suspense.

The general terms and conditions and provisions regarding rates and charges published by the regulatory authority can be found at http://www.rtr.at/agb-eb (in German). The TKK's official objections to such terms and conditions are published at http://www.rtr.at/de/tk/EntscheidungenGesamt (in German).

4.2.10 International roaming

EU Roaming Regulation in force since June 30, 2007

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 (referred to below as the "EU Roaming Regulation" or simply the "regulation") has been in effect for nearly two years now. The objective of this regulation was to promote competition in the roaming sector, and to ensure a higher level of consumer protection and more affordable roaming rates. The regulation has been in effect in all EU member states since June 30, 2007, and in the EEA member countries Liechtenstein, Norway and Iceland since December 22, 2007.

4.2.10.1 Content and implementation of the regulation (voice services)

Eurotariff currently only applies to voice roaming

The regulatory measures currently apply to voice roaming services only and stipulate price regulations at the wholesale and retail levels; in addition, mobile operators are required to provide their customers with a text message informing them individually of the roaming charges which apply under the customer's rate plan immediately upon their arrival in an EU member state. The average maximum wholesale charge for a regulated roaming call (calculated over a period of one year) is currently EUR 0.28 per minute excluding VAT, and this rate will be reduced further in the summer of 2009. At the retail level, all mobile operators are required to offer a roaming rate no higher than the maximum amount stipulated in the regulation ("Eurotariff"). In Austria, almost all mobile operators have based their Eurotariffs on this maximum amount. Only one mobile operator offers a Eurotariff which is markedly lower than the maximum amount stipulated in the regulation. The maximum rate is currently EUR 0.46 per minute excluding VAT for regulated outgoing calls and EUR 0.22 per minute excluding VAT for incoming calls. This rate will also be reduced further at the retail level in the summer of 2009.

The current version of the regulation does not contain any provisions on the question of billing intervals. Austrian mobile operators charge the Eurotariff to their subscribers on the basis of defined billing intervals (e.g., 60/30 billing).

The Eurotariffs offered by Austrian providers for regulated roaming calls are at approximately the same level – that is, at or just below the maximum permitted amount – as in other EU member states. Similarly, there are very few providers in other member states which offer their customers a Eurotariff which is substantially lower than the maximum amount stipulated in the regulation.

Efficient implementation of the EU Roaming Regulation to date

Now that the EU Roaming Regulation has been in effect for nearly two years, it can generally be observed that Austrian mobile operators have complied with the resulting obligations appropriately and implemented the regulation efficiently. The regulatory authority has only received isolated complaints from retail customers regarding potential violations of the regulation. The few complaints received mainly concerned the information text message service ("push" SMS): Customers reported that they had not received a "push" text message containing individual rate information at all upon arrival in another EU member state, or that they had not received the information immediately upon arrival (as stipulated in the regulation).

4.2.10.2 Content and implementation of the regulation (SMS)

Under Art. 11 of the EU Roaming Regulation, the European Commission was required to review the functioning of the regulation and report to the European Parliament and the Council no later than December 30, 2008. In this review, the European Commission was to evaluate whether the objectives of the current EU Roaming Regulation had been achieved and how the charges for voice and data communications services, including SMS and MMS, had developed up to that time.

Proposals to extend and expand the Roaming Regulation

The European Commission carried out the review and came to the conclusion that it is necessary to extend the regulation on voice roaming services and to expand the regulation to include text messaging (SMS) and mobile data services. In particular, the Commission criticized the high rates charged for data roaming as well as the frequent "bill shocks" experienced as a result of using mobile data services abroad. The Commission has already drawn up a draft of the extended and expanded regulation and submitted its proposal to the European Council and the European Parliament. The draft provides for an extension of the regulation until the year 2013 as well as an expansion of regulatory obligations to include text messages and mobile data services (mobile Internet).

Price regulations for text messaging, transparency obligations for data roaming services

In essence, the Commission's proposal stipulates the following obligations for mobile operators: For voice services, operators should no longer be able to charge their customers on the basis of billing intervals for regulated outgoing voice roaming calls. However, operators will be allowed to maintain a minimum billing duration of no more than 30 seconds for outgoing voice calls. In addition, the Commission suggests price regulations for SMS roaming services. Finally, the proposal calls for price regulations for data roaming services at the wholesale level as well as extensive transparency obligations for the use of data roaming services at the retail level.

The full text of the European Commission's proposal to expand the EU Roaming Regulation can be downloaded at http://ec.europa.eu/information_society/activities/roaming/docs/regulation/reg_en.pdf.

At the end of the reporting period, it was not completely certain whether the amended version of the EU Roaming Regulation would go into effect as proposed by the European Commission because the legislative process (agreement of the European Parliament and Council) had not yet been completed. However, it is highly probably that an amended EU Roaming Regulation will go into effect in the summer of 2009. It remains to be seen whether all of the Commission's proposals are put into force.

4.2.11 Universal service

Universal service refers to the minimum set of public services to which all end users must have access, regardless of their place of residence or business. 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 (Art. 26 TKG 2003):

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

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

3. Nationwide coverage with public pay telephones.

Private-law agreement between Telekom Austria and alternative operators on compensation amount

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 cannot be recovered despite efficient management where these costs constitute an unreasonable burden. As Austria's universal service provider, Telekom Austria was able to reach private-law agreements with alternative telecommunications providers on the amount of compensation until the year 2006. At the end of 2008, Telekom Austria submitted a request to the TKK for reimbursement of the costs of providing public pay telephones in the year 2007. RTR has also been informed that Telekom Austria is negotiating with the alternative network operators in order to reach a private-law agreement for the 2007-2008 period.

The quality criteria for universal service are defined in the Universal Service Ordinance (UDV). Among other requirements, the criteria include key indicators such as the initial connection setup time, fault rate, call setup time, voice transmission quality and the number and features of public pay telephones in operation. Telekom Austria is legally required to provide RTR with a report on those indicators on a yearly basis. Once again, the regulatory authority's review of the report did not give rise to any major objections in 2008.

Telekom Austria requests approval of rate increase for public pay telephones

Changes in the fees for calls from public pay telephones require the approval of the regulatory authority in accordance with Art. 26 Par. 3 TKG 2003. In the summer of 2008, Telekom Austria submitted such a request for approval, which was reviewed by experts in order to establish whether the new rates can be considered affordable. The criteria used to determine affordable price levels in this context were the Austrian consumer price index as well as gross per capita income. In addition, the expert reviewers calculated the cost of a basket of goods on the basis of changing public payphone rates over time. A comparison of these indicators led to the conclusion that the rate increase was reasonably proportionate to the rise in consumer prices and income over time. The experts also considered other factors, such as changes in the use of public pay telephones and the possibility of substituting this service, mainly through the increasingly favorable rates charged for mobile communications services. In the end, the TKK concluded that the rates requested meet the requirement of affordability. The relevant decision can be found on the RTR web site.

TKK approves rate increase for public pay telephones.

4.2.12 Services subject to reporting requirements

Service notifications, number notifications and data reports via the RTR web interface

Under Art. 15 TKG 2003, the regulatory authority must be notified in advance of the intended operation or provision of public communications networks or services as well as any changes in or terminations of such networks/services. The regulatory authority (RTR) issues a confirmation indicating that the notification was received in cases where it refers to a communications network or service. The notification procedure is handled via a web-based interface provided by RTR. Using this interface, operators and providers can also carry out the following processes:

- Number requests and returns;
- Reports required under the Communications Survey Ordinance (KEV);
- Information for market analyses;
- Reports relevant to financing contributions.

1,474 services reported as of December 31, 2008

As of December 31, 2008, a total of 1,474 active services had been reported to RTR. A list of companies which have reported the operation or provision of public communications networks or services can be found on the RTR web site.

4.2.13 Frequencies

Three frequency allocation procedures, review of compliance with 3.5 GHz coverage requirements

With regard to frequencies, the following procedures were carried out in the year 2008:

Allocation procedure for the 900 MHz frequency band

In 2007, a procedure for the allocation of frequencies in the 900 MHz band was initiated in response to a request from One GmbH. At the end of the tender submission period, the regulatory authority had received applications for frequency allocation from three companies (One GmbH, T-Mobile Austria GmbH and Barablu Mobile Austria Limited). The allocation procedure was carried out in the form of a sealed-bid auction on the basis of which One GmbH was identified as the high bidder with a bid of EUR 501,500.00. The frequencies were allocated in September 2008 for a limited time period (until December 31, 2017).

Review of compliance with coverage requirements in the 3.5 GHz frequency band

During the reporting period, the TKK initiated a procedure in order to review the fulfillment of coverage requirements in the 3.5 GHz band.

In November 2004, the coverage requirements were imposed in connection with the allocation of frequencies in this band. In those requirements, the regulatory authority stipulated that a certain coverage level had to be reached by December 31, 2007. The review procedure was initiated by the TKK in January 2008, and the companies involved (WiMAX Telecom GmbH, B-MAX Breitband GmbH, Teleport Consulting und Systemmanagement GmbH, and UPC Wireless GmbH) were instructed to provide evidence that they had reached the relevant coverage level in each case. The subsequent investigations revealed that one company (UPC) had not fulfilled the defined coverage requirements. In accordance with the terms of the allocation, a penalty totaling EUR 920,000.00 was then imposed on the company in question for failing to meet the coverage requirements on schedule. The company then relinquished its frequency usage rights in December 2008.

TKK imposes penalty on UPC

As for WiMAX Telecom GmbH, B-MAX Breitband GmbH and Teleport Consulting und Systemmanagement GmbH, the review procedures revealed that those companies had fulfilled the relevant coverage requirements. The next review was carried out as of the reference date December 31, 2008.

Allocation of frequencies in the 3.5 GHz frequency band

In December 2007, Telekom Austria relinquished the frequency usage rights it had acquired in the November 2004 allocation procedure for the 3.5 GHz frequency band. As a result, the TKK carried out another allocation procedure for those frequencies in 2008. The invitation to tender was published in August 2008, and the frequencies were allocated by means of an auction procedure in December 2008. The frequencies were allocated at the level of Austria's federal provinces (with the exception of the Vorarlberg province). The frequencies were acquired by EVN Netz GmbH (Vienna and Lower Austria), B-Net Burgenland GmbH (Burgenland) and BF Twelve Holding GmbH (Styria, Carinthia, Tyrol, Salzburg and Upper Austria). The total revenues from the auction came to EUR 181,000.00. The frequencies were allocated for a limited period ending on December 31, 2019.

Discontinuation of allocation procedure for the 450 MHz frequency band

In 2008, the TKK also carried out a procedure to allocate frequencies in the 450 MHz band. The procedure was designed as a sealed-bid auction. At the end of the tender submission period, the TKK had not received any applications for frequency allocation, and therefore the procedure was discontinued in October 2008.

4.2.14 Mergers and substantial changes in ownership structure

Telekom Austria merged with eTel Austria AG

eTel no longer exists as a separate company.

Telekom Austria's complete takeover of eTel Austria AG, which had already taken place in 2007, was finalized with the legal merger of the two companies in the year 2008.

The merger itself had already undergone an approval procedure carried out by the Austrian Federal Competition Authority in the year 2007. In the procedure, Telekom Austria (as the acquiring company) agreed to fulfill numerous obligations in the interest of the remaining alternative providers on the relevant telecommunications markets in order to gain regulatory approval for the planned merger.

The regulatory authority is not equipped with independent powers in merger procedures involving companies which do not hold frequency usage rights. However, the TKK and the Federal Competition Authority also cooperated closely in this procedure, with the TKK contributing comments and opinions to the procedure before the Federal Competition Authority.

One Austria GmbH: Change of name and ownership (Orange)

One taken over by Orange

In September 2008, the mobile network operator One GmbH changed its ownership structure and became Orange Austria Telecommunication GmbH. The new owners of the company are France Telecom (35%) and the Mid Europa Partners consortium (65%).

Telekom Austria's takeover of Tele2 Österreich's mobile communications division

Tele2 sheds mobile communications arm.

In the first half of 2008, Telekom Austria took over Tele2 Österreich's entire mobile communications division. However, the Stockholm-based Tele2 Group remained the sole owner of Tele2 Österreich's fixed-link operations.

4.2.15 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 as well as regulations with regard to value-added services. Other addressing elements are administered on the basis of the Special Communications Parameters Ordinance (SKP-V).

Aside from the day-to-day business of managing communications parameters, activities in this field focused on two main areas in the reporting period: the third amendment to the KEM-V as well as the preparation of a major KEM-V amendment which is slated to go into effect in 2009.

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

Third amendment to the KEM-V in effect since February 29, 2008

On February 29, 2008, RTR issued the third amendment to the KEM-V (Federal Law Gazette II No. 77/2008). This amendment served to meet the requirement set forth by the European Commission on October 29, 2007 (2007/698/EC) which calls for two additional harmonized services of social value in addition to the missing children hotline (116 000):

- 116 111 for child helplines;
- 116 123 for emotional support hotlines.

On June 20, 2008, the 116 123 hotline number was allocated to the Austrian Broadcasting Corporation (ORF), which plans to use the number as the Ö3 emotional counseling hotline in cooperation with the Austrian Red Cross from 2009 onward.

In addition, the discontinuation of the (0)70 area code for the city of Linz was postponed by five years. This step was taken in order to account for the fact that subscribers are only slowly curtailing their use of this area code, and to enable the shutdown in the course of expected technology migration (to NGNs/NGA) in order to minimize the costs to operators. Finally, additional provisions were introduced for the sake of reducing the use of the area code in order to ensure that it can be discontinued on May 12, 2014.

4.2.15.2 KEM-V 2009

KEM-V 2009: Extensive discussion and consultation process

At the beginning of the year 2008, RTR launched an extensive public discussion process with market participants regarding the further development of the Communications Parameters, Fees and Value-Added Services Ordinance (KEM-V).

In the first three months of the reporting period, the regulatory authority held discussions with market participants in order to survey their concerns. With regard to the more flexible usage of geographical telephone numbers, the input document published by RTR on January 28, 2008 sparked intensive discussions. These activities were driven in particular by international developments in this field, as can be seen in the ERG's new Common Position on VoIP (December 2007), to name one example. One of the core issues in this context is the need to enable the nomadic use of geographical telephone numbers for IP-based telephone services in response to the changing requirements of the market.

Using the results of these discussions, RTR published a second input paper (June 17, 2008) based on the current Communications Parameters, Fees and Value-Added Services Ordinance (KEM-V) and containing specific amendment proposals. In addition to giving market participants the opportunity to submit written comments on the planned changes until August 31, 2008, RTR also held numerous meetings with ministries, emergency number operators, network operators and consumer representatives.

The results of this discussion process were incorporated into a draft version of the new KEM-V (KEM-V 2009) and put out to public consultation in accordance with Art. 128 TKG 2003 from November 13, 2008 to January 30, 2009. At present, the new ordinance is scheduled to enter into effect in the second quarter of 2009.

The main changes in the KEM-V 2009 relate to geographical telephone numbers and value-added services.

The fact that geographical numbers serve the purpose of addressing fixed network termination points will remain unchanged; however, it is envisaged that VoI operators will be able to use geographical numbers for telephone services when (only) the subscriber provides evidence of such a network termination point. Up to now, VoI operators have had to provide the network termination point themselves or present evidence in the form of an agreement with a communications network operator. As this change may lead to an increase in the number of applicants for geographical telephone numbers, the proposed amendment to the KEM-V also contains regulations which will ensure that the relevant number range is used more efficiently.

In the field of value-added services, the provisions governing voice and fax services as well as dialer and messaging services (SMS-based services) were reorganized in order to improve the clarity of the ordinance's structure; in addition, certain (language-related) points were clarified. Moreover, a definition of the term "platform operator" was added to the ordinance; these operators will be obliged to comply with the provisions regarding fee information for text messaging services. A new obligation to provide evidence of compliance with the provisions pertaining to text messaging services was also introduced.

It is also important to note that telephone numbers involved in ongoing procedures will be ineligible for allocation in the future.

4.2.15.3 Statistical analyses in telephone number administration

Table 4 provides a quantitative overview of the telephone number allocation decisions issued over the last six years. In this context, the upward trend in the number of allocation decisions for geographical telephone numbers continued in 2008 (+27% compared to the previous year). This steady increase can primarily be attributed to requests submitted by VoIP operators offering telephone services in Austria.

In contrast, the number of allocations has declined in the ranges designated for non-geographical telephone numbers, for example in the (0)800, (0)900 and (0)930 ranges.

Number of decisions fairly constant in recent years

Table 4: Number of decisions issued

	2003	2004	2005	2006	2007	2008
Number of affirmative decisions	**600**	**494**	**871**	**834**	**1,036**	**991**
for geographical numbers	20	31	79	150	247	314
for non-geographical numbers	580	463	792	684	789	677
Number of negative decisions	**82**	**41**	**47**	**68**	**48**	**75**
Total	**682**	**535**	**918**	**902**	**1,084**	**1,066**

Source: RTR

In its administration of special communications parameters,[1] RTR issued a total of 17 decisions (one of which was negative) in 2008.

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 5, RTR has continued to meet and even exceed this requirement. 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.

[1] The 2005 Communications Report contains an overview of the special communications parameters administered by RTR.

Table 5: Processing times for telephone number requests

Processing time for telephone number requests (days)	2003	2004	2005	2006	2007	2008
Average processing time	3.9	3.1	2.7	2.2	2.5	2.2
50% of all requests	2.0	1.7	1.8	1.3	1.4	1.2
90% of all requests	7.6	5.5	5.0	3.9	4.8	4.2

Source: RTR

Average processing time decreased in 2008.

Table 6 provides an overview of all telephone number ranges administered by RTR as of December 31, 2008, including allocated numbers and numbers in use. Compared to the previous year, the number of location-independent fixed-link numbers in use rose 30%, which can largely be explained by the increased use of these numbers by VoIP providers. The downward trend in geographical numbers in use continued, albeit with slightly less intensity. The increase in the number of allocated geographical numbers at Telekom Austria TA AG by approximately 104,000 can be attributed to the company's merger of operations with eTel Austria GmbH & Co KG. Overall, the number of geographical numbers in use declined by 3.5% in 2008. The number of geographical numbers in use at Telekom Austria dropped by 4.5%, while alternative network operators – including VoB and VoIP providers – recorded an increase of 4.7%.

A sharp decline in use was once again observed in carrier preselection prefixes (-27%). It is also worth mentioning the 46% increase in the number of service numbers in use in the (0)810 and (0)820 range. At the same time, the use of value-added service numbers in the (0)900 and (0)930 ranges showed signs of stagnation in 2008, recording a decline of 4% in numbers in use.

Table 6: Numbers allocated and in use in Austria

	Range	Allocated	Used
Geographical subscriber numbers Telekom Austria	(0)1 (0)2xx (0)3xx (0)4xx (0)5xx (0)6xx (0)7xx	25,809,500*	2,443,313**
Geographical subscriber numbers Alternative network operators	(0)1 (0)2xx (0)3xx (0)4xx (0)5xx (0)6xx (0)7xx	2,643,400*	460,349**
Area codes for private networks	(0)5	443	291
Area codes for mobile networks	(0)6xx	11	8
Dial-up Internet access	(0)718	7,100	59
Location-independent fixed-link numbers	(0)720	265,000	38,370
Convergent services	(0)780	2,888	2,888
Toll-free services	(0)800	83,206	15,208
Toll-free dial-up Internet access	(0)804 00	230	28
Services with regulated fee limits	(0)810 (0)820 (0)821	92,886	14,678
SMS services in the range for services with regulated fee limits	(0)828 2	1,644	23
Value-added services	(0)900 (0)930	118,326	27,286
Value-added services subject to event-based charges	(0)901 (0)931	42,299	1,804
Dialers (value-added services)	(0)939	10,400	57
Carrier selection prefixes (public carrier networks)	10	38	19
Telephone troubleshooting hotlines	111	74	29
Telephone directory assistance services	118	51	41
Routing numbers for number portability	86	58	21
Routing numbers for mobile number portability	87	16	10
Routing numbers for services	89	38	9

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.

4.2.16 Activities focusing on NGNs/NGA

NGNs and NGA as a focus area in 2008

The topic of migration to next-generation networks (NGNs) and the accompanying economic, technical and regulatory changes have been key issues for market participants as well as the regulatory authority for several years now. With a symposium marking the regulatory authority's ten-year anniversary in the summer of 2007, RTR explicitly declared this topic a focus area and has since carried out a number of activities in this regard. This step appeared to be appropriate in light of the fact that the shift toward NGNs will trigger fundamental changes in the telecommunications landscape. This not only refers to technical aspects, such as the replacement of conventional line-based technology with packet-switched technology or the trend toward multi-service platforms, it also has far-reaching consequences for the economic and regulatory fields.

4.2.16.1 NGA industry working group

One focus of activities in this area in 2008 was in the field of next-generation access (NGA), which refers to fixed-link-based access networks as used in NGNs. NGA is characterized by the increased use of fiber optics infrastructure, thus bringing the core network closer to the retail user. The resulting shorter distances within the access network enable markedly higher data rates and the introduction of new and innovative services.

The regulatory authority's activities on the topic of NGA stem from a discussion process which was launched in the course of the symposium held in June 2007 and was supported by the simultaneous publication of three input documents. The ensuing consultation on those documents ended in the annual regulatory workshop held by RTR (October 2007), where this topic was also addressed, as well as the definition of RTR's focus areas in the year 2008. Key questions on the migration to NGA were subsequently raised and discussed in an industry working group initiated and moderated by RTR.

Industry working group prepares NGA switching guidelines

The NGA industry working group addressed two central topics in particular: One was the issue of how to handle local loop spectrum management in such a way that the mutual impacts of high bit-rate transmission systems are kept to a minimum in an NGA scenario. The other central issue was access to serving area interfaces, which will gain importance in hybrid access networks with regard to the scale disadvantages of alternative network operators and the need for alternative wholesale products. As for the actual output of the industry working group, it is worth mentioning the preparation of "switching guidelines" to govern the deployment of high bit-rate transmission systems in different NGA scenarios.

Publication on NGA

An overview of this topic is provided in a volume of RTR's publication series released in October 2008, "Next Generation Access – A dialog between the regulatory authority and market participants." Based on the common position of the ERG as well as the relevant international developments, the publication sets the stage for a discussion at the national level in Austria, summarizes the current state of the discussion in the NGA industry working group, and provides a cross-section of various topics by identifying the regulatory implications and potential courses of action in this context.

4.2.16.2 Investment incentives and cost accounting

In parallel to the activities of the industry working group described in Section 4.2.16.1, the regulatory authority held a number of expert workshops on the topic of investment incentives and cost accounting. The debate on these topics is also rooted in the discussions surrounding the input document published by RTR in the summer of 2007 ("NGNs: Investment incentives and cost accounting").

Focus area: Costs of capital

The first group of topics related to the costs of capital, specifically addressing issues related to WACC (weighted average costs of capital) and the CAPM (capital asset pricing method for [exchange-oriented] companies) with a view to opening up a fundamental discussion of methods and surveying the European environment on the basis of selected benchmarks and PIBs (principles of implementation and best practice). This subject area was rounded off by a discussion of real options, which represent an alternative approach to calculating the costs of capital.

Focus area: Financing

The second group of topics concerned financing, in particular dealing with the issues of risk-adjusted financing, differences between project and corporate finance, the distinction between equity capital, mezzanine capital and debt capital, as well as private equity and mezzanine financing.

4.2.16.3 Alternative charging systems

This series of events was initiated by RTR on the basis of suggestions contributed by individual operators in the course of the presentation and discussion of its work program for 2008. The objective of the working group was to enable participants to prepare a summary assessment document on various charging systems. RTR's role in this context was limited to moderating and organizing the events, and contributing especially relevant points from a regulatory perspective. The findings of the working group do not prejudice the position of RTR or the TKK in any way.

This topic was addressed in two steps: In the first step, the working group identified potential alternatives to the current charging system. In addition to various options under existing regulations (LRAIC), the working group examined the following charging models in its discussions:

- Bill and keep;
- IP peering;
- Pure LRIC approach (recommendation of the European Commission);
- Capacity-based or volume-based charging;
- Quality-based charging;
- Termination competition.

Focus on infrastructure expansion and financing

In the second step, the group developed assessment criteria with which the charging systems could be evaluated. A total of ten assessment criteria were defined and further broken down into sub-criteria. These criteria include the "Elimination of competition problems," "Investment incentives," "Transaction costs," "Future security" and "Creation of sustainable competition." In the third step, the charging systems were evaluated on the basis of those criteria. The findings

were presented in a final report prepared in cooperation with SBR Juconomy Consulting AG and published in early 2009. The report as well as the overall discussion can be found on the RTR web site at http://www.rtr.at/de/tk/AbrechnungssystemeVL (in German).

4.2.16.4 Follow-up activities

Focus area: Infrastructure expansion

RTR's activities to date have confirmed the prevailing international view that the migration to NGA and NGNs will have significant effects on the entire telecommunications sector, thus warranting an intensive regulatory discussion of the topic. The general conditions for the migration to NGA will require careful consideration of the balance between promoting innovative developments in the sector and protecting (previous and future) investments; for this reason alone, NGA will also remain a crucial topic in the year 2009.

The NGA industry working group will continue its activities in 2009 and work together to define generally applicable conditions for the migration of conventional access networks to NGNs in Austria.

Focus area: Financing

In addition, the group will discuss and develop alternative models of infrastructure expansion and financing for broadband networks with regard to access. These topics will be emphasized considerably by means of discussion events and the preparation of a study in the first half of 2009. The target group includes telecommunications providers as well as utilities companies, municipal and provincial governments, infrastructure expansion initiatives, interest groups and financial institutions.

4.2.17 International activities

Various roles and tasks

Depending on the focus areas and their level of priority, RTR participates in a wide variety of international working groups, such as the IRG/ERG, CEPT/ECC, the 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).

With regard to RTR's participation in the IRG/ERG, the following activities were especially important in 2008:

- Roaming guidelines were published in order to support the implementation of the EU Roaming Regulation.

Roaming

- The ERG publishes reports on international roaming. Since the EU Roaming Regulation went into effect, the group has been preparing regular reports on its effects. The objective of these activities is to provide a data basis for evaluating regulatory measures.

Harmonization

- One important objective of the ERG's activities is to promote harmonization in Europe. For this reason, the group established a process in order to monitor regularly and consistently (i.e., on the basis of the same standards) the extent to which ERG common positions are incorporated into individual regulatory decisions, to name one example. Such a report was published on the topic of broadband in 2008.

- The annual report on the development of regulatory cost accounting systems was also published. In comparison to the reports from previous years, a clear trend toward harmonization in cost accounting can now be identified. Here it has become clear that many authorities now use the cost standard of forward-looking, long-run incremental costs (FL-LRIC) on the basis of replacement costs.

Mobile termination

- The semi-annual "Snapshots" of mobile termination rates reveal a convergent trend in Europe, with a continued general tendency to decline. Based on the glide paths already defined in some countries, the European average is expected to decrease by another 1.9 euro cents per minute by the end of 2009. In some countries, a certain symmetry has already emerged in the rates of mobile operators.

Market analysis

- The ERG decided to draw up a common position on geographical aspects of market analysis.

NGNs

- The ERG published a common statement on the subject of "IP Interconnection and Next Generation Networks." This document mainly focuses on NGNs in the core network and the associated regulatory questions. Key issues in this context include the most efficient number of interconnection points, standardization, interoperability, reference offers, and costs.

- The ERG published its position on the European Commission's recommendation on next-generation networks. The ERG is of the opinion that a stable and foreseeable regulatory framework is especially important to expansion and competition in the field of NGNs. In future regulation, it will be necessary to provide for a sufficient degree of flexibility and to enable the consideration of specific national circumstances. Topics such as the scope of the recommendation, the "ladder of investment" and access to infrastructure, charging (e.g. for cable ducts), transparency, processes and roll-out scenarios were addressed.

Termination

- Positions on the European Commission recommendation on termination rates for fixed-link and mobile networks: In 2008, the European Commission prepared a recommendation on the regulatory treatment of fixed and mobile termination rates in the EU. The purpose of these efforts is to harmonize fixed and mobile termination rates by introducing analogous calculation methods, by reducing the prices of termination services (especially mobile termination rates) and by aligning mobile and fixed-link termination rates. The Commission is pursuing this objective with an approach which involves adapting the cost accounting systems used to date. In this context, one can expect the application of a mandatory bottom-up cost accounting model based on an increment definition which diverges from previous practice. Both RTR and the ERG are rather critical of this approach but at the same time welcome the efforts to harmonize methods in Europe.

Efficiency

- Organizational measures were taken for the purpose of further professionalization and the reinforcement of international cooperation. A permanent IRG secretariat was established, and the IRG web site was also restructured.

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.

Changes in signature legislation

In the year 2008, extensive changes in Austria's legislation on electronic signatures also had an impact on the activities of the TKK and RTR. An amendment to the Signatures Act (which was already passed in 2007) was announced on January 7, 2008 and went into effect retroactively as of January 1, 2008. The Signatures Ordinance 2008 (SigV 2008) also went into force on January 7, 2008, thus replacing the previous version of the ordinance. The following key changes were introduced in this context:

- Under the amendment which went into effect on January 1, 2008, most of the provisions in the Signatures Act now only apply to providers of qualified certificates or qualified time-stamp services. In particular, only those certification service providers (CSPs) are subject to supervision by the TKK.

- The term "secure electronic signature" was replaced with "qualified electronic signature." The definition of the new term has been altered slightly, but it is more compatible with the terminology of the Signature Directive and technical standards.

- Electronic signatures which are not based on a qualified certificate can also be created by legal entities (e.g., for electronic invoicing).

- Qualified certificates can no longer be issued for CSPs, but only for physical persons. As a result, the TKK's certificates for CSPs are no longer issued in the form of qualified certificates.

- The identity check required in order to issue a qualified certificate no longer has to be based on verification by means of an official photo identification, but only has to correspond to the reliability of a registered personal delivery.

- Formats other than those recommended by the CSP may also be used to create qualified electronic signatures.

- A CSP's accreditation can be revoked in cases where the applicable requirements are no longer fulfilled.

- The financing of supervisory activities, which includes an allocation of funds from the federal budget, is governed by the Signatures Ordinance 2008.

In line with its legal mandate, the supervisory authority continued to maintain an electronic directory of certificates issued for CSPs in the year 2008. Naturally, the authority complied with the revised certification practice statement, which stipulates that certificates must only be issued for providers of qualified certificates or qualified time-stamp services and for the

authentication of components in the authority's own infrastructure. As the relevant legislation no longer allows the supervisory authority to issue qualified certificates, the authority no longer needed to fulfill the requirements for providers of qualified certificates (specifically with regard to security and the availability of directory and revocation services). However, the authority did continue to maintain the directories of certificates issued for CSPs in the year 2008 using the existing public key infrastructure, mainly because this infrastructure already exists and the operating costs are low compared to the setup costs. The authority plans to continue operating the existing infrastructure as long as no significant maintenance costs are incurred.

Public key infrastructure of supervisory authority

Procedures before the TKK

In 2008, six procedures under the Signatures Act were initiated before the TKK, and four of those procedures were completed in the reporting period. The authority was unable to complete two procedures (as well as an additional procedure which was still pending at the end of the year) by the end of the reporting period.

Online activation of eCard

In 2008, the certification service provider A-Trust Gesellschaft für Sicherheitssysteme im elektronischen Datenverkehr GmbH was once again the only Austrian provider of qualified certificates. In this context, A-Trust notified one change in its certification practice statement. Since the beginning of 2008, it has also been possible to issue qualified certificates on the eCard, a signature card issued by Austria's health insurance institutions. In order to simplify the registration process, the person requesting the certificate does not necessarily have to visit a registration authority; instead, they have the option of activating the eCard's signature function online. There are two possible ways to carry out this process; in one procedure, the identity verification is based on a registered personal delivery, and in the other case it is based on a previous verification of the person's identity in connection with the FinanzOnline platform, a service provided by the Austrian tax authority. The relevant procedure before the TKK had not been completed at the end of the reporting period.

Two other notifications from A-Trust concerned extraordinary operating situations to which (in the opinion of the supervisory authority) the CSP responded prudently. It was therefore possible to discontinue the two procedures before the TKK without ordering supervisory measures. As CSPs must be reviewed at two-year intervals, another procedure involving a comprehensive review of A-Trust's activities as a CSP was initiated ex officio in 2008. At the end of 2008, this procedure had not yet been completed.

Currently the only provider of qualified time-stamp services, the Federal Office of Metrology and Surveying reported a change in its certification practice statement, but the change only concerned contact information.

The accreditation of Datakom Austria GmbH granted on December 17, 2001 was revoked by the TKK on May 26, 2008 because the most recently submitted certification practice statement no longer reflected the state of the art (NB: The certification services to which the accreditation referred had already been discontinued on September 27, 2002).

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 three 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, the forum also discussed aspects of Directive 2006/123/EC

of the European Parliament and of the Council of 12 December 2006 on services in the internal market, which must be implemented by member states by December 28, 2009. Article 8 of the directive requires member states to ensure that all procedures and formalities relating to access to a service activity and to the exercise thereof can be completed online. In order to ensure interoperability, the European Commission will issue detailed rules for implementation. The national supervisory authorities for electronic signatures are concerned with this directive insofar as they will be required to publish lists of the CSPs supervised ("trusted lists") in a standardized format in accordance with the technical specifications published by the European Telecommunications Standards Institute (ETSI TS 102 231 V2.1.1 [2006 03], Electronic Signatures and Infrastructures [ESI]; Provision of harmonized Trust-service status information).

Trusted lists

4.4 Postal services

Under an amendment to the Postal Services Act (Amendment to the Postal Services Act 2005, Federal Law Gazette I No. 2/2006), RTR was assigned additional duties in the field of postal service regulation as of January 1, 2008. In addition to the first actual procedures (resolution of a dispute regarding discounts, rate approval request for special letter formats) before the TKK Postal Regulation Committee, the authority's activities in 2008 mainly focused on supporting the Austrian Federal Ministry of Transport, Innovation and Technology (BMVIT). In addition to a review of the postal service's cost accounting system, the authority also supported the BMVIT in selecting an external consultant to calculate the net costs of universal service. In addition, RTR has also represented Austria in several CERP working groups since the end of 2008.

RTR assigned additional duties in postal service regulation as of January 1, 2008

Apart from the issue of discounts granted by Österreichische Post AG, the procedures carried out before the TKK's Postal Regulation Committee and RTR essentially related to the following topics:

- Submission of Österreichische Post AG's 2007 report of key indicators with regard to required quality standards (e.g., handling times, delivery frequency, complaint management).

- Submission of reports required under Art. 16a of the Postal Services Act (PostG) by Hermes Logistik GmbH and General Logistics Systems Austria GmbH. Under Art. 16a PostG, providers of postal services are required to define quality indications and standards in their general terms and conditions for services within the universal service category. These reports must be submitted to RTR by March 1st each year.

- Adaptation of the rules of procedure for the TKK Postal Regulation Committee for the sake of coherence with the TKK.

- Obligation of Österreichische Post AG's customers to label their promotional mail with an indication of postage paid; after a complaint was received from a market participant with regard to a suspected distortion of competition, Österreichische Post AG was instructed to submit comments on this case. As unaddressed promotional mail is not classified as part of universal service, the case was not subject to the jurisdiction of the Postal Regulation Committee, and the complainant was referred to the Federal Competition Authority for further steps in the matter.

- Acknowledgment of changes in Österreichische Post AG's general terms and conditions of service with regard to domestic parcel services, international parcel services and "Info.Mail" pursuant to Art. 9 Par. 4 PostG. The rates for these services remained unchanged; any and all changes served the sole purpose of improving service quality. As a result, there was no need to take supervisory measures.

- Submission of a supplementary report on the universal service plan for 2008 with regard to the structure of the branch network; under Art. 4 Par. 5 PostG, the TKK Postal Regulation Committee is not responsible for this area. According to the relevant provisions, the universal service provider must prepare a plan for the provision of universal service and present it to the highest postal authority by March 1st each year. The Austrian Federal Minister of Transport, Innovation and Technology can issue an official decision prohibiting the closure of a post office in cases where the criteria stipulated in Art. 4 Par. 5 are not fulfilled.

- Notification of changes in Österreichische Post AG's general terms of service with regard to domestic letter services; the changes referred to the introduction of a premium for special-format letters weighing between 51 and 1,000 grams. RTR acknowledged this notification and informed Österreichische Post AG that an informal review of the rates by RTR's experts revealed no reason for an objection to those rates.

RTR reviews postal service's cost accounting system

RTR was instructed by the Federal Ministry of Transport, Innovation and Technology to review Österreichische Post AG's cost accounting system in accordance with Art. 1 Par. 3 of the Postal Service Cost Accounting Ordinance. The review focused on the organization and methods of cost accounting employed by the postal service. Specific figures were only reviewed to the extent necessary to understand the postal service's cost accounting system. Additional focus areas included mapping the group's annual financial statements to its cost accounting figures as well as process cost accounting. In the course of the review, Österreichische Post AG provided the authority with a great deal of information and specific data. During several on-site inspections at Österreichische Post AG, RTR employees were given the opportunity to review the system in operation and to discuss the information and data provided.

Study on universal service commissioned

As instructed by the Federal Ministry of Transport, Innovation and Technology, RTR launched an international invitation to tender for a study to calculate the net costs of Österreichische Post AG's universal service obligation. Due to the expected volume of applications, the invitation was carried out by means of a negotiation procedure instead of a public announcement. The study will be carried out under RTR's supervision in 2009. In preparation for the invitation to tender and the study itself, RTR employees studied the theoretical fundamentals and carried out an international comparison.

In 2008, RTR began to cooperate with international working groups (CERP) in coordination with the BMVIT.

Discounts

One procedure for review of discount terms and conditions

Under Art. 10 of the Postal Services Act, the TKK Postal Regulation Committee is responsible for approving the fees charged for reserved postal services. According to the TKK's interpretation of the law, the approval of fees also refers to any discounts granted. In response to a suggestion that Österreichische Post AG's terms and conditions regarding discounts should be reviewed, the TKK Postal Regulation Committee initiated a procedure for such a review in 2008. Once an investigation procedure had been carried out, Österreichische Post AG was ordered in an official decision on December 9, 2008 to submit its terms and conditions regarding discounts for reserved postal services for approval and to notify the regulatory authority of such terms and conditions for universal services. On February 25, 2009, the Austrian Administrative Court (VwGH) confirmed the regulatory authority's interpretation of the law. The case before the Austrian Constitutional Court (VfGH) is still pending.

5. The Austrian communications markets

5.1 The Austrian communications and advertising market in 2008

5.1.1 Development of the advertising market in 2008

Highest growth rates of the year recorded in April and September 2008

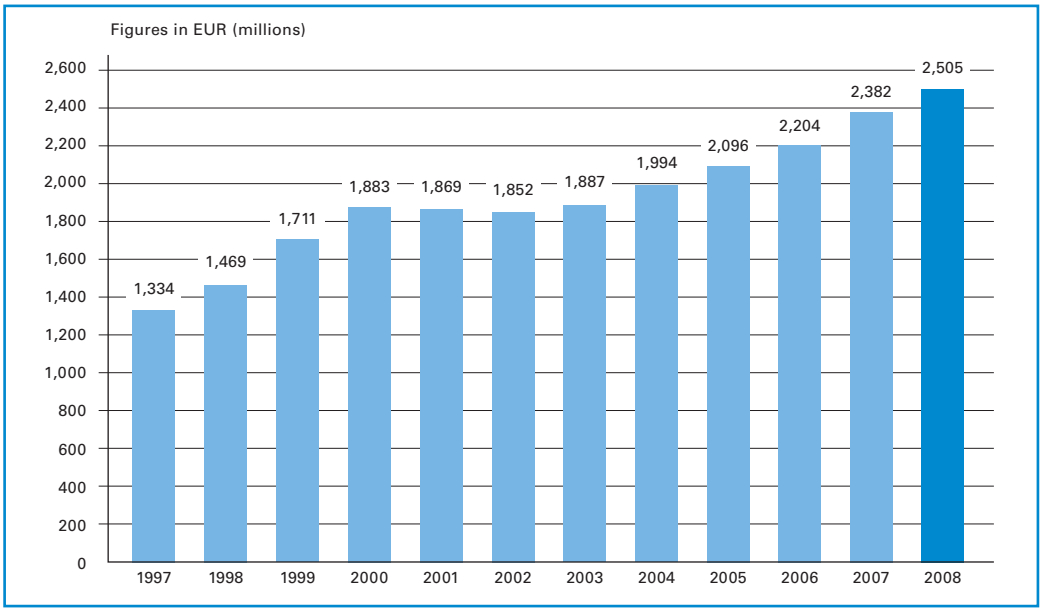
For the year 2008, the media analysis firm FOCUS Media Research reported growth in gross advertising revenues for the sixth consecutive year, with an increase of 5.1% for the overall market and 6.7% for conventional advertising media. There is no doubt that advertising was heavily influenced by three key events in 2008, each of which had very different effects: In June 2008, the Euro 2008 football championship was held in Vienna, Salzburg, Klagenfurt and Innsbruck as well as a number of cities in Switzerland. This event at least met expectations in tourism, but the resulting advertising stimulus was rather limited due to the conditions imposed by the organizers (FIFA) and international sponsors. At the end of September, the early elections to the National Council (one of the chambers of the Austrian parliament) took place, which generated additional business for the outdoor advertising segment and this time for private broadcasters as well. As a result, the second-highest growth rate of the year was recorded in September (+8.0%), while April showed the highest rate (+13.6% in nominal terms).

However, late September also saw the spectacular failure of the U.S. investment bank Lehman Brothers, and since that time the worldwide financial markets have been in a state of crisis. In the developments from December 2008 to February 2009, FOCUS Media Research's advertising monitoring clearly shows that advertising spending dropped in three consecutive months, each time more drastically: -1.5% in December 2008, -3.2% in January 2009 and finally -3.9% in February. The semi-annual advertising barometer (also published by FOCUS) on the development of advertising expenditure projected a further decline of up to 6.9% in gross spending in early 2009.

5.1.2 Advertising expenditure

Given the current crisis, we can already state that 2008 was probably the last year in which such levels of gross advertising expenditure will be recorded in Austria's media until the economic situation improves. Based on official price lists, FOCUS estimates that EUR 2.5 billion were spent on Austria's conventional advertising media, including commercials, print advertisements and posters (see Figure 3). As for the difference between reported and actual net revenues, the following remark can be made on the basis of historical developments: ORF-Enterprise last reported figures in early 2007, indicating a ratio of approximately 33% for television and radio on the basis of its net figures for the year 2006. Additional statements on the development of print advertisements, posters and commercials are only possible on the basis of a simple quantitative count, and one can only speculate on these gross values calculated using official price lists, in particular on their development in terms of qualitative impact (i.e., in terms of net revenues from advertising media).

Figure 3: Development of overall advertising expenditure in Austria

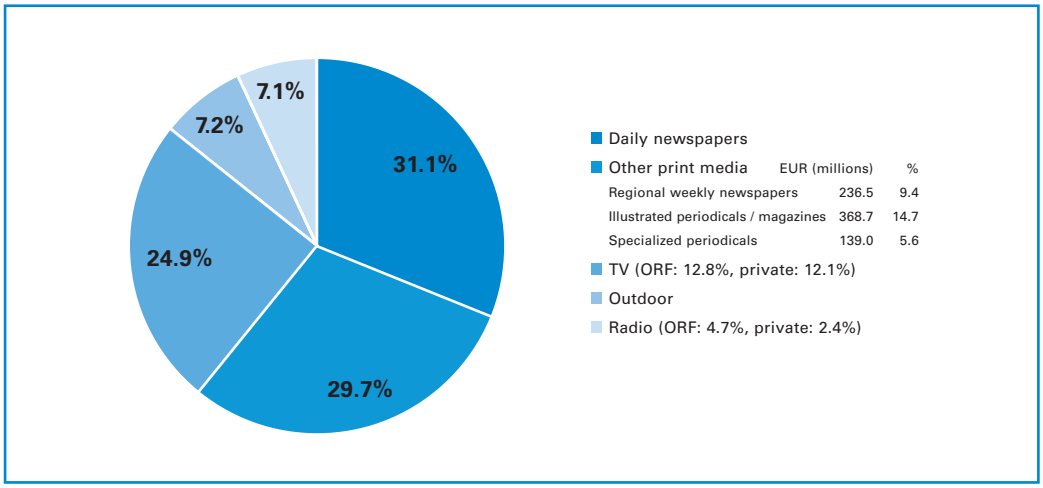


Source: FOCUS Media Research (excl. cinema / classic brochure / online advertising)

Private broadcasters show growth in television segment, ORF sees decline.

In 2008, however, growth in gross terms – in other words, growth in advertising intensity – began to diverge in individual media categories: In the television medium, private broadcasters recorded a nominal growth rate of 23.4%. At the same time, ORF's television channels saw a decline of 8.8%. This is significant because the gross advertising revenues evaluated by FOCUS up to January 2009 for ORF television, where advertising is limited to 42 minutes per day on each channel, were higher than those of the private broadcasters which broadcast commercials for the Austrian market. Starting in January 2009, the private television broadcasters will surpass ORF in this regard. In 2008, radio advertising grew by 4.7% in nominal terms, with ORF's radio stations as well as the private radio broadcasters growing by the exact same percentage. Print media, which still represent the largest advertising channel by far, showed a growth rate of 5.7%, while outdoor advertising increased by 5.4% (both in nominal terms).

Figure 4: Share of advertising in 2008



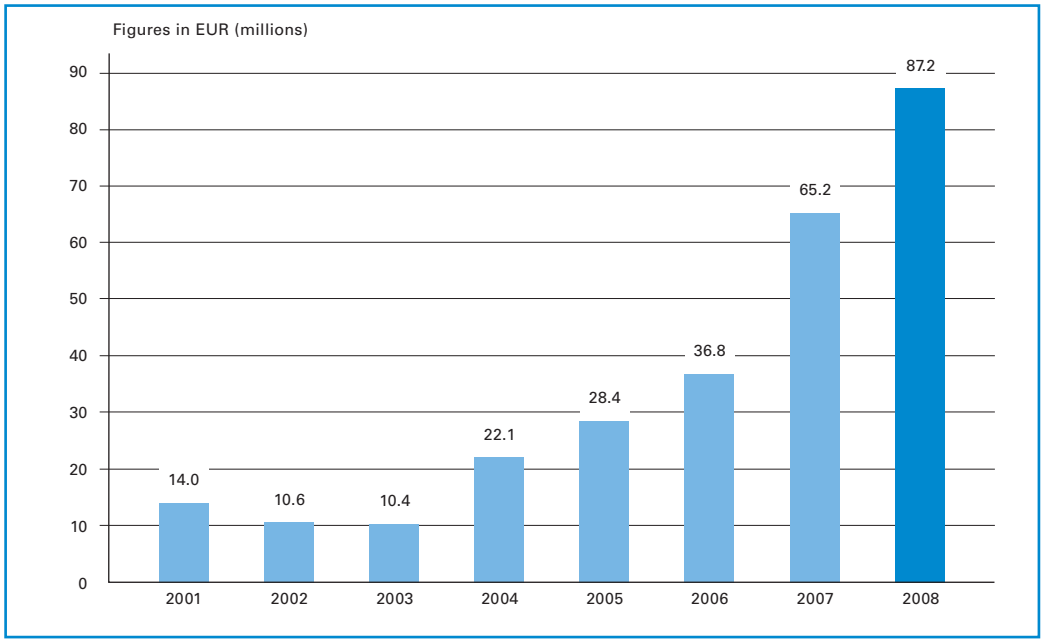
Source: FOCUS Media Research

The market shares of conventional advertising media (print, television, radio and posters) in gross advertising expenditure (i.e., advertising intensity) remained practically unchanged between 2007 and 2008. However, print media benefited from an increase in their share of advertising from 30.3% in 2007 to 31.1% in 2008 at the expense of television advertising. Within the television segment, ORF television's market share declined by two percentage points to 12.8%, meaning that its share of advertising was approximately the same as that of the private broadcasters (12.1%) in 2008, as shown in Figure 4.

Online presentations promoted heavily, leading to higher growth.

Online media showed an especially high rate of growth, with advertising revenues increasing by 33.8%. Fourteen marketing organizations and advertising platforms which (according to their own estimates) cover 75% of the market in question reported EUR 87.2 million in gross revenues to FOCUS (see Figure 5). However, it is also necessary to note that this figure does not include search engine marketing in particular, and that no reliable indicators of the difference between reported and net revenues are available. In any case, we can observe that practically all of Austria's major media companies are beginning to promote online presentations more heavily, often under the same brand name, and to step up cross-media marketing with combinations of print and online advertising or television and online advertising.

Figure 5: Online advertising expenditure in Austria



Source: FOCUS Media Research (survey method changed in 2004 and 2007)

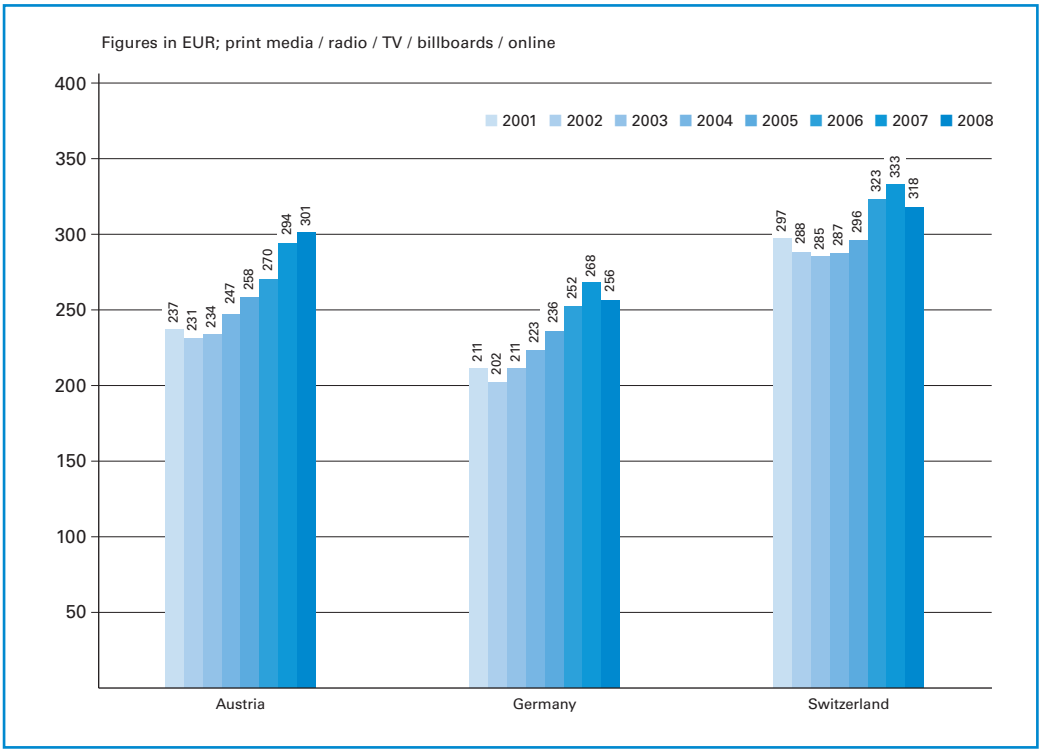
However, a look at the number of brands and products advertised in each media category – as presented in FOCUS Media Research's 2008 advertising yearbook (*Jahrbuch der Werbung 2008*) – reveals a clear picture of advertiser preferences regardless of gross advertising revenues: According to FOCUS, print advertising was used for 33,348 brands (39,138 products), while radio (ORF and private broadcasters) was used for 2,411 brands (2,941 products), television (ORF and private broadcasters) for 1,726 brands (2,722 products), outdoor advertising (posters, illuminated signs, public transportation) for 1,570 brands (1,712 products) and finally online advertising for 1,049 brands (1,297 products).

Three-country comparison

Austria increases per capita advertising expenditure.

In a three-country comparison between Austria, Germany and Switzerland, Austria has continued to advance in terms of gross per capita advertising expenditure: For 2008, FOCUS reports EUR 318.00 in gross per capita expenditure in Switzerland, ahead of Austria with EUR 301.00 and Germany with EUR 256.00. In 2007, the corresponding figures were EUR 333.00 for Switzerland, EUR 294.00 for Austria and EUR 268.00 for Germany. The survey of per capita advertising expenditure in these three countries includes print, radio, television, online and poster advertising (see Figure 6).

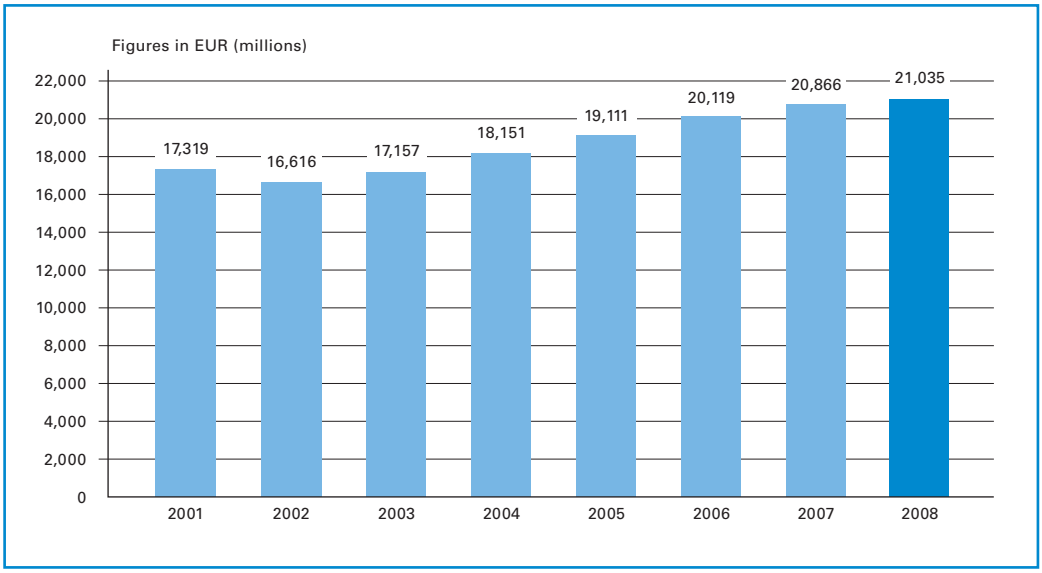
Figure 6: Development of per capita advertising expenditure



Source: FOCUS – *Buch der Werbung 2008* (including online expenditure from 2001; excluding online advertising in Austria from 2003 onward)

In Germany, which serves as a reference market, classic advertising media generated a gross advertising volume of EUR 21.035 billion in 2008, up only slightly from the previous year (+0.8%; see Figure 7). With a growth rate of 4.5%, television was the main driver of growth among the classic advertising media, followed by poster advertising, which grew 2.0%. Like in Austria, Internet advertising is growing in Germany, albeit at a different level in terms of volume: With gross expenditure of EUR 1.4 billion and a growth rate of 26.9%, Internet advertising has surpassed radio as an advertising medium.

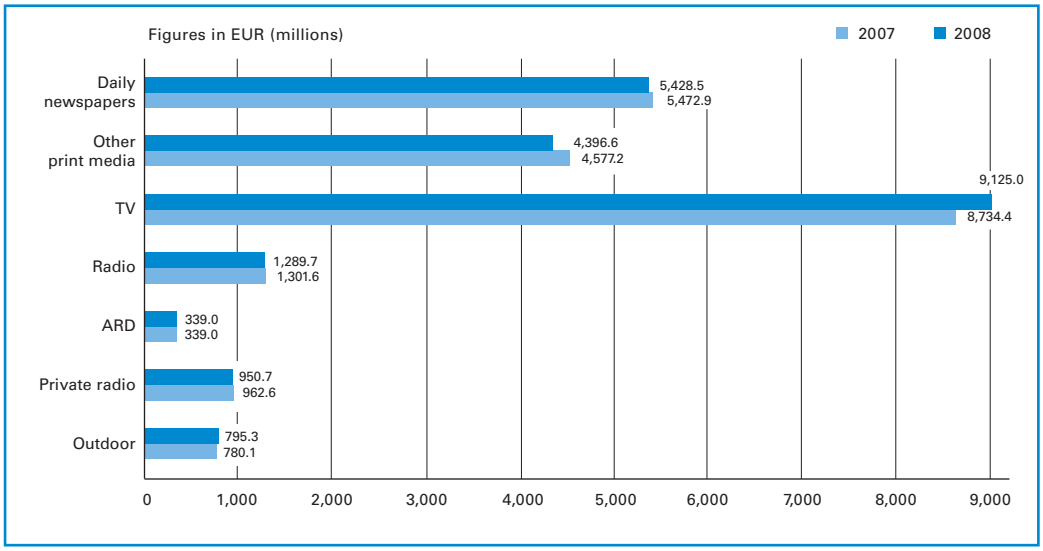
Figure 7: Development of overall advertising expenditure in Germany



Source: S+P Deutschland

One interesting development can be identified in the television and radio segment: The two public broadcasters ARD and ZDF generated gross advertising revenues of EUR 425 million, while ORF's two television channels and its radio stations netted EUR 320 million. The actual relationships are revealed in private television, where advertising revenues came to EUR 8 billion in 2008 (up 1.6% in nominal terms): For RTL alone, S+P Nielsen reports gross advertising revenues of EUR 2.2 billion, while Sat.1 and ProSieben generated EUR 1.5 and 1.4 billion in gross advertising revenues, respectively. However, the three large first-generation private television channels saw slight declines year on year, while growth on the German market was driven by second and third-generation channels such as RTL II, VOX, Nick, tele5 and Das Vierte.

Figure 8: Advertising expenditure in Germany: 2007 vs. 2008



Source: S+P Deutschland

5.1.3 Television

5.1.3.1 Status of television digitization in Austria

Overview

Breakthrough in 2008: More than half of Austrian television households receive digital television.

The year 2008 stands out in the digitization of television in Austria, as an especially important milestone was reached:

For the first time, a majority of Austria's 3.44 million television households used some form of digital reception for their primary (or only) television set. At the end of 2008, the share of Austrian television households which received digital television came to 54%. This represents an increase of approximately 35% compared to December 2007, when this figure had only reached 40%, according to the Teletest working group (AGTT/GfK). This percentage places Austria in the top 25% of EU member states in terms of progress in the digitization of television households.

On all three broadcasting platforms (satellite, cable and antenna), the use of analog television signals has been declining steadily, albeit to different degrees and at different speeds.

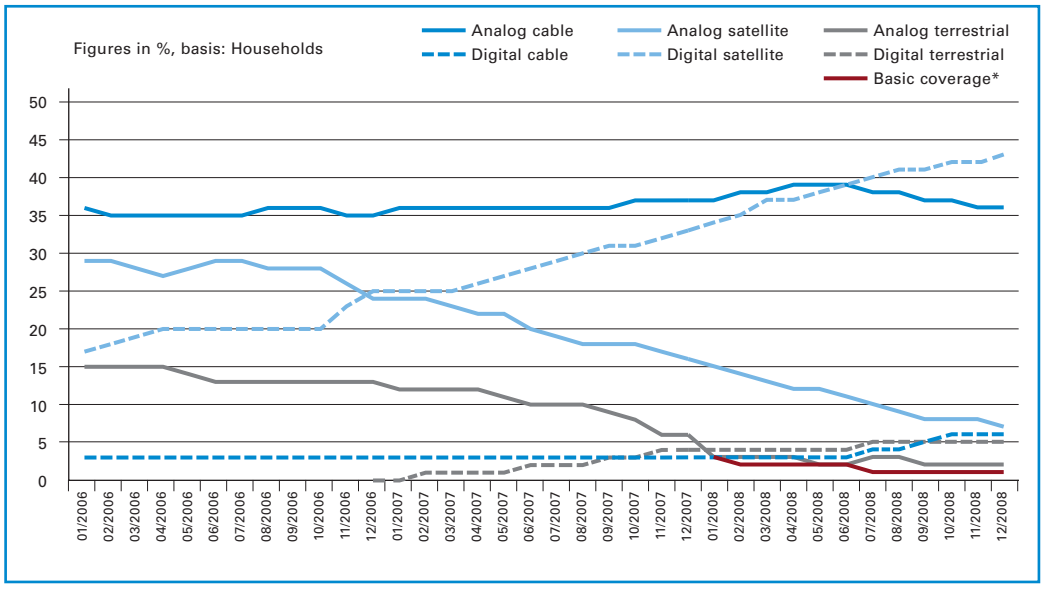
Satellite broadcasting once again proved to be the "heavyweight" in the digitization of broadcast television in 2008. Within just one year (December 2007 to December 2008), the percentage of television households with digital satellite reception rose from 33% to approximately 43%. This means that about 86% of all Austrian satellite television households were digitized at the end of the year 2008.

In the breakdown of reception platforms, the share of digital cable television households doubled between December 2007 and the end of the year 2008, thus recording the largest increase among digital television reception platforms. This change also marked the first significant increase in the use of this digital reception mode in years. However, this development has remained at a comparatively low level, with only some 6% of Austrian television households using digital cable reception at the end of December 2008.

However, these changes not only took place among "classic" cable television providers; much of the growth can be attributed to the rapid proliferation of IP-TV connections. In the classification of reception platforms, IP-TV households are placed in the same category as cable households and not reported separately.

All the same, it is remarkable that the first significant trend reversal could be observed in analog cable television connections in the year 2008. Until May/June 2008, the share of analog cable television households had shown slow but steady growth, even reaching 39% of all television households. After July 2008 – that is, within a period of only six months – analog cable households dropped three percentage points to 36% in the distribution of reception platforms.

Figure 9: Distribution of reception platforms



Source: AGTT/GfK

* Households/persons with basic coverage who can receive Austrian terrestrial channels are assigned to the terrestrial platform.

According to AGTT/GfK, the share of television households which receive digital terrestrial (DVB-T) signals on their only or primary television set had reached 5% by the end of 2008, an increase of one percentage point compared to December 2007.

In absolute terms, the number of households which use DVB-T as their primary television reception mode comes to 172,000; however, this figure is less than one third of the number of DVB-T receivers sold between January 2006[2] and December 2008, which was approximately 537,000 (GfK, product group: set-top boxes). This means that the significance of digital terrestrial television broadcasting cannot be assessed solely on the basis of the number of households which use DVB-T as their primary reception mode.

Since June 2008, an entirely new form of broadcasting has been offered in the capital cities of all Austrian provinces: Mobile television can now be received using the DVB-H standard, which is optimized for mobile handheld devices. According to MEDIA BROADCAST, the coverage level of mobile television has now reached 53% of Austria's population. At present, no official information is available on the actual use of mobile television, which is broadcast in encrypted form and marketed by three of Austria's mobile network operators. The launch of DVB-H with 15 television channels and five radio stations was made possible by the shutdown of analog terrestrial television, which means that it is part of the digital dividend. The digital dividend refers to the frequencies made available in the switchover from analog to digital television transmission technology.

The additional broadcasts of the channel ORF1 in HDTV format (ORF1 HD) via digital satellite and on cable networks from June 2008 onward provides an initial indication of the qualitative effects on the use of these two digital broadcasting platforms. As a result, the consumers' selection behavior when purchasing new digital satellite and cable receivers has shifted in favor of HDTV reception.

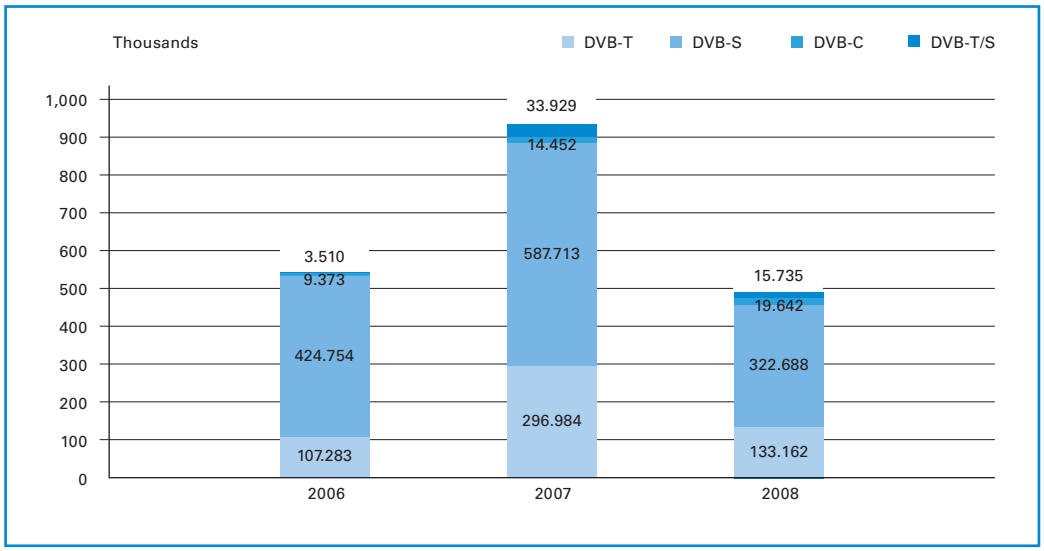
While only 2.2% of all digital satellite receivers sold by retail outlets in 2007 were also capable of processing high-resolution television signals (HDTV and HDTV 1080p according to EICTA[3] standards), this share jumped to 12.5% in 2008.

Most digital cable receivers are sold or rented directly to customers by the cable network operators. However, the devices are also sold in retail stores. The share of HD-compatible cable receivers in the total volume of cable receivers sold by retail outlets climbed from 14.7% in 2007 to 27.6% in 2008.

[2] i.e., the year in which DVB-T was launched in Austria

[3] European Information & Communications Technology Industry Association, now called DIGITALEUROPE

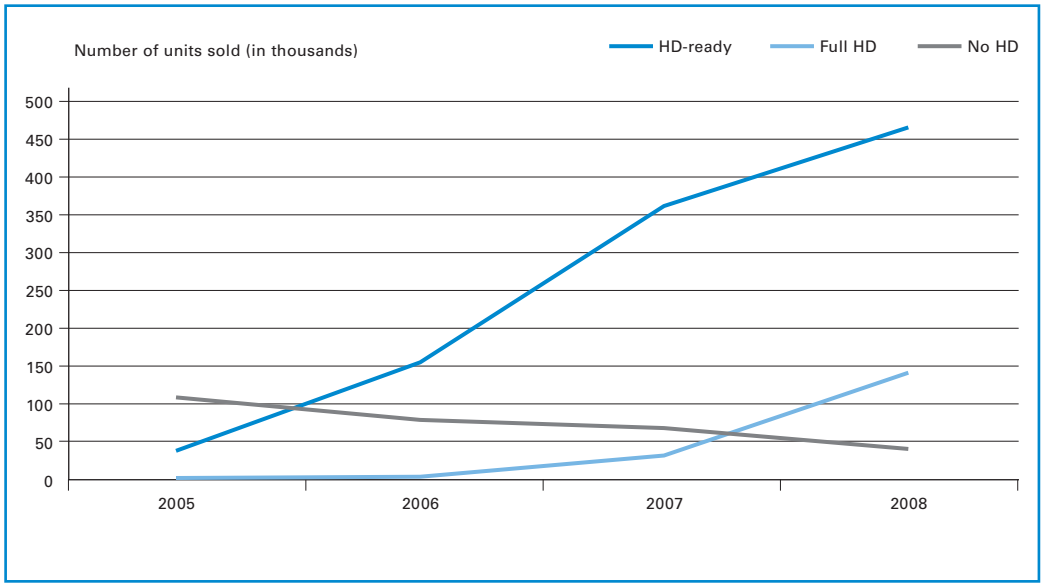
Figure 10: Development of digital receiver sales



Source: GfK Media

Measured against the number of HD-ready or full HD resolution flat-screen television sets sold in the year 2008 (approximately 605,000), the number of HD-ready satellite or cable receivers – which are a prerequisite for displaying HD television channels – sold in 2008 accounts for a maximum[4] of one in ten of those screens.

Figure 11: Development of flat-screen television sales



Source: GfK Media

[4] This includes an estimate of approximately 30,000 HD cable receivers distributed directly by cable network operators in 2008.

Digitization of satellite television reception (DVB-S)

86% of satellite households have gone digital.

The share of Austria's television households which use digital or analog satellite reception has only changed slightly, climbing one percentage point to 50% between December 2007 and December 2008. As in the previous years, however, the use of digital and analog satellite reception among satellite households continued to shift rapidly. While 65% of all satellite households were already using digital receivers at the end of 2007, this share had risen to 86% just one year later. This represents an increase of approximately 30% within a period of one year.

The number of households which use analog satellite television reception continued to decline rapidly in the reporting period. The share of television households which primarily use analog satellite reception dropped by more than 50% over the year 2008 (December 2007: 16%; end of 2008: 7%).

A comparison of these figures over a period of only two years clearly illustrates the speed of digitization in Austria's satellite households: On average, analog satellite households accounted for 27.8% of all television households in 2006, while only 20.2% were digital satellite households at that time.

Until November 2006, analog satellite households (26% of all television households) outnumbered digital satellite households (23%) in Austria. By the end of December 2006 – only one month later – signs of a reversal had already begun to appear: At the end of that year, 25% of television households had a digital satellite receiver for their primary television set, while only 24% received analog satellite signals. Over the year 2007, the digitization of satellite television reception accelerated rapidly. By the end of December 2007, the digitization level of satellite households had already reached 65%, and just six months later (June 30, 2008) approximately 80% of all satellite households were digitized.

The main reasons for this rapid shift toward digital satellite reception in the years 2007 and 2008 were the launch of digital terrestrial television in October 2006 and the gradual shutdown of analog terrestrial television transmissions.

As Austrian television channels cannot be received in analog form via satellite, analog satellite households generally received those channels using an additional terrestrial antenna before DVB-T was introduced. Since the switchover to digital terrestrial television based on the DVB-T standard, however, it has only been possible to receive terrestrial television using the appropriate digital receiver (set-top box, built-in DVB-T receiver). For analog satellite households, this meant that it was necessary either to connect an additional (DVB-T) receiver to the television set along with the analog satellite receiver or to invest in a slightly more expensive digital satellite receiver which supports the channels previously received via analog satellite as well as Austrian television channels (in encrypted form). In making this choice, most television households have opted to switch over from analog to digital satellite reception instead of purchasing a DVB-T receiver.

In the second half of 2008, the digitization of satellite households showed the first signs of leveling off. Over the year 2008 as a whole, however, the curve mainly saw marked increases around the dates of regional shutdowns of analog terrestrial television. The only major analog shutdowns in the year 2009 are planned in the federal provinces of Lower Austria and Salzburg. In this regard, we can expect the trend toward digitization in satellite households to continue in 2009, although the speed of this development is likely to decrease by about half.

Digitization of cable television reception (DVB-C, IP-TV)

HDTV, receiver subsidies and initial success of IP-TV helped accelerate cable digitization in 2008.

By the end of the year 2008, the percentage of digital cable television households had increased by 100% compared to December 2007. The resulting 6% share of digital cable households in the overall number of television households in Austria (or 15% of Austria's cable television households) is still far below the level of digitization in satellite and terrestrial households, but it does point to sound progress compared to developments in previous years.

The share of digital cable households reached 3% of all television households at the end of 2005, then remained unchanged for two and a half years. During the same period, the corresponding share of analog cable television households even increased by 3 percentage points to 39% (May/June 2008).

This trend did not reverse direction until July 2008, when the number of digital cable households began to climb, reaching a share of 6% in December 2008, while analog cable households dropped by three percentage points (to 36%, as mentioned above) during the same period.

The overall share of cable television households (i.e., analog and digital cable households) in the total number of television households in Austria rose from 40% in December 2007 to 42% in December 2008.

Among other things, the fact that the ORF1 channel has been broadcast in HD resolution (HDTV) since June 2008 was probably an important factor in the digitization of cable households. Moreover, it is also likely that the Euro 2008 football championship, which was held in Austria and Switzerland in June 2008 and broadcast on ORF1 (and thus also on the ORF1 HD channel), had an additional positive effect on the digitization of cable households. This hypothesis is not only supported by the fact that the number of digital cable households began to climb in June/July 2008, but also by the fact that the sales figures for HD-ready digital cable receivers jumped suddenly in June 2008. Retail outlets sold just under 700 HD-ready cable receivers in the first quarter of 2008, but this figure increased to approximately 1,400 devices in the second and in the third quarter. In the fourth quarter of 2008, sales climbed even higher to 1,900 HD-ready cable receivers.

However, a number of additional measures were also behind the digitization of cable television households:

- For technical reasons, a consumer subsidy campaign for digital cable receivers which was launched by several major cable network operators in late 2007 and supported by the Austrian Digitization Fund did not take full effect until 2008. The subsidies, which were reserved for television households which had previously used analog reception only, contributed to the growth in digital cable reception. By the end of 2008, approximately 23,000 television households had made use of these subsidies. This accounts for nearly 1.8% of cable households which had previously used analog reception.

- In early 2008, Austria's largest cable provider (UPC) set the price of the basic digital package, which offers 65 channels, at the same level (EUR 20.95) as that of its analog cable television service with approximately 35 channels. The digital package also includes the HDTV channels ORF1 HD and arte HD.

- In January 2009, Austria's largest IP-TV provider (Telekom Austria) announced that a total of 63,800 customers were already using its aonTV product. This figure accounts for approximately 1.8% of the overall number of television households in Austria. In this way, the success of aonTV has also had a decisive impact on growth in the digital cable segment.

As a form of digital cable television, IP-TV is considered equivalent to other forms of cable broadcasting from a regulatory perspective. In IP-TV, television signals are not transported to households on the basis of a digital broadcasting transmission standard such as DVB-C, but via broadband connections using Internet Protocol (IP).

Telekom Austria is far and away the largest provider of this type of IP-based digital television transmission via broadband telephone lines. Telekom Austria's basic aonTV package, which includes 65 television channels, has been marketed aggressively at a price of only EUR 4.90 per month. However, customers only qualify for this low price if they also have a Telekom Austria telephone line or broadband connection.

At the end of December 2007, the number of aonTV customers came to 10,900, after which it increased – nearly sixfold – to 63,800 at the end of December 2008.

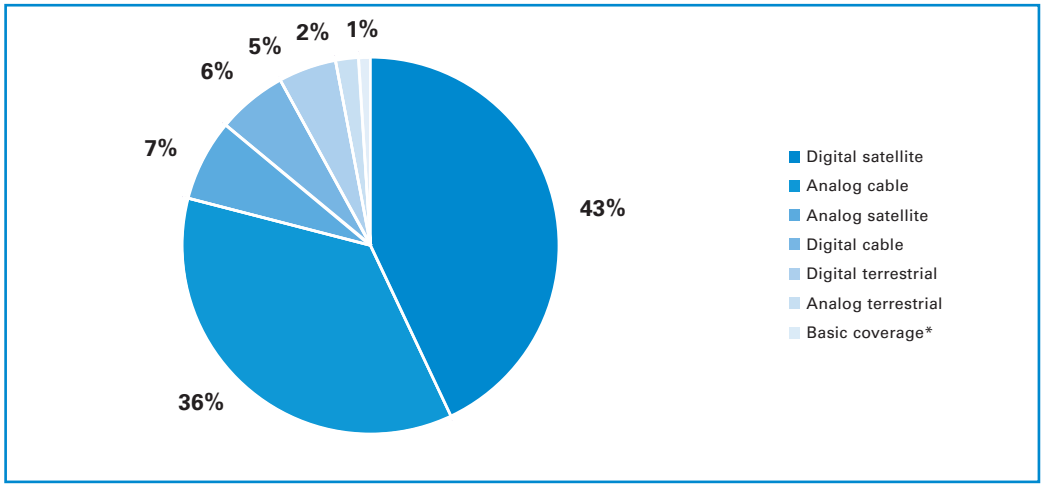
Aside from Telekom Austria's aonTV product, IP-TV is only offered by local network operators (such as the inext.TV product offered by Infotech in Ried im Innkreis or PitztalNET, which is offered in Pitztal in Tyrol). aonTV's market share in the IP-TV segment is estimated to be over 95%.

Digitization of terrestrial television reception (DVB-T)

Digital terrestrial television (DVB-T) available to 92% of Austrian households

Overall, the share of Austrian television households which use antenna reception for their only or primary television set has declined by approximately 30% in just one year. Whereas 10% of Austrian television households still used terrestrial television as their primary reception mode in December 2007, this share had dropped to only 7% by December 2008. This value appears to have remained stable since September 2008. Among the 7% share of primarily terrestrial households, just under 72% (or 5% of all television households) have switched to digital terrestrial reception. 28% of terrestrial households (2% of all television households) still use analog terrestrial television (December 2007: 6% of all television households).

Figure 12: Reception modes as of December 31, 2008



Source: AGTT/GfK: Teletest

* Households/persons with basic coverage who can receive Austrian terrestrial channels are assigned to the terrestrial platform.

By December 2008, the expansion of the digital terrestrial television transmitter network had progressed to the point that 92% of Austrian households could at least receive the Austrian channels ORF1, ORF2 and ATV by digital means. Those three channels are bundled on Multiplex A (MUX A) in Austria.

At the end of 2008, 78% of Austrian households were also within the coverage area of MUX B, on which the channels PULS 4, ORF Sportplus and 3sat are broadcast. Further expansions of the MUX B platform's coverage area are not currently planned.

In parallel to the expansion of the digital transmitter network, the shutdown of analog terrestrial television transmissions continued in the year 2008. At the end of December 2008, 88% of Austria's households could receive terrestrial television signals by digital means only (MUX A; December 31, 2007: 80%).

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

Over 537,000 DVB-T receivers were sold in Austria between the launch of digital terrestrial television (October 2006) and the end of December 2008. Some 363,000 of those devices are simple DVB-T receivers, while approximately 175,000 are MHP-compatible set-top boxes. The latter devices are capable of displaying ORF's "MultiText" media product, an enhancement of conventional teletext which makes it possible to display photos, graphics and various fonts. While ORF revised and expanded the layout and content of its MultiText offerings in late 2008 and early 2009, ATV discontinued MultiText broadcasting for budgetary reasons at the end of 2008.

Digital broadcast television for mobile handheld devices (mobile TV / DVB-H)

All provincial capitals covered; 53% of population can receive DVB-H signals.

In June 2008, MUX D was put into operation as a supplementary broadcasting platform for digital terrestrial television and radio in the capitals of Austria's federal provinces. MUX D broadcasts 15 television channels and five radio stations using the DVB-H standard, which is optimized for mobile handheld devices. MUX D's coverage area reaches approximately 53% of Austria's population (source: MEDIA BROADCAST).

The platform is operated by MEDIA BROADCAST GmbH, which was issued the license to operate MUX D by KommAustria in the course of an invitation to tender launched in the fall of 2007.

The channel lineup on MUX D is broadcast in encrypted form and marketed by the three mobile network operators mobilkom austria (A1), Hutchison 3G ("3") and Orange.

At present, it is very difficult to assess the potential market success of DVB-H in Austria. Neither the mobile network operators nor the MUX D operator has announced official statistics on the number of contract customers. According to industry estimates, this figure comes to approximately 20,000.

However, only Orange offers its customers the MUX D lineup "as is" (15 television channels, five radio stations), which costs EUR 7.00 per month.

A1 and 3 offer channel packages which consist of DVB-H channels as well as channels broadcast via UMTS only. In this context, DVB-H is not advertised separately as a highly stable transmission standard but only used by the providers as a technical transmission means for those channels which attract higher numbers of users and could therefore overload UMTS cells quickly. To the customer, it largely remains unclear which transmission standard is used to receive specific channels.

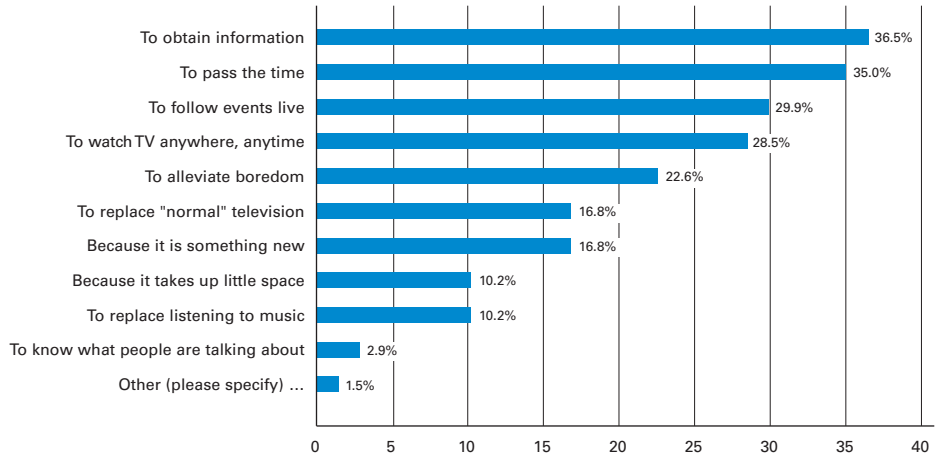
The reasons why DVB-H and mobile TV have attained only a low level of success as a broadcasting platform probably include the highly reserved advertising activities to date, the consumers' unwillingness to pay for the service, and the small range of terminal devices available for this kind of broadcasting reception.

The mobile network operators' communication strategy is designed to market mobile television as a product without confusing the customer by advertising the transmission technology used (DVB-H, UMTS). In addition, it would hardly be possible to advertise the advantages of DVB-H as a broadcasting transmission technology without at least implicitly communicating the disadvantages of UMTS at the same time.

On the other hand, this strategy implies that mobile television is nothing new, as it was possible via UMTS even before DVB-H was available. However, the "old" form of mobile television carries a number of negative connotations (expensive, unsteady images, etc.). In this area, more aggressive advertising of DVB-H as a new, more stable and less expensive form of mobile television transmission could ultimately be used to create an advantage for mobile television as a product.

Figure 13: Reasons for using mobile television

Basis: Respondents who use mobile television on a mobile phone or laptop computer
Survey period: July 31, 2008 to August 6, 2008; population: Austrians between 14 and 59 years of age who use the web (501 interviews)



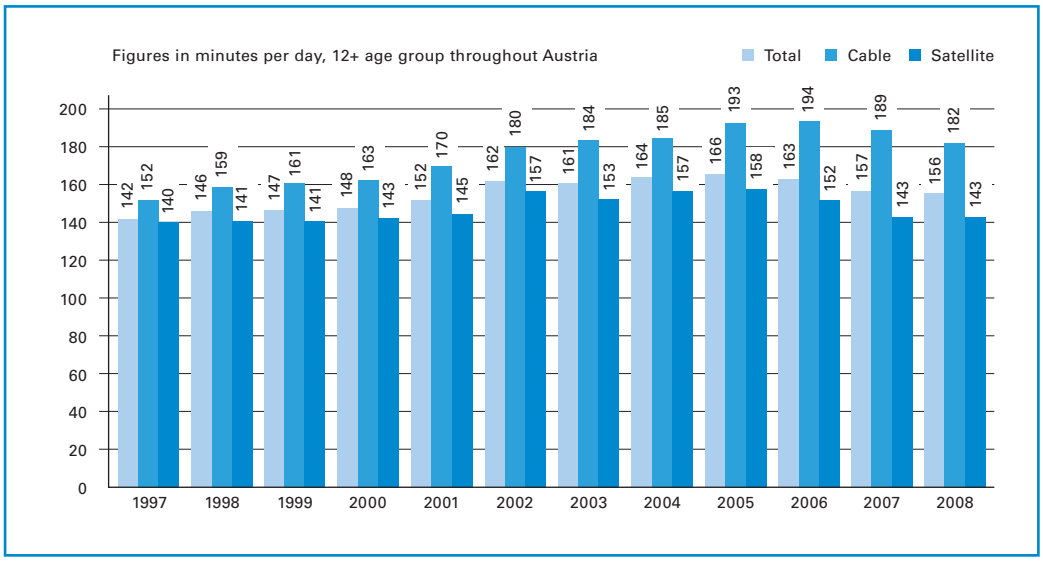
Source: Marketagent.com

5.1.3.2 Television viewing

Television viewing remains stable in 2008.

Television viewing remained largely stable in the year 2008: According to the Teletest, Austrians in the 12+ age group (7.070 million persons in the year 2000) watched television for an average of 156 minutes per day – only one minute less than in 2007 (see Figure 14). Daily viewing time averaged 182 minutes in cable households and 143 minutes in satellite households. On the basis of age groups and target groups, the following statement can be made: The older the viewers are, the longer they watch television. Once again, children (3 to 11 years) as well as youths and young adults (12 to 29 years) exhibited the lowest average viewing time, with 73 and 90 minutes (respectively) in 2008.

Figure 14: Development of viewing time



Source: Teletest

The older the viewers, the longer the viewing time.

People in the 30 to 39 and 40 to 49 age group were also below the average for the overall population (148 minutes), with 116 and 145 minutes of viewing time per day, respectively; the 50 to 59 age group spent more than three hours per day watching television (194 minutes), and people in the 60+ age group watched for about four hours per day (242 minutes) in 2008. According to the 2008 Teletest, the average age of Austria's television viewers in the 3+ age group was 49.7 years; for comparison purposes, the average age of the overall population of Austria (in television households) is 40.9 years. In recent years, the average age of the television audience has risen steadily, increasing by a full 2.6 years since the year 2000. This development is also linked to the aging of the overall population (in which the average age increased by 1.4 years). Not including children aged 3 to 11 years, the average age of Austria's television audience is 51.8 years, while the overall population in the 12+ age group (in television households) averages 44.6 years of age. Since the year 2000, the adult population in television households has aged by 2.4 years, while the average age of persons over 12 in the overall population has increased by exactly one year over the same period.

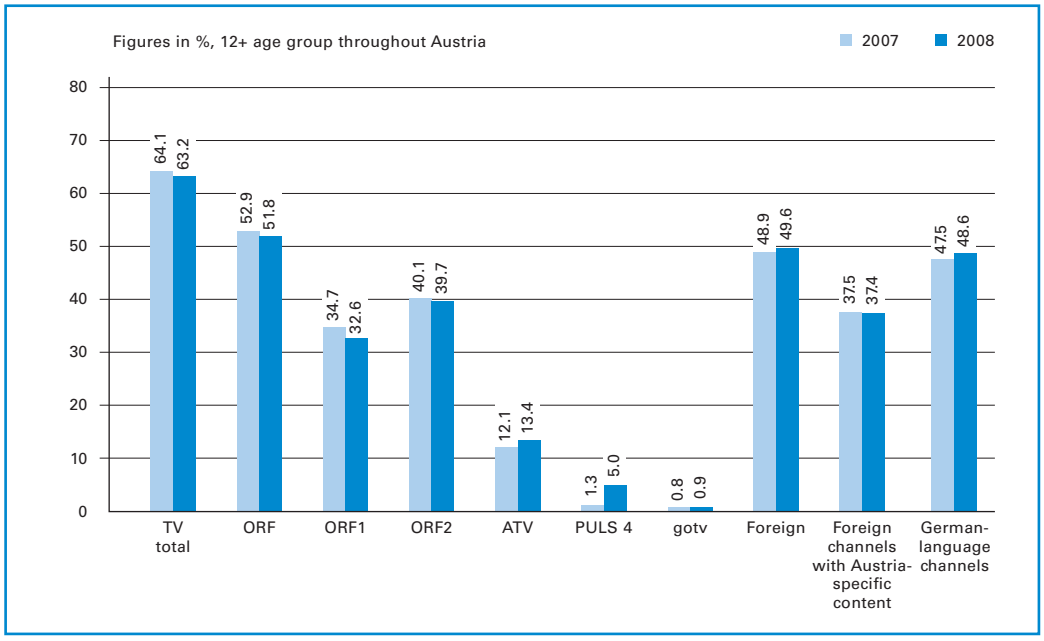
Change in daily reach of television

Over the course of the day, television viewing reaches a peak around 9:00 pm: From the morning hours onward, viewing increases only slightly, but then it rises rapidly starting in the early evening and reaches a peak in the mid-evening. According to the 2008 Teletest, the highest viewer numbers of the day were reached at 8:55 pm with an average reach (Monday to Sunday) of 35.8%, which equals 2.52 million viewers over 12 years of age. The television viewing habits of Austria's population have changed since the year 2000, as in 2008 consistently higher viewing figures were recorded in the afternoon and during non-prime time hours (late evening, nighttime, early morning) compared to eight years earlier. At the same time, television's reach during the early and mid-evening (6:00 pm to 10:00 pm) is markedly lower than it was in the year 2000.

5.1.3.3 Daily reach of television

In a year-on-year comparison, television's overall average daily reach of 63.2% of the 12+ age group in Austria (4.439 million people) represents a slight decrease in 2008.

Figure 15: Daily reach of television channels, 2007 vs. 2008

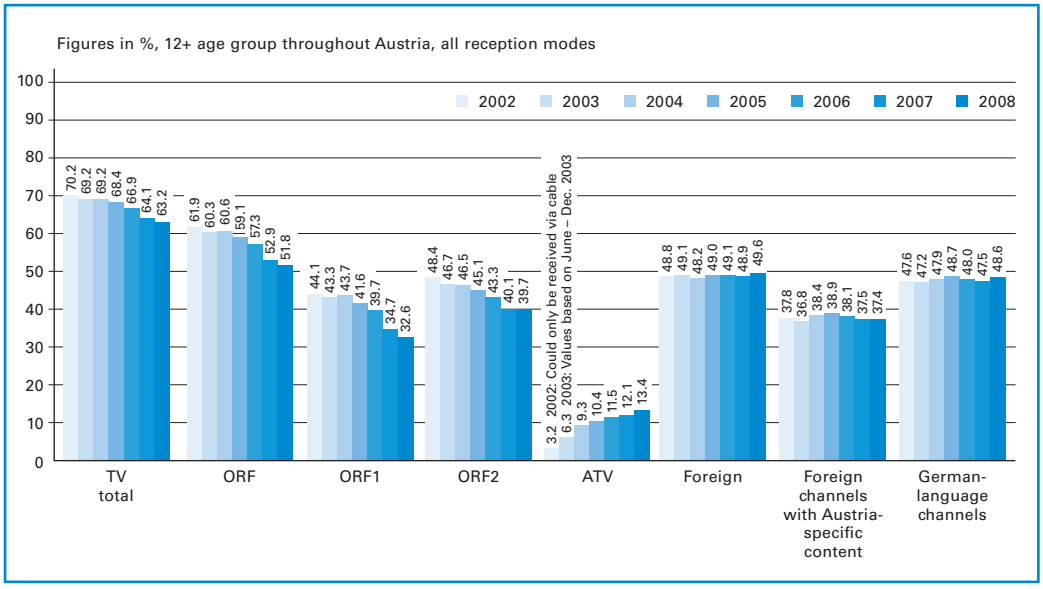


Source: Teletest

German channels gaining in terms of reach

Likewise, the two ORF channels dropped just slightly in terms of reach (-1.1 percentage points) and showed an average of 51.8% (3.641 million viewers) over 12 years of age in Austria. In 2008, ORF was once again unable to stop the decline in reach which started after the reforms in 2007, but it was able to decelerate this development: With a daily reach of 32.6% for ORF1 and 39.7% for ORF2, the public broadcaster remained the largest on the Austrian television market, although the private broadcasters' share of the market has increased steadily. Across all of the existing technical reception platforms, Austria's private broadcasters are catching up to ORF's channels in terms of daily reach on the viewer market. ATV attained a daily reach of 13.4%, the newcomer PULS 4 reached an even 5.0%, and the foreign channels which offer Austria-specific content (i.e., advertising and/or programming in the RTL and ProSiebenSat.1 Group) recorded a combined total of 37.4% (see Figure 16). Thanks to the rapid increase in digitization and growth in the number of satellite households, the number of channels on offer also rose in 2007 and 2008, and the reach of foreign channels as well as German-language channels is also on the rise.

Figure 16: Long-term development of daily reach figures



Source: Teletest

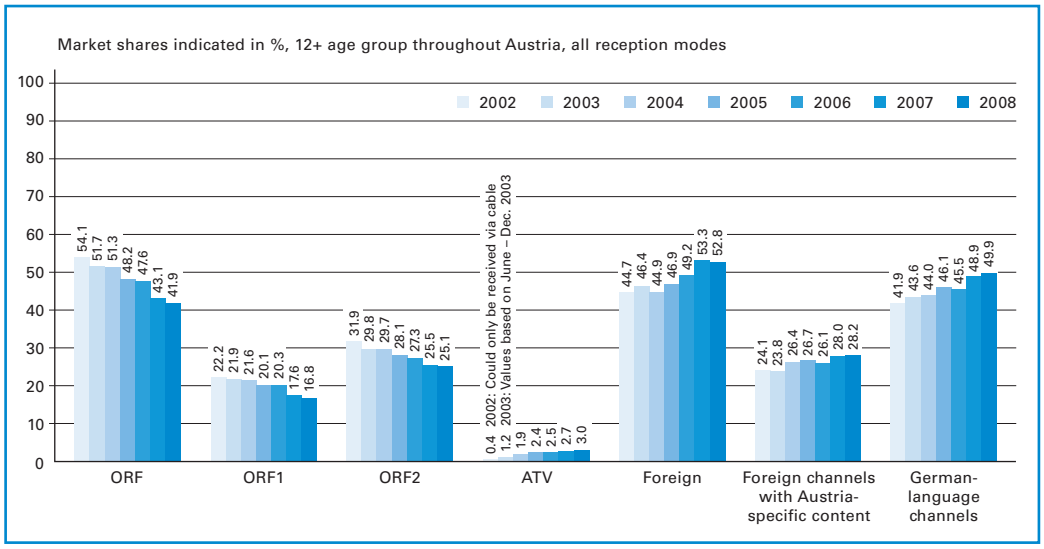
The German channel with Austria-specific content which has the highest reach after ORF is RTL (17.0% average daily reach in 2008), followed by Sat.1 (16.8%), ProSieben (15.6%), VOX (12.6%), Kabel 1 (10.3%), RTL II (10.2%) and Super RTL (7.7%).

ATV holding its own against German channels with Austria-specific content

The shift in favor of private television broadcasters is shown even more clearly in the market shares of individual channels in relation to each other: Since the start of digitization in 2006, ORF's two channels have lost 5.7 percentage points across all platforms and now command a market share of 41.9%, with ORF1 at 16.8% and ORF2 at 25.1% (see Figure 17). ATV, which was launched in its current form as Austria's first private television channel with a terrestrial license on June 1, 2003, attained a market share of 3% in its fifth year of operation (across all reception

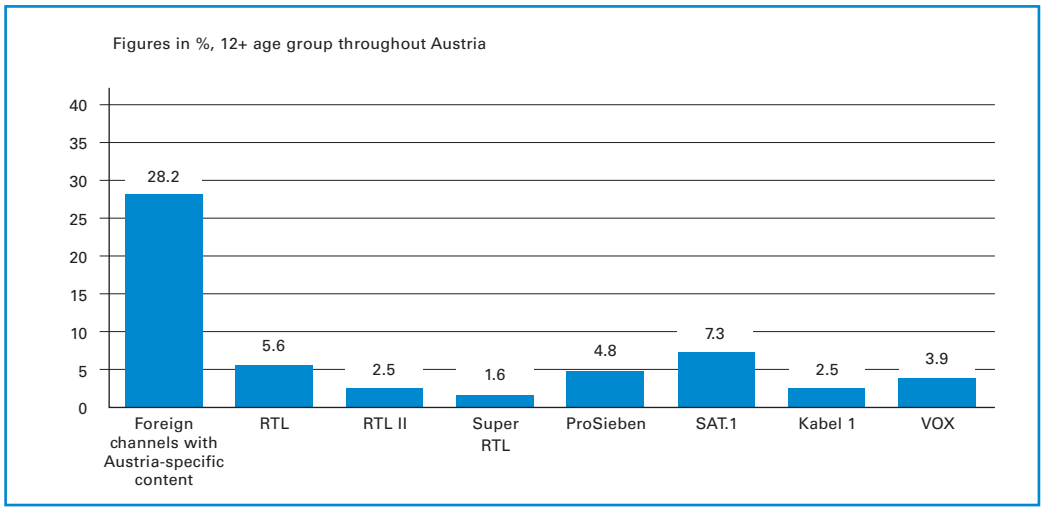
platforms), thus holding its own against the German-language channels which offer Austria-specific content, namely Sat.1 (7.3% market share), RTL (5.6%), ProSieben (4.8%), VOX (3.9%), RTL II and Kabel 1 (2.5% each) as well as Super RTL (1.6%).

Figure 17: Long-term development of market shares



Source: Teletest

Figure 18: Market shares of television channels with Austria-specific content in 2008



Source: Teletest 2008

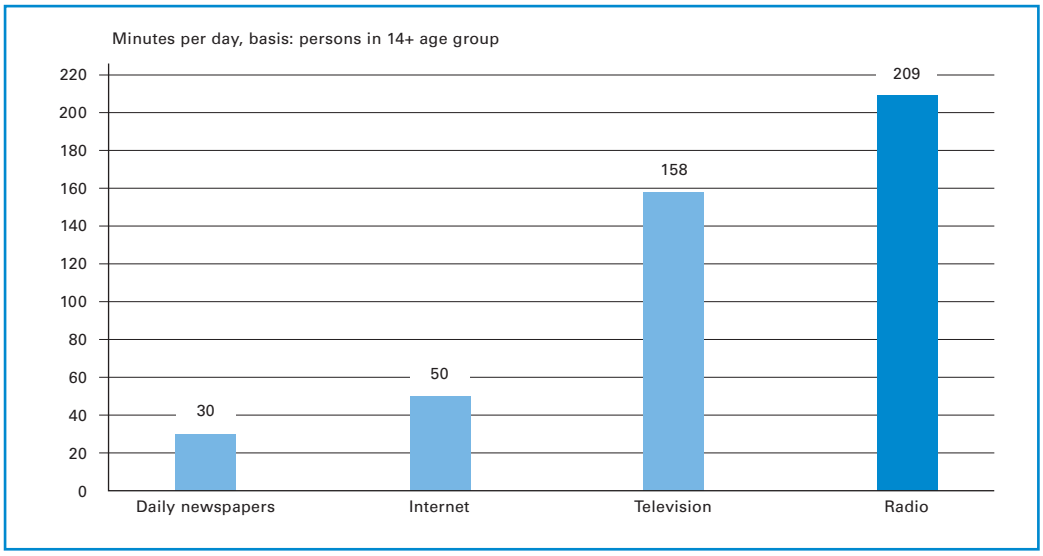
5.1.4 Radio market

Radio is the most heavily used medium in Austria.

The year 2008 began with a unique development on the radio market: For the first time in the ten-year history of the dual radio broadcasting system in Austria, the two main marketers launched a cooperation arrangement with regard to category marketing: Together with the "Creativ Club Austria" (CCA) and Marx Productions sound studio, ORF-Enterprise and RMS Radio Marketing Service – which market all of the private stations across multiple regions – are cooperating in development for the *Werbe Wunder Radio* campaign, which was designed to point out the advantages of radio advertising and broadcast commercials on practically all of Austria's public and private radio stations in January 2008. At the same time, ORF-Enterprise and RMS presented a study on the implicit advertising effects of radio as a medium. At the end of 2008, ORF and RMS planned to launch another wave of commercials for this campaign.

In the 2008 Radiotest, radio remained the medium used longest and most frequently by far in Austria: In the 14+ age group, average daily listening time came to 209 minutes, compared to 158 minutes of television viewing, 50 minutes of Internet usage and 30 minutes of reading daily newspapers (according to the respondents' own estimates).

Figure 19: Media usage time per day



Source: Radiotest 2008, Teletest 2008, MTUs, AIM Q1 2008

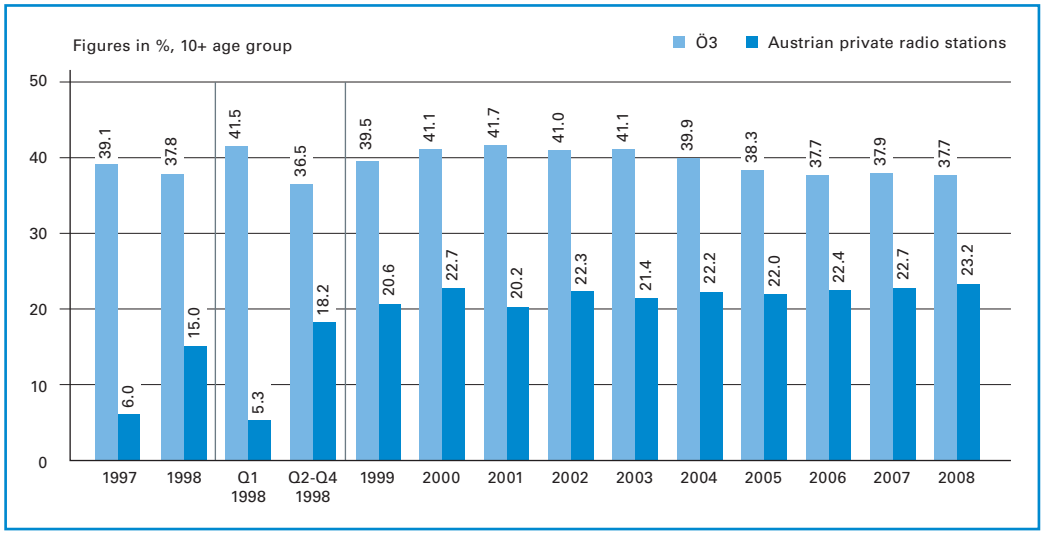
The Radiotest breaks down listening time even further: The overall population over ten years of age listened to the radio for 203 minutes on average in 2008 (2007: 205 minutes), while the advertising-relevant target group of 14 to 49-year-olds listened for 207 minutes (2007: 212 minutes) and the 14+ age group listened for an average of 209 minutes (see Figure 19).

A similar picture emerges in the average daily reach figures for 2008: 81.8% of the 10+ age group (6.055 million people) and 81.6% of the 14 to 49 age group (3.433 million) in Austria listen to the radio.

ORF's reach edged down, while private broadcasters saw gains.

The steady climb in private broadcasters' reach levels continued in 2008. All of the private radio stations included in the Radiotest attained a combined daily reach level of 23.2% in the 10+ age group, which represents an increase of 0.5 percentage points compared to 2007 and is also the highest level the private broadcasters have reached in the history of the dual radio broadcasting system in Austria. ORF's radio stations, especially Ö3, the entertainment station with the highest reach level by far, are still the undisputed market leaders, but their reach has declined slightly. Ö3's average daily reach came to 37.7%, down 0.2 percentage points from 2007.

Figure 20: Development of daily reach, Ö3 vs. private radio stations (10+ age group)

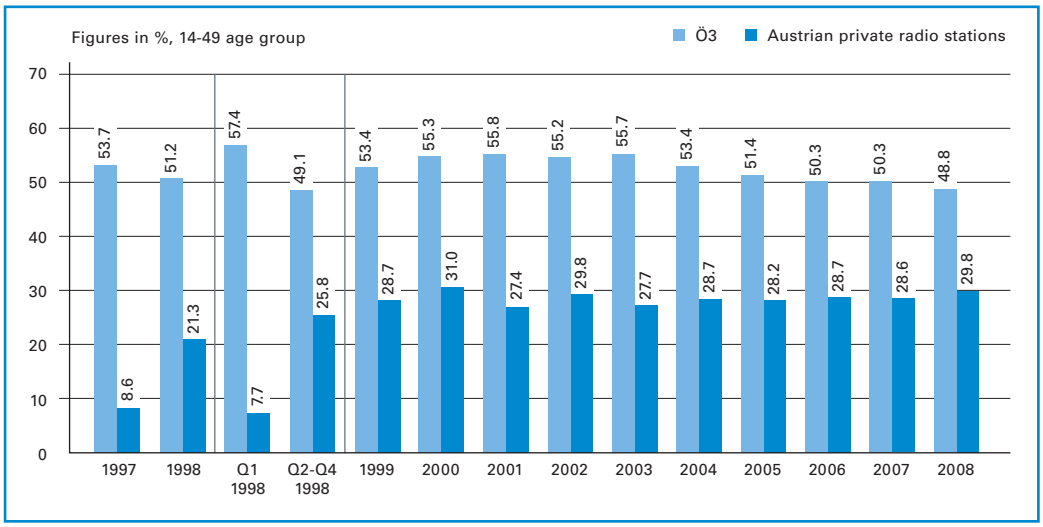


Source: Radiotest

Ö3 still the undisputed leader

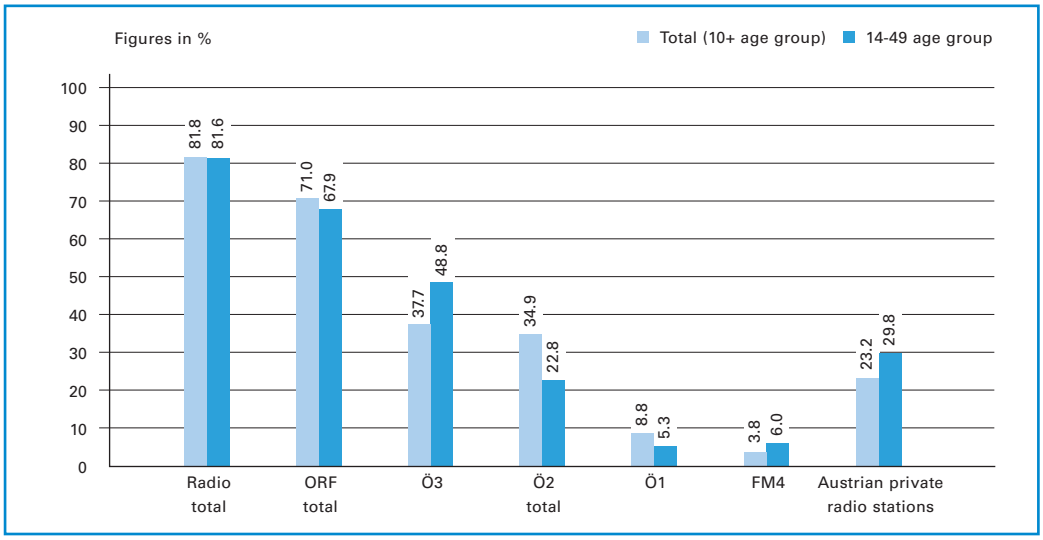
In the 14 to 49-year-old target group, which is especially relevant to the advertising industry, the figures point to a similar picture at a different level: With 29.8% in 2008, the private radio stations increased their average daily reach by 1.2 percentage points compared to the previous year and attained the second-highest level since the establishment of the dual system (2000: 31.0%). The daily reach of ORF's flagship station Ö3 shows how firmly established this radio station is on Austria's radio market, even after ten years of competition with private broadcasters. Ö3's average daily reach among 14 to 49-year-olds came to 48.8% in 2008 (see Figure 21).

Figure 21: Development of daily reach, Ö3 vs. private radio stations (14-49 age group)



Source: Radiotest

Figure 22: Radio: Daily reach levels in 2008



Source: Radiotest 2008

In Vienna, which is the most competitive radio market in Austria with the largest number of public and private radio stations, a shift has begun to emerge in favor of the private broadcasters: The stations marketed by RMS and combined under the heading of "RMS Top" in the Radiotest attained a daily reach of 32.2% in the 14 to 49 age group, while the daily reach of Ö3, which is the undisputed leader in the other eight federal provinces of Austria, came to 35.9%.

Superfly and LoungeFM included in the Radiotest survey for the first time

Two new private stations which first went on the air at the beginning of 2008 were reported in the Radiotest for the second half of the year and showed a surprisingly strong performance: In Vienna, the station "98.3 Superfly" attained a daily reach of 2.6% (14 to 49 age group, Monday

to Sunday), and in Upper Austria the station "LoungeFM" managed to achieve a reach of 3.0% (14 to 49 age group, Monday to Sunday in the coverage area comprising the towns of Linz, Wels and Steyr and the surrounding areas).

Table 7: Daily reach of radio stations in Austria (2008)

	Total	Vienna	Lower Austria	Burgenland	Styria	Carinthia	Upper Austria	Salzburg	Tyrol (including Eastern Tyrol)	Vorarlberg
Total number of cases (unweighted)	**16,276**	**2,161**	**2,185**	**1,325**	**2,498**	**1,427**	**1,844**	**1,406**	**1,892**	**1,538**
Total daily reach										
Radio total	81.6	75.6	84.3	83.3	82.1	83.8	82.1	81.6	85.7	81.4
ORF total	67.9	55.5	72.0	75.1	69.9	74.3	68.8	70.0	73.4	70.4
Austrian private BC total	29.8	32.6	30.5	23.7	31.2	26.7	31.4	25.9	27.3	22.8
Other stations total	32.8	35.3	31.5	25.4	33.5	28.2	36.0	30.8	31.2	30.7
Minor stations total	4.0	3.5	1.7	2.5	3.0	2.1	5.9	6.0	5.7	10.3
Other minor stations	2.8	3.5	1.7	2.5	3.0	2.1	2.7	3.5	3.4	3.7
ORF's daily reach										
Ö1	5.3	7.4	4.0	3.5	5.3	3.9	5.2	5.7	5.0	4.4
Ö3	48.8	35.9	52.2	53.8	52.2	54.0	51.2	50.1	54.6	50.0
FM4	6.0	8.3	4.6	3.8	4.5	4.4	6.3	6.6	6.4	7.4
ORF regional stations total	22.8	16.0	25.5	33.6	24.1	31.3	19.9	23.6	24.2	26.2
Radio Wien	4.3	13.0	8.2	4.5	-	-	-	-	-	-
Radio Niederösterreich	4.2	3.0	17.4	2.3	0.2	-	1.5	-	-	-
Radio Burgenland	1.5	1.7	0.6	28.7	0.6	-	-	-	-	-
Radio Steiermark	3.5	-	0.3	1.8	22.8	0.4	0.3	0.6	-	-
Radio Kärnten	2.2	-	-	-	0.8	31.0	-	0.1	0.6	-
Radio Oberösterreich	3.3	-	0.8	-	0.1	-	18.3	0.8	-	-
Radio Salzburg	1.7	-	-	-	0.1	0.2	1.0	22.5	0.4	-
Radio Tirol	2.1	-	-	-	-	0.2	-	0.4	23.6	0.1
Radio Vorarlberg	1.2	-	-	-	-	-	-	-	0.2	26.1
Daily reach of private radio stations										
RMS Top	29.6	32.2	30.3	23.7	30.9	26.5	31.4	25.9	27.3	22.8
Kronehit	9.1	9.1	14.3	12.5	7.0	5.5	10.5	4.9	6.0	4.5
HiT FM total	1.4	0.4	6.1	4.4	0.1	-	0.1	-	-	-
88.6	3.0	8.1	6.5	3.8	-	-	-	-	-	-
Antenne Wien	0.9	3.2	1.1	0.7	-	-	-	-	-	-
Radio Arabella (V/LA/B)	2.5	7.8	4.7	1.9	-	-	-	-	-	-
Radio Energy 104,2	2.4	10.1	1.8	0.5	-	-	-	-	-	-
Antenne Steiermark	3.1	-	0.1	3.1	20.1	1.0	0.1	0.5	-	-
A1 Radio	0.1	-	-	-	0.5	-	-	-	-	-
89.6 Das Musikradio	0.2	-	-	-	1.3	-	-	-	-	-
Soundportal	0.5	-	-	-	3.3	-	-	-	-	-
Radio Grün-Weiß	0.2	-	-	-	1.1	-	-	-	-	-
Radio West	0.0	-	-	-	0.3	-	-	-	-	-
Antenne Kärnten	1.3	-	-	-	0.6	18.1	-	0.1	0.2	-
Radio Harmonie	0.3	-	-	-	0.1	4.9	-	-	-	-
Life Radio (UA)	3.2	-	0.6	-	0.1	0.2	18.0	0.4	-	-
Antenne Wels	0.1	-	-	-	-	-	0.6	-	-	-
Radio Arabella (UA)	0.4	-	-	-	-	-	2.5	-	-	-
Antenne Salzburg	1.4	-	-	-	0.0	0.5	1.7	15.6	0.2	-
Radio Arabella (Sbg.)	0.1	-	-	-	-	-	-	1.0	-	-
Welle 1 total (Sbg./UA)	0.6	-	-	-	-	-	1.2	6.7	-	-
Life Radio (Tyrol)	0.8	-	-	-	-	-	-	-	9.3	-
Antenne Tirol	0.4	-	-	-	-	-	-	-	4.2	-
Radio Osttirol	0.1	-	-	-	-	0.2	-	-	1.5	-
Radio Unterland/U1	0.6	-	-	-	-	-	-	-	6.6	-
Welle (Tyrol)	0.3	-	-	-	-	-	-	-	3.0	-
Antenne Vorarlberg	0.8	-	-	-	-	-	-	-	0.1	18.1
Radio Arabella (Vbg.)	0.1	-	-	-	-	-	-	-	-	1.1

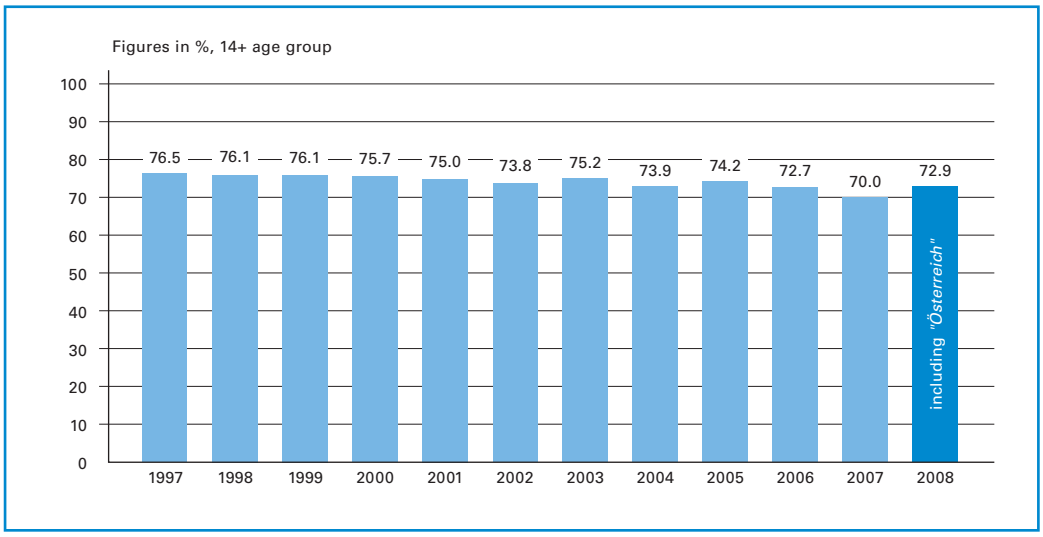
Source: Radiotest 2008; vertical percentages, 14-49 age group.

LoungeFM also triggered debates on the methods used in the Radiotest, and these discussions will also continue in the future: LoungeFM can be received via DVB-H and therefore demands to be surveyed throughout Austria in the Radiotest. Like all of the public and private stations, LoungeFM also has a major web presence in which the station streams its terrestrial broadcasts, meaning that the station can not only be received in its broadcast region, but also throughout Austria (and the rest of the world). This has given rise to requests for a nationwide survey of reach and the corresponding reports for this station. However, according to the Radiotest working group, such a survey would go beyond the scope of the method used to date. In addition to discussions in the industry, legal proceedings are also underway with regard to this matter.

5.1.5 Print media

After a slight decline in 2007, publishers were again relieved to see the results of the Austrian Media Analysis for the year 2008: 72.9% of Austrians over 14 years of age indicated that they read a daily newspaper every day, up from "only" 70.0% in 2007. However, the 2007 Media Analysis already clearly showed that including the *Österreich* ("Austria") daily newspaper and the free daily newspaper *Heute* ("Today") distributed in eastern Austria would have yielded a better result for the year 2007.

Figure 23: Newspapers: Development of daily reach figures

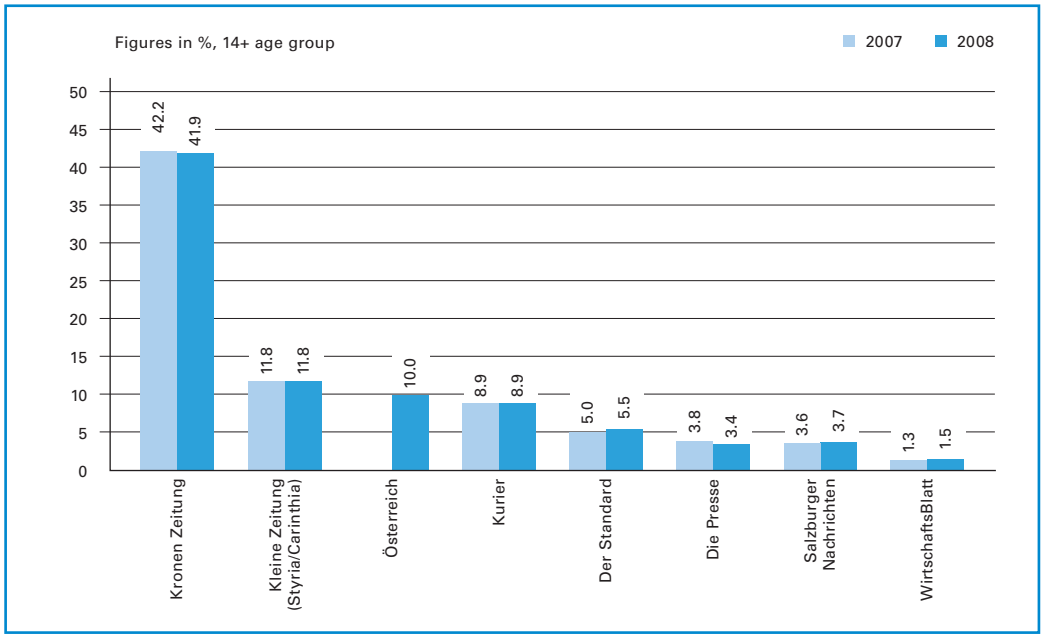


Source: Austrian Media Analysis

Print media gain ground in 2008.

In terms of readership, the 2008 Media Analysis points to a successful year for print media in 2008, with all of the reach figures moving upward and many magazines even showing statistically significant growth. For the first time, full-year figures for the *Österreich* daily newspaper were reported, and its 10% nationwide reach put the newspaper in third place after *Kronen Zeitung*, the undisputed market leader in the daily newspaper segment (41.9%), and the *Kleine Zeitung* (11.8%; see Figure 24).

Figure 24: Daily reach of national daily newspapers, 2007 vs. 2008

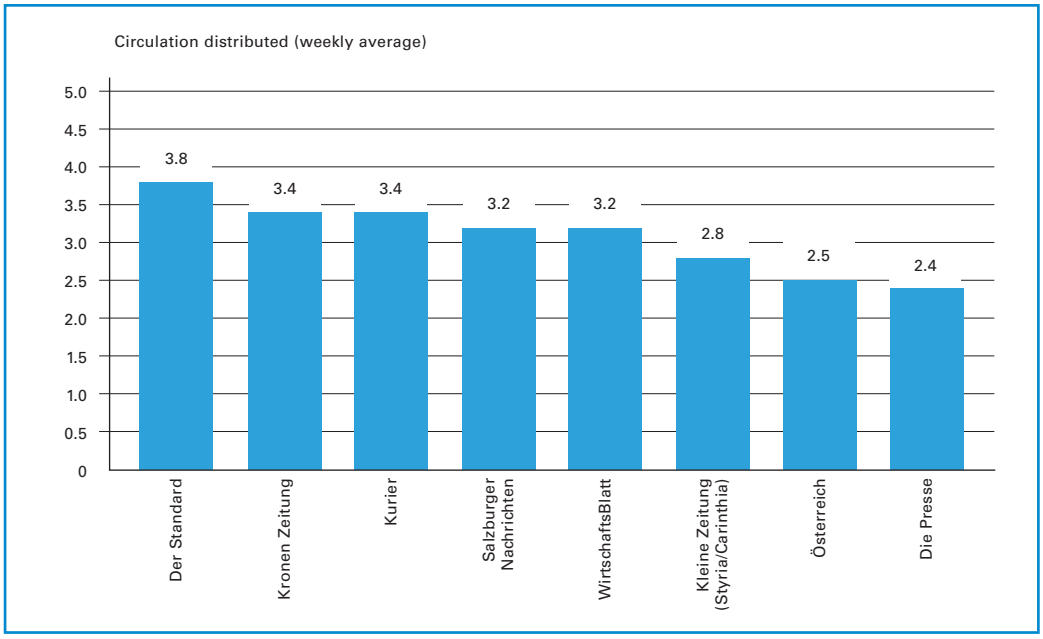


Source: Austrian Media Analysis

The second half of the year 2008 was characterized by an internal discussion among publishers with regard to the Media Analysis. In addition to other topics, this discussion mainly referred to the inclusion of free newspapers such as *Heute* along with paid newspapers in Media Analysis reports. At the same time, the Austrian Circulation Survey (ÖAK) is now based on new definitions; the most important change is the fact that "distributed circulation" – that is, the total of all distribution forms such as individual sales, subscriptions, bulk sales, free addressed and unaddressed distribution, and self-service sales – is no longer reported. In addition, after years of not participating, the Mediaprint group and the News publishing group are now included in the survey.

Media agencies and analysts rely on a special technique and calculate "distributed circulation" as the total number of copies printed minus returns and foreign circulation. Distributed circulation figures are relevant to the advertising industry because they show the number of copies offered to the market regardless of the form of distribution, thus expressing the chances of contact with readers. This value and the reach figures reported in the Media Analysis are used to calculate the number of readers per copy, which is one possible evaluation criterion for the attractiveness of a print media product.

Figure 25: Readers per copy, national daily newspapers



Source: Austrian Media Analysis 2008; ÖAK 2008

5.2 Development of the Austrian telecommunications markets

Third round of market analyses launched

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. As the third round of market analysis procedures was launched in connection with the TKMV 2008 in the course of the year 2008, Austria has maintained its leading position in this area (cf. Section 4.2). The market analysis procedures carried out by the Austrian regulatory authority were (and will be) completed not only relatively quickly and efficiently, but also without external support from consulting services.

The data sources underlying the descriptions and explanations provided in the sections below are 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

The Austrian telecommunications market recorded strong growth after the start of liberalization, then showed a slightly declining trend in the total volume of relevant retail communications revenues for the first time in 2006. Retail revenues on the Austrian telecommunications market declined by 3.7% between 2006 and 2007 and by 5.4% between 2007 and 2008 (to EUR 4.3 billion). Table 8 shows how the revenues break down across the various business areas. More than half of all revenues – 60.6% – can be attributed to mobile communications, while only one quarter of telecommunications revenues are now generated by fixed-link voice telephony.

Table 8: Development of retail telecommunications revenues

	2006 EUR (millions)	2007 EUR (millions)	2008 EUR (millions)	Change in %, 2006-2007	Change in %, 2007-2008	Share of total revenues in %, 2006	Share of total revenues in %, 2007	Share of total revenues in %, 2008
Fixed-link networks*	1,360	1,218	1,107	-10.4	-9.1	28.6	26.6	25.6
Mobile networks	2,771	2,682	2,626	-3.2	-2.1	58.4	58.7	60.6
Broadband**	533	592	514	10.9	-13.1	11.2	12.9	11.9
Leased lines	87	84	82	-2.7	-2.1	1.8	1.8	1.9
Total	**4,751**	**4,576**	**4,329**	**-3.7**	**-5.4**			

Source: RTR survey

* The figures shown include all voice telephony revenues on the retail fixed-link market, including dial-up services and public telephones.

** Revenues from mobile broadband services are included in mobile network revenues.

Due to subsequent corrections by the network operators, the values shown for 2006 and 2007 differ slightly from those reported in the 2007 Communications Report.

Table 9: Overall development of traffic volumes and lines/subscribers

	Unit	2006 (millions)	2007 (millions)	2008 (millions)	Change in %, 2006-2007	Change in %, 2007-2008
Fixed-link networks*	Call minutes	13,082.68	9,952.85	7,862.17	-23.9	-21.0
	Lines	2.89	2.74	2.72	-5.3	-0.7
Mobile networks	Call minutes	13,728.43	16,977.20	19,673.61	23.7	15.9
	Subscribers (post- und prepaid)	9.28	9.91	10.82	6.8	9.1
Broadband	Fixed-link connections	1.43	1.60	1.75	12.4	9.2
	Mobile connections	0.22	0.61	0.97	181.0	59.7
Leased lines	Number of 64 kbit/s equivalents	1.76	2.17	2.77	23.0	27.7

Source: RTR survey

* Minutes including dial-up services and public telephones

Due to subsequent corrections by the network operators, the values shown for 2006 and 2007 differ slightly from those reported in the 2007 Communications Report.

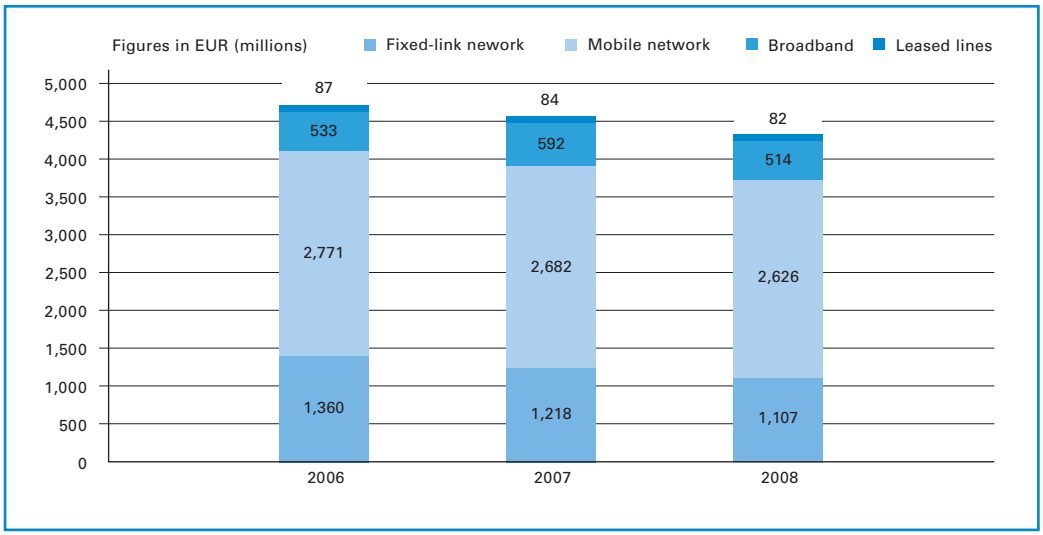
Rapid growth in mobile broadband

Table 9 shows the development of traffic volumes and the number of lines or subscribers in each business segment. While the number of call minutes has declined substantially, this number has increased drastically in the mobile segment. If we compare the development of revenues for each segment in Table 8 to the corresponding traffic volumes and number of lines/subscribers in Table 9, it becomes clear that rates in the fixed-link segment have largely stagnated, whereas the mobile segment has seen significant rate reductions in recent years. Moreover, the stagnation in mobile revenues must be interpreted against the backdrop of a very high national penetration rate, with over 10 million activated subscriber numbers in Austria. Considerable price reductions can be observed in the broadband segment as well, a development which can mainly be attributed to bundled offers (i.e., combinations of various retail services), which have increasingly established themselves on the market in recent years. These price reductions can be regarded as the main reason behind the decline in overall revenues in the fixed-link segment.

In the field of mobile communications, it is also important to consider the growth in mobile broadband connections, which is not shown in Table 8 but was especially high. Despite the lack of growth in mobile services, more than half of overall telecommunications revenues can be attributed to mobile communications (cf. also Figure 26). Since 2007, however, mobile services have not contributed to growth in revenues on the retail communications markets; in fact, a decrease could also be observed in this segment during the reporting period (-2.1% in 2008). The main reasons for this decline are the rate limits set in the EU Roaming Regulation for roaming services within the EU as well as decreasing revenues due to the further reduction of termination charges.

Therefore, the main driver of growth is the development of broadband lines, especially mobile broadband connections. However, due to a lack of available data, this development – which is highly significant in terms of volume (cf. Table 9) – cannot be depicted, and revenues from mobile broadband connections could not be reported separately in Table 8.

Figure 26: Development and distribution of retail revenues



More than half of total retail revenues generated by mobile networks.

Source: RTR
Due to subsequent corrections by the network operators, the values shown for 2006 and 2007 differ slightly from those reported in the 2007 Communications Report.

In recent years, mobile networks have become the fiercest competitor to the fixed-link network in Austria (cf. in particular the opposing developments in call minutes in Table 9). 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.

The demand for leased lines with high bandwidths has risen, especially as those lines offer more favorable prices per kbit/s equivalent compared to low bit-rate leased lines. The increase in 64kbit/s equivalents in Table 9 is therefore not reflected to the same extent in the revenues shown in Table 8 (cf. Section 5.2.5).

Table 10 provides a qualitative overview of the major factors influencing market developments. For more detailed information, please refer to the sections indicated below.

Table 10: Trends on retail markets in 2008

Service	Revenues	Traffic volumes	Rates	Remarks	cf. Section
Fixed-link communications	Decreasing	Decreasing	Stagnating/ decreasing	Partial substitution with mobile telephony, VoI and PNs	5.2.2
Mobile communications	Decreasing	Increasing	Decreasing	Share of data services rising quickly; introduction of flat rates	5.2.3
Broadband	Decreasing (without mobile broadband)	Increasing	Decreasing	Rapid growth in mobile broadband	5.2.4
Leased lines	Decreasing	Capacity increasing	Stagnating	Decreasing 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 2008; 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 TKMV 2008. 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 communications

5.2.2.1 Introduction

Increasing market consolidation

After a large number of new market entries were recorded in the fixed-link segment during the first stage of liberalization, the market has increasingly undergone consolidation processes in the last few years. 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, which was one of the most important unbundling operators apart from Inode. UPC Telekabel took over Inode in early 2006 and Telesystem Tirol in late 2007. eTel, a provider which primarily operated in the business segment, had taken over numerous smaller companies – especially Internet service providers – before the company itself was acquired by Telekom Austria in early 2007.

Depending on the type and scope of the network infrastructure used, different business models can be distinguished in the fixed-link segment:

Quasi-monopolist structures on the local access market

- As the former monopolist, Telekom Austria is the only telecommunications enterprise with nationwide infrastructure and still holds the largest market share by far, especially in the access market. As Telekom Austria's market power puts the company in a position to prevent alternative providers from gaining access to its customers and thus to frustrate or even prevent competition, Telekom Austria has been classified as a company with significant market power (SMP) up to this point. As such, 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 are still characterized by a sub-additive cost structure, meaning that from a static point of view, 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 5.2.2.2.2 and 5.2.2.2.3.1).

- 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, those companies 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.

Quasi-competitive structures in the carrier segment

- Carrier selection has proven to be an effective instrument for promoting competition on the fixed-link market, as it allows relatively easy access to the market and involves low investment costs compared to building separate access networks. The competitive stimulus created by the entry of new providers 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. The carrier network does not requires its own telecommunications network infrastructure; instead, the carrier network is interconnected with the incumbent's telecommunications network by means of a dialing code. The carrier network operator collects the charges directly from the subscriber and is required to pay origination, transit and termination charges to the other operator(s) for the services used. In carrier selection, it is necessary to distinguish between call-by-call (CbC) and carrier pre-selection (CPS) arrangements. For more detailed information, please refer to Section 5.2.2.1 in the 2007 Communications Report.

VoIP as a technology with high innovative potential

Another major development is Voice over Internet Protocol (VoIP), which has become a powerful factor for the entire fixed-link sector and may have an impact on all of the business models mentioned in Table 11. 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.

Whereas fixed-link markets have been discussed as a whole up to this point, the retail and wholesale markets are now described separately below in line with the delineation of markets in the TKMV 2008 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. Table 11 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 11: 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 (limited) ▪ Pricing ▪ Sales/billing	Medium
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

5.2.2.2 Retail markets

5.2.2.2.1 Market participants

Five operators currently cover more than 90% of demand

Table 12 lists the largest providers of fixed-link voice telephony services in Austria. Taken together, these operators covered more than 90% of the call minutes handled on the retail market.

Table 12: Largest providers on the retail fixed-link markets

Company	Share of call minutes
Telekom Austria	approx 60%
Tele2	< 25%
UPC	< 5%
COLT	< 5%
FINAREA	< 5%

Source: RTR

5.2.2.2.2 Structural developments on the fixed-link market

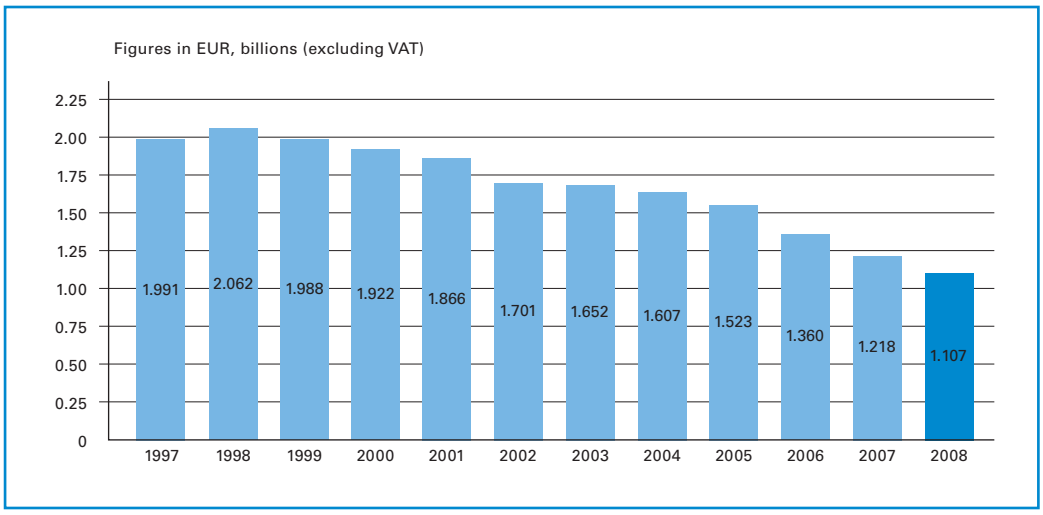
Substantial declines in overall fixed-link revenues

In the past, the rapid growth in the number of subscribers on the mobile communications market in particular brought about a substantial decline in total revenues on the market for fixed-link telephony services (cf. Figure 27). Although revenues on the overall fixed-link retail market followed an upward trend from the start of liberalization until the year 1998 (1998: +3.6%), they have declined steadily over the remaining period (1999 to 2008), most recently losing as much as 9% between the years 2007 and 2008. This general decrease can be seen (albeit to different degrees) in revenues as well as traffic volumes.

The calculation of overall revenues on the fixed-link retail market in Figure 27 is based on the following income types:

- 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;
- Access setup charges.

Figure 27: Development of revenues on the retail fixed-link market

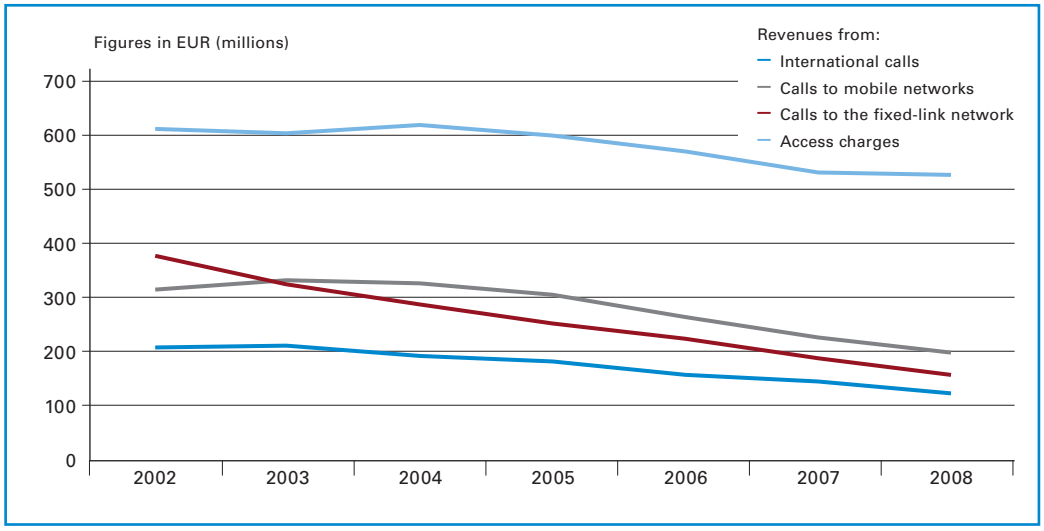


Source: RTR
Due to subsequent corrections by the network operators, the values shown for 2006 and 2007 differ slightly from those reported in the 2007 Communications Report.

Decline in revenues from connection charges due to intermodal competition from the mobile sector

Figure 28 shows clear differences in the development of revenues in each charge category (access charges, calls to mobile networks, calls to fixed-link networks and abroad). Revenues from connection charges were most heavily affected by the decline, especially in the case of calls to the fixed-link networks, where revenues dropped 16% between 2007 and 2008 alone. Revenues from calls abroad and calls to mobile networks have decreased steadily since 2003. The decreases identified in call charges can mainly be attributed to intermodal competition emanating from the mobile communications sector. Above all, this competition has affected revenues from calls to domestic fixed-link networks in the residential segment. Moreover, part of this persistent decline in revenues can also be explained by additional price reductions, but such reductions have become less and less pronounced. In general, it is important to note that these developments refer to the entire fixed-link sector, not just specific operators.

Figure 28: Development of retail fixed-link revenues by segment

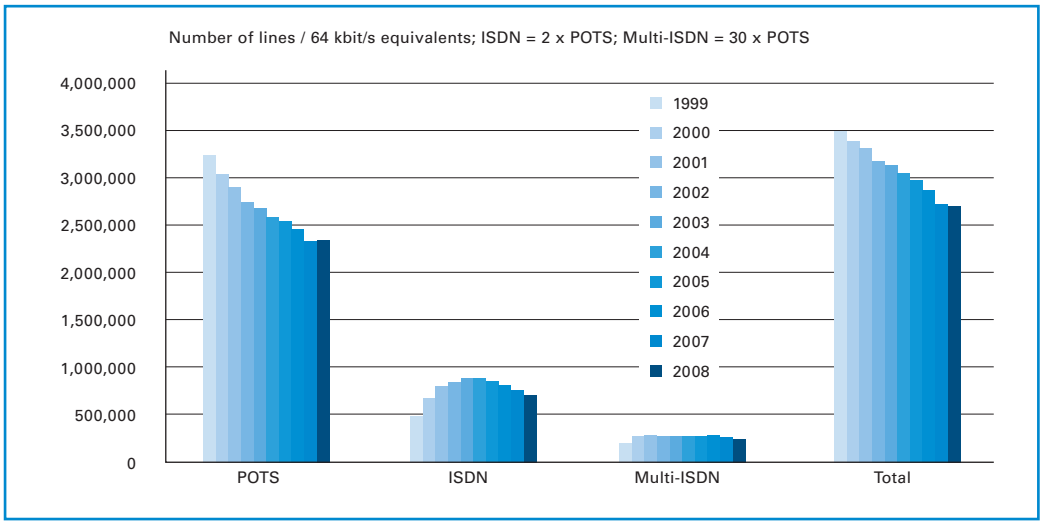


Source: RTR

Negative trend in access revenues halted

With regard to access charges, revenues from monthly base fees and setup charges remained stable between 2007 and 2008 after declining steadily for years (cf. Figure 29). Among other things, this can be attributed to the success of various bundled products, which have made it possible to stabilize the number of lines. After years of continuous decline, the number of POTS lines (measured in 64 kbit/s equivalents) rose slightly for the first time in 2008. At the same time, the development of specific line types reveals that the changes differ substantially depending on the access technology in question. While the trend reversal mentioned above was observed in POTS lines and the number of multi-ISDN lines has largely remained constant in recent years, the downward trend has continued in ISDN lines.

Figure 29: Development of line types in 64 kbit/s equivalents

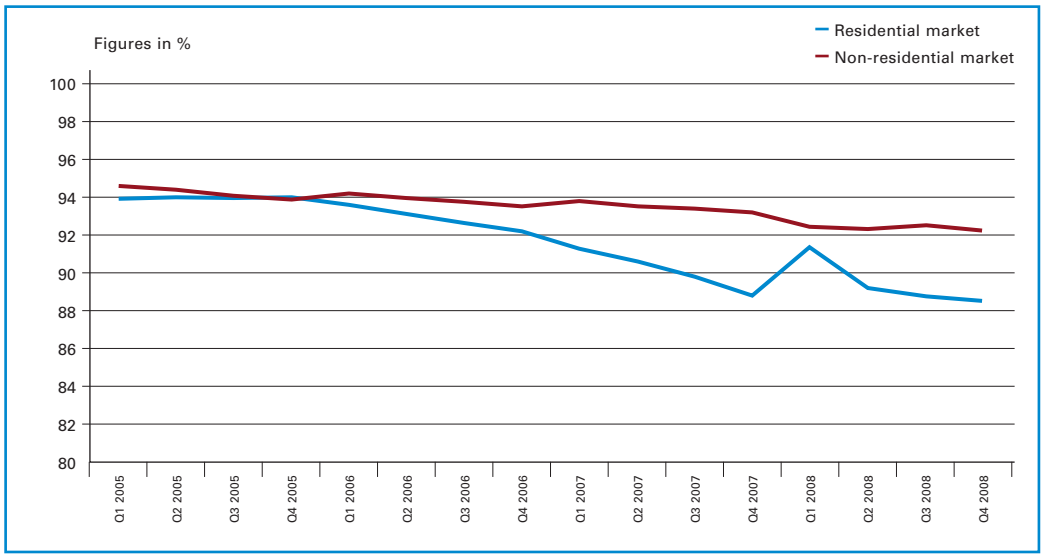


Source: RTR

Telekom Austria's market share remains high and stable in access segment.

The market share levels of Telekom Austria (Figures 30 and 31) also provide an indirect indication of the success of alternative network operators (access and carrier network operators) in individual segments of the fixed-link telephony market since the start of liberalization. In terms of the absolute number of subscriber lines, Telekom Austria still holds a relatively high and stable market share measured in terms of revenues from monthly base fees and setup charges. The high concentration in terms of connected subscribers is not particularly surprising, as only few alternative network operators (ANOs) have their own access network to connect subscribers directly. The vast majority of subscriber lines are thus realized by Telekom Austria. This shows that the Austrian market is still in effect characterized by a monopolistic market structure in terms of access. However, Figure 30 also reveals that somewhat more competitive developments can be identified in the residential segment (compared to the non-residential segment), which can be attributed to Tele2's unbundling activities and the gains made by the cable network operator UPC. In general, customer retention is lower and demand behavior is more elastic in the residential segment (compared to the business segment). The temporary rise in Telekom Austria's market share among residential customers in the first quarter of 2008 can be explained by an increase in setup activities during that quarter.

Figure 30: Telekom Austria's share of market revenues from access services by customer segment



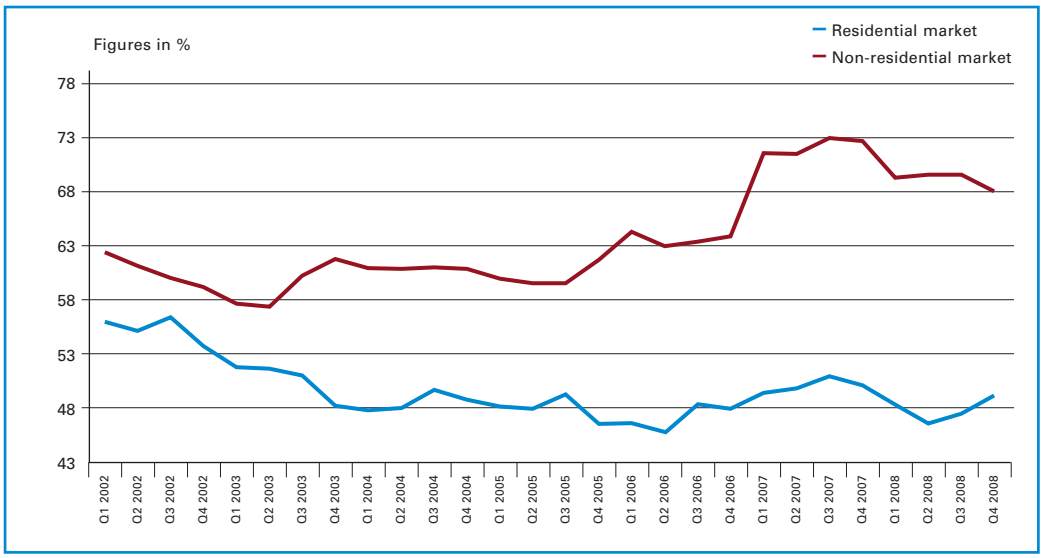
Source: RTR

Incumbent regaining market share for connection services in business segment

With regard to connection services (national and international; calls to the mobile network, fixed-link network and abroad), on the other hand, the alternative operators were able to garner a markedly larger share of the market (cf. Figure 31). In national calls, however, we have again been able to observe a significant increase in Telekom Austria's market share among business customers since mid-2005. A substantial part of this development can be attributed to Telekom Austria's acquisition of eTel; this effect is included in the data from the first quarter of 2007 onward, which is why Telekom Austria's market share jumped in that quarter. However, this still only explains approximately half of the overall increase (up to 10 percentage points) in the incumbent's market share in terms of revenues since 2005. 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.

The stagnation of the alternative network operators' market shares in terms of connection services, which is only implicitly shown in Figure 31, is closely linked to the development of the market for call-by-call (CbC) and carrier pre-selection (CPS) services. As shown in Figure 32, CPS in particular gained popularity quickly, although this segment has shown a steadily declining trend in recent years. Nevertheless, at the end of the reporting period more than 600,000 subscribers in Austria still had 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 with sufficient consistency from July 2003 onward (i.e., the start of the observation period for RTR's Operator Survey 2006).

Figure 31: Telekom Austria's share of market revenues from connection services by customer segment



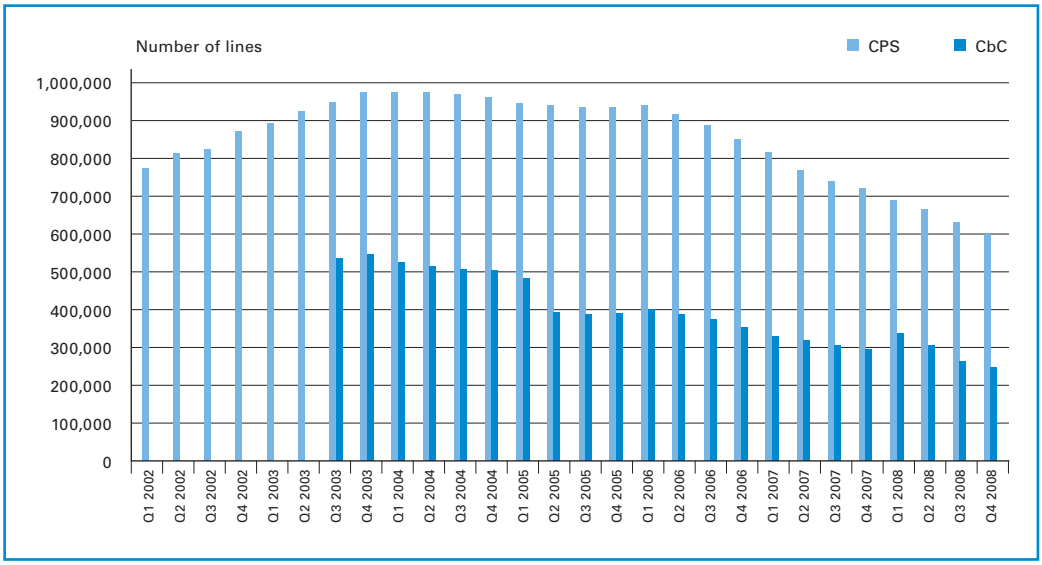
Source: RTR

Carrier (pre-) selection still essential, but declining further

At present, we can estimate a basic level of just under 250,000 CbC customers. The decline in CPS services can also be explained by the fact that alternative network operators have increasingly shifted from carrier pre-selection to subscriber network operation in line with the "ladder of investment." Moreover, 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. Section 5.2.1, Table 9). Moreover, the CPS and CbC levels shown reflect the respective aggregate values for residential as well as non-residential customers. However, regulatory experience has made it clear that a very large share of CbC usage can be attributed to residential customers.

In any event, the figures shown 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 enabled them to provide services throughout Austria within a 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 manifested itself in the increase in unbundling activities observed in recent years (cf. Section 5.2.4.6).

Figure 32: Development of number of CPS and CbC customers



Source: RTR

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, the key indicators 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 14th Implementation Report published by the European Commission.

5.2.2.2.3.1 Market shares

In the Implementation Report mentioned above, the European Commission also voiced criticism with regard to the specific market situation in Austria, as the incumbent enterprise Telekom Austria still holds a relatively strong position on the market (Country Fact Sheet No. 14.1). Therefore, the figures below show the most important market share comparisons.

Table 13 shows the average market shares of incumbent operators in terms of revenues in individual call segments. A comparison with the national market shares of Telekom Austria reveals that the company's market share figures were substantially lower than the averages reported until the end of 2006. Only in early 2007 did Telekom Austria's market share figures begin to shift, a development which was only partly due to the takeover of eTel.

Table 13: Average market share of incumbent operators on the EU voice telephony market by revenues

	Domestic calls total		Calls to mobile networks		International calls	
	EU average	Telekom Austria	EU average	Telekom Austria	EU average	Telekom Austria
2005	66.3%	55.7%	62.5%	51.7%	57.0%	50.0%
2006	60.9%	55.3%	60.0%	52.0%	53.6%	52.4%
2007	61.3%	61.8%	60.6%	59.3%	52.5%	57.9%

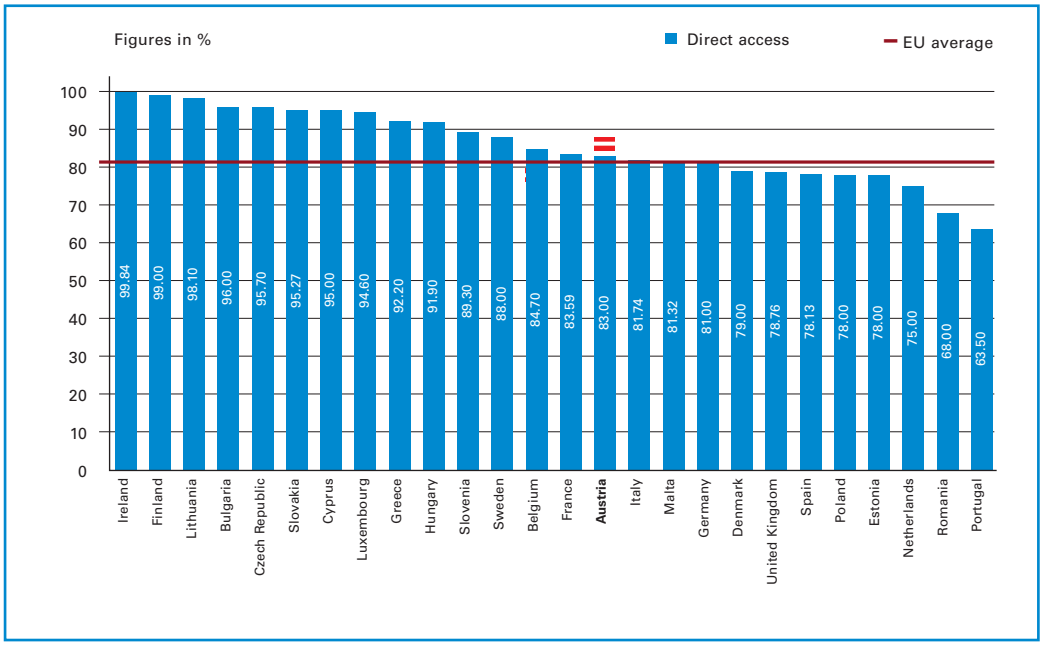
Source: 14th Implementation Report of the European Commission, RTR

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 33 shows that the value reported for Austria's national incumbent is just slightly over the European average (81.4%). The market shares shown in Figure 30 are only comparable to a limited extent, as the underlying revenues were calculated on the basis of differing product bundles.

Overall, 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.

Figure 33: Number of access subscribers with the incumbent (July 2008)



Source: 14th Implementation Report of the European Commission

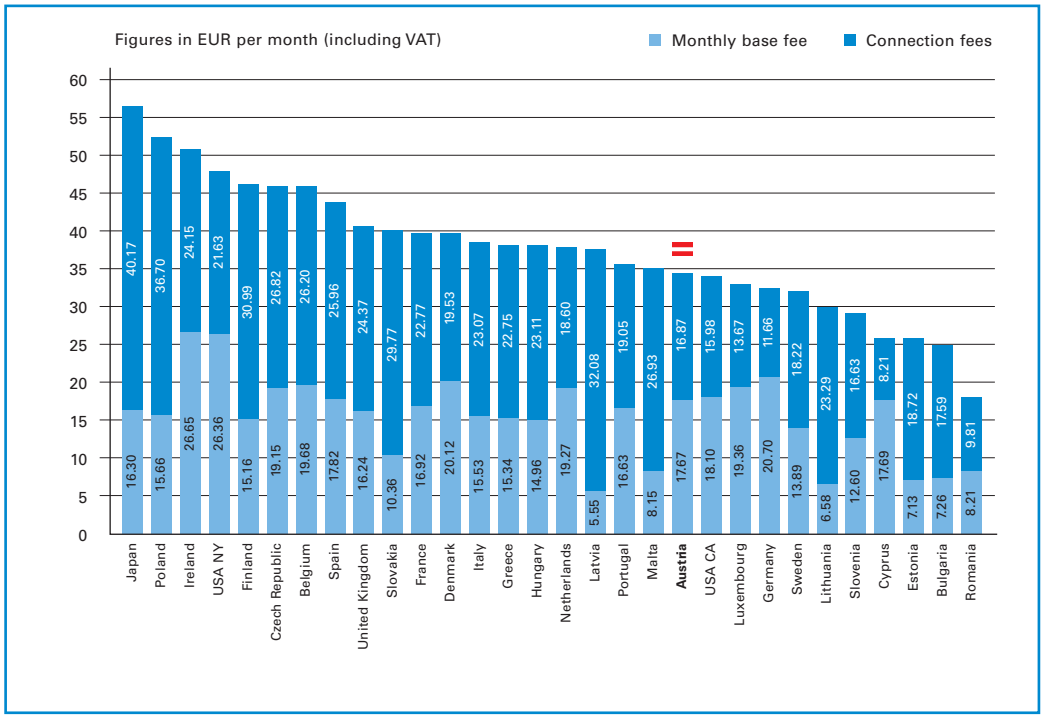
5.2.2.2.3.2 Rates

Austrian residential rates in middle range by European comparison

In general, this comparison of rates is based only on the standard rates of each incumbent operator. As this analysis does not include 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. For details on the composition of the basket used for the rate comparisons, please refer to the 14th Implementation Report.

With regard to monthly base fees, Figure 34 reveals that Telekom Austria is just over the EU average (based on the "TikTak Privat" rate plan). However, this relatively high monthly base fee is offset by low call rates, which is why Telekom Austria is placed in the lower middle range among operators from an overall perspective (see Figure 34). 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. The underlying demand behavior and weighting factors are designed to reflect a "standard European residential user."

Figure 34: Residential customers: Average monthly expenditure (September 2008)



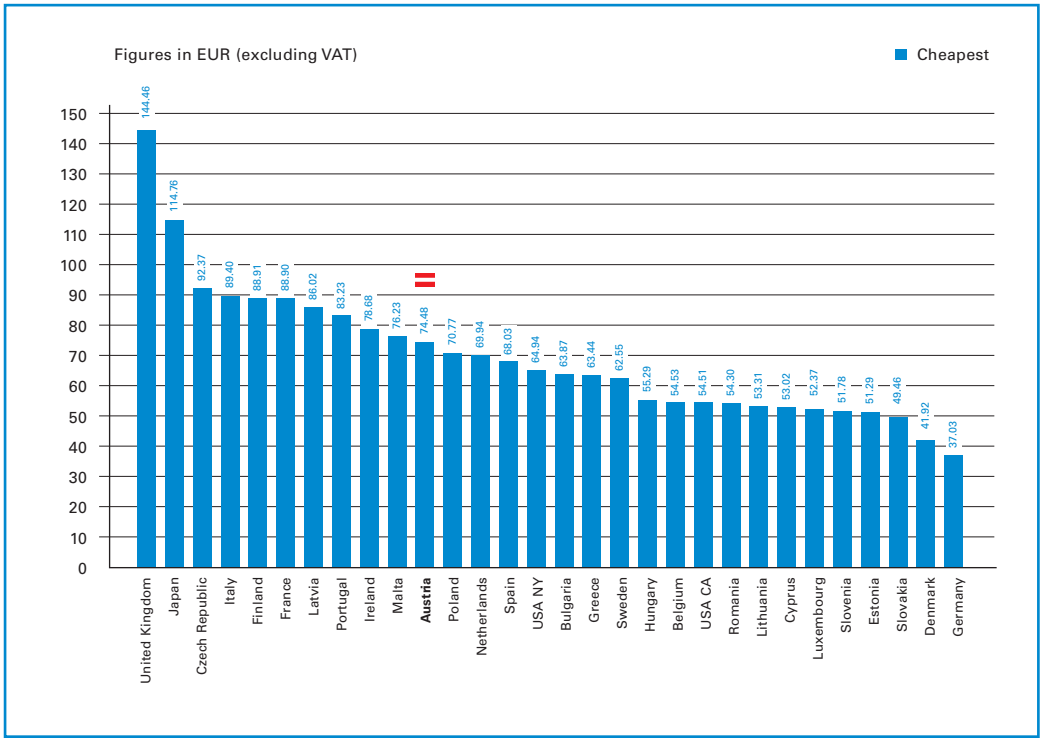
Source: 14th Implementation Report of the European Commission

Figure 35 shows the average monthly expenditure of a representative "European business customer" as of September 2008. The basket shown includes the monthly base fee and setup fee charged by the incumbent as well as national calls over various distances, international calls as well as calls to mobile networks. The chart shows the least expensive rate options in each case.

Austrian business rates in the middle range by European comparison

As in the case of residential customers, Telekom Austria is again in the middle range among European operators.

Figure 35: Business customers: Average monthly expenditure (September 2008)



Source: 14th Implementation Report of the European Commission

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 an important element of functional competition and are the focus of regulation when regulatory action is required. On the one hand, the interconnection of networks (which brings about transactions at the wholesale level) serves to enable the customers of a certain network operator to reach the customers of other network operators. Otherwise, small networks with only few customers would be placed at a disadvantage, and "any to any"

Wholesale markets highly important for competition

connectivity would not be ensured. On the other hand, network operators can purchase wholesale services from Telekom Austria or other operators, which serves to lower their infrastructure investment costs and thus substantially reduces barriers to market entry.

Therefore, there is a close link between the wholesale and retail markets, as services purchased on the wholesale market are ultimately included in retail products.

RTR analyzed the following wholesale markets in the field of fixed-link voice telephony:

- The market for call origination on the public telephone network provided at a fixed location (origination);
- The markets for call termination on individual public telephone networks provided at a fixed location (operator-specific termination);
- The market for transit services in the fixed-link public telephone network (transit).

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 close 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.

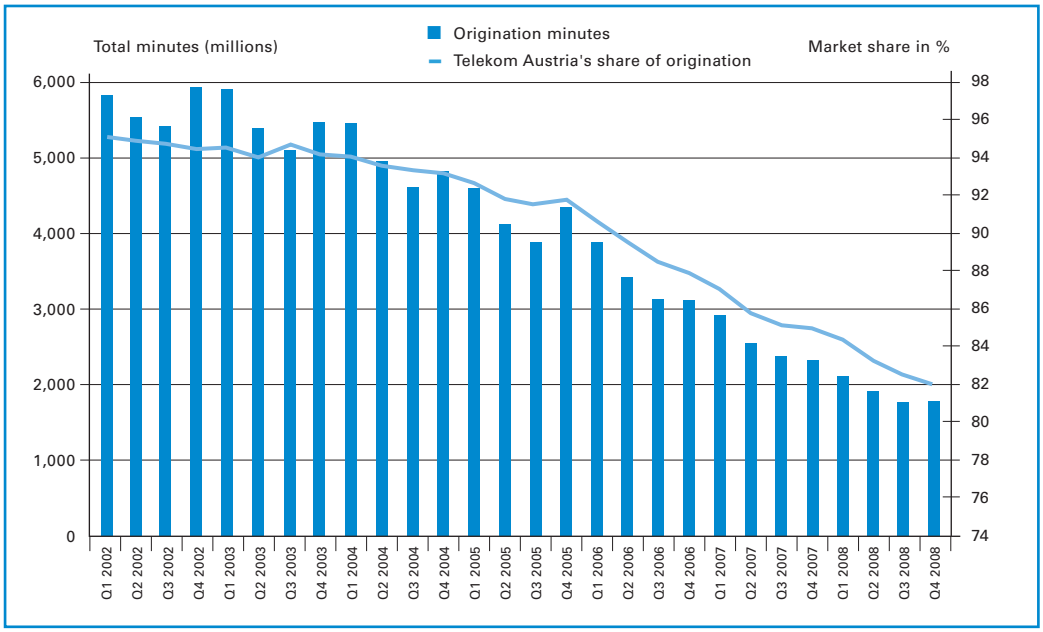
In addition to those origination services, the service of origination to target network-priced service numbers is also provided on the origination market. The latter service is provided in cases where retail customers make calls to toll-free numbers, numbers with regulated maximum prices, and value-added service numbers. In the case of calls to toll-free numbers, the access network operator does not collect any charges from the retail customer. For the other types of numbers, the access network operator passes on the retail charge (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 as well as fixed-link/mobile substitution, especially in the residential segment.

Minutes declining, but Telekom Austria's market share remains high.

As for its relative position on the market, Telekom Austria still has a very large market share (cf. Figure 36), which has only decreased slightly – but to a greater extent than in the case of 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.

Figure 36: Telekom Austria: Development of origination minutes and market share



Source: RTR
Due to subsequent corrections by the network operators, the values shown for 2006 and 2007 differ slightly from those reported in the 2007 Communications Report.

As mentioned above, Telekom Austria is subject to price regulations on the origination market. Table 14 shows Telekom Austria's regulated 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, 2008 in EUR cents (excluding VAT)

Local 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.

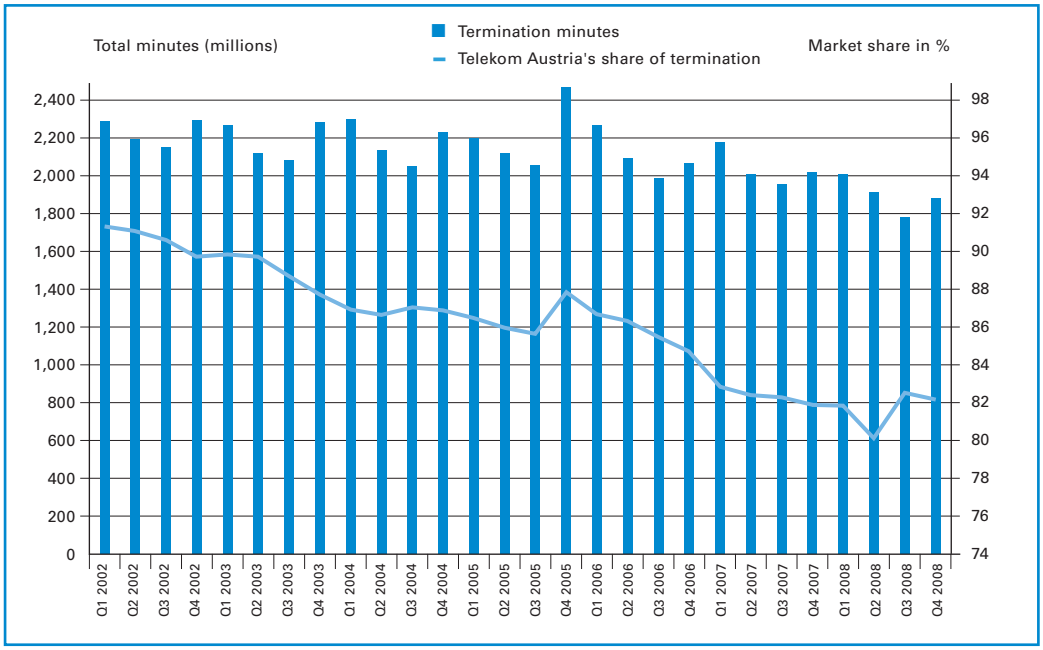
Termination monopoly leads to operator-specific market power

One unique characteristic of termination markets is that they are delineated for each specific operator, meaning that every subscriber network operator establishes its own termination market. This is because termination services can only be rendered by the provider network to which the subscriber is connected. At the same time, this implies a market share of 100%.

Figure 37 shows market structure developments for a hypothetical overall multi-operator termination market for fixed-link voice telephony. In Austria's fixed-link networks, a total of approximately 7.6 billion minutes were terminated for other operators in 2008. In contrast to origination (Figure 36), self-provided services are not included in Figure 37.

Both traffic minutes as well as the corresponding termination revenues (cf. Section 5.2.2.3.4) 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 that the increasing number of calls from mobile networks to fixed-link networks has partly compensated for the declining number of calls within the fixed-link network.

Figure 37: 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. The operator's "hypothetical" market share in this context is approximately 80% and even rose slightly toward the end of the observation period.

Due to its large number of connected subscribers, its size and its power on other markets, in the absence of regulation Telekom Austria would create different competition problems than smaller network operators. 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-based prices based on FL-LRAIC.

Table 15 provides an overview of regulated local termination charges.

Table 15: Termination charges of Telekom Austria and ANOs as of December 31, 2008 in EUR cents (excluding VAT)

Termination	Peak	Off-peak
Telekom Austria	0.82	0.48
ANOs	1.28	0.71

Source: RTR

Thanks to its large number of connected subscribers, UPC, which operates in certain regions of Austria, has the largest number of termination minutes among 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 only 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

Operators which transport traffic out of their own networks provide transit services.

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.

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 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.

Transit market still competitive

With regard to the competitive situation, the regulatory authority identified sufficiently competitive structures on the transit market for the third time in 2008. Transit charges are therefore subject to the forces of the market. This market is not considered a relevant market and was therefore not included in the TKMV 2008.

5.2.2.3.4 Development of revenues on wholesale markets

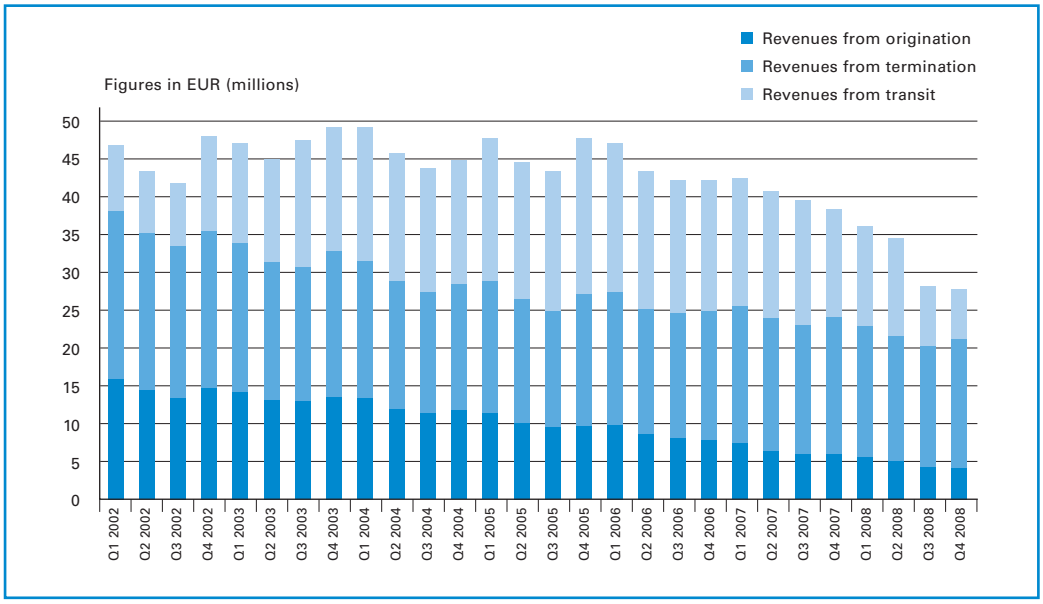
Steadily declining revenues

Revenues from origination have been declining steadily in recent years due to the general downward trend in minutes and the decreasing significance of CbC/CPS, while revenues from termination have remained fairly constant, as in this area the increase in calls from fixed-link networks has largely offset the decline in calls within the fixed-link network.

In addition to revenues from origination and termination, Figure 38 also shows revenues from transit services. While these revenues rose in the years 2002 to 2005, they have plummeted since that time. This reduction can probably be attributed to the larger number of direct interconnections in which transit services are no longer required by other operators (and thus no revenues are generated). The marked drop in transit revenues between the second and third

quarter of 2008 resulted from the integration of eTel into Telekom Austria. eTel used to provide services as a transit network operator for a large number of small telecommunications operators, but those operators are now directly interconnected with Telekom Austria.

Figure 38: Development of revenues on fixed-link wholesale markets



Source: RTR

5.2.3 Mobile communications

5.2.3.1 Market participants

Four mobile network operators on the Austrian market

During the reporting period, there were four mobile network operators (MNOs) in Austria which have been allocated frequencies for this purpose. New MNOs can only enter the market if they can obtain frequency usage rights through allocations or transfers. Table 16 provides a summary of the year in which each MNO entered the market and the frequencies allocated to each MNO.

At present, frequencies in the 900 and 1800 MHz bands may only be used for GSM applications. At the European level, the possibility of making these bands available for services other than GSM services is already being discussed. This process, which is also known as refarming, will play a significant role in Austria in the coming years, especially when the licenses for frequencies in the 900 and 1800 MHz bands expire. Frequencies in those bands have a longer range, which reduces the costs of network construction (due to savings on transmitter masts, transmitters, etc.) for the operators.

Table 16: Frequencies and market entry of MNOs

	Market entry	GSM 900	GSM 1800	UMTS
mobilkom austria	1994	2 x 17.0	2 x 15.0	2 x 14.8
T-Mobile	1996	2 x 12.8	2 x 25.4	2 x 15.0
Orange	1998	2 x 4.0	2 x 33.0	2 x 14.8
Hutchison 3G ("3")	2003			2 x 14.8

Source: RTR

Until mid-2008, the presence of MVNOs (mobile virtual network operators), which do not have their own radio communications network but operate essential network elements in the core network, and independently owned airtime resellers, which do not operate any of their own telecommunications infrastructure, was quite low in Austria. Tele2 (Austria's only MVNO) as well as the airtime reseller eTel were recently taken over by the Telekom Austria Group.

However, the trend now seems to have reversed, as two MVNOs (Barablu and Lycamobile) have entered the market since late 2008.

5.2.3.2 Market development

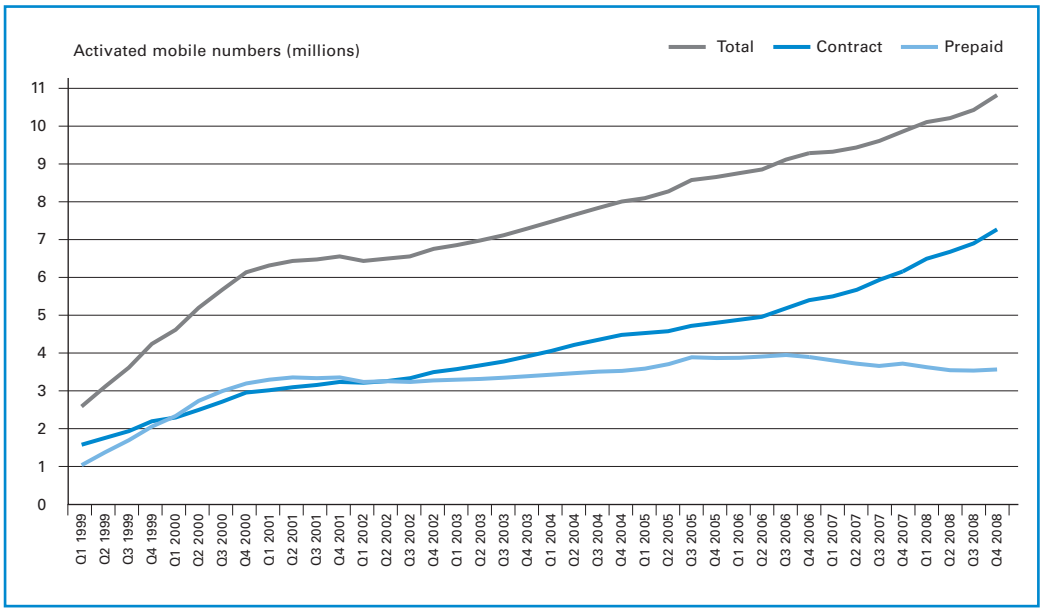
5.2.3.2.1 Development of number of subscribers and penetration rate

Mobile penetration at 129%

At the beginning of the year 2008, the number of activated mobile subscriber numbers in Austria exceeded 10 million for the first time, after which it climbed further to 10.8 million at the end of the year (cf. Figure 39). This increase can mainly be attributed to rapid growth in the number of contract customers – who account for approximately two thirds of activated subscriber numbers – and in data products.

Austria's mobile penetration rate, which represents the ratio of activated subscriber numbers to the country's population, had reached 129% by the end of 2008. According to the 14th Implementation Report of the European Commission, the average penetration rate in the EU came to 119% in October 2008. With a penetration rate of 125% at that time, Austria was above the EU average.

Figure 39: Development of activated mobile numbers



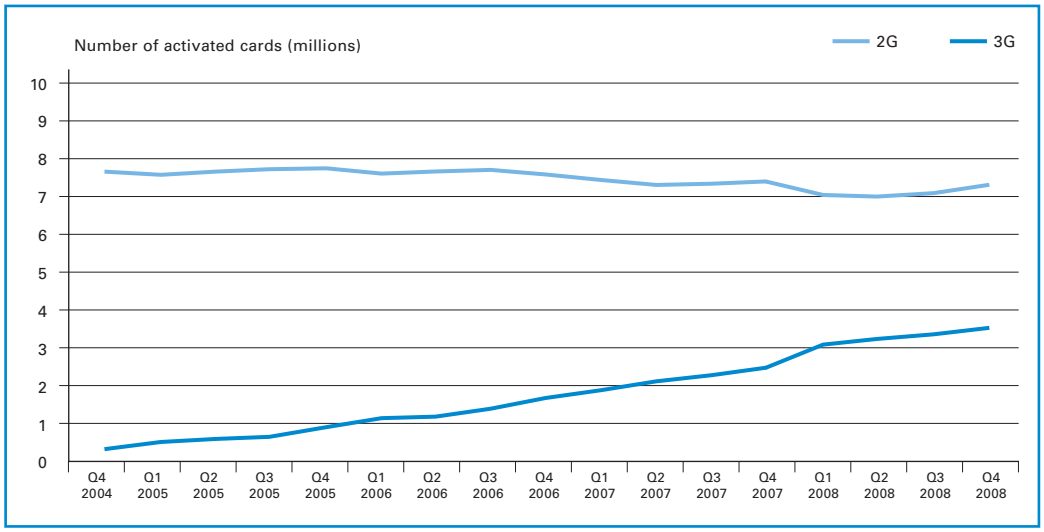
Source: RTR
Data interpolated from Q4 2003 to Q3 2004.

5.2.3.2.2 Development of 2G vs. 3G-compatible SIM cards

Figure 40 shows the number of 2G and 3G-compatible SIM cards in Austria. The chart reveals that the number of 3G-compatible SIM cards is rising. By the end of 2008, one third of all SIM cards were already 3G-compatible. The main reason for this development is the fact that most mobile network operators are now only issuing 3G-compatible SIM cards – even if the subscribers only use GSM services – and that there has been a very sharp rise in the number of mobile data cards and data modems.

Figure 40 shows the number of SIM cards activated and in use, broken down into 2G (GSM) and 3G (UMTS) SIM cards.

Figure 40: Development of 2G and 3G-compatible SIM cards



Source: RTR

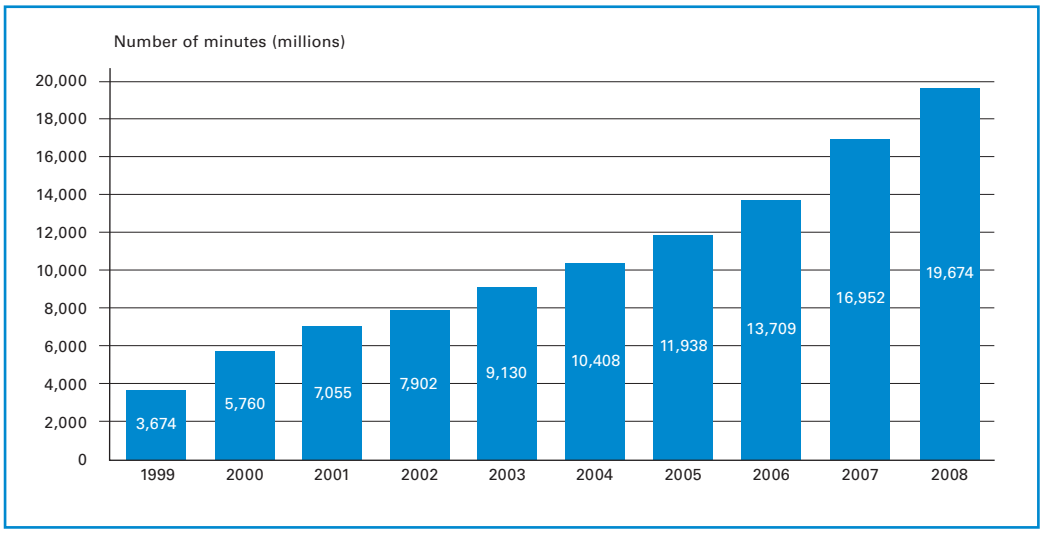
5.2.3.2.3 Development of call minutes and text messages

Rapid growth in traffic volumes continues.

The number of call minutes as well as text messages showed enormous increases in 2008. While call minutes exhibited steady growth of approximately 15% per year from 2003 to 2006, their growth rate jumped to 24% in 2007 and then slowed to approximately 16% in 2008. Growth in the number of text messages has also decelerated; while this number rose by 60% between 2006 and 2007, the growth rate dropped to 43% between 2007 and 2008.

The high rates of growth in minutes and text messages can largely be attributed to the new rate plans – many of which included flat rates – offered by mobile providers (cf. Section 5.2.3.4).

Figure 41: Development of call minutes on the retail mobile market (technical measurement*)

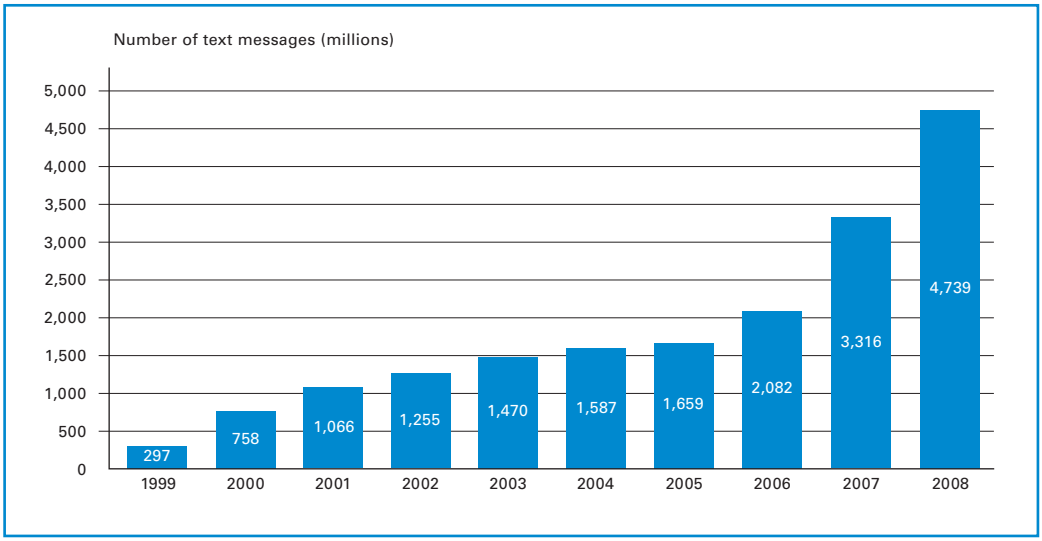


Source: RTR

* This figure refers to the actual number of call minutes consumed by retail customers. In contrast, billed call minutes refer to the number of minutes charged to retail customers.

Due to subsequent corrections by the network operators, the values shown for 2006 and 2007 differ slightly from those reported in the 2007 Communications Report.

Figure 42: Development of text messages on the retail mobile 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.

Due to subsequent corrections by the network operators, the values shown for 2006 and 2007 differ slightly from those reported in the 2007 Communications Report.

5.2.3.2.4 Development of revenues

Revenues continue to decline.

Despite the increasing number of subscribers and rising traffic volumes, revenues from the mobile communications sector have declined even further, both in the retail and in the wholesale segment. The decline in revenues was especially visible at the wholesale level, where a decrease of approximately 9% was recorded between 2007 and 2008. This can be attributed to the reduction of termination charges ordered by the regulatory authority (cf. Section 4.2.1.2.3) and the implementation of the EU Roaming Regulation as of June 30, 2007 (cf. Sections 4.2.10 and 5.2.3.6), which provides for a maximum charge for international roaming within the EU/EEA at the wholesale level (among other things). The decline in retail revenues between 2007 and 2008 was less pronounced (approximately 2%) and can mainly be attributed to reductions in the operators' rates (cf. Section 5.2.3.4). The calculation of revenues in Figure 43 is based on the following income types:

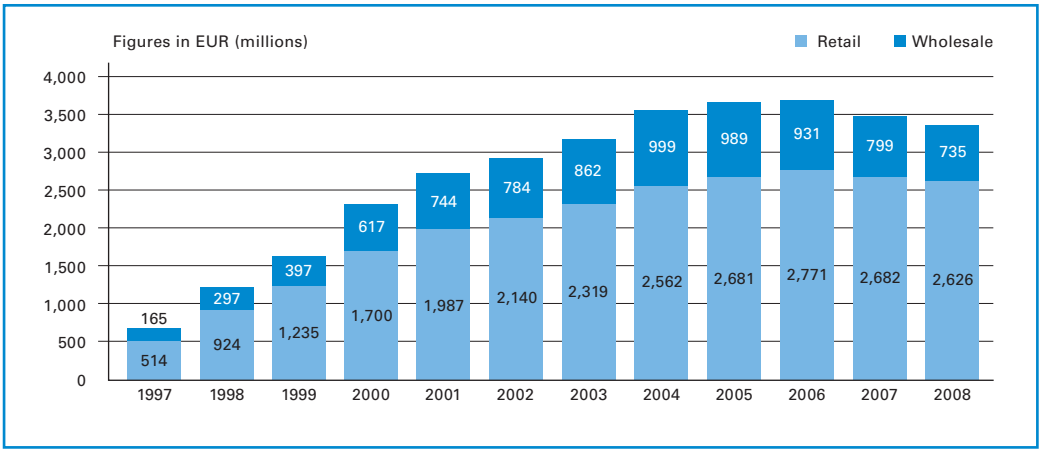
Retail revenues:

- Connection charges for voice services;
- Connection charges for text messages (SMS);
- Connection charges for data services;
- Monthly base fees and
- Activation charges;

Wholesale revenues:

- Revenues from voice termination;
- Revenues from SMS termination and
- Revenues from inbound international roaming (subscribers from abroad using their telephones in Austria).

Figure 43: Development of revenues in mobile communications



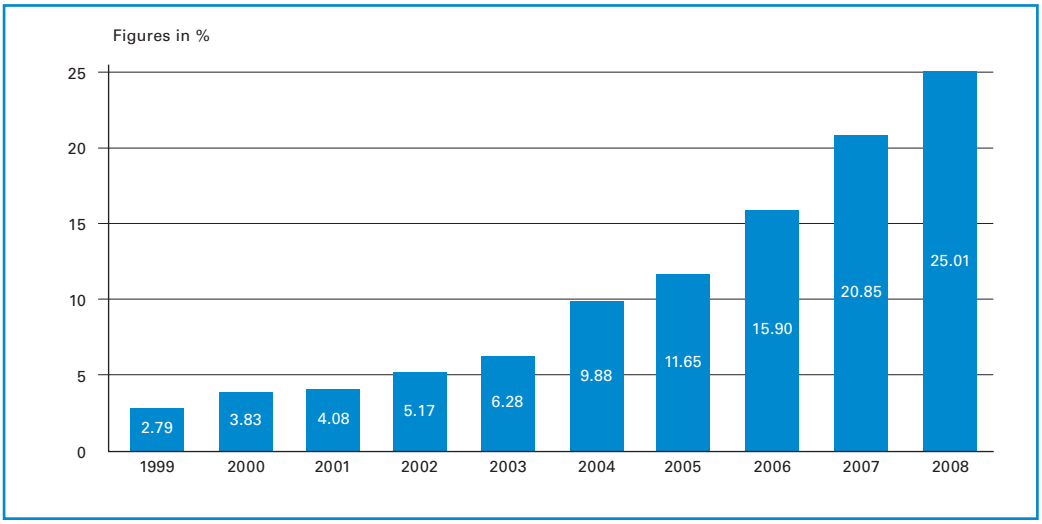
Source: RTR

Due to subsequent corrections by the network operators, the values shown for 2006 and 2007 differ slightly from those reported in the 2007 Communications Report.

Data services continue to gain 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 one fourth of overall retail revenues in 2008. This can mainly be attributed to rapid growth in the number of mobile broadband users. Nearly one third of all broadband connections in Austria are mobile broadband connections (cf. Section 5.2.4).

Figure 44: Development of retail revenues attributable to data and value-added data services (including SMS and MMS)



Source: RTR

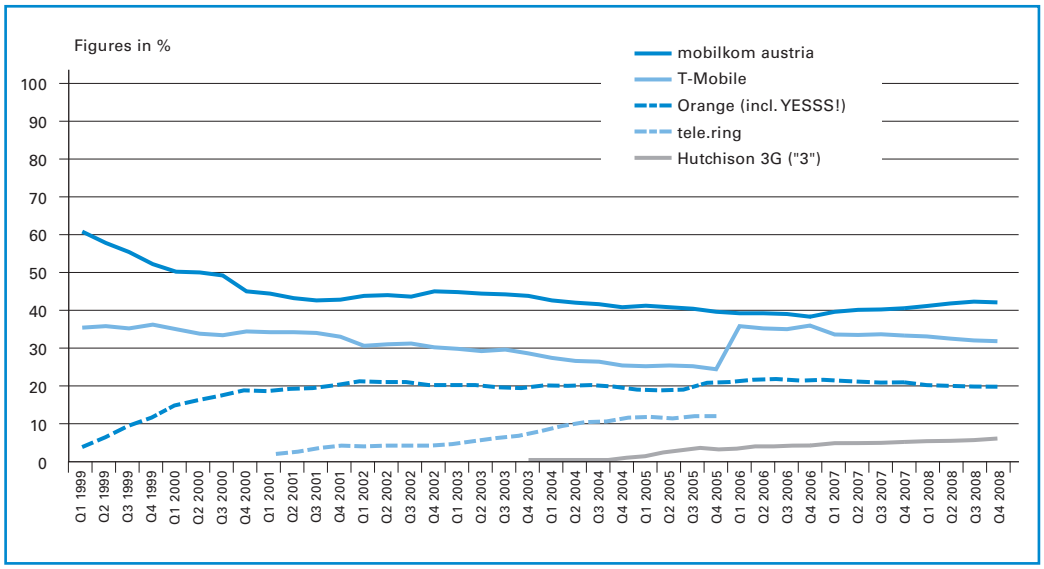
Due to subsequent corrections by the network operators, the values shown for 2006 and 2007 differ slightly from those reported in the 2007 Communications Report.

5.2.3.3 Market shares and concentration

Figure 45 below shows the market shares of mobile network operators, measured in terms of the number of subscribers (not including service providers).

The development in the chart shows that the market shares of the two largest providers slowly converged during the year 2006 due to T-Mobile's takeover of tele.ring. Since the fourth quarter of 2006, however, the opposite trend can be identified; while mobilkom austria's market share rose slowly but steadily to 42% at the end of 2008, T-Mobile's market share has declined since mid-2006 and came to 32% at the end of 2008. The market share of the smallest MNO, Hutchison 3G ("3"), has continued to show steady but weak growth, coming to just under 6% at the end of 2008. The market share of Orange (including Yesss!) dropped below 20% for the first time since mid-2005.

Figure 45: Development of mobile market shares (basis: number of subscribers)



Source: Information from operators for the RTR web site

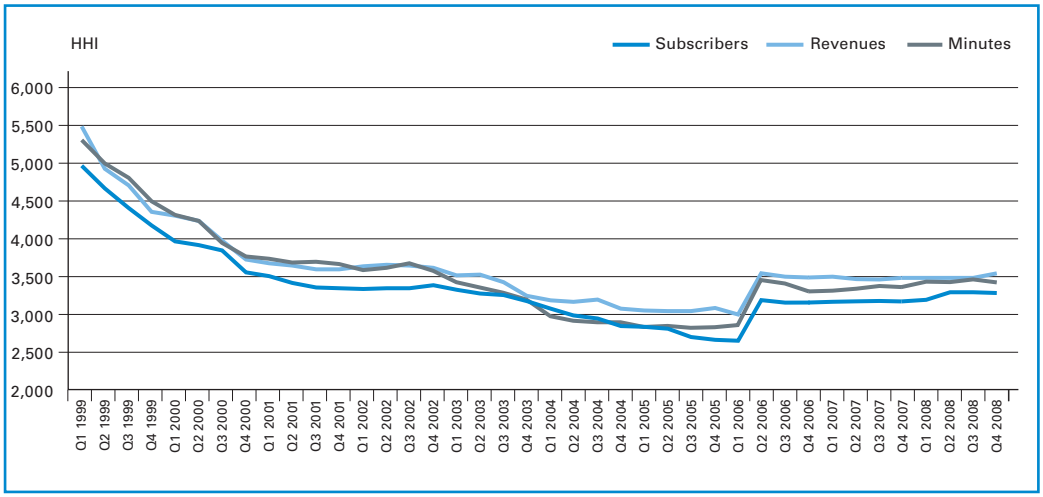
One of the most common measures of concentration is the Hirschman-Herfindahl Index (HHI), which is calculated as the sum of squares of specific parameter values (in this case market share percentages). The value of this index is thus between 0 and 10,000. A value close to zero indicates low concentration 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.

Due to the market entries of One (now Orange) and tele.ring, the Hirschman-Herfindahl Index for the mobile communications market dropped steadily until 2001 (cf. Figure 46). The index began to decline again after the entry of another mobile operator, Hutchison 3G ("3"), in 2003. Not surprisingly, T-Mobile's acquisition of tele.ring in 2006 led to a sharp increase in the HHI

for this market. However, the takeover of eTel by the Telekom Austria Group, which also includes mobilkom austria, in the first quarter of 2007 hardly showed any effect on the HHI. Thus the index has remained relatively stable since the second quarter of 2006, showing values between 3,280 (based on subscribers) and 3,542 (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 subscribers who generate the highest revenues.

HHI stable since T-Mobile's takeover of tele.ring

Figure 46: Development of the HHI for the retail mobile communications market



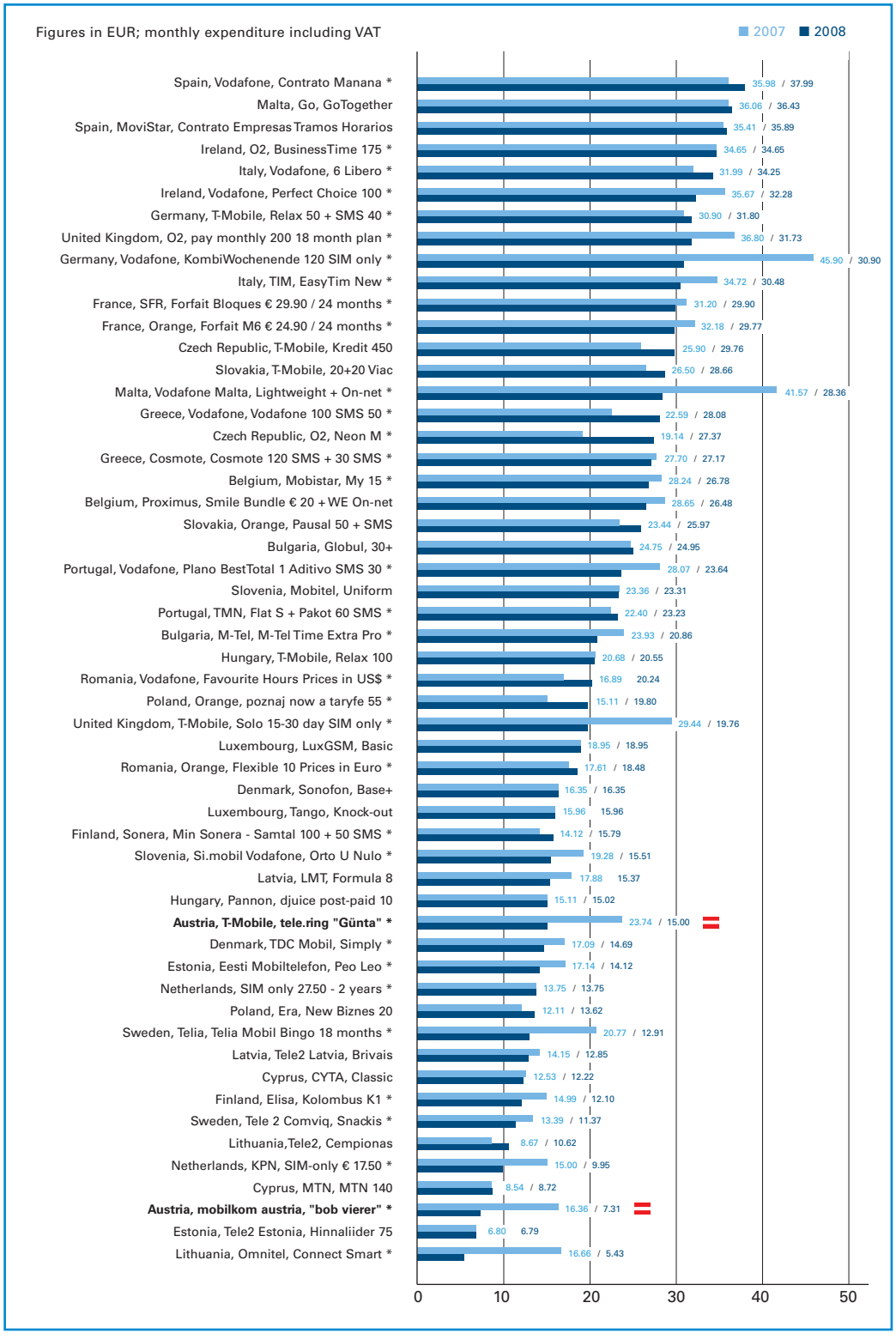
Source: RTR

5.2.3.4 Rates

Austria's mobile rates are the third-lowest in the EU.

In the Implementation Report, the European Commission regularly publishes rate comparisons between individual EU countries based on baskets of services. There are three OECD baskets which 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 in this section (cf. Figure 47). This basket comprises 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, these are the providers mobilkom austria and T-Mobile. In contrast to previous Implementation Reports, the calculations in the most recent report also included the discount brands (Bob und tele.ring) offered by Austria's two largest operators.

Figure 47: EU-wide comparison of rates for the OECD's average user basket in 2008



Source: 14th Implementation Report of the European Commission

* Package name and structure changed between 2007 and 2008.

In this comparison, Austria ranks third (mobilkom austria, bob vierer) and 16th (T-Mobile, tele.ring Günta) out of 54. Compared to 2007 (28th and 39th place), Austria's position has improved markedly. However, in this context it is necessary to note that mobilkom austria and T-Mobile's discount brands were not included in the basket calculations in 2007. The results are similar for the high-usage basket (3rd and 6th place) and for the low-usage basket (1st and 22nd place).

Development of rates

Flat rates also include minutes to networks abroad.

In the last three years, two main developments have arisen in mobile providers' pricing models. The regulatory reduction of termination charges, which lowered the risk of having to pay high net amounts to competitors, allowed Austria's mobile providers to offer rates without network-based price discrimination as well as flat rates. The latter are characterized by the fact that they include services for a single price, regardless of the actual frequency and duration of use. In 2008, these flat rates also included call packages (and in some cases text messaging packages) from Austria to other EU member countries for the first time.

5.2.3.5 Wholesale termination market

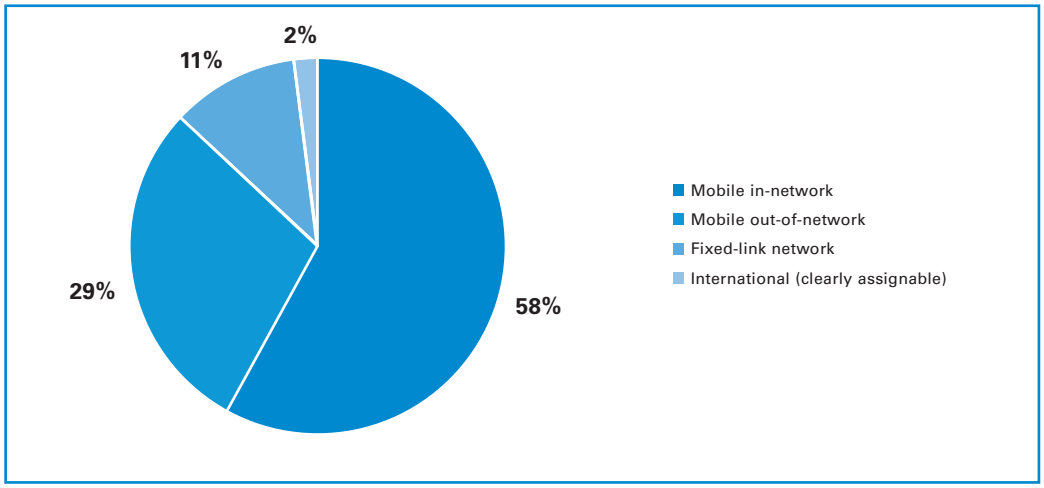
Termination refers to an interconnection service between telecommunications operators and serves to ensure that subscribers can reach one another across various networks. As a result, termination is a prerequisite for functional communication. When one subscriber calls another in a different mobile operator's network, the call is either routed directly or indirectly via a transit network operator through an interconnection point to the network of the subscriber receiving the call, and from there the call is routed to the relevant subscriber. This service is subject to what is known as a termination charge.

Four mobile termination markets in Austria

The routing of the call to a certain subscriber (i.e., the service of termination) can only be handled by the operator which runs the network to which the called subscriber is connected. As a result, each operator forms its own termination market and has a monopoly in that market. In total, there are currently four providers – and thus four markets – for mobile termination services in Austria.

Mobile termination services are used by fixed-link and mobile network operators both in Austria and abroad. As shown in Figure 48, more than half (58%) of the incoming minutes come from the same network, while 29% of all mobile termination minutes come from mobile networks. Only 11% of the minutes terminated in the mobile networks come from domestic fixed-link networks.

Figure 48: Sources of calls to Austrian mobile networks (as of 2007)



Source: RTR, 2007
Data for 2008 was not available when this report was published.

5.2.3.6 International roaming

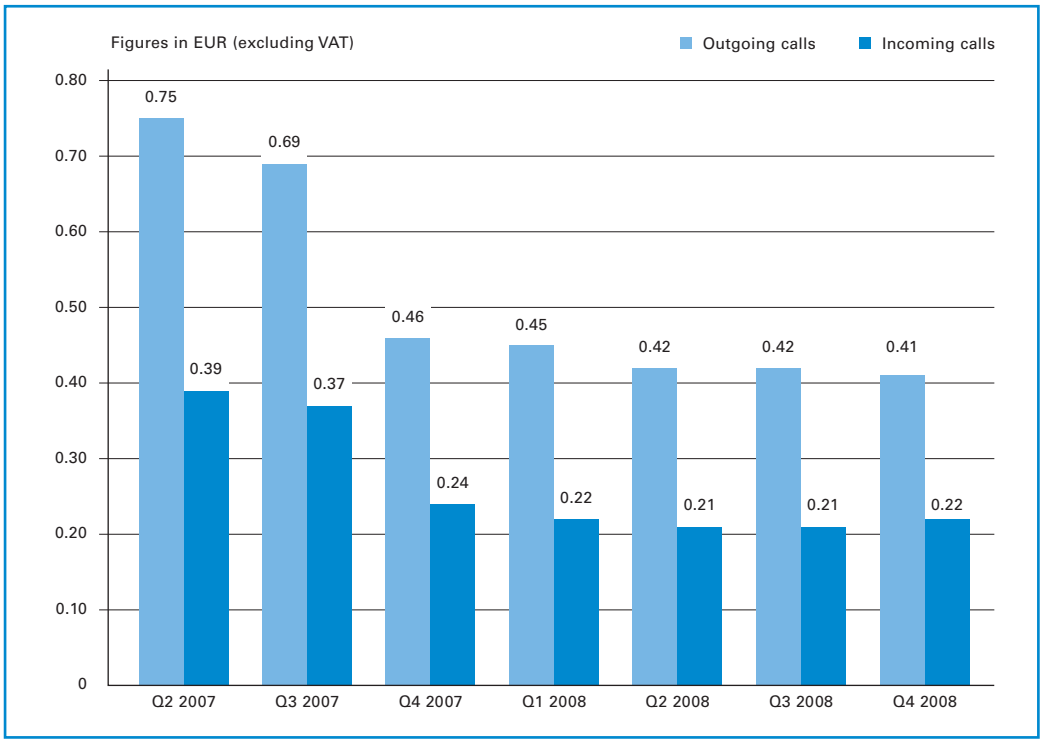
In mobile communications, the term "roaming" refers to the use of a mobile telephone outside the coverage area of one's own network operator (the home network), in which case the mobile phone uses the coverage service of another network (the visited network). In international roaming, the home and visited networks are located in different countries, and the coverage areas of the two networks do not overlap (or only overlap along shared national borders). The subscriber does not pay the visited network operator directly for the service of roaming; instead, the amount is billed through the home network operator. The visited network charges the home network operator a fee known as an IOT (inter-operator tariff) at the wholesale level, and the home network charges the visitor a retail fee.

Since the implementation of its regulation on roaming in public mobile telephone networks within the Community on June 30, 2007, the European Commission has regulated roaming charges at the wholesale (IOT) and retail level (cf. Section 4.2.10). 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 this survey are presented in the charts below.

In this context, it is important to note that the retail "Eurotariff" required in the Roaming Regulation was only compulsory in its entirety from the fourth quarter of 2007 onward. The figures show average rates per billed minute (excluding VAT).

Figure 49 shows the average roaming rates at the retail level for incoming and outgoing calls within the EU/EEA. Since the second quarter of 2007, these rates have dropped from EUR 0.75 to EUR 0.41 per minute for outgoing calls and from EUR 0.39 to EUR 0.22 per minute for incoming calls. Since August 30, 2008, the price limits on these calls have been EUR 0.46 for outgoing calls and EUR 0.22 for incoming calls (excluding VAT).

Figure 49: Average retail roaming rates for calls within the EU/EEA*



Source: RTR

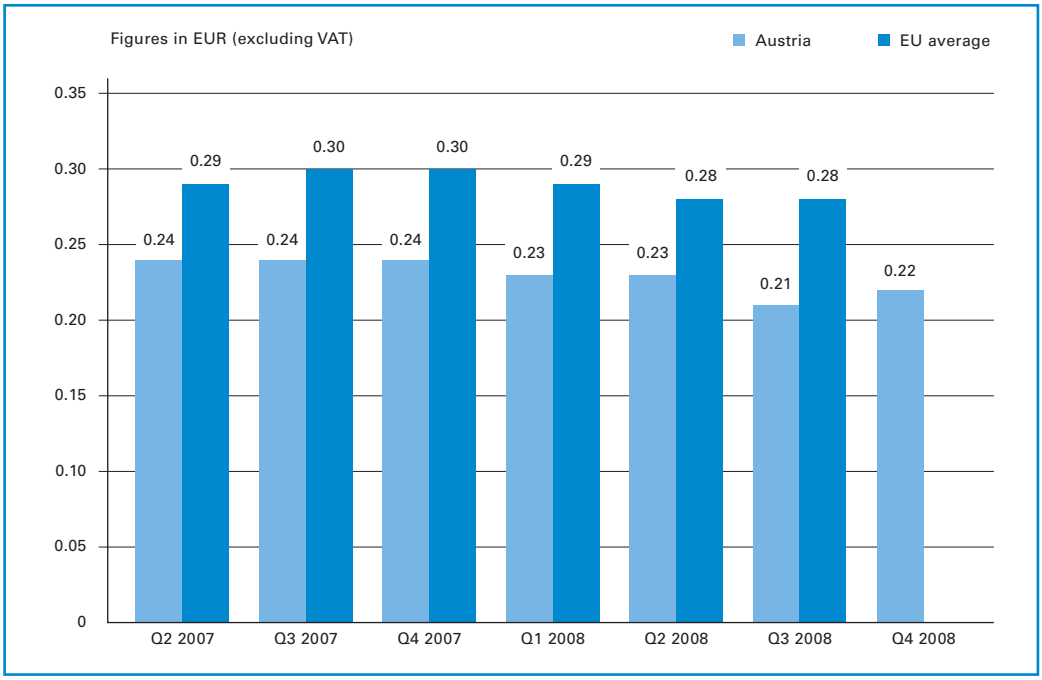
* Average rate paid by Austrian customers in the EU/EEA.

At present, the regulation does not stipulate limits for SMS and data roaming services, but in the summer of 2009 the Commission is expected to expand the regulation to include price regulations for SMS roaming at the retail and wholesale level and a price limit for data roaming at the wholesale level.

Average roaming rates dropped slightly in 2008.

Although Austrian consumers pay less than the European average for roaming text messages, the average price of EUR 0.21 per text message in the third quarter of 2008 is still far higher than the price suggested by the European Commission for the expansion of the Roaming Regulation (EUR 0.11 per text message).

Figure 50: Retail text message roaming rates within the EU/EEA

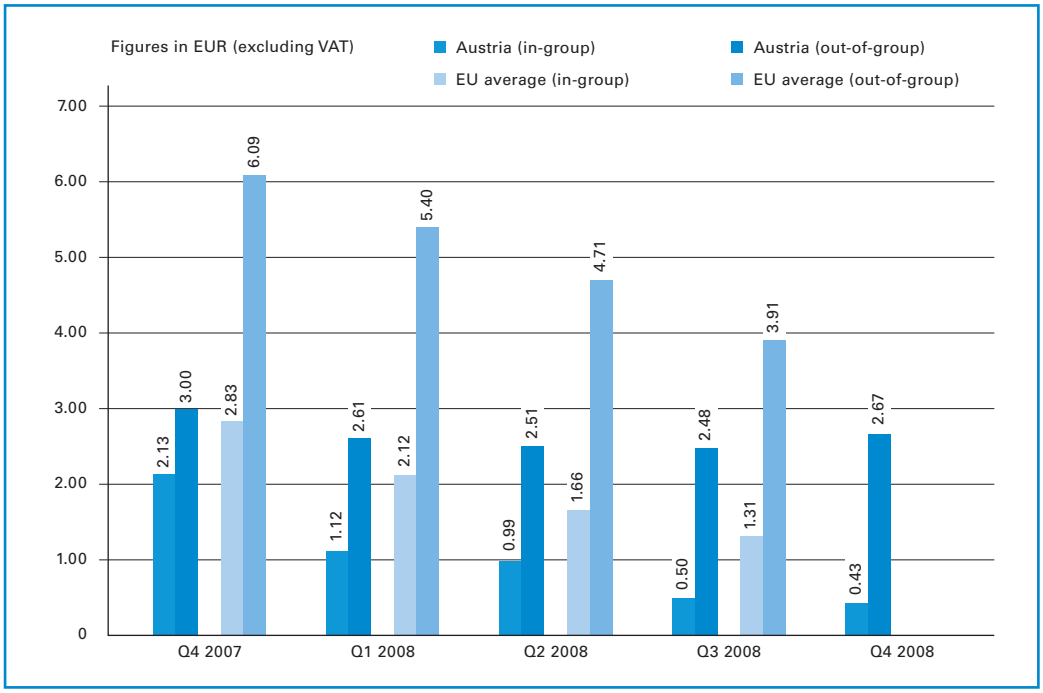


Source: RTR, International Roaming ERG Benchmark Data Report
EU average data for Q4 2008 was not yet available when this report was published.

Data roaming rates decreased drastically

Austria's data roaming rates at the retail level are among the lowest in Europe. For example, Austrian consumers pay an average of only EUR 0.43 per megabyte when they use data roaming services on a network belonging to the same corporate group as their home network operator. In contrast, customers in other EU member states pay EUR 1.31 per megabyte on average. Where data roaming services are used on networks not belonging to the same group, Austrian customers pay on average more than six times as much as the within-group rate (EUR 2.67 per megabyte). However, this rate is still lower than the average retail rate for out-of-group traffic in the EU, which came to EUR 3.91 per megabyte in the third quarter of 2008.

Figure 51: Retail data roaming rates within the EU/EEA (per megabyte)



Source: RTR, International Roaming ERG Benchmark Data Report
EU average data for Q4 2008 was not yet available when this report was published.

Outlook

Expansion of regulation expected in summer of 2009

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 the development of prices on its web site (http://www.erg.eu.int) using the results of those data surveys as a basis. In addition, we can expect an amended EU Roaming Regulation to go into force in the summer of 2009, which will provide for an extension and further reduction of price regulations on voice roaming, as well as an expansion of the regulation to include price limits for SMS roaming at the wholesale and retail level and data roaming price limits at the wholesale level (cf. Section 4.2.10.2).

5.2.4 Broadband

5.2.4.1 Introduction

Alternative network operators or Internet service providers (ISPs) 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.

Unbundling and bitstreaming: Wholesale services at different levels of the value chain

Bitstreaming is usually mentioned in connection with DSL services. 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.

Unbundling refers to an arrangement in which alternative network operators and other unbundling partners such as Internet service providers (ISPs) or leased line operators are not required to set up their own infrastructure to connect end users directly, but use Telekom Austria's copper-wire access network instead. A majority of unbundled local loops are used for broadband access (DSL), while voice telephony-only lines on unbundled local loops now play an increasingly subordinate role (less than 7% at the end of 2008). Local loop unbundling can be (and is) used by alternative providers in order to provide bitstreaming services as well. 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, the importance of mobile broadband access (3G/UMTS) in particular has also increased drastically since 2007.

5.2.4.2 Broadband 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 technologies, 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):** Broadband access via cable modems takes an approach that is similar to DSL (shared capacity in the core network 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 (access network) 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 has seen strong growth since the year 2007. RTR is currently examining the extent to which this technology can be regarded or is used as a substitute for line-based Internet access; given the rapid developments in this area, it will also be necessary to observe this technology closely in the future (cf. Section 5.2.4.7).

- **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, thus ensuring consistent transmission quality. In the case of DSL services, this dedicated capacity is only available in the local loop. On the backbone (e.g. ATM), however, the simultaneous use of transmission capacity (shared capacity) may create transmission bottlenecks (depending on the overbooking factors used). Broadband Internet access via leased lines is in higher demand among large companies.

- **W-LAN/WiFi/WiMax:** Wireless access technologies (apart from 3G) have attained a stable level of proliferation in Austria. These technologies can be used for (nomadic)[5] broadband access at hot spots (airports, train stations, cafés). In addition, WiMax offers an alternative to line-based broadband Internet access in rural areas where such services are not available (fixed wireless access, or FWA). Although FWA spread relatively quickly until the end of 2007, the absolute number of end users remained comparatively low and even saw a decline in 2008 (approximately 34,000 connections at the end of the year).

- **PLC (power lines):** This technology has not proliferated to any noteworthy extent and faced persistent difficulties in the testing phase. Pilot operations were partly discontinued after several years. In this context, problems arose in connection with high-frequency interference, which could have effects on the frequency bands used by amateur radio operators, to name one example. At present, just over 5,000 broadband connections have been realized using this technology.

- **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 hundred 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 only play a secondary role in Austria.

[5] i.e., without meeting all mobility requirements such as full coverage, handover, etc.

5.2.4.3 Retail market for broadband Internet

At the retail level, broadband Internet access can be realized in the following forms:

- 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 (CATV);
- Leased lines;
- Mobile broadband access (UMTS or HSPA), which is currently not part of 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 are as follows:

- Downstream capacity greater than 144 kbit/s;
- "Always on" service.

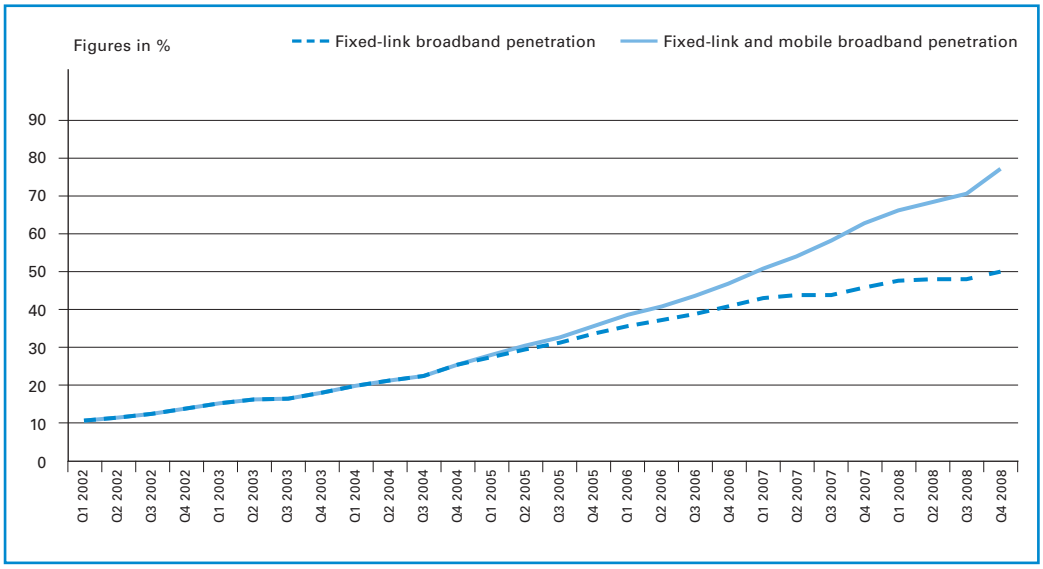
With regard to data rates, there is no (internationally) accepted standard definition of broadband access. The regulatory authority has defined 144 kbit/s as the upper limit for narrowband. Therefore, transmission speeds above that level are considered to be broadband.[6]

At the end of 2008, line-based broadband Internet connections were available for almost all households in Austria (over 96%), and more than half of Austria's households had taken advantage of such offers. This makes it clear that the services are offered by the network operators, but that customers do not use these services to the full extent possible in technical terms. If mobile broadband access is also included, more than 75% of households have broadband service.

The figure below shows the development of broadband penetration (in terms of households), which has seen consistent growth.

[6] 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.

Figure 52: Broadband penetration (percentage of households)

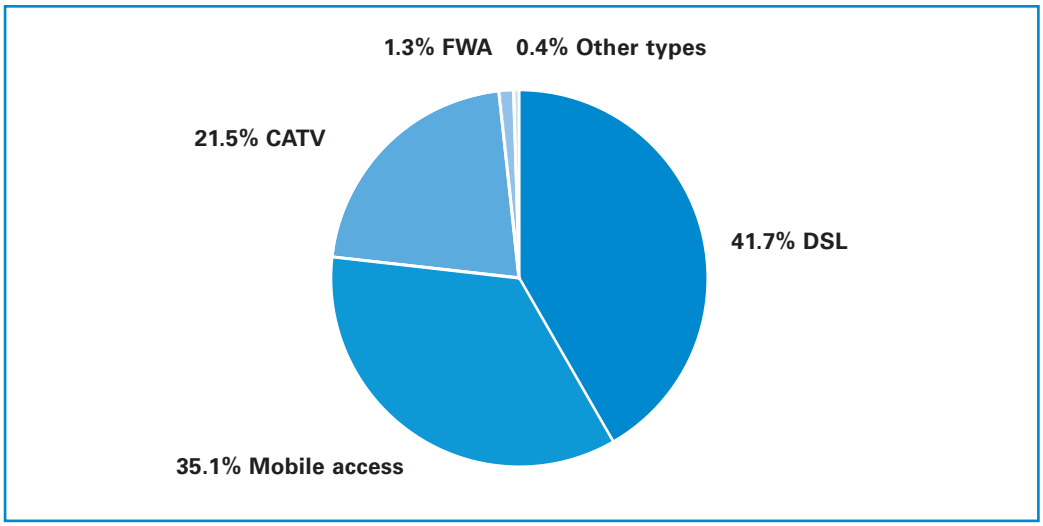


Broadband penetration already very high in Austria

Source: RTR

The figure below shows the distribution of technologies used on the retail consumer market.

Figure 53: Types of broadband access (end of 2008)



Less than half of all broadband Internet connections are provided using DSL.

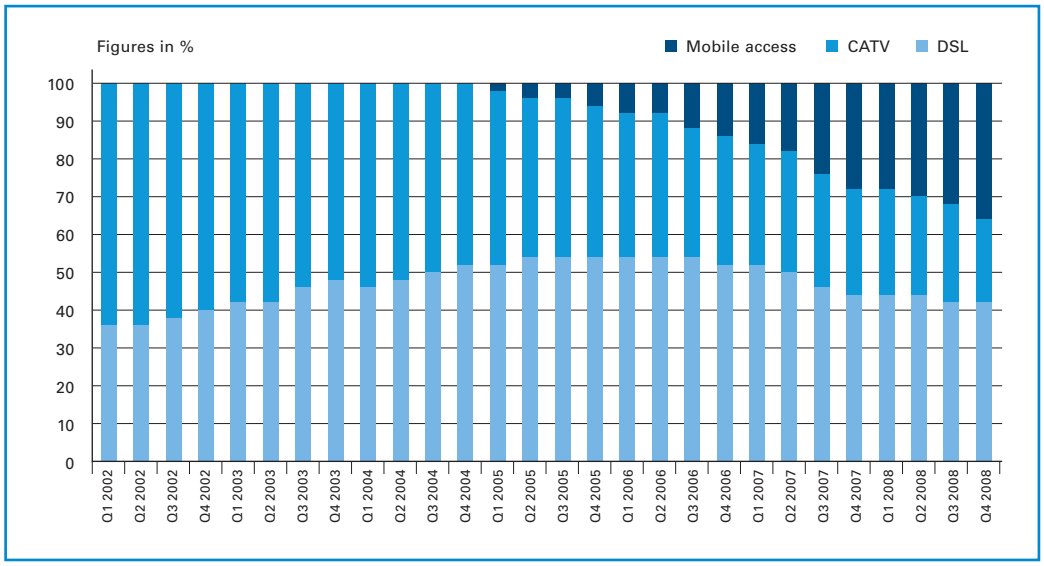
Source: RTR

This depiction makes it clear that approximately 42% of broadband connections are provided using DSL access technology.

Mobile broadband catching up quickly

The next chart shows the development of the most important access technologies – DSL, cable networks (CATV, coaxial cable, HFC) and mobile broadband (3G/UMTS/HSPA) – 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 had already surpassed CATV-based broadband connections.

Figure 54: Development of DSL, coaxial cable and mobile broadband



Source: RTR

5.2.4.4 Austria's largest broadband providers

Ten operators currently cover more than 90% of the market.

The largest providers of broadband Internet access on the Austrian retail market are as follows (by number of connections in descending order):

- Telekom Austria;
- UPC;
- mobilkom austria;
- T-Mobile;
- Hutchison 3G ("3");
- Tele2;
- Orange;
- Salzburg AG;
- LIWEST Kabelmedien;
- Kabelsignal.

Taken together, these operators hold a 90% share of the retail market, with individual market shares ranging from 1.5% to 30%.

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.

For information on the procedures carried out by the regulatory authority with regard to bitstreaming in the year 2008, please refer to Section 4.2.6.

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.

Market analysis decision provides for geographical distinction in regulatory measures.

The wholesale service based on DSL technology and referred to as "bitstreaming" is predominantly provided by Telekom Austria (more than 77%). 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 decision on the analysis of the broadband market.[7]

This was justified by the fact that broadband Internet connections were provided using various parallel types of infrastructure in areas of high population density, which also affected competitive conditions. In such areas, Telekom Austria had a market share of less than 30%. In contrast, Telekom Austria held a market share of over 70% in other regions.

[7] Decision M 1/07-534 of the Telekom-Control Commission of July 4, 2008 (http://www.rtr.at/uploads/media/1_M_1-07_web.pdf, in German)

It was thus possible to lift the obligation imposed on Telekom Austria to offer bitstreaming services in areas of high population density; however, it was expected that Telekom Austria would continue offering this service voluntarily. On the other hand, lifting the obligation to offer bitstreaming in areas of high population density would only have concerned approximately 20,000 bitstreaming connections among a total of some 2.2 million broadband connections (including mobile broadband) at that time. However, on December 17, 2008 this decision was overturned by the Austrian Administrative Court, thus rendering the carefully prepared analyses and conclusions regarding geographical differentiation obsolete.

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-based prices. For the year 2008, a price of EUR 9.33 was applied as the monthly charge for the rental of a complete unbundled subscriber line (cf. Section 4.2.2).

Unbundling generated decisive incentives to offer low-priced and innovative broadband services, especially in the Internet segment. Inode, Tele2 as well as numerous regional providers have taken advantage of these incentives (in some cases quite intensively), and by the end of 2008 more than 11% of all Telekom Austria's lines had actually been unbundled. Over 90% of unbundled lines are used for broadband access.

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 main distribution frame (MDF), then the households in that MDF's local loop area are considered to be 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.

66% of households are potential unbundling candidates.

The local loop areas covered by unbundling partners represent approximately 66% of Austrian households which could be unbundled at present (100% in Vienna). These figures make it clear that this market has enormous potential, although less than 300,000 of the 2 million potential households have been unbundled.

5.2.4.7 Mobile broadband

Once again, mobile providers recorded high growth rates in 2008 by offering new and attractively priced mobile broadband products based on faster technologies (HSDPA) which promise speeds of up to 7.2 Mbit/s, with prices comparable to those of introductory fixed-link products. Compared to the rest of Europe, Austria appears to have taken a leading position in the diffusion of mobile broadband.

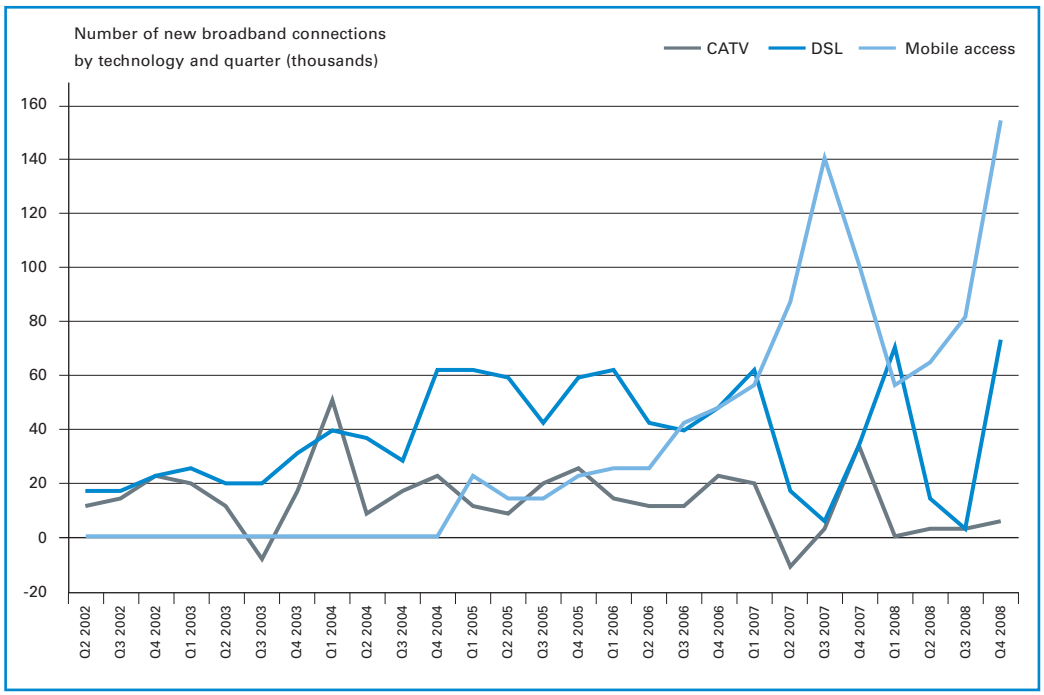
Whereas in the past mobile broadband connections were mainly used by business customers and highly tech-friendly residential customers as a complement to fixed-link broadband access (complementary usage), more and more residential customers are now using mobile broadband as their only form of Internet access. This increase in substitutive usage has had an adverse effect on fixed-link broadband connections. In the course of the year 2009, the number of mobile broadband connections surpassed the number of DSL connections in Austria (cf. Figure 54).

Telekom Austria responded by offering a combination package around the holiday season in 2007 and 2008, and in this way the company has been able to halt the slowdown in the growth of broadband (and thus also fixed-link) connections, at least temporarily.

The figure below shows the development of broadband access on a quarterly basis.

Rapid growth in mobile broadband since 2007

Figure 55: Growth in broadband access per quarter



Source: RTR

In light of these 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 an equivalent to fixed-link broadband connections to a sufficient extent. At the end of 2008, no reliable statements could be made in this regard because the relevant examinations and analyses are still in progress. Bandwidths of up to 7.2 Mbit/s are promised, but many of the mobile operators' base stations are connected in such a way that they can only offer low capacity. 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.

Surveys have already been conducted for a demand-side analysis examining these questions. The results will be used in the next analysis and delineation of the broadband market.

5.2.5 Leased lines

5.2.5.1 Introduction

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.

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.

Three relevant leased line markets

In line with the method applied in the delineation of markets for the TKMV 2008, three relevant leased line markets have been identified in Austria (see also Section 4.2.1.1):

- Retail leased lines up to and including 2.048 Mbit/s (retail market);
- Terminating segments of leased lines with low bandwidths up to and including 2.048 Mbit/s (wholesale market);
- Terminating segments of leased lines with high bandwidths over 2.048 Mbit/s up to and including 155.52 Mbit/s (wholesale market).

The market for terminating segments is differentiated according to bandwidth, with a distinction being drawn between low bandwidths (up to and including 2.048 Mbit/s) and high bandwidths (over 2.048 Mbit/s up to and including 155.52 Mbit/s). Due to the high intensity of competition in the segment, terminating segments with very high bandwidths (over 155,52 Mbit/s) are not covered by the TKMV 2008.

In addition, the market for terminating segments of leased lines with bandwidths over 2.048 Mbit/s up to and including 155.52 Mbit/s is differentiated geographically. Services classified in this market segment where both ends of the line are located in one of the following municipalities are not considered part of this market: Bregenz, Dornbirn, Feldkirch, Graz, Hallein, Innsbruck, Klagenfurt, Linz, Salzburg, Steyr, Wels and Vienna.

Ethernet services as a substitute for wholesale leased lines

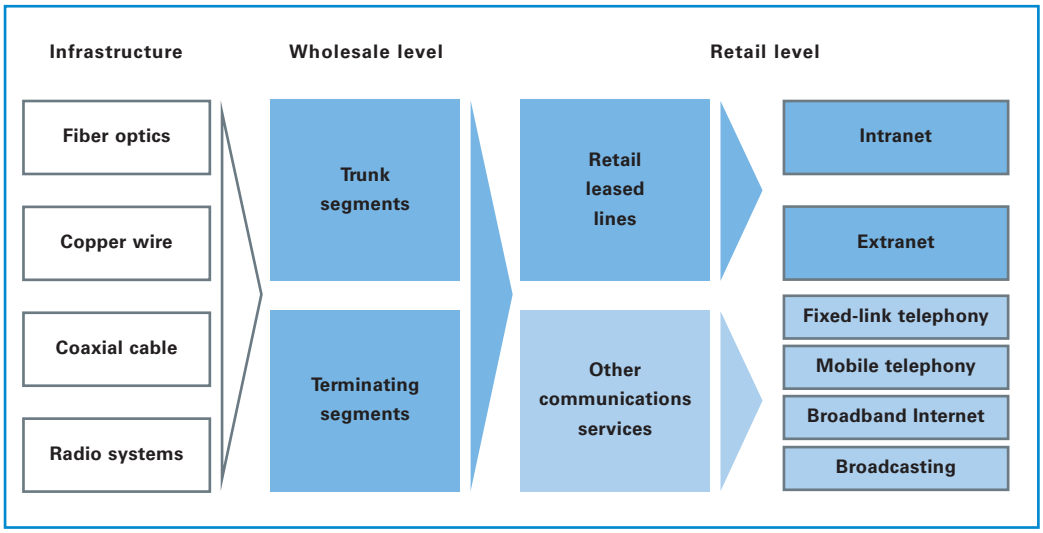
Compared to the definitions in the TKMVO 2003, the two relevant markets for terminating segments now also include Ethernet services in which a guaranteed bandwidth is provided between network termination points and in which the leased lines do not have user-side Ethernet interfaces.

In accordance with the European Commission's markets recommendation, the TKMV 2008 no longer defines the market for trunk segments as a relevant 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. As no competition problems were identified on this market and it had not been subjected to sector-specific ex ante regulation in the past, the market was not included in the TKMV 2008.

Even in the past, retail leased lines with bandwidths higher than 2.048 Mbit/s and international leased lines were not considered relevant to the delineation of markets under the Three-Criteria Test used to assess whether sector-specific regulation is necessary.

The figure below illustrates the relationship between wholesale leased lines and retail leased lines as well as other communications services.

Figure 56: 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.

5.2.5.2 Market data

5.2.5.2.1 Market participants

Table 17 shows the largest companies in the leased line sector based on total revenues in 2007 (January to December) and the markets (under the TKMVO 2003) on which the companies operate.

Table 17: Largest providers on the leased line markets (2007)

Telekom Austria the largest provider by far

Company	Share of revenues	Retail market ≤ 2 Mbit/s	Market for trunk segments	Market for terminating segments
Telekom Austria	approx 70%	■	■	■
Tele2	< 10%	■	■	■
COLT	< 5%	■	■	■
EVN	< 5%		■	■
Salzburg AG	< 5%	■	■	■
Elektrizitätswerk Wels	< 5%	■	■	■
Energie AG Oberösterreich	< 5%		■	■
T-Systems Austria	< 5%	■		

Source: RTR
Data for 2008 was not available when this report was published.

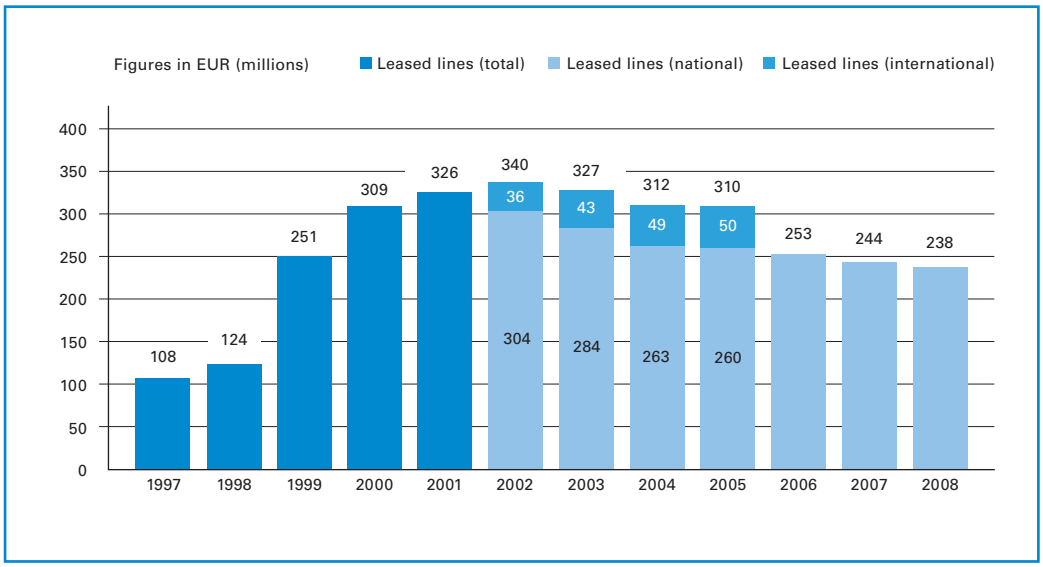
As of December 2007, a total of 39 companies served the demand for national leased lines. An examination of the overall revenues quickly makes it clear that Telekom Austria is the largest provider in the leased line sector (in terms of revenues). Table 17 also shows that many of the largest companies operate on all of the leased line markets, albeit to different extents.

5.2.5.2.2 Development of revenues

Decline in revenues continues in 2008.

As in previous years, the declining trend in revenues from national leased lines also continued in 2008. This can be attributed to decreasing demand for (relatively expensive) low bit-rate leased lines, to declining prices, and to increased substitution using other services (Ethernet services). Figure 57 provides an overview of the development of revenues generated by national leased lines since 1997, including both wholesale and retail leased lines. In 2008, national leased lines generated revenues of approximately EUR 238 million, which represents a decrease of 2% compared to the previous year's figure. Unfortunately, no data on international leased lines is available from 2006 onward.

Figure 57: Development of revenues from leased lines



Source: RTR
Due to subsequent corrections, the values shown for 2006 and 2007 differ slightly from those reported in the 2007 Communications Report.

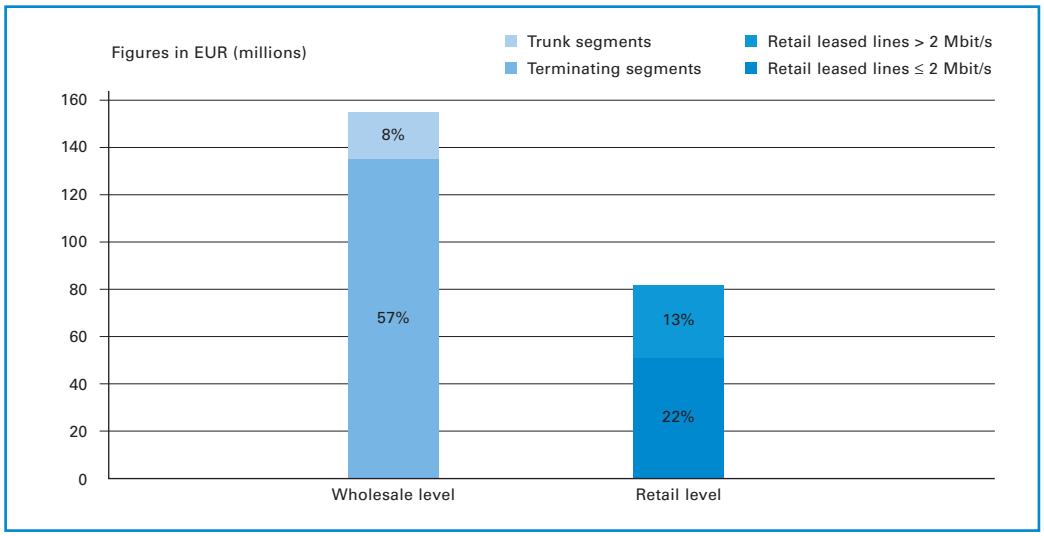
Trend toward higher bandwidths

The declining trend in revenues is most clearly 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 (>2Mbit/s) has been rising steadily 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.

Highest demand generated at the wholesale level

Most of the revenues from national leased lines are generated at the wholesale level, in particular by terminating segments (57%). The retail market accounts for 35% of the overall revenues from national leased lines; most of the demand in this segment is (still) for leased lines with bandwidths up to and including 2 Mbit/s (cf. Figure 58). 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.

Figure 58: Revenues by area in 2008



Source: RTR

5.2.5.2.3 International comparison of rates

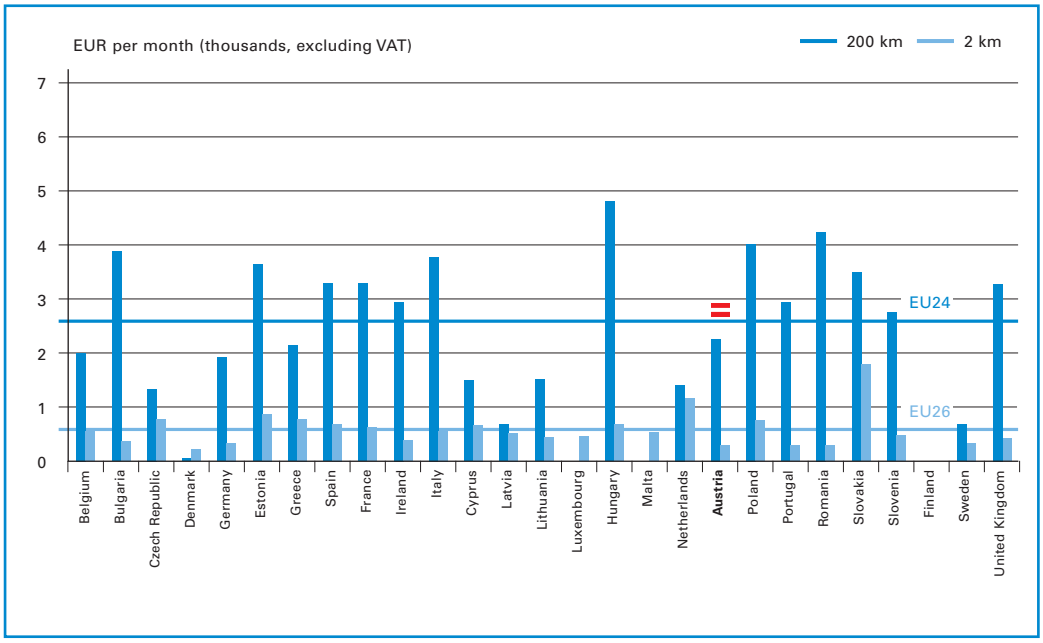
The Implementation Report published at regular intervals by the European Commission contains international comparisons of the leased line prices of the incumbent operator in each country and compares the annual expenditure (excluding setup charges and taxes) of retail customers for national leased lines with bandwidths of 2 Mbit/s and 34 Mbit/s and lengths of 2 km and 200 km.

Figure 59 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.

Austrian prices below EU average

This comparison makes it clear that Austria's prices (based on Telekom Austria's offers) are below the EU average for 2Mbit/s leased lines over distances of 2 km as well as 200 km; for short-distance 2Mbit/s leased lines, Austria's prices are even among the lowest in Europe, along with those in Denmark, Romania and Portugal. Moreover, the Implementation Report reveals that Telekom Austria's rates are also below the EU average for short-distance 34 Mbit/s leased lines in the retail segment, but above the EU average for long-distance 34 Mbit/s leased lines in that segment.

Figure 59: International leased line prices (2 Mbit/s), 2008



Source: 14th Implementation Report of the European Commission

6. RTR's activities as a competence center

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 national and international level.

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).

Fall 2008: Fourth Austrian Broadcasting Forum

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 2008, the Austrian Broadcasting Forum was entitled "Media on the Web" and dealt with the various legal aspects of online media. Participants in the forum presented Austrian as well as European perspectives, covering a broad spectrum of topics such as a journalistic perspective on new media, their general conditions in terms of organization and civil law, the protection of integrity and privacy, aspects of copyright law and collecting societies law, the significance of current Community standards and net neutrality.

In addition, the REM also produces a publication series on the topics discussed at each year's Broadcasting Forum.

6.1.2 Scientific works commissioned by RTR

In 2008, RTR commissioned extensive studies, all of which can be downloaded on the RTR web site (http://www.rtr.at).

Survey of Austrian television producers on the Austrian Television Fund

In order to assess the impact of the Austrian Television Fund on the Austrian film industry, RTR commissioned Hermann-Dieter Schröder of the Hans Bredow Institute in Hamburg to conduct a survey of Austrian television producers and to evaluate the Television Fund's system of film promotion. The results were published in March 2008. Over 90% of the interviewees confirmed the statement that the Austrian Television Fund serves to strengthen infrastructure in the Austrian film industry. Some 75% of those surveyed agreed that the Television Fund provides foreign television broadcasters with an incentive to produce in Austria. The indirect returns expected for Austria as a business location also underscore the need for film promotion in Austria.

Analysis of Austrian television programming

For the second time, RTR had an analysis of Austrian television programming carried out by Jens Woelke of the Communications Department at the University of Salzburg. As in the previous year, the study specifically addressed aspects of programming economics, the structural diversity of programming and the diversity of content in information broadcasts. The study focused on Austria's three general-interest channels (i.e., channels which offer comprehensive programming), ORF1, ORF2 und ATV, whose programs were analyzed using a one-week sample from April 16 to 23, 2007, 24 hours per day (from 3:00 am to 3:00 am). The insights generated by the Austrian study were also compared to reference data on eight general interest channels and the Swiss general-interest channel SF1 on the basis of a cooperation arrangement with the Association of State Media Authorities in Germany and the Federal Office of Communications (BAKOM) in Switzerland.

One topic of particular interest in the study, the first part of which was presented at RTR in April 2008, was the comparison of this year's data on the three Austrian channels with the data from the previous year. The summary of the study's findings indicates that all three Austrian channels were able to increase the share of information content offered during prime time. This change was not identified in any of the other German-language channels examined and thus represents a trend specific to the Austrian channels. One common trend identified in the German-language channels is that the share of "human touch" topics addressed in information shows is generally increasing, while ORF and ATV were also able to boost the overall share of controversial topics in their information shows in the past year. In addition, it is important to note that new Austrian channels have managed to attain a market share of approximately 5%, while the market share of ORF channels has slowly declined.

"Bundesland heute" news show also examined

The second part of the "Television programming analysis – Austrian general-interest channels in 2007" study, which was written by Woelke and other experts from the University of Salzburg (Christian Steininger and Andrea Dürager), was presented in June 2008. In this part of the study, the authors come to the conclusion that differences between the individual regional editions of the "Bundesland heute" news program do not carry a great deal of weight in ORF2's overall 24-hour programming. The analysis identifies potential improvements in the presentation of regional reports in such a way they can be perceived (attention to regional dialects), understood (attention to regional vernacular) and placed in context (references to regional agendas) easily by people in the region. Compared to the supraregional news content on ORF1, ORF2 and ATV, the "Bundesland heute" program reports on less controversial topics. Moreover, the share of non-political, non-fiction topics from society is higher, and the scope of "human touch" reports is greater.

Study on digital radio in Europe

During the plenary assembly of the Digital Platform Austria working group in June 2008, Markus Morgen of LS telcom presented the study "Digital Radio in Europe," which was commissioned by the Austrian Federal Chancellery and RTR. According to Morgen, "If we look at the digital radio situation in Europe at the moment, divergent developments appear to be emerging, which means that there is no uniform system in all countries as in the case of analog FM, but instead a tendency toward different standards in each country. In addition to 'digital diversification,' certain ancillary conditions are making the introduction of digital radio more difficult, thus making it clear that the ultimate success of the system hinges on coordinated action involving all parties affected." Moreover, Hilmar Linder and Jan Graf (Salzburg University of Applied Sciences) as well as Peter Reindl (RTR) presented their study on "The Costs of Introducing Digital Radio," which specifically examines the costs of digital terrestrial

radio broadcasting in Austria. For this purpose, the authors compare the projected costs of introducing and operating the T-DAB/DAB+ and HD Radio™ technology variants.

2 studies on independent radio broadcasting

The publication series entitled "Non-Commercial Broadcasting in Austria and Europe" was presented in October 2008 and includes two studies, one on the subject of "Ten years of independent radio in Austria: Open access, diversity of opinion and social cohesion" by Judith Purkarthofer, Petra Pfisterer and Brigitta Busch, and one on "Community media in Europe: General legal and economic conditions in the third broadcasting sector in five countries" by Helmut Peissl und Otto Tremetzberger. Both studies emphasize the major contribution of independent radio stations to dismantling the broadcasting monopoly and enhancing the diversity of opinions in Austrian media. Special challenges such as open access in programming, the diversity of opinions and social cohesion as well as multilingual programming can be regarded as a special form of radio broadcasting which differs from public and commercial broadcasting. As a measure to promote and ensure the diversity of local media, the authors recommend changing the regulatory framework in Austria in order to enable nationwide coverage in the medium term and to ensure that sufficient frequencies are provided. Moreover, the authors also suggest awarding multiple licenses to independent radio broadcasters in areas of high population density. Finally, the study also indicates that it is necessary to review the extent to which additional transmission capacity can be made available for community media in the course of digitization.

6.1.3 Involvement in training and education measures for broadcasters

Continuing education for Austria's private television stations

Measures to enhance quality and competition

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. 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. RTR supports these education measures in accordance with its legal mandate as defined in Art. 9 Par. 2 No. 3 KOG.

VFRÖ education program

Since 2006, RTR has maintained a grant agreement with the *Verband Freier Radios Österreichs* (Austrian association of independent radio broadcasters, or VFRÖ) to provide training and continuing education for employees at Austria's independent radio broadcasters. In cooperation with independent radio broadcasters and Okto (a Vienna community television station), the association organized over 250 workshops and seminars with more than 2,300 participants in 2008. One key focus area in the reporting period was the topic of quality development in education, in which the VFRÖ places the continuing education efforts of the non-commercial broadcasting sector in the context of lifelong learning.

6.2 Telecommunications Division

6.2.1 Information and communication technologies (ICT)

On the basis of expertise gained in recent years, RTR's competence center was able to make important contributions to Austria's development into a highly advanced information society:

Austrian Internet Offensive

Austrian Internet Offensive: A joint effort involving all ICT stakeholders in Austria

The Austrian Internet Offensive – a coordinated nationwide effort involving ICT stakeholders from businesses, interest groups, academic institutions and organizations in Austria – was launched under the auspices of Austrian Federal Chancellor Alfred Gusenbauer and Vice-Chancellor Wilhelm Molterer in March 2008. In over 20 sessions and numerous discussions, more than 400 experts developed over 200 measures intended to pave the way for Austria's advancement as an information society. Participants in this platform included all of the noteworthy companies and stakeholders in the ICT sector. The experts classified approximately 50 of the proposed measures as high priorities which will serve as the basis for a national ICT strategy. Those 50 measures have been described in greater detail and evaluated on the basis of various criteria (e.g., cost/benefit analysis, feasibility, etc.). The Austrian Internet Offensive was designed as a campaign to increase awareness of the critical importance of ICTs. The initiative dealt with the use of ICTs in all areas of life and brought together the most important stakeholders in the field to develop a common perspective; as a result, the campaign represents an important milestone in Austria's development into a highly advanced information society.

Working groups developed 50 high-priority measures

RTR responsible for content

RTR provided the editorial team for the Austrian Internet Offensive and was thus able to contribute its expert know-how to the initiative. RTR also assumed responsibility for the content of the campaign. In order to attain the results mentioned above, RTR organized, moderated and recorded the activities of various working groups in which high-level experts discussed the opportunities and challenges of ICTs in Austria. RTR also documented and summarized the participants' suggestions so that concrete measures could be proposed. These measures formed the basis for the resulting "Internet Declaration."

A discussion platform was also set up in order to involve other groups who could not attend the actual meetings. Stakeholders from various areas provided a large number of contributions and comments, which the editorial team prepared and documented so that they could be included in the Internet Declaration.

Result of Internet Offensive: Internet Declaration as a basis for a national strategy

As a visible result of this campaign, RTR's editorial team drew up the Internet Declaration in order to raise awareness of this sector's importance, to propose specific measures and to provide a basis for a national strategy.

ICT Factbook

Despite its outstanding importance, the ICT sector is barely noticed in the public eye and only addressed as a political issue in isolated cases. The general public's knowledge of this sector is often limited to rather specific areas, such as mobile communications. This low level of awareness of the sector's importance can be attributed in part to the available data, which is

often sparse and scattered. Reliable and regular data is provided by Statistics Austria as well as a few private market research companies and international organizations; otherwise, statistics on the sector can only be found in one-off or irregular studies.

ICT Factbook: In-depth data basis for the entire ICT sector

The publication of the ICT Factbook was an important initial step toward creating an in-depth data basis for the ICT sector as a whole. The publication contains a unique compilation of data from various fields, such as culture, health, security, education and other areas in which ICTs are used for the benefit of people in Austria. In contrast to other publications, the factbook not only addresses the core subject of information technology but also shows how intensively people use ICTs in various areas as well as the changes brought about by these technologies. In addition to the existing data material, a total of 14 experts (two per section) also contributed their views on current problems in each area of activity.

14 expert contributions

Presentation of ICT Factbook in November 2008

Based on the alarming fact that part of the population (e.g., people with special needs) does not benefit from the potential advantages of ICTs, the EU Commission declared 2008 the year of "e-Inclusion". The ICT Factbook, which was published as Volume 5/2008 of RTR's publication series, was presented to the public on November 10, 2008 at a book presentation on "e-Inclusion – An information society for everyone? Facts and figures." In the course of a moderated panel discussion, individuals who were personally affected as well as representatives of various population groups had the opportunity to report on their experiences with information and communication technologies.

ICT Task Force

RTR participated in 3 of 4 working groups in ICT Task Force.

In the ICT Task Force chaired by the Austrian Federal Ministry of Transport, Innovation and Technology (BMVIT), RTR contributed proposals on how to position Austria among the top ICT countries in the world. On the basis of the four strategic objectives set out in the 2006 Master Plan, four working groups were created to address the topics of ICT usage, awareness, infrastructure and location. As a competence center, RTR was heavily involved in developing results and proposals in the first three working groups. Along with other contributions, the proposals were discussed at length by the working groups, which largely consisted of representatives from the business world. The results were then incorporated into the Austrian Internet Offensive.

Results used as input for the Austrian Internet Offensive

6.3 The Review

The proposals for the review of the EU's regulatory framework for electronic communications (the "review package") adopted by the European Commission in November 2007 were subsequently debated in parallel by the European Council and European Parliament.

The European Economic and Social Committee delivered its opinion on May 29, 2008, and the Committee of the Regions adopted an opinion on June 19, 2008.

In the European Parliament, the review package was assigned to the Committee on Industry, Research and Energy (ITRE) as the lead committee as well as the Committee on Internal Market and Consumer Protection (IMCO) and the Committee on Civil Liberties, Justice and Home Affairs (LIBE).

Discussion in the European Parliament

The reports of the individual committees were presented before the summer. On September 24, 2008, the full European Parliament voted on the entire review package (first reading).

After the first reading in the European Parliament, the European Commission adopted the amended proposals for the entire review package on November 6, 2008, commenting in detail on the European Parliament's proposed changes.

Developments during Slovenia's EU Council presidency

Discussion by the European Council

Under the Slovenian EU Council presidency, the main topics of the reform proposals were defined and reviewed individually starting in January 2008. With regard to the "Better Regulation" Directive, the areas of radio frequencies, number assignment, Article 7 procedures and remedies were discussed. At the same time, with regard to the "Citizens' Rights" Directive, the topics of consumer protection and user rights as well as security and the protection of privacy and data were discussed.

Based on those discussions and supplemented (amended) by compromises proposed by the member state holding the presidency, consolidated versions of the Framework, Access and Authorisation Directives as well as the Universal Service and Data Protection Directives were drawn up. In the case of the latter two directives, progress was made quickly in finding a consensus on protecting the interests of consumers in the EU.

Rejection of European Commission's EECMA proposal

At the EU Council on June 12, 2008, a progress report was presented and views were exchanged regarding the overall review package. Even at that time, it was clear after a review of proportionality and subsidiarity in the European Commission's proposals that the establishment of the European Electronic Communications Markets Authority (EECMA), the far-reaching frequency harmonization measures for radio frequencies, and the European Commission's proposed power to veto market remedies (Article 7 procedures) were not supported by the European Council.

Developments during France's EU presidency

Agreement on common position in the Council

On the basis of the compromise proposals drawn up under the Slovenian presidency and with due attention to the results of the first reading in the European Parliament, the French presidency managed to reach a political agreement among member states on November 27, 2008 in finding a common position of the Council on the overall review package.

With regard to the establishment of a new authority for electronic communications markets, the presidency focused on improving the existing structure of the European Regulators Group (ERG). Instead of a new Community structure, the new body – which will apparently be known as the Group of European Regulators in Telecoms (GERT) – should be given a formal status, and the tasks of the group as well as its operations and relationships to Community bodies should be defined more precisely.

An overview of the topic areas addressed:

- Harmonization of frequency administration (with additional exemptions possible, especially for broadcasting, and highly limited new powers on the part of the European Commission);
- Instead of the European Commission's veto power, the possibility of submitting opinions on market remedies (Article 7 procedures);
- New time periods for market analysis procedures;
- Reference to investments in next-generation networks (NGNs);
- Functional separation of areas as a new remedy (only under strictly defined conditions);
- Reinforcement of consumer rights (increased transparency and disclosure of information as well as quality of service, improvement of access for users with disabilities);
- New regulations in the case of violations of the integrity of networks, services and personal data.

Outlook

Objective: Agreement in 2nd reading

The Council's common position of November 27, 2008 will be announced officially and conveyed to the European Parliament in mid-February 2009. As the current term of the European Parliament and Commission is drawing to a close, the objective is to reach agreement in the second reading by June 2009.

The new regulations would then be implemented in Austrian law in 2010/2011.

6.4 Convergence

Convergence of broadcasting and telecommunications

In 2008, RTR also continued to monitor international developments with regard to the convergence of broadcasting and telecommunications. One significant trend in this area is the rapidly increasing importance of mobile terminal devices (mobile telephones, netbooks, laptops) for Internet access and as a platform for many new applications and services which offer both audio and video content (e.g., television via UMTS as well as DVB-H). Since Apple's launch of the iPhone, the Internet giant Google has also entered this growing market directly with its own family of mobile phones (with the Linux-based Android operating system).

Against this backdrop, and in light of the relatively low cost of covering rural areas and thus avoiding a "digital divide", the mobile operators are now demanding a share of the digital dividend, specifically those frequencies which will no longer be necessary for existing broadcasts due to the switchover from terrestrial television to more efficient digital transmission. However, broadcasters generally have a very different perspective on this issue, as they wish to broadcast second-generation DVB-T as well as HDTV using the digital dividend frequencies (i.e., Channels 61 to 69). RTR is currently preparing a workshop on this topic, which has also

been the subject of lively debates at the international level; the workshop will take place in early 2009 and will be attended by representatives of classic broadcasting as well as mobile network operators from Austria and abroad.

Another trend can be identified in typical Internet content providers such as MySpace, which are beginning to make their way onto conventional televisions (e.g., some flat-screen televisions already include LAN connections), and at the same time conventional television broadcasters are also making great efforts to position their content on the Internet (e.g., ARD and ZDF's online media platforms).

Music downloads on the Internet, which were criticized heavily at the outset, have now become a key source of revenues; recently, there have been signs that digital rights management (DRM) systems (which are often unpopular among consumers) may largely be eliminated in the future.

The topic of convergence is being advanced by both the Broadcasting and Telecommunications Divisions at RTR.

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 topic 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

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 (http://www.rtr.at), where 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, collecting societies and postal services. 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.

Publications

RTR's frequent publications are another 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 the work of the regulatory authorities.

In addition, five new volumes in RTR's publication series were produced during the reporting period. The authors of these publications include both in-house and external experts.

Table 18: Titles in RTR's publication series in 2008

1/2008	Television programming analysis – General-interest channels in Austria in 2007
2/2008	Opportunities and risks of digital radio in Austria
3/2008	Non-commercial broadcasting in Austria and Europe
4/2008	Next Generation Access – Dialog between the regulatory authority and market participants
5/2008	ICT Factbook

Source: RTR

Information via publication series and newsletters

RTR's regular broadcasting and telecommunications newsletter (*RTR Aktuell*) provides timely information on regulatory decisions and international topics of interest from both divisions at RTR.

One especially popular publication is the quarterly RTR Telecom Monitor, which discusses developments on the telecommunications market and presents data on the fixed-link, mobile, leased line and broadband sectors.

Events

Numerous specialist conferences in the Broadcasting and Telecommunications Divisions

The regulatory authority conveys relevant topics to market participants and 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 field of broadcasting, highlights in 2008 included the presentation of the television programming analysis, the 4th Austrian Broadcasting Forum and a seminar on "Austrian films and distribution".

In the Telecommunications Division, RTR intensified its dialog with the telecommunications industry at recurring events such as meetings of industry working groups and regulatory discussions on mobile communications. The 9th annual Telecom Forum in Salzburg dealt with developments in Austrian and European telecommunications law in 2008. Upon publishing the ICT Factbook, RTR's Telecommunications Division organized a discussion forum on the topic "An information society for everyone? Facts and figures."

Management of inquiries

RTR handles a large number of inquiries by telephone and in writing every day. In 2008, RTR replied to nearly 3,800 written inquiries submitted to the e-mail address rtr@rtr.at, which were largely answered individually. The average processing time was two working days.

Table 19: Number of inquiries sent to rtr@rtr.at, 2006 to 2008

Number of inquiries remains fairly stable.

Year	2006	2007	2008
Number of inquiries	3,890	3,763	3,872

Source: RTR

In terms of content, the inquiries cover the entire scope of the regulatory authorities' activities, with the bulk of inquiries (58%) involving retail consumer affairs, broadcasting issues (13%) and telephone number administration (12%). In addition to answering written inquiries, RTR's experts frequently provided advice by telephone.

RTR's call center is also available for initial advising by telephone. The 0810 511 811 hotline (subject to a charge) handled nearly 7,000 calls in 2008, mainly dealing with topics such as objections to telephone bills, conciliation procedures and telephone number administration.

Table 20: Number of call center inquiries, 2006 to 2008

Call center: Slight decrease in inquiries

Year	2006	2007	2008
Calls	7,160	7,431	6,953

Source: RTR

Media relations

52 press releases

In order to provide the public with timely and accurate information on the activities and decisions of the regulatory authorities, RTR organized eight press conferences and prepared 52 press releases in 2008, in addition to answering numerous press inquiries and holding individual interviews with media representatives. In September 2008, media activities for the Austrian Television Fund were intensified. In the future, the broadcast dates and times of all projects supported by the fund will be announced by means of press releases.

7. The company

7.1 Staff structure and development

Stable personnel structure

With due attention to maternity leave and other leaves of absence, RTR's personnel structure remained largely stable in the reporting period.

On average, the company had 95.99 full-time equivalents (FTEs) in 2008. As of December 31, 2008, RTR's staff comprised 96.45 full-time equivalents (FTEs), which was 2 FTEs more than one year earlier.

This change can essentially be attributed to an increase in personnel in the field of retail consumer affairs due to the significant rise in the number of procedures and the need for greater international coordination of regulatory activities.

Shifts in the allocation of FTEs to each division arose from the fact that two positions in the Broadcasting Division were deliberately left vacant and due to employees on maternity leave and other leaves of absence.

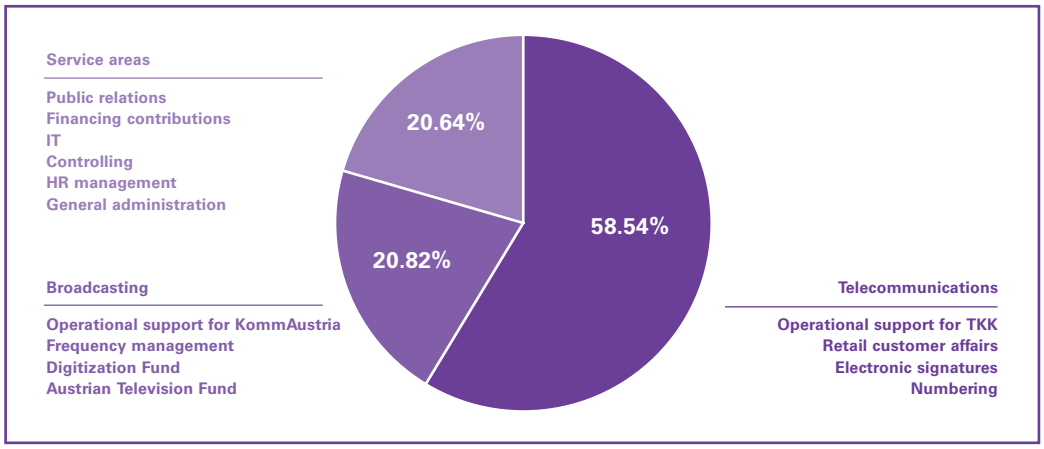
In order to enable the allocation of individual work efforts to each relevant area, RTR employees enter their activities in a timesheet software system as well as a project-based work tracking system. This ensures that work activities can be delineated precisely in cost accounting.

Allocation according to the "causer pays" principle

In order to ensure the optimum use of personnel resources, RTR's employees perform tasks in various areas of the company. Work activities in the service departments which cannot be allocated directly to specific units are assigned as overhead to RTR's cost units according to their share of RTR's head count.

Services are also exchanged between RTR's divisions. For example, the Economics department played a major role in the broadcasting market analyses in 2008, and regulatory activities for postal services were handled by the Telecommunications Division's Business Administration, Economics and Law departments. In internal accounting, these services are charged using RTR's current hourly rates. These measures ensure that RTR's personnel resources are used efficiently across the various areas of the company.

Figure 60: Staff structure and size as of December 31, 2008



Source: RTR

7.2 RTR's financial statements for 2008

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 2008 business year (January 1, 2008 to December 31, 2008).

RTR's income statement and balance sheet from the 2008 financial statements are presented below.

The company's revenues consist of financing contributions from broadcasters established 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) as well as payments from the federal government for activities related to postal market regulation (2005 Amendment to the Postal Services Act) and for RTR's activities as 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 2008 business year with a profit of approximately EUR 56,000.00 resulting from duties assigned to the company under the Austrian Postal Services Act 1997 (2005 Amendment to the Postal Services Act). The profit will be used to finance RTR's postal regulation activities in the year 2009.

Compared to the previous years, the development of RTR's expenditures is balanced.

Table 21: Income statement for the 2008 business year (January 1, 2008 to December 31, 2008)

		2008		2007	
		EUR		EUR '000	
1.	Net revenues		10,354,953.11		10,704
2.	Other operating income				
	a) Income from reversal of provisions	1,772,958.89		19	
	b) Other	163,593.37	1,936,552.26	94	114
3.	Personnel expenses				
	a) Salaries	-5,659,303.69		-5,292	
	b) Severance payment expenses	-126,772.12		-437	
	c) Pension insurance expenses	-163,175.31		-163	
	d) Cost of statutory social insurance contributions as well as remuneration-dependent charges and mandatory contributions	-1,386,729.43		-1,283	
	e) Voluntary benefit expenses	-104,303.97	-7,440,284.52	-95	-7,271
4.	Depreciation of intangible fixed assets and tangible assets		-214,563.17		-212
5.	Other operating expenses				
	a) Allocation to provision for anticipated losses	0.00		-1,750	
	b) Other	-3,184,502.97	-3,184,502.97	-3,491	-5,241
6.	**Subtotal of items 1 to 5**		**1,452,154.71**		**-1,906**
7.	Income from other securities held as financial assets		105,089.75		94
8.	Miscellaneous interest and similar income		133,230.59		138
9.	Income from write-ups of financial assets		50,856.90		0
10.	Expenses from financial assets				
	a) Depreciation of financial assets	0.00	0.00		-46
11.	Interest and similar expenses		0.00		0
12.	**Subtotal of items 7 to 11**		**289,177.24**		**187**
13.	**Result from ordinary activities =**		**1,741,331.95**		**-1,719**
14.	**Net annual profit/loss**		**1,741,331.95**		**-1,719**
15.	Reversal of capital reserves				
	a) Reversal of appropriated capital reserves		33,909.95		0
16.	**Profit in current year**		**1,775,241.90**		**-1,719**
17.	Loss carried forward		-1,719,376.66		0
18.	**Accumulated profit**		**55,865.24**		**-1,719**

Table 22a: Balance sheet as of December 31, 2008 – Assets

Assets

		Dec. 31, 2008		Dec. 31, 2007	
		EUR		EUR '000	
A.	**Fixed assets**				
I.	Intangible assets				
	1. Industrial property rights and similar rights	213,891.06		186	
	2. Prepayments and construction in progress	0.00	213,891.06	47	233
II.	Property, plant and equipment				
	1. Fixtures in rented buildings	42,839.33		24	
	2. Other fixed assets, furniture, fixtures and fittings	115,426.75		118	
	3. Prepayments and construction in progress	0.00	158,266.08	12	154
III.	Financial assets				
	Securities held as financial assets		3,345,420.61		3,289
			3,717,577.75		**3,676**
B.	**Current assets**				
I.	Receivables and miscellaneous assets				
	1. Trade accounts receivable	651,731.32		325	
	2. Other receivables and assets	85,105.39	736,836.71	179	505
II.	Cash on hand and at banks		3,414,172.22		4,069
			4,151,008.93		**4,574**
C.	**Prepaid expenses and deferred charges**		**126,681.17**		**59**
D.	**Trustee accounts - funds**		13,771,327.51		**11,849**
			21,766,595.36		**20,158**

Table 22b: Balance sheet as of December 31, 2008 – Liabilities

Liabilities

		Dec. 31, 2008		Dec. 31, 2007	
		EUR		EUR '000	
A.	**Equity**				
I.	Capital stock	3,633,641.71		3,634	
II.	Appropriated capital	106,482.39		140	
III.	Accumulated profit/loss	55,865.24	**3,795,989.34**	-1,719	**2,055**
B.	**Provisions**				
	1. Provisions for severance payments	257,037.77		921	
	2. Other provisions	1,232,480.00	**1,489,517.77**	2,941	**3,862**
C.	**Liabilities**				
	1. Trade accounts payable	276,713.71		369	
	2. Other accounts payable	2,065,893.53	**2,342,607.24**	1,628	**1,997**
	(taxes payable: EUR 416,190.50; 2007: EUR 295,000) Social security obligations: EUR 127,423.63; (2007: EUR 121,000)				
D.	**Trustee obligations - funds**		**14,138,481.01**		**12,245**
			21,766,595.36		**20,158**

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 23 below gives a breakdown of the main items in RTR's income statement for the Broadcasting (BC) and Telecommunications (TC) Divisions in order to ensure the transparency of sector-specific expenses. In the business year 2008, income and expenses were distributed as follows:

Table 23: RTR expenses by division

Figures in EUR (thousands)	BC	TC	Total
Net revenues	3,424	6,931	10,355
Other operating revenues	37	1,900	1,937
Personnel expenses	-2,141	-5,300	-7,440
Depreciation	-79	-136	-215
Other operating expenses	-1,330	-1,854	-3,184
Operating result	**-89**	**1,542**	**1,453**
Financial result	89	200	289
Result from ordinary activities	**0**	**1,742**	**1,742**
Reversal of capital reserve	0	34	34
Loss carried forward	0	-1,720	-1,720
Accumulated profit/loss	**0**	**56**	**56**

Source: RTR. Differences in sums are due to rounding.

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 (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 (adjusted from 2007 onward).

The Telecommunications Division is allocated federal funds amounting to EUR 2 million per year (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 (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 2008, the Digitization Fund received an endowment of EUR 6.722 million (based on 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 installments as of January 30th and June 30th each year.

The legal basis for the funds is established in Articles 9a to 9g KOG. These 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 in RTR's 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 Chancellor, who must then present the report to the Austrian National Council.

The resources in the funds established within RTR developed as follows in the year 2008:

Table 24: Austrian Television Fund: Excerpt from 2008 financial statements

	EUR	EUR
Balance in trustee account as of December 31, 2007		3,686,601.76
Income		
Increase from credits in 2008	7,500,000.00	
Surplus from administrative expenses from 2007	161,715.69	
Interest	235,695.76	7,897,411.45
Payments		
Administrative expenses from 2008	-585,000.00	
Grant payments from 2004	-41,417.78	
Grant payments from 2005	-46,308.00	
Grant payments from 2006	-175,147.37	
Grant payments from 2007	-2,573,399.46	
Grant payments from 2008	-4,638,278.00	-8,059,550.61
Balance of initial funds, debits and credits in 2008 **= Balance in trustee account as of December 31, 2008**		**3,524,462.60**
Administrative expenses from 2008 to be repaid to the fund in 2009		76,047.23
Balance of trustee obligations as of December 31, 2008		**3,600,509.83**
Grants approved but not yet paid out		-3,405,991.94
Funds available in 2009		194,517.89

Source: RTR

Table 25: Austrian Digitization Fund: Excerpt from 2008 financial statements

	EUR	EUR
Balance in trustee account as of December 31, 2007		8,162,815.73
Income		
Increase from credits in 2008	6,722,002.50	
Surplus from administrative expenses from 2007	233,411.91	
Repayment of grants	86,178.47	
Interest	490,735.41	7,532,328.29
Payments		
Administrative expenses and RTR's participation in projects in 2008	-842,500.00	
Grant payments from 2006/2007	-3,280,206.39	
Grant payments from 2008	-391,212.72	
Payment of subsidies for terminal devices	-934,360.00	-5,448,279.11
Balance of initial funds, debits and credits in 2008 **= Balance in trustee account as of December 31, 2008**		**10,246,864.91**
Administrative expenses and RTR's participation in projects from 2008 to be repaid to the fund in 2009		291,106.27
Balance of trustee obligations as of December 31, 2008		**10,537,971.18**
Grants approved but not yet paid out		-3,910,680.00
Funds available in 2009		6,627,291.18

Source: RTR

When the 2006 Amendment to the Collecting Societies Act (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 of the amended act. Pursuant to Art. 28 Par. 2 VerwGesRÄG, RTR's Broadcasting Division 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 allocates 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).

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 excess costs are offset by an annual grant in the amount of EUR 90,000.00 from the federal budget.

In the period from January 1 to December 31, 2008, RTR incurred total costs in the amount of EUR 187,716.55 in performing its duties pursuant to the Signatures Act. On the other side, revenues amounted to EUR 123,183.26 (including the grant from the federal budget). The loss in the amount of EUR 64,533.29 was covered by the profit from 2007 and a partial reversal of capital reserves.

For RTR's activities pursuant to the Postal Services Act 1997 (2005 Amendment to the Postal Services Act), the federal government allocated EUR 200,000.00 for the year 2008 and for advance services provided in the year 2007. In total, RTR's costs in this area amounted to EUR 108,263.50 in 2008 (2007: EUR 38,392.85), while additional revenues came to EUR 2,521.59. The resulting profit of EUR 55,865.24 will be used to cover expenses in the year 2009. Future financing will be governed by the forthcoming amendment to the Postal Services Act.

Therefore, the company's equity as of December 31, 2008 was as follows:

Table 26: Equity as of December 31, 2008

	EUR	EUR
Capital stock as of December 31, 2008		3,633,641.71
Capital reserve as of December 31, 2008		106,482.39
Profit from duties under the KOG, Jan. 1 to Dec. 31, 2008	1,750,000.00	
Profit from duties under the PostG, Jan. 1 to Dec. 31, 2008	55,865.24	
Loss from duties under the SigG, Jan. 1 to Dec. 31, 2008	-64,533.29	
Result from ordinary activities = Net annual profit/loss	1,741,331.95	
Reversal of capital reserve	33,909.95	
Loss carried forward	-1,719,376.66	
Accumulated profit		55,865.24
Equity as of December 31, 2008		**3,795,989.34**

Source: RTR

7.4 RTR Supervisory Board

As of December 2008, the RTR Supervisory Board consisted of the following members:

Josef Halbmayr (Member of the Management Board, ÖBB Holding 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, ECP EURO 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 (GSM)
3G	3rd generation (UMTS)

A

ABGB	General Civil Code *(Allgemeines Bürgerliches Gesetzbuch)*
ADR	Alternative Dispute Resolution
ADSL	Asymmetric Digital Subscriber Line
ANO	Alternative network operator
ASBL	*Association sans but lucrative*
ATM	Asynchronous Transfer Mode
ATO	Analog Turn-Off
AVG	General Administrative Procedures Act *(Allgemeines Verwaltungs-verfahrensgesetz)*

B

BAKOM	Swiss Federal Communications Office *(Bundesamt für Kommunikation)*
BKA	Federal Chancellery *(Bundeskanzleramt)*
BKS	Federal Communications Senate *(Bundeskommunikationssenat)*
BMVIT	Federal Ministry of Transport, Innovation and Technology *(Bundesministerium für Verkehr, Innovation und Technologie)*

C

CAPM	Capital Asset Pricing Method
CATV	Cable television
CbC	Call-by-call
CEPT	European Conference of Postal and Telecommunications Administrations *(Conférence Européenne des Administrations des Postes et des Télécommunications)*
CERP	European Postal Regulation Committee *(Comité Européen de Régulation Postale)*
CoCom	Communications Committee
CPS	Carrier pre-selection

D

DAB	Digital Audio Broadcasting
DMB	Digital Multimedia Broadcasting
DRM	Digital Radio Mondiale / Digital Rights Management
DSL	Digital Subscriber Line
DSLAM	Digital Subscriber Line Access Multiplexer
DVB-C	Digital Video Broadcasting – Cable
DVB-H	Digital Video Broadcasting – Handheld
DVB-T	Digital Video Broadcasting – Terrestrial

E

ECC	Electronic Communications Committee
ECG	E-Commerce Act *(E-Commerce-Gesetz)*

ECJ	European Court of Justice
EEA	European Economic Area
EECMA	European Electronic Communications Market Authority
EICTA	European Information & Communications Technology Industry Association (now called DIGITALEUROPE)
EMERG	Euro Mediterranean Regulators Group
ERG	European Regulators Group
ESI	Electronic Signatures and Infrastructures
ETSI	European Telecommunication Standardisation Institute
EU	European Union
EUR	Euro

F

FESA	Forum of European Supervisory Authorities for Electronic Signatures
FL-LRAIC	Forward-Looking Long-Run Average Incremental Costs
FL-LRIC	Forward-Looking Long-Run Incremental Costs
FM PT	Frequency Management Project Team
FTE	Full-time equivalent
FTTH	Fiber to the Home
FWA	Fixed Wireless Access

G

GERT	Group of European Regulators in Telecoms
GHz	Gigahertz
GSM	Global System for Mobile Communication

H

HD	High Definition
HDTV	High Definition Television
HFC	Hybrid Fiber Coax
HH	Household(s)
HHI	Hirschman-Herfindahl Index
HSDPA	High Speed Downlink Packet Access
HSPA	High Speed Packet Access

I

IC	Interconnection
ICT	Information and communication technologies
IMCO	Committee on Internal Market and Consumer Protection
IOT	Inter Operator Tariff
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
ITRE	Committee on Industry, Research and Energy
ITU	International Telecommunication Union

J

JTG	Joint Task Group

K

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)*
KOG	KommAustria Act *(KommAustria-Gesetz)*
KommAustria	Austrian Communications Authority
KSchG	Consumer Protection Act *(Konsumentenschutzgesetz)*

L

LIBE	Committee on Civil Liberties, Justice and Home Affairs
LRAIC	Long-Run Average Incremental Costs

M

MB	Megabyte
Mbit/s	Megabits per second
MDF	Main distribution frame
MHP	Multimedia Home Platform
MHz	Megahertz
MMS	Multimedia Messaging Service
MT	Mobile terminated
MUX	Multiplexer

N

NGA	Next Generation Access
NGN	Next Generation Network
NRA	National Regulatory Authority
NÜV	Number Porting Ordinance *(Nummernübertragungsverordnung)*

O

OECD	Organization for Economic Cooperation and Development
ORF-G	ORF Act *(ORF-Gesetz)*

P

Par.	Paragraph
PDH	Plesio-synchronous digital hierarchy
PIBs	Principles of implementation and best practice
PLC	Power line communication
PN	Private network
PostG	Postal Services Act 1997 *(Postgesetz 1997)*
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

RFMVO 2004	Broadcasting Market Definition Ordinance 2004 *(Rundfunkmarktdefinitionsverordnung 2004)*
RGG	Broadcasting Fees Act *(Rundfunkgebührengesetz)*
RRC	Regional Radio Conference

S

SDH	Synchronous digital hierarchy
SDSL	Symmetric Digital Subscriber Line
SigG	Signatures Act *(Signaturgesetz)*
SigV	Signatures Ordinance *(Signaturverordnung)*
SIM	Subscriber Identity Module
SKP-V	Special Communications Parameters Ordinance *(Spezielle Kommunikationsparameter Verordnung)*
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
TKKP	TKK Postal Regulation Committee
TKMV 2008	Telecommunications Markets Ordinance 2008 *(Telekommunikationsmärkteverordnung 2008)*
TKMVO 2003	Telecommunications Markets Ordinance 2003 *(Telekommunikationsmärkteverordnung 2003)*

U

UDV	Universal Service Ordinance *(Universaldienstverordnung)*
UGB	Austrian Commercial Code *(Unternehmensgesetzbuch)*
ULL	Unbundled local loop
UMTS	Universal Mobile Telecommunications System
UVS	Independent Administrative Board *(Unabhängiger Verwaltungssenat)*

V

VBKG	Cooperation of Consumer Protection Authorities Act *(Verbraucherbehörden-Kooperationsgesetz)*
VerwGesG 2006	Collecting Societies Act 2006 *(Verwertungsgesellschaftengesetz 2006)*
VerwGesRÄG 2006	Amendment to the Collecting Societies Act 2006 *(Verwertungsgesellschaftenrechtsänderungsgesetz 2006)*
VfGH	Austrian Constitutional Court *(Verfassungsgerichtshof)*
VHF	Very high frequency
VoB	Voice over Broadband
VoI	Voice over Internet
VoIP	Voice over Internet Protocol
VwGH	Austrian Administrative Court *(Verwaltungsgerichtshof)*

W	
WACC	Weighted average cost of capital
WGFM	Working Group Frequency Management
WiMAX	Worldwide Interoperability for Microwave Access
W-LAN	Wireless local area network
WRC	World Radio Conference

Z	
CSP	Certification service provider
ZuKG	Access Control Act *(Zugangskontrollgesetz)*

8.3 Selection of relevant legal sources (as of December 31, 2008)

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).
Audiovisual Media Services Directive (formerly the Television Directive)	Directive 89/552/EEC of the European Parliament and of the Council of 3 October 1989 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, amended by Directive 97/36/EC, OJ L 202 of 30 July 1997, p. 60, and by Directive 2007/65/EG, OJ L 332 of 18 December 2007, p. 27).
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, OJ L 105 of April 13, 2006, p. 54).

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 L 171 of 29 June 2007, p. 32).
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, amended by the EU Roaming Regulation).
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, amended by Directive 2005/29/EC, OJ L 310 of 25 November 2005, p. 28, and by the Audiovisual Media Services Directive).
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).
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. 142/2002.
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)* Federal Act on Cartels and Other Restrictions on Competition, Federal Law Gazette No. 61/2005 as last amended by Federal Law Gazette I No. 2/2008.
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 (WettbG)	*(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. 2/2008.
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. 21/2008.
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 as last amended by Federal Law Gazette I No. 59/2008.
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. 2/2008.
Federal Constitutional Broadcasting Act	*(BVG-Rundfunk)* Federal Act Ensuring the Independence of Broadcasting, Federal Law Gazette No. 396/1974.
General Administrative Procedures Act (AVG) 1991	*(Allgemeines Verwaltungsverfahrensgesetz)* General Administrative Procedures Act, Federal Law Gazette No. 51/1991 as last amended by Federal Law Gazette I No. 5/2008.
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. 52/2007.
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. 102/2007.
Postal Services Act 1997 (PostG)	*(Postgesetz)* Federal Act on Postal Services, Federal Law Gazette I No. 18/1998 as last amended by Federal Law Gazette I No. 70/2006.
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. 59/2008.
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 Mehrwertdienste-verordnung)* 6th RTR Ordinance defining regulations regarding communications parameters, fees and value-added services, as last amended by Federal Law Gazette II No. 77/2008.
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. 365/2004.
Frequency Allocation Ordinance (FWV)	*(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 Range Allocation Ordinance 2005 (FBZV)	*(Frequenzbereichszuweisungsverordnung 2005)* Ordinance of the Austrian Federal Minister of Transport, Innovation and Technology on the allocation of frequency ranges, Federal Law Gazette II No. 306/2005 as last amended by Federal Law Gazette II No. 524/2006.
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.
Interconnection Ordinance	*(Zusammenschaltungsverordnung)* Ordinance of the Austrian Federal Minister of Science and Transport specifying requirements with regard to interconnection, Federal Law Gazette II No. 14/1998.
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.
Multiplex Operator Selection Principles Ordinance 2007 (MUX-AG-V 2007)	11th Ordinance of the Austrian Communications Authority (KommAustria) specifying the selection principles for the issuance of terrestrial multiplex licenses in 2007.
Number Porting Ordinance (NÜV)	*(Nummernübertragungsverordnung)* Ordinance of the Austrian Federal Minister of Transport, Innovation and Technology on number porting in mobile communications networks, Federal Law Gazette II No. 513/2003.
Postal Service Cost Accounting Ordinance	*(Post-Kostenrechnungsverordnung)* 71st Ordinance of the Austrian Federal Minister of Science and Transport on a cost accounting system for universal postal services, Federal Law Gazette II No. 71/2000.
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.
Signatures Ordinance 2008 (SigV 2008)	*(Signaturverordnung 2008)* Ordinance of the Austrian Federal Chancellor on electronic signatures, Federal Law Gazette II No. 3/2008.
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)	*(Telekommunikationsmärkteverordnung 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. 505/2008.
Telecommunications Markets Ordinance 2008 (TKMV 2008)	*(Telekommunikationsmärkteverordnung 2008)* RTR ordinance identifying the relevant national markets susceptible to sector-specific regulation in the telecommunications sector, as last amended by Federal Law Gazette II No. 505/2008.

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 calculations 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
AGTT	Teletest working group *(Arbeitsgemeinschaft Teletest)*
A-Trust	A-Trust Gesellschaft für Sicherheitssysteme im elektronischen Datenverkehr GmbH
ATV	ATV Privat TV GmbH & Co KG
COLT	COLT Telecom Austria GmbH
EPI	Erich Pommer Institute
eTel	eTel Austria AG
FINAREA	FINAREA SA
GfK	GfK Austria GmbH
Hutchison 3G ("3")	Hutchison 3G Austria GmbH
KRONEHIT	KRONEHIT Radio BetriebsgmbH.
MEDIA BROADCAST	MEDIA BROADCAST GmbH
mobilkom austria	mobilkom austria AG
Multikom	Multikom Austria Telekom GmbH
One	ONE GmbH
Orange	Orange Austria Telecommunication GmbH (previously ONE GmbH)
ORF	Austrian Broadcasting Corporation *(Österreichischer Rundfunk)*
ORS	Österreichische Rundfunksender GmbH & Co KG
Post AG	Österreichische Post AG
ProSieben Austria	ProSieben Austria GmbH
PULS 4	Puls 4 TV GmbH & Co KG
REM	Research Institute for Electronic Mass Media Law *(Forschungsinstitut für das Recht der elektronischen Massenmedien)*
RMS	RMS Radio Marketing Service GmbH Austria
Silver Server	Silver Server GmbH
TA / Telekom	Telekom Austria TA AG
Tele2	Tele2 Telecommunication GmbH
Tellmore	TELLMORE Telefoniedienstleistungen GmbH
T-Mobile	T-Mobile Austria GmbH
UPC	UPC Austria GmbH
Verizon	Verizon Austria GmbH
VFRÖ	Austrian association of free radio broadcasters (*Verband Freier Radios Österreichs*)
VÖP	Austrian association of private broadcasters (*Verband Österreichischer Privatsender*)
VÖZ	Austrian Newspaper Association (*Verband Österreichischer Zeitungen*)
WKO	Austrian Federal Economic Chamber (*Wirtschaftskammer Österreich*)
YESSS!	YESSS! Telekommunikation GmbH

Publishing information

Owner and publisher: Austrian Regulatory Authority for Telecommunications and Broadcasting (Rundfunk und Telekom Regulierungs-GmbH), Mariahilfer Strasse 77-79, A-1060 Vienna Tel.: +43 (0)1 58058-0, Fax: +43 (0)1 58058-9191, e-mail: rtr@rtr.at, Internet: http://www.rtr.at.
Responsible for content: Alfred Grinschgl (Managing Director, Broadcasting Division) and Georg Serentschy (Managing Director, Telecommunications Division), Austrian Regulatory Authority for Broadcasting and Telecommunications.
Conceptual design and text: Austrian Regulatory Authority for Broadcasting and Telecommunications
Editors and coordinators: Daniela Andreasch, Anita Haspl, Michaela Ilming
Graphic design and layout: Johannes Bulgarini, Gföhl 8, A-3053 Laaben, Tel.: +43 (0)2774 8725, e-mail: jo@bulgarini.at
Printing: H+S Druck, Gadering 30, A-4921 Hohenzell
Translation: Christopher Anderson, e-mail: chris.anderson@wu-wien.ac.at

RUNDFUNK & TELEKOM REGULIERUNGS-GMBH

A-1060 Wien, Mariahilfer Str. 77–79
Tel: +43 (0)1 58058-0
Fax: +43 (0)1 58058-9191
http://www.rtr.at E-Mail: rtr@rtr.at
FN: 208312t HG Wien
DVR-Nr.: 0956732 Austria