

Communications Report 2010

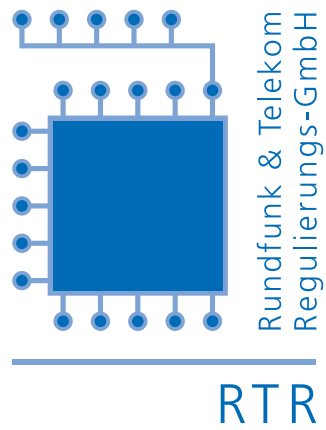








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Preface

In their activities, the Austrian Communications Authority (KommAustria), the Telekom-Control-Kommission (TKK), the Post-Control Kommission (PCK) and the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) aim to ensure innovative, high-quality and secure communication services at an affordable price for everyone, a diversity of opinions and media, and a forward-looking legal framework for the Austrian media, postal services and telecommunications sectors.

The 2010 Communications Report documents the regulatory activities of these bodies and serves to fulfill all of the authorities' legal reporting obligations, thus accounting for the requirements of transparency and comprehensibility.

In addition, the report provides in-depth and realistic insights into the problems and challenges addressed by KommAustria, the TKK, the PCK and RTR in fulfilling their legal duties and objectives in the interests of consumers and the economy during the reporting period.

We sincerely hope that the 2010 Communications Report provides you with interesting reading.

Vienna, June 2011

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1. Management summary:

We stand for competition and media diversity

RTR sees itself as an organisation committed to enhancing competition and media diversity, and aims to promote and strengthen the following:

- Competition in broadcasting, telecommunications and postal services;
- Efficient use of scarce resources;
- Electronic communications infrastructure and services;
- Media content production;
- Consumer interests.

In accordance with Art. 19 Par. 2 KOG, the Communications Report also provides RTR's owner (i.e. the Austrian federal government) with an account of the company's business activities as well as the operational fulfilment of regulatory objectives in the interest of all market participants and for the benefit of consumers.

Moreover, RTR is also required to report to the relevant bodies in the Austrian federal government on the fulfilment of its regulatory objectives as stipulated in the relevant material laws. In this context, the Communications Report focuses on RTR's reporting obligations pursuant to Art. 34 Par. 2 TKG 2003. Under Art. 24 Par. 2 TKG 2003, the report must also include information on unfair practices in the provision of value-added services as well as the measures taken to combat such practices.

RTR strives to fulfil its duties, to meet its regulatory objectives and to carry out its activities as a competence centre with a maximum of efficiency and efficacy. On the basis of international benchmarks, RTR was once again able to maintain its outstanding position among national regulatory authorities in this regard in 2010.

The key topics and activities covered in this year's Communications Report are summarised briefly below.

1.1 Media: Contribution to the achievement of objectives under the KommAustria Act and the Telecommunications Act 2003

Under the Austrian Broadcasting Law Amendment (Federal Law Gazette I No. 50/2010), KommAustria was transformed into an independent panel authority which has the powers of a court and is not bound by instructions from any other authority. In addition, the scope of the authority's responsibilities was expanded to include numerous new duties.

Objectives of KommAustria defined in Austrian law

The objectives to be pursued in the regulatory activities of KommAustria and RTR's Media Division are defined as follows in Art. 2 Par. 3 of the KommAustria Act (Tasks and objectives of KommAustria):

1. to promote market access for new providers;
2. to ensure the diversity of opinions and encourage quality in broadcasting programmes, 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 optimise 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 Austria's high locational quality.

In addition, the objectives of the Media Division's regulatory activities also include promoting competition in the field of electronic communications as set forth in Art. 1 Par. 2 TKG 2003.

Therefore, the main focus of the authority's regulatory duties is to enable competition as well as a diversity of opinions and media in the interest of the entire population of Austria.

All of the activities of KommAustria and RTR's Media Division in the year 2010 can be attributed to the duties defined in Art. 2 KOG and Art. 120 TKG 2003 or to the additional duties of promoting digitisation, supporting television film production and private broadcasting, administering and allocating press and journalism subsidies, and operating a competence centre for media industry affairs.

In this context, the allocation and licensing procedures under the Private Radio Act (PrR-G) and the Audiovisual Media Services Act (AMD-G; formerly the Private Television Act, or PrTV-G) in 2010 were also a major part of the authority's efforts to establish a dual broadcasting market, and the number of procedures and parties involved was largely comparable to previous years. In the year 2010, the authority's activities in the field of radio broadcasting focused on the 17 procedures for the re-allocation of the ten-year broadcasting licences set to expire in 2011.

*Radio:
Re-allocation of
17 expiring licences*

Moreover, KommAustria announced the possibility of applying for a nationwide radio licence until February 25, 2011. At the end of the year 2010, however, no applications had been received.

In the field of digital television, the expansion of national, regional and local coverage with digital terrestrial television continued, and additional local and regional private multiplex platforms were able to launch broadcasting operations in 2010.

*Expansion of multiplex
platforms for digital
television*

Other key activities in 2010 included the authority's extensive preparations for drawing up a new Digitisation Plan pursuant to Art. 21 AMD-G. For this purpose, a plenary assembly of the Digital Platform Austria was convened in February 2011 (for further information, please refer to Section 5).

*2011 Digitisation Plan
in preparation*

While the licensing procedures under the Private Radio Act (PrR-G) and the Audiovisual Media Services Act (AMD-G) are decisive to market access for private broadcasters, the approval of new media services under the ORF Act (ORF-G) is relevant to the activities of the Austrian Broadcasting Corporation (ORF).

This area already began to emerge as an important focus of the regulatory authority's activities in 2010, and additional preliminary review procedures as well as ORF services subject to notification requirements can be expected in 2011. In addition to the handling of procedures by RTR's Legal Department and KommAustria, this will require expertise in the fields of media and economics. In 2010, the regulatory authority launched preparations for the appointment of a review commission pursuant to Art. 40 ORF-G. After completion of the EU-wide selection procedure, this commission will be appointed by KommAustria in early 2011.


*Preparations for
appointment of ORF
Review Commission*

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 neighbouring 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 preventing technical interference, the purpose of these conferences is to optimise the use of the frequency spectrum, as broadcasting frequencies are a scarce resource in every country.

*International frequency
coordination*

The need to ensure a diversity of opinions plays an especially important role in the awarding of licences. KommAustria and RTR as its operative arm are also responsible for the legal supervision of multiplex operators, private broadcasters and (since October 2010) audiovisual media services. These activities serve to encourage pluralism in the Austrian media landscape as well

*Legal supervision of
private broadcasters
and ORF*



as the creation of fair conditions for competition. In addition to issuing licences, activities in this area specifically include the approval of changes in programming and ownership as well as monitoring compliance with legal regulations and the terms and conditions of broadcasting licences. In this context, suspected violations of the provisions of the ORF Act, the Private Radio Act, the Audiovisual Media Services Act and the Act on Exclusive Television Rights (FERG) are largely pursued ex officio and in response to complaints submitted to the authority.

This area also accounted for a significant part of KommAustria's regulatory work in the year 2010. The authority's activities involved legal supervisory procedures regarding the multiplex operators' obligation to launch broadcasting operations as well as responses to numerous complaints from competing radio broadcasters due to suspected violations of advertising regulations under the Private Radio Act. After October 1, 2010, complaints were also filed with regard to the ORF.

Specific supervision of ORF

Moreover, the ORF Act calls for further official measures related to content monitoring, which will be handled by KommAustria to a greater extent in 2011. These measures largely refer to monitoring business development, structural measures, adherence to quality assurance rules, adherence to the ORF's public mandate, and the programming fees for the ORF and its subsidiaries. Supervisory measures in this area were already initiated in 2010.

Monitoring of adherence to regulations governing commercial communication

In particular, it is important to note the ongoing monitoring of broadcasts and Internet services of the ORF, of its subsidiaries and of private Austrian broadcasters and audiovisual media service providers in order to ensure adherence to regulations pertaining to commercial communication; in this context, the regulatory authority monitored the broadcasters' compliance with advertising regulations.

Broadcasting markets defined by KommAustria

In addition to their co-regulatory tasks relating to the supervision of multiplex platforms, KommAustria and RTR also have at their disposal a number of specific instruments of competition regulation regarding infrastructure under the Telecommunications Act 2003. Upon completion of the relevant market definitions and market analyses, these instruments may be employed for the sake of enabling the highest possible level of competition on the markets for broadcasting infrastructure. In 2010, KommAustria continued the ongoing market analysis procedures with regard to three specific broadcasting markets (analogue terrestrial transmission of FM radio broadcasting signals to end-users; access and digital terrestrial transmission of television signals to the end-user via the multiplex platforms MUX A and MUX B; access to transmission facilities and the digital terrestrial transmission of television signals to the end-user).

Austrian Digitisation Fund

Grants for consumers, MUX C platforms and DVB-T2 trials

In 2010, RTR continued to administer grants for digital transmission technologies and digital applications based on European standards in connection with broadcasting. Grants were again awarded to retail consumers, who were provided with vouchers for DVB-T/DVB-C boxes at reduced prices; to broadcasters in order to facilitate the digital terrestrial transmission of regional and local broadcasting channels via regional and local DVB-T multiplex platforms and broadcasting facilities (known as "MUX C"); and to ORS for trial broadcasting operations based on the DVB-T2 standard. Finally, an ORF project involving the operation of digital cable multiplex platforms via which ORF and ATV channels as well as various additional services were broadcast in high quality via cable networks came to an end in December 2010.

Austrian Television Fund

The provisions of Articles 9f and 9g in conjunction with Articles 9c to 9e KommAustria Act (KOG), which went into effect on January 1, 2004, previously defined the basis for the activities of the Austrian Television Fund (FERNSEHFONDS AUSTRIA). Under the 2010 amendment to the KommAustria Act (Federal Law Gazette I No. 50/2010), which went into effect on October 1, 2010, the Television Fund's activities are now governed by Articles 26 and 27 in conjunction with Articles 23 to 25 KOG. As the total amount of grants was increased as of June 30, 2009, grants totalling EUR 13.5 million are now available each year (previously EUR 7.5 million).

The overarching goal of grants from this fund is to strengthen the Austrian film industry and Austria as a media location. The objective of strengthening the Austrian film industry involves reinforcing the rights of producers vis-à-vis television broadcasters (e.g. by ensuring that broadcasting rights are granted for a limited time period). With regard to strengthening Austria's position as a media location, the purpose of the grants is to create an incentive to launch productions and co-productions which create a large share of added value in Austria, which involve production companies from Austria and abroad, and which are financed by Austrian as well as foreign television broadcasters.

In addition, the fund is also intended to help maintain a diverse cultural landscape and strengthen the audiovisual sector in Europe.


Private and Non-Commercial Broadcasting Funds

The Fund for the Promotion of Private Broadcasting (Private Broadcasting Fund) and the Fund for the Promotion of Non-Commercial Broadcasting (Non-Commercial Broadcasting Fund) were established by an amendment to the KommAustria Act in 2009 for the purpose of promoting the dual broadcasting system in Austria and helping broadcasters deliver diverse and high-quality programming. The funds are allocated in accordance with the provisions of applicable law and a set of guidelines which were subject to approval by the European Commission under the state aid rules of the EC Treaty.

Press and journalism subsidies, Advertising Council and Press Council

The general objective of the grants defined under the Press Subsidies Act 2004 (PresseFG 2004) and in Section II of the Journalism Subsidies Act 1984 (PubFG), which are awarded by KommAustria, is to maintain diversity in Austria's media landscape. In addition, support is provided for self-regulation bodies in the media field, specifically the Austrian Press Council pursuant to Art. 12a PresseFG 2004 and the Austrian Advertising Council pursuant to Art. 33 KOG.

In addition to these two councils, the grants are intended for publishers of daily and weekly newspapers, associations exclusively devoted to the promotion of reading, associations for journalist education, press clubs, research projects on press-related topics, as well as publishers of newspapers which serve the purpose of educating citizens. Research projects are supported with advance grants, while all other grants are awarded ex post for activities carried out in the year prior to the allocation. The amount granted is determined either on the basis of circulation, publication frequency and costs incurred using a legally defined formula, or on the basis of various criteria defined in the relevant law.



These grants are recurrent annual subsidies awarded to a group of recipients which changes only slightly from year to year.

Competence centre

Under Art. 20 KOG, RTR is also responsible for maintaining a competence centre for media and telecommunications industry affairs. In the Media Division, expenditure for the activities of the competence centre is limited to a maximum of 10% of overall expenditure for that industry. In 2010, the competence centre's activities comprised RTR studies on topics relevant to the media (which were subsequently published in RTR's publication series) as well as other specialist publications and events. In addition, RTR and KommAustria also played an active role in the activities of the Research Institute for Electronic Mass Media Law (REM).

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

RTR sees itself as an organisation committed to enhancing competition and media diversity. Accordingly, the regulatory authorities work to implement the objectives defined in the TKG 2003, which form the framework for the activities of the Telekom-Control-Kommission (TKK), the Post-Control-Kommission (PCK), and RTR.

All of these activities pursue the following objectives:

- Definition of a general framework for the market;
- Enforcement of rights and obligations;
- Fair, transparent and non-discriminatory allocation of scarce resources;
- Protection of consumer interests;
- Promotion of investment and innovation;
- Support for EU-level harmonisation in the interest of fair, sustainable and functioning competition.

This section discusses a number of examples of the regulatory authority's activities during the reporting period. Further information on each topic can be found in the relevant sections of the report.

Market definition and analysis procedures

In 2010, the regulatory authority largely completed the procedures initiated in 2009 to determine whether effective competition prevails or (at least) one operator possesses significant market power (SMP) on the markets defined in the Telecommunications Market Ordinance 2008 (TKMV 2008). The following procedures carried out in 2010 are worth mentioning:



Leased lines

With regard to leased lines, three procedures were completed. In Procedure M 6/09 (analysis of the retail market for leased lines up to and including 2 Mbit/s) as well as Procedures M 7/09 (analysis of the wholesale market for terminating segments with low bandwidths) and M 8/09 (analysis of the wholesale market for terminating segments with high bandwidths), the regulatory authority determined that A1 Telekom Austria AG possesses significant market power on each of the markets concerned. As a result, specific obligations were imposed in accordance with the TKG 2003 in order to address the competition problems identified.

In addition to the market analysis procedures concerning leased lines, one procedure was carried out to review the specific obligations imposed on A1 Telekom. In Procedure S 12/10 (reference offers for terminating segments of leased lines and Ethernet services with guaranteed bandwidths), the regulatory authority reviewed the reference offers published by A1 Telekom in July 2010. A number of points were initially regarded as problematic, but A1 Telekom was able to eliminate the regulatory authority's concerns after thorough discussion and appropriate adaptations.

Mobile termination

In this area, it is worth mentioning Procedure M 11/09, the market analysis procedure concerning mobile termination in the Mundio Mobile (Austria) Limited (Mundio) network. In this procedure, the regulatory authority determined that Mundio, a mobile virtual network operator, possesses significant market power and imposed (among other things) specific charges for the service of mobile termination.


Physical access

In a decision issued on September 6, 2010 in Procedure M 3/09 (analysis of the market for physical access to network infrastructure), the TTK specified the general conditions for the expansion of broadband communications networks in Austria.

This key decision created clarity for all parties, as it forms the basis for financial incentives for investment and further planning. The operators will be accommodated on the basis of where they currently stand: For A1 Telekom and other potential investors, incentives will be created for the rollout of optical fibre networks, and for companies which plan to maintain their focus on copper unbundling, the long-awaited deployment of a new, higher-performance transmission standard (VDSL2) will be enabled from the central exchange.

Wholesale broadband

With regard to wholesale broadband services, three market analysis procedures were completed. One special characteristic of Procedure M 1/10 (analysis of the wholesale market for the provision of broadband access for non-residential customers) arose from the fact that the market definition was restricted to the wholesale market for the provision of access for non-residential customers due to especially high competitive pressure from mobile broadband services in Austria; in 2009, this narrow definition drew a high level of attention, also at the international level.



The procedure was completed with a decision issued on November 15, 2010 in which the regulatory authority determined that A1 Telekom possesses significant market power on the market in question.

Wholesale fixed-link services

On the market for fixed-link origination services, the regulatory authority also identified A1 Telekom as an SMP operator in the course of Procedure M 4/09.

In the field of fixed-link termination, the authority determined that A1 Telekom as well as 21 additional operators possess significant market power (Procedure M 5/09). In all three procedures, the operators were each subjected to specific obligations in order to address the competition problems that would arise in the absence of regulation.

Retail markets

With regard to the retail markets for access to the public telephone network at a fixed location for residential and non-residential customers (i.e. access for retail customers), the regulatory authority was able to complete two procedures which had been initiated in 2009 (M 1/09 regarding residential customers and M 2/09 regarding non-residential customers). In addition, the TTK completed the procedure regarding the retail market for publicly available telephone services provided at a fixed location for non-residential customers (M 10/09, likewise initiated in 2009) by issuing an official decision.

Network access

The interconnection of communications networks supports interoperability between subscribers in all public telephone networks. This is important for market participants as it ultimately allows them to provide their services on the market.

Procedures Z 1/10 and Z 2/10 involved setting interconnection charges. For this purpose, the regulatory authority issued official orders setting the charges between A1 Telekom and Hutchison 3G Austria GmbH (Hutchison) as well as A1 Telekom and Verizon Austria GmbH (Verizon).

Procedures Z 3 to Z 7/09, Z 3/10 and Z 5 to Z 14/10 dealt with VDSL2 switching guidelines between A1 Telekom and the following operators: Tele2 Telecommunication GmbH (Tele2), UPC Austria GmbH (UPC) and Silver Server GmbH (Silver Server). In those procedures, the TTK issued partial unbundling orders on December 20, 2010. The issue under discussion concerned the use of VDSL2 technology in A1 Telekom's access network.

In response to a petition by 1012-Festnetz-Service GmbH, the regulatory authority issued general regulations regarding communications network interconnection with Mundio in August 2010, as the parties were previously unable to agree on an acceptable solution (Procedure Z 4/10).

Shared use of communication lines and site sharing

In this rather new area of activity, the regulatory authority was required to address the issue of shared use of A1 Telekom's dark fibre by Silver Server in Procedure D 1/10. After thoroughly examining the case at hand and obtaining an opinion from an official expert, the TKK issued an order instructing A1 Telekom to allow shared use of this infrastructure.

Supervisory procedures

In this area, it is particularly worth noting Procedures R 1/10 and R 10/08: The former was a supervisory procedure involving Mundio, as this operator failed to fulfil its obligation to provide a reference offer for the service of (mobile) termination. The latter procedure dealt with A1 Telekom's charging of a "deinstallation fee" for mobile number porting. The regulatory authority was able to conclude the procedure involving Mundio, while Procedure R 10/08 was still pending at the end of the reporting period.

General terms and conditions and tariffs

This area of regulatory activity deals with the approval of tariffs (fees and charges) and the general terms and conditions of service stipulated by SMP operators on relevant markets as well as the notification of tariff provisions and general terms and conditions by operators and providers of (tele)communications networks and services under the provisions of the TKG 2003.

With regard to the latter activities, the Austrian Payment Services Act (ZaDiG; passed in 2009) and the Austrian Bankruptcy Law Amendment (IRÄG 2010) were also relevant to the review of general terms and conditions.

For further information, please refer to Sections 7.5 and 7.6.

Frequencies


The regulatory authority's frequency-related activities in 2010 were largely characterised by the assignment of frequencies in the 2.6 GHz band as well as discussions on the future use of the digital dividend.

In preparation for the frequency assignment procedure held in September 2010, a new auction design was developed. In this context, the regulatory authority used what is referred to as a "combinatorial clock auction." The total revenues from the auction came to EUR 39,527,109.00.

As for the future use of the digital dividend, an important preparatory step in terms of policy was taken in the decision to designate the frequencies in the 800 MHz band for use in mobile communications.

Electronic signatures

In 2010, seven procedures under the Austrian Signatures Act (SigG) were initiated before the TKK, and five of those procedures (plus three additional cases from 2008 that were still



pending at the beginning of 2010) were completed in 2010. The certification service provider (CSP) A-Trust Gesellschaft für Sicherheitssysteme im elektronischen Datenverkehr GmbH remained the only provider of qualified certificates in Austria in the year under review.

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

In the year under review, retail conciliation procedures saw very few changes in terms of quantity and subject matter. The number of procedures changed only slightly (+3.4%) compared to 2009. In terms of subject matter, procedures again focused largely on charges for mobile data services. In this context, it is especially worth mentioning the complaints related to value-added text message services. Although the conciliation body only handled 161 procedures in 2010, the problems in this regard have not diminished.

For more information on the use of value-added services, please refer to Section 8.2.

International roaming

In addition to the price regulations imposed at the wholesale level (i.e. on the roaming fees charged between mobile network operators) from July 1, 2009 onward, EU regulations also introduced an obligatory cap to protect subscribers from excessively high data roaming charges as well as far-reaching transparency obligations vis-à-vis roaming customers at the beginning of March (and subsequently at the beginning of July 2010). Price regulations for data roaming services are not defined at the retail level. The price of wholesale data roaming services is now limited to 80 euro cents (excluding VAT) per megabyte and will again be reduced to 50 euro cents as of July 1, 2011.

In addition, since July 1, 2010, mobile operators have no longer been allowed to charge their subscribers for receiving voice messages (i.e. for receiving a call and message on their mobile voice boxes) when travelling abroad within the EU.

The maximum prices for mobile voice telephony were also lowered in 2010, and a further reduction is planned for 2011 as well. For further information, please refer to Section 8.3.1.

Amendments to the Communications Parameters, Fees and Value-Added Services Ordinance 2009 (KEM-V 2009)

The KEM-V 2009 was amended twice in 2010. In these amendments, two new short public numbers for harmonised services – specifically advising services for crime victims and non-emergency on-call medical services – were introduced in the 116 range. In addition, the second amendment to the KEM-V 2009 ensured a higher degree of tariff transparency in the number range for private networks (05). Due to the rising number of complaints regarding excessively high telephone costs and a lack of transparency in the rates charged for calls from mobile numbers to numbers in the 05 range, new regulations were defined for calls to this number range.

International activities

Depending on the relevant focus areas and priorities, RTR participates in a wide variety of international working groups, such as the IRG/BEREC, CEPT/ECC, the OECD and the Forum of European Supervisory Authorities for Electronic Signatures (FESA). In addition to its activities as a member of those working groups, and in many cases as a provider of text and editorial services, RTR also acts as an advisor to Austrian representatives in organisations such as the European Commission's Communications Committee (CoCom).

Competence centre

Under the provisions of Art. 9 KOG, RTR is also responsible for acting as a competence centre for broadcasting and telecommunications industry affairs. This duty does not apply to RTR's activities in the regulation of postal services.

In the Telecommunications Division, for example, the Internet Society Competence Centre (*Kompetenzzentrum Internetgesellschaft*, or KIG) was established on February 9, 2010 on the basis of a declaration of the Austrian Council of Ministers. The KIG comprises the Board of Directors and the General Assembly. Each of the following institutions is entitled to appoint two representatives to the Board of Directors: the Federal Chancellery (BKA), the Federal Ministry of Finance (BMF), the Federal Ministry of Transport, Innovation and Technology (BMVIT), the Federal Ministry of Economy, Family and Youth (BMWFJ), RTR and the Austrian Internet Initiative; each representative is appointed for a term of two years. The representatives of federal ministries are voting members of the board, while the other members act in an advisory capacity.

1.3 Postal services: Contribution to the achievement of objectives under the Postal Services Act (PostG) 1997

In this area of activity, the most essential topic during the reporting period was the Austrian Postal Services Act of 1997 (PostG 1997), which was supplemented and amended by specific provisions of the Postal Market Act (PMG) in early December 2009.

The Postal Services Act 1997 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 on equal terms. The act defines the basic criteria for the fulfilment of the universal service mandate as well as the general terms of competition in the field of postal services.

The PMG is intended to ensure that Austria's consumers and businesses have access to diverse and high-quality postal services at reasonable prices. In particular, the PMG is designed to ensure sufficient basic postal services (universal service) at reasonable prices and to enable fair competition in the provision of postal services. However, this provision regarding the purpose of the act (Art. 1 PMG) did not go into effect until January 1, 2011.

The Communications Report 2009 already mentioned the fact that – in contrast to the KommAustria Act (KOG) and Telecommunications Act (TKG) 2003 – the Postal Services Act 1997 does not stipulate objectives to be attained through regulation. The entry into effect of several provisions in the PMG has not changed this interpretation.

PostG 1997 does not define objectives of regulation

*Defining topic:
Closure of
post offices*

With regard to the PCK's activities, the year 2010 was dominated by procedures concerning the closure of post offices (for further information, see Section 9.2). Moreover, the authority conducted a number of procedures related to Österreichische Post AG's general terms and conditions of service. Toward the end of the year, the PCK also turned its attention to the scope of universal service; in this regard, a formal decision in connection with a procedure requested by Österreichische Post AG is not expected until the first quarter of 2011.

*Modification of private
mailbox installations
in buildings*

In addition, the regulatory authority closely followed Österreichische Post AG's preparations for the modification of private mailbox installations in buildings. By December 31, 2012 (!), Österreichische Post AG is required to modify those mailbox installations in such a way that all other postal service providers can deliver letters and parcels "without difficulties" (Art. 34 Par. 2 PMG). To this end, Österreichische Post AG is also required to present a plan for the changeover, but the plan is not due until after January 1, 2011. However, even in the run-up to these changes, the regulatory authority has maintained that the PMG's definition of December 31, 2012 as the latest possible date for the changeover is questionable under EU legislation.

*No transparency
requirements*

The PostG 1997 and PMG (where it is already in force) do not stipulate specific transparency obligations for the regulatory authorities. Therefore – in contrast to the requirements under Art. 123 TKG 2003 – fundamental decisions made by the regulatory authority are not made public or presented in this report. This information will be provided from 2011 onward.







2. Regulatory authorities and environment

2.1 Regulatory authorities

In implementing the Austrian Telecommunications Act 1997 (TKG [1997]), the Austrian government established two regulatory authorities for telecommunications: the Telekom-Control-Kommission (TKK) and the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR; formerly known as Telekom-Control GmbH). On the basis of the KommAustria Act, the Austrian Communications Authority (KommAustria) was set up in 2001 as the regulatory authority for the broadcasting markets. In October 2010, this body was transformed into an independent panel authority which has the powers of a court and is not bound by instructions from any other authority. The duties and objectives of all regulatory authorities responsible for electronic communications markets are defined in the relevant legislation, especially in the Austrian Telecommunications Act 2003 (TKG 2003) and the KommAustria Act (KOG).


For example, the main regulatory objectives defined in the TKG 2003 are to create modern electronic communications infrastructure, to ensure equal opportunities and functional competition, and to promote and protect the interests of users.

The KOG defines the duties of the regulatory authority in the fields of electronic audio and audiovisual media, including the supervision of the Austrian Broadcasting Corporation (ORF) and its subsidiaries. These duties are primarily designed to promote market access for new providers, to ensure a diversity of opinions and promote quality in broadcasting programmes, to promote a dual broadcasting market in Austria, to ensure adherence to minimum European standards for broadcasting content, to optimise the use of frequencies, to provide expert knowledge, and to promote the development of markets and location quality with regard to communications infrastructure.

On January 1, 2008, the TKK was expanded to include a second committee for matters related to postal services (known as the Post-Control-Kommission, or PCK, since the announcement of the Postal Market Act on December 4, 2009), with RTR serving as its operative arm. The Postal Services Act (PostG) 1997 and the Postal Market Act (PMG), the bulk of which did not go into effect until January 1, 2011, essentially deal with ensuring the provision of universal service and fair competition on the Austrian postal services market.

2.1.1 Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR)

RTR is a convergent regulatory authority which is wholly owned by the Republic of Austria. The organisation is headed by two managing directors: In the year 2010, Alfred Grinschgl served as managing director of the Media Division, while Georg Serentschy was in charge of



the Telecommunications and Postal Services Division. With regard to the specialist 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 KommAustria, the PCK and TKK as well as disseminating information to the public about their activities;
2. Fulfilment of specific official duties in the Telecommunications and Postal Services Division (e.g. powers to issue ordinances and to carry out procedures in the field of numbering, duties under the PMG);
3. Activities under the Signatures Act (SigG);
4. Administration and allocation of grants from the Austrian Digitisation Fund, Non-Commercial Broadcasting Fund, Private Broadcasting Fund and the Austrian Television Fund (handled by the Media Division);
5. Management of a competence centre for issues related to media and telecommunications (both divisions), including matters related to the convergence of broadcasting and telecommunications;
6. Maintenance of the list pursuant to Art. 7 of the Austrian E-Commerce Act (ECG).

2.1.2 Telekom-Control-Kommission (TKK)

The Telekom-Control-Kommission was set up as a panel authority with the powers of a court and makes major decisions in connection with telecommunications regulation. The TKK is not bound by instructions from any other 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.

2.1.3 Post-Control-Kommission (PCK)

As a committee within the TKK, the PCK was likewise set up as a panel authority with the powers of a court and makes major decisions in connection with the regulation of postal services. Like the TKK, this commission is not bound by instructions from any other authority. Each member of the commission is appointed for a term of five years.

In the year under review, the PCK comprised the following members:

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

A comprehensive list of the duties assigned to the PCK can be found in Art. 25a PostG 1997 (since January 1, 2011: Art. 40 PMG).

2.1.4 Austrian Communications Authority (KommAustria)

KommAustria is Austria's first-instance regulatory authority for electronic audio media and electronic audiovisual media. The authority consists of five members, each of whom is nominated by the federal government and appointed by the Austrian president for a term of six years. In the performance of their duties, the members of KommAustria are independent and not bound by instructions from any other authority. On October 1, 2010, the following members were appointed to this body:

- Michael Ogris (Chairperson)
- Florian Philapitsch (Deputy Chairperson)
- Martina Hohensinn
- Susanne Lackner
- Michael Truppe.

In addition to its previous duties in broadcasting regulation under the KOG, AMD-G, PrR-G, the Austrian Competition Act (WettbG) and the TKG 2003 as well as its duties pertaining to press and journalism subsidies, KommAustria is now also responsible for the legal supervision of the Austrian Broadcasting Corporation (ORF) and its subsidiaries, for activities under the Austrian Act on Exclusive Television Rights (FERG) and for the legal supervision of audiovisual media service providers.

The authority relies on RTR for administrative support.

Federal Communications Senate (BKS)

The Federal Communications Senate is responsible for handling appeals against KommAustria decisions. Under Art. 12 Par. 1 KOG, the five members of the BKS, at least three of whom must be appointed judges in Austria, are independent and not bound by instructions in the performance of their duties (a "panel authority with the powers of a court"). The members of the BKS are nominated by the Austrian federal government and appointed by the Austrian president for a term of six years. The offices of the BKS are situated at the Austrian Federal Chancellery.

The BKS currently includes the following members:

- Wolfgang Pöschl
- Edwin Gitschthaler

- Dorit Primus
- Michael Holoubek
- Georg Karasek
- Rainer Geissler (Alternate Member)
- Ilse Huber (Alternate Member)
- Barbara Helige (Alternate Member)
- Barbara Leitl-Staudinger (Alternate Member)
- Robert Streller (Alternate Member).

Until the Broadcasting Law Amendment (Federal Law Gazette I No. 50/2010) went into effect on October 1, 2010, the BKS was the first-instance authority in charge of legal supervision of the ORF and its subsidiaries. The BKS is required to continue any procedures pending as of October 1, 2010 as the first-instance authority, meaning that legal supervisory procedures were still pending with this authority during the reporting period.

2.2 Lines of command and levels of appeal

Austrian Communications Authority (KommAustria)

In the performance of their duties, the members of KommAustria are independent and not bound by instructions from any other authority.

Austria's Federal Chancellor does not have the power to issue instructions to KommAustria. However, the Federal Chancellor is authorised to gather and request relevant information on all matters handled by KommAustria, while appeals against KommAustria decisions can be submitted to the Federal Communications Senate (BKS) in the second instance.

Further appeals against BKS decisions may be submitted to the Austrian Administrative Court (VwGH) and the Austrian Constitutional Court (VfGH).

Telekom-Control-Kommission (TKK) / Post-Control-Kommission (PCK)

Both the TKK and PCK are panel authorities chaired by an appointed judge in Austria, and neither authority is bound by instructions from any other authority.

The Austrian Federal Minister of Transport, Innovation and Technology does not have the power to issue instructions to the TKK or PCK. However, the Federal Minister is authorised to gather and request relevant information on all matters handled by these two authorities.

TKK and PCK 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).

Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR)

a) Media Division

In carrying out its activities for KommAustria, RTR is bound only by assignments and instructions issued by the chairperson and other members of KommAustria.

In addition, KommAustria's chairperson is responsible for the supervision of specialist and directly related matters in connection with RTR's activities in the field of electronic audio media, electronic audiovisual media, and KommAustria's administration of grants and subsidies.

The Federal Chancellor is responsible for supervising RTR's performance of its independent duties in the Media Division.

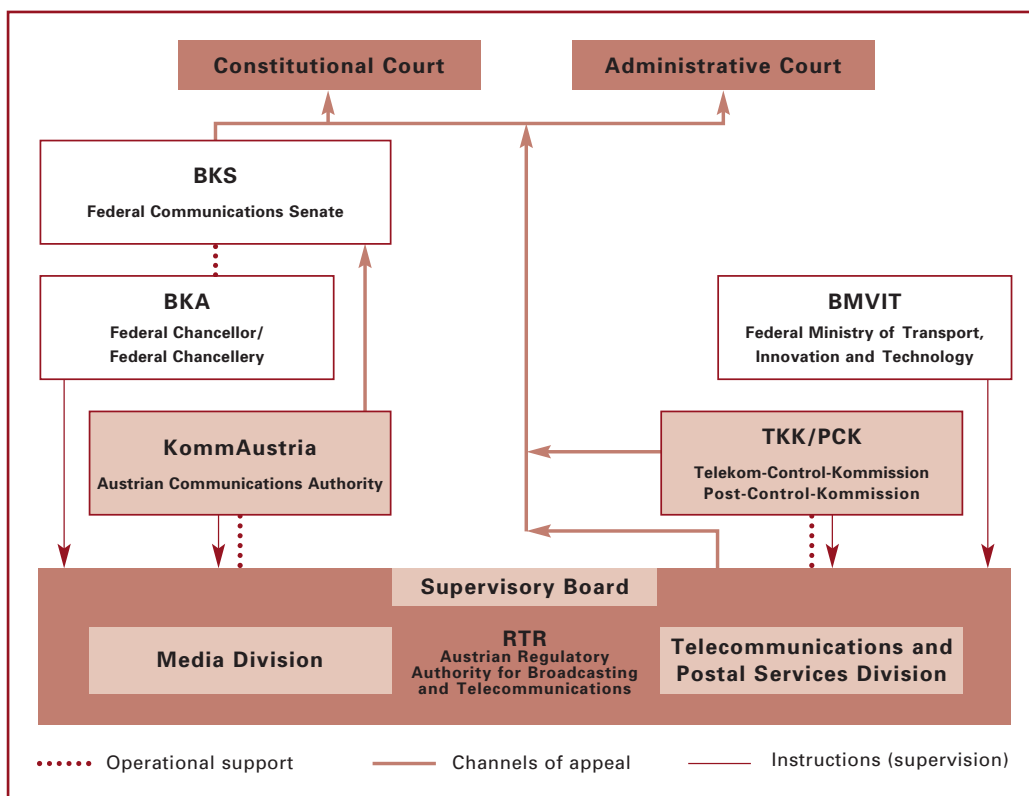
In matters subject to supervision by the Federal Chancellor, the chairperson of KommAustria and the Federal Chancellor have the power to issue instructions to RTR. Such instructions must be issued in writing and justified accordingly.

b) Telecommunications and Postal Services Division

In its activities for the TKK and PCK, RTR is bound only by assignments and instructions issued by the TKK/PCK's chairperson or another member designated in the authority's rules of procedure.

Where specialist or directly related organisational matters in the field of telecommunications or postal service regulation are concerned, the Austrian Federal Minister of Transport, Innovation and Technology is responsible for supervising RTR's activities. In performing those supervisory duties, the Federal Minister is allowed to issue justified instructions, which must be in written form and published appropriately.

Figure 1: Lines of command and levels of appeal (as of December 31, 2010)



In addition, the Federal Chancellery is authorised to request information from KommAustria and the BMVIT is authorised to request information from the TKK/PCK.

Source: RTR

2.3 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 discussed briefly below.

Federal Chancellery (BKA)

As the authority responsible for handling appeals against KommAustria decisions, the Federal Communications Senate (BKS) is situated at the Federal Chancellery, which serves as its operational arm (for further information, please refer to Section 2.1.4).

Federal Ministry of Transport, Innovation and Technology (BMVIT)

The Federal Ministry of Transport, Innovation and Technology is responsible for defining the general framework for the telecommunications market and postal services market. The managing director in charge of the Telecommunications and Postal Services Division at RTR is bound by the instructions of the Federal Minister of Transport, Innovation and Technology; such instructions are to be issued in writing and justified accordingly.

On the basis of its experience in day-to-day implementation (e.g. at the EU level), RTR advises the ministry on the ongoing development of the framework mentioned above.

Telecommunications authorities

The duties of the telecommunications authorities – which include the Federal Ministry of Transport, Innovation and Technology as the highest authority, the Telecommunications Offices, and the Office for Radio Systems and Telecommunications Terminal Equipment – are governed by Articles 112 to 114 TKG 2003. For RTR's Telecommunications and Postal Services Division, it is important to emphasise 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 assigning 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.

Postal service authorities

The duties of the postal service authorities – which include the Federal Ministry of Transport, Innovation and Technology as the highest authority and the Postal Bureau as the first-instance authority – are governed by Art. 25 PostG 1997 (since January 1, 2011: Art. 37 PMG). In this context, the Postal Bureau essentially acts as the first-instance administrative penal authority.

Post Office Advisory Board

The Post Office Advisory Board was established under Art. 43 PMG as an advisory body to the PCK in matters related to ensuring nationwide coverage with post offices. The board must be



consulted and submit its comments before the PCK takes supervisory measures, and in particular before the PCK makes decisions regarding the closure of post offices. The PCK may take those comments and opinions into account at its own discretion.

The board consists of three voting members, who are appointed by the Austrian Association of Municipalities, the Austrian Association of Cities and Towns, and the Liaison Office of the Federal Provinces. In addition, the board includes a representative of RTR as a non-voting member. The Post Office Advisory Board held its founding meeting on January 27, 2010.

In the year under review, the Post Office Advisory Board comprised the following members:

- Robert Hink (Austrian Association of Municipalities; Chairperson)
- Paul Trippl (Liaison Office of the Federal Provinces; Deputy Chairperson)
- Thomas Weninger (Austrian Association of Cities and Towns)
- Georg Serentschy (RTR).

In addition, an alternate has been appointed for each member of the commission:

- Bernhard Haubenberger (Austrian Association of Municipalities)
- Albert Kreiner (Liaison Office of the Federal Provinces)
- Sabine Marchart (Austrian Association of Cities and Towns)
- Wolfgang Feiel (RTR).


Digital Platform Austria

The Digital Platform Austria working group was established by the Austrian Federal Chancellor under Art. 21 of the Audiovisual Media Services Act (AMD-G; formerly the Private Television Act, or PrTV-G) in order to support the regulatory authority in creating a plan for the introduction of digital broadcasting in Austria. The group's activities are managed by the regulatory authority (KommAustria) and by RTR. One major step in the digitisation process – namely the digitisation of terrestrial television broadcasting – will be completed in the first half of 2011.

Public Value Review Board

This review board established within KommAustria must be given the opportunity to submit comments and opinions on new ORF services in accordance with Art. 6a of the ORF Act (ORF-G). The board's task is to evaluate whether new ORF services can be considered appropriate for the effective fulfilment of ORF's core public mandate from a media standpoint and to assess the probable effects of such services on programming diversity for viewers, listeners and users. In addition, this board must be given the opportunity to submit comments and opinions in procedures where the regulatory authority is to determine (ex officio or on the basis of a complaint or petition) whether special online content and special-interest television channels offered by the ORF are in line with the broadcaster's specific mandates and duties under the ORF Act (ORF-G Art. 4b to 4f) and with any service plans (Art. 5a, 6b Par. 2 ORF-G).

The review board comprises five members, each of whom is appointed by the Austrian federal government for a term of five years. Members of the review board must have earned a *venia legendi/docendi* at a university in Austria or abroad, or possess another form of outstanding



specialist qualifications. On the basis of their prior academic and scientific work, members of the board must possess specific knowledge in the field of media law, media sciences or business administration and economics.

The Public Value Review Board currently includes the following members:

- Hannes Haas (Chairperson)
- Andrea Grisold (Deputy Chairperson)
- Reinhard Christl
- Ruth Jaroschka
- Julia Wippersberg.

Broadcasting Advisory Board

Until the amendment of Austrian broadcasting legislation in 2010, this board served as an advisory body to KommAustria and was to be given the opportunity to submit comments before private broadcasting licences were issued or changes in programming were approved.

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

In its final term (May 30, 2007 to September 30, 2010), 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.

Press Subsidies Commission

This commission was set up as an advisory body to KommAustria in accordance with Art. 4 of the Austrian Press Subsidies Act (PresseFG) 2004. Before subsidies are allocated, it is necessary to obtain the commission's opinion on whether the prerequisites for funding are fulfilled. These opinions are to be presented to KommAustria.

Commission members serve a two-year term and can be reappointed. The Austrian Federal Chancellor, the Association of Austrian Newspapers (VÖZ), and the labour union responsible for employees in journalism positions at daily and weekly newspapers each have the right to appoint two members. These six members are required to elect an additional member as a chairperson.

In 2010, the commission included the following members (2010-2011 term):

- Otto Oberhammer (until December 2010; Chairperson)
- Samo Kobenter (appointed by the Federal Chancellor)

- Dagmar Hemmer (appointed by the Federal Chancellor)
- Gerald Grünberger (appointed by VÖZ)
- Paul Pichler (appointed by VÖZ)
- Gisela Vorrath (appointed by the labour union)
- Fritz Wendl (appointed by the labour union).

Otto Oberhammer, the commission's long-standing chairperson, resigned in December 2010.

Journalism Subsidies Advisory Board

The advisory body in matters pertaining to subsidies for periodicals pursuant to Section II of the Journalism Subsidies Act (PubFG) is the Journalism Subsidies Advisory Board set up in accordance with Art. 9 PubFG; KommAustria is required to take this board's suggestions into account when allocating these subsidies. The members and alternate 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. In accordance with Art. 9 Par. 1 PubFG, the board includes one representative each from the parties represented in the Main Committee of the Austrian National Council, one representative each from the Austrian Federation of Trade Unions and the labour union responsible for employees in journalism positions at periodicals; one representative of media and communication sciences at Austria's universities; one representative of the scientific disciplines listed under Art. 7 Par. 1 No. 3 PubFG; one representative from the field of continuing education; one representative of Austria's legally recognised churches and religious communities; one representative each from the Austrian Federal Chancellery, the Austrian Federal Ministry of Economy, Family and Youth (BMWFJ), the Austrian Federal Ministry of Science and Research (BMWF) and the Austrian Federal Ministry for Education, Arts and Culture (BMUKK); one representative each from the associations of Austrian newspaper publishers, Austrian periodical publishers and freelance journalists; and one certified accountant.

In the year 2010, Annemarie Kramser served as the Chairperson of this board, while Matthias Karmasin served as Deputy Chairperson. The following members and alternate members were appointed for the 2010-2012 term:

- Annemarie Kramser (Presseclub Concordia; Chairperson)
- Matthias Karmasin (Conference of Media and Communications Departments; Deputy Chairperson)
- Petr Baxant (Austrian Social Democratic Party)
- Markus Keschmann (Austrian People's Party)
- Harald Vilimsky (Austrian Freedom Party)
- Martin Strutz (Alliance for the Future of Austria)
- Wolfgang Hirner (Austrian Green Party)
- Johanna Wagner (Austrian Federation of Trade Unions)
- Alice Rienesl (Union for the Printing, Journalism and Paper Industries)
- Fritz Plasser (Universities Austria)
- Bernhard Keiler (continuing education)
- Thomas Dasek (churches and religious communities)
- Matthias Traimer (Austrian Federal Chancellery)
- Thomas Kohlert (BMWFJ)

- Bettina Kölbl-Resl (BMWF; until August 24, 2010) and Martha Brinek (BMWF; from September 19, 2010)
- Christine Bouska-Lamm (BMUKK)
- Wolfgang Pichler (ÖZV)
- Rainer Eder (VÖZ)
- Leopold Wundsam (certified accountant)
- Raphael Sternfeld (Alternate Member)
- Andreas Kratschmar (Alternate Member)
- Gerfried Nachtmann (Alternate Member)
- Lukas Bruckner (Alternate Member)
- Marco Schreuder (Alternate Member)
- Franz Fischill (Alternate Member)
- Arno Miller (Alternate Member)
- Martina Thiele (Alternate Member)
- Heinz Mayer (Alternate Member)
- Gerald Leitner (Alternate Member)
- Paul Wuthe (Alternate Member)
- Michael Truppe (until September 2010) and Andreas Ulrich (from October 2010; Alternate Members)
- Wolfgang Schneider (Alternate Member)
- Gerhard Pfeisinger (Alternate Member)
- Wolfgang Fingernagel (Alternate Member)
- Gabriele Ambros (Alternate Member)
- Matthias Hranjai (Alternate Member)
- Wolfgang Mayr (Alternate Member)
- Helmut Puffer (Alternate Member).

Broadcasting Fund Review Board

This review board was established in order to advise RTR on the allocation of grants from the Austrian Non-Commercial Broadcasting Fund and the Private Broadcasting Fund, and is required to submit comments and opinions on the fulfilment of grant requirements. The board consists of five broadcasting experts, each of whom is appointed by the Austrian federal government for a term of three years. At present, the board includes the following members:

- Michael Holoubek (Chairperson)
- Angela Fritz (Deputy Chairperson)
- René Tritscher
- Martina Hohensinn (until September 30, 2010)
- Cornelia Breuss.

Austrian Television Fund Review Board

The purpose of this review board is to advise RTR's management on the allocation of grants from the Austrian Television Fund (FERNSEHFONDS AUSTRIA). Its five members are required to have a sound knowledge of the film industry as well as several years of relevant practical experience. All members are appointed by the Austrian Federal Chancellor for a term of three years and work for the board on a voluntary basis.



At present, the Television Fund Review Board comprises the following members:

- Andreas Hruza (Chairperson)
- Werner Müller (Deputy Chairperson)
- Bettina Leidl
- Gerlinde Seitner
- Matthias Settele.

Federal Competition Authority

Due to certain parallels in sector-specific and general competition law and with due attention to maintaining the integrity of each authority's competences, it is necessary to ensure that the regulatory authorities cooperate 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. In the amendment of Austria's broadcasting laws, the Austrian Federal Competition Authority was also granted the rights of a party to the newly created preliminary review procedures for ORF services in order to safeguard the interests of fair competition. In the course of these preliminary review procedures, KommAustria is also required to obtain comments and opinions from the Federal Competition Authority regarding the expected effects of new services on the competitive situation of other media companies operating in Austria.

Other organisations and national working groups


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

2.4 International regulatory environment

Apart from the European Commission, the most important institutions in RTR's international activities are the Brussels-based Independent Regulators Group (IRG) and the Body of European Regulators for Electronic Communications (BEREC).

Originally established in 1997, the IRG was registered as an association under Belgian law in 2008 and provides regulatory authorities with an international platform for coordination, discussion and multi-country comparisons of regulatory methods in practice. The IRG's members include the regulatory authorities of the 27 EU countries as well as those of EU candidate countries (in 2010: Former Yugoslav Republic of Macedonia, Croatia and Turkey) and non-EU countries belonging to the European Economic Area (Iceland, Norway and Liechtenstein). In addition, the Swiss regulatory authority is also represented in the IRG. The main difference between IRG's approach and that of BEREC is that the IRG can take a broader perspective as an independent association with members from outside the EU. Moreover, IRG meetings are held without the participation of European Commission representatives. In this

IRG as an independent association



way, the group's activities and methods remain open to non-EU countries, and as an independent platform the IRG can tackle and discuss a very wide variety of regulatory issues in its working groups. In addition, the IRG does not have any specific duties related to the European Union's regulatory framework. In 2010, the IRG chair was held by John Doherty, head of the Irish regulatory authority ComReg.

New body:
BEREC

In the course of the review of the European legal framework for electronic communications, BEREC was created in early 2010 on the basis of Regulation (EC) 2009/1211 and was then set up in the course of the year. In 2010, BEREC was also headed by John Doherty (ComReg). The chair of this body serves a one-year term of office. In 2011, BEREC will be chaired by the Netherlands, after which Georg Serentschy, Managing Director of RTR's Telecommunications and Postal Services Division, will serve as chair in 2012. This is also significant because BEREC's rules of procedure call for Austria to hold the position of Vice-Chair in the years 2011 and 2013.

As the organisation was able to use existing structures from its predecessor, the European Regulators Group (ERG), BEREC was able to carry out a considerable number of activities in parallel to setting up and organising the BEREC Office during its first year of operation. In the body's active operations, 12 expert working groups were taken over from the former ERG and are now continuing their activities under the new framework at BEREC. These working groups are dealing intensively with topics such as the implementation of the legal framework, convergence and market analysis, regulatory remedies, benchmarking, roaming, next generation networks, termination charges, network neutrality, retail consumer affairs, access for users with disabilities, network security and data protection as well as similar topics in the field of electronic communications.

In 2010, the IRG and BEREC were once again able to cooperate in the development of the European legal framework and to contribute their experience in its day-to-day implementation with regard to key regulatory issues.







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

3.1 Media Division

3.1.1 Procedures before the Federal Communications Senate (BKS) and the Independent Administrative Boards (UVS)

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

In the reporting period, the BKS issued 12 decisions in response to appeals, with two decisions pertaining to ORF's complaints regarding violations of advertising regulations on the part of private broadcasters. One KommAustria decision was confirmed in its entirety, while in the other case a private broadcaster's appeal against a KommAustria decision identifying legal violations was partly sustained. In connection with KommAustria's official advertising monitoring duties, the BKS issued rulings on KommAustria decisions in three cases where violations had been identified on the part of private broadcasters. In one case, KommAustria's decision was confirmed in its entirety, while two decisions were partly confirmed.


Violation of advertising regulations by private broadcasters

In the field of radio broadcasting, one KommAustria decision on the allocation of an additional frequency to expand a broadcaster's coverage area and two licensing decisions were confirmed in their entirety; one licensing decision was overturned, and the matter was remanded to KommAustria for reconsideration and the adoption of a new official decision. The latter decision concerned an appeal submitted by K9 Media Medienberatungs- und BetriebsgmbH against the issuance of a radio broadcasting licence to the association "Radio Maria Österreich" for the Innsbruck 91.1 MHz coverage area. In explaining its decision, the BKS stated that KommAustria had not sufficiently addressed the extent to which the radio station's programming was identical to the programming offered by Radio Maria Südtirol 104.8 MHz, which can be received in vast parts of the coverage area.

Radio licences

In the field of television regulation, the BKS partly confirmed three official decisions in which KommAustria had identified violations of requirements imposed in licence decisions for the operation of regional terrestrial multiplex platforms (MUX C platforms). The licensing decisions each required the multiplex operator to commence operation of the platform by a

Procedures regarding legal violations by regional terrestrial multiplex operators (MUX C)



specified date. KommAustria's identification of a legal violation was confirmed in each case; however, the BKS overturned another item in the decision which instructed the licensees to restore legal compliance within two months after the decisions went into effect. The BKS justified this decision by stating that the only legal consequence provided for in the relevant legislation on procedures related to violations of imposed requirements is the identification of a legal violation, but not the issuance of instructions to restore legal compliance within a certain period of time.

Shift of first-instance competence for legal supervision of ORF

In addition, until the relevant amendment (Federal Law Gazette I No. 50/2010) went into effect on October 1, 2010, the BKS was the first-instance authority responsible for legal supervision of the ORF; where KommAustria's official advertising monitoring activities provided reason to suspect that advertising regulations under the ORF Act (ORF-G) had been violated, KommAustria was required to report such violations to the BKS until that time.

With the above-mentioned change in legislation, the BKS' first-instance adjudicative powers were shifted to KommAustria; under the transitional provisions of the amendment, however, the BKS was still responsible for ruling on any KommAustria reports to the BKS which were still pending when the amendment went into effect (for further information, see Sections 4.7.1 and 4.7.2). In the reporting period, the BKS issued five official decisions with regard to KommAustria reports; violations of the ORF Act were identified in four cases.

3.1.2 Proceedings before the Constitutional Court (VfGH)

No Constitutional Court rulings

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

3.1.3 Proceedings before the Administrative Court (VwGH)

Administrative Court reviews official decisions issued by BKS

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

In the reporting period, the Administrative Court ruled on one BKS decision regarding a radio licence and on one BKS decision regarding the expansion of an existing licence. Another Administrative Court ruling related to a complaint submitted by the ORF regarding a private broadcaster, while four other rulings pertained to legal violation procedures involving private broadcasters which had been initiated on the basis of official advertising monitoring activities. In one of the latter procedures before the Administrative Court, the BKS' official decision was overturned in part; in all other cases, the decisions were confirmed.



3.2 Telecommunications and Postal Services Division

3.2.1 Proceedings before the Constitutional Court (VfGH) regarding telecommunications

During the period under review, one complaint regarding a TKK decision was filed with the Austrian Constitutional Court. This decision related to a procedure in which the TKK had ordered site sharing pursuant to Art. 8 TKG 2003. As of December 31, 2010, a total of five procedures were still pending.

3.2.2 Proceedings before the Administrative Court (VwGH) regarding telecommunications

During the period under review, a total of 32 complaints regarding TKK decisions were filed with the Austrian Administrative Court. These complaints pertained to 27 procedures in which companies were identified as possessing significant market power and subjected to obligations under Articles 38 to 47 TKG 2003, two interconnection procedures, one procedure regarding site sharing rights pursuant to Art. 8 TKG 2003, one supervisory procedure under Art. 91 TKG 2003, and one miscellaneous procedure.

The Administrative Court issued a total of five rulings in the reporting period. In two cases, the court overturned the TKK's official decisions due to legal violations, and in three procedures, the TKK's official decision was confirmed. As of December 31, 2010, 51 complaints were still pending before the Administrative Court.

3.2.3 Proceedings before the Constitutional Court (VfGH) regarding postal services

In this area of activity, no procedures were initiated before the Constitutional Court during the reporting period.

3.2.4 Proceedings before the Administrative Court (VwGH) regarding postal services

During the reporting period, two complaints were submitted to the Administrative Court with regard to the PCK's enjoinder of the closure of post offices. Both complaints related to cost accounting aspects in the business administration of a post office. In addition, one complaint regarding the approval of discounts was submitted to the Administrative Court. As of December 31, 2010, no further procedures were pending before this court.



4. Activities of KommAustria and RTR's Media Division

In discussing the regulatory authority's activities in this field, it is first important to note that KommAustria's duties were expanded considerably by the Austrian Broadcasting Law Amendment (Federal Law Gazette I No. 50/2010), which went into effect on October 1, 2010. As a result of this amendment, KommAustria is now also responsible for comprehensive legal supervision of ORF and its subsidiaries, for the legal supervision of private providers of audiovisual media services on the Internet, and for certain tasks under the Austrian Act on Exclusive Television Rights (FERG). Some of these powers, especially regulatory activities involving the ORF, already began to take effect in practice during the reporting period.

New regulatory and supervisory duties

The procedures handled in the year 2010 can be categorised roughly into the areas of broadcasting market access (allocations/licences/notifications for private broadcasters and media services as well as the market launch of new ORF content), permits for transmission facilities and frequencies, legal supervision (content-related supervision of private broadcasters and the ORF as well as specific duties related to legal supervision of the ORF), and infrastructure regulation under the TKG 2003.

During the reporting period, one major characteristic of regulatory activities in private broadcasting was the handling of 17 cases involving the broadcasting licences set to expire in the summer of 2011. These licences include multiple coverage areas in Vienna as well as a number of nationwide licences. In addition, there was a marked increase in the number of supervisory procedures in all areas. In this context, it is worth mentioning numerous complaints from competitors regarding suspected violations of the Private Radio Act (PrR-G), complaints regarding the ORF, as well as procedures initiated due to the non-fulfilment of notification requirements or requirements imposed in official decisions.

With regard to digital television, the regulatory authority's activities focused on the further expansion of nationwide, regional and local DVB-T coverage in Austria.

4.1 Regulatory activities in private radio broadcasting

Under the provisions of the Broadcasting Law Amendment passed in 2010, the Private Radio Act now also governs satellite radio broadcasting. In addition, this amendment made it possible to issue regular multiplex licences for digital radio for the first time. However, this new development was not yet relevant to practice in 2010.

4.1.1 Licensing procedures / Allocation of analogue terrestrial frequencies

Applications for the allocation of new frequencies can be submitted to KommAustria at any time. Applicants can either request a licence 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 usage, information on technical range/coverage deficiencies, and (in the case of licence applications) credible evidence of the applicant's fulfilment of technical, financial and organisational 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 amounts to less than 50,000 people and the applicant fails to provide evidence that an independent radio station in the coverage area would make a special contribution to the diversity of opinions in the media (prior to the amendment in Federal Law Gazette I No. 50/2010: "would serve 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

Moreover, 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 licence, 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 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 licences.

- 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.

In the year 2010, the regulatory authority handled a total of 43 allocation procedures related to terrestrial radio broadcasting pursuant to the Austrian Private Radio Act (PrR-G), and the authority completed 18 of those procedures by issuing official decisions. The procedures were carried out either at the request of the relevant parties or on the basis of official invitations to tender. In five procedures, a total of six frequencies were allocated to existing private radio broadcasters in order to expand their coverage areas. One frequency was allocated to a radio broadcaster for the purpose of improving coverage in an existing coverage area. In addition, a total of nine frequencies were allocated to Kronehit Radio Betriebs GmbH, Austria's only nationwide private radio broadcaster during the reporting period, in order to expand the organisation's nationwide broadcasting licence. Two licence applications were rejected due to technical infeasibility or failure to comply with an instruction to remedy shortcomings in the application. One licence application was withdrawn by the applicant. Finally, 32 additional 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).

18 KommAustria decisions on private radio broadcasting

4.1.2 Allocation of analogue terrestrial frequencies to create new coverage areas

In the year 2010, a new radio broadcasting licence was issued to Entspannungsfunk Gesellschaft mbH for the Klagenfurt 93.4 MHz coverage area. However, as appeals were submitted against this official decision, it has not yet taken legal effect.

Creation of a new coverage area

Another 23 licensing procedures were still pending before KommAustria at the end of 2010. Seventeen of those cases involved licences which are set to expire in the summer of 2011.

4.1.3 Allocation of analogue terrestrial frequencies to expand or improve 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).

In 2010, no frequencies were allocated for the expansion of previously existing coverage areas in procedures based on a restricted invitation to tender under Art. 13 Par. 3 PrR-G.

In contrast, five procedures were carried out after an unrestricted invitation to tender under Art. 12 in conjunction with Art. 10 PrR-G in order to expand previously existing coverage areas:

Five existing coverage areas expanded

- GMUNDEN (Grünberg) 90.6 MHz: expansion of the existing coverage area "Linz, Wels und Steyr" (Entspannungsfunk Gesellschaft mbH; coverage area renamed "Central Upper Austria");
- STEYR (Tröschberg) 90.4 MHz: expansion of the existing coverage area "Linz 91.8 MHz" (WELLE SALZBURG GmbH; coverage area renamed "Linz and Steyr");
- DEUTSCHLANDSBERG 3 (Ulrichsberg) 106.6 MHz: expansion of the existing coverage area "Graz and parts of the Voitsberg district" (Medienprojektverein Steiermark; coverage area renamed "Graz and parts of the Voitsberg and Deutschlandsberg districts");
- WOERGL 2 (Baumgarten) 91.4 MHz and KUFSTEIN 2 (Thierberg) 90.0 MHz: expansion of the existing coverage area "Innsbruck and parts of the Tyrolean Lowlands" (Lokalradio Innsbruck GmbH; coverage area renamed "Innsbruck and Tyrolean Lowlands");
- VOECKLABRUCK (Hongar) 105.8 MHz: expansion of the existing coverage area "Linz 96.7 MHz" (Privatradio Arabella GmbH & Co KG; coverage area renamed "Traunviertel region").

*Announcement
of coverage
improvement
applications to
licensees in the
same coverage area*

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

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

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

*Coverage
improvement
in city of Salzburg*

One allocation procedure carried out under Art. 12 in conjunction with Art. 10 PrR-G served to improve the quality of coverage in an existing coverage area:

- SALZBURG 5 (Nonntal) 99.7 MHz: improvement of coverage in the existing coverage area "City of Salzburg 102.5 MHz" (Arabella Privatradio GmbH).

4.1.4 Nationwide broadcasting licence

On December 6, 2004, KommAustria issued Kronehit Radio Betriebs GmbH the first licence for nationwide private terrestrial radio broadcasting in Austria. On the basis of the 28 frequencies allocated in connection with the licence award, the company was allocated seven additional frequencies in 2005, 15 in the year 2006, ten in 2007, eight in 2008, and six in 2009. Due to rulings handed down by the Austrian Administrative Court, the frequencies "SALZBURG (Gaisberg) 94.0 MHz" and "SPITTAL DRAU 5 (Hühnersberg) 99.3 MHz" are no longer allocated to the nationwide licensee. KRONEHIT broadcasts radio content in adult contemporary format under the name "Kronehit".

Status at end of 2009

In 2010, the nationwide licensee was allocated the following nine frequencies to expand its coverage area, and its broadcasting licence was amended accordingly:

Nine additional frequencies in 2010

- Radio broadcasting station: FROHNLEITEN, location: Schlöglmoar, frequency: 104.3 MHz;
- Radio broadcasting station: UEBELBACH, location: Palpas mobile antenna mast, frequency: 107.0 MHz;
- Radio broadcasting station: WOERGL 4, location: Werlberg, frequency: 97.2 MHz;
- Radio broadcasting station: KUFSTEIN 2, location: Thierberg, frequency: 98.8 MHz;
- Radio broadcasting station: EISENERZ 1, location: Polster, frequency: 107.9 MHz;
- Radio broadcasting station: KALWANG, location: Stellerberg, frequency: 95.9 MHz;
- Radio broadcasting station: MITTERBACH ERL 2, location: Gemeindealpe, frequency: 101.2 MHz;
- Radio broadcasting station: WERFEN, location: Feuerseng, frequency: 100.4 MHz;
- Radio broadcasting station: RENNWEG, location: Atzensberg, frequency: 106.9 MHz.

These frequency allocations served to close gaps in coverage in the federal provinces of Carinthia, Salzburg, Styria and Tyrol.

In the year under review, KRONEHIT requested another 33 frequencies, which are to be allocated after completion of the respective procedures in early 2011.

33 procedures pending

In the period from August 16, 2010 to February 25, 2011, the regulatory authority invited interested parties to apply for another nationwide licence in accordance with Art. 28b Par. 1 PrR-G. However, no applications were received.

Opportunity to apply for nationwide licence

4.1.5 Event and educational radio programmes

Event radio refers to radio broadcasting licences 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.

Event radio licences

In 2010, licences were granted for the following event radio programmes:

- V.A.Z. Veranstaltungs Zentrum Betreiber GmbH was granted radio broadcasting licences for the following time periods:

- a) May 7, 2010 to May 16, 2010, in connection with a gathering of VW GTI owners;
- b) July 19, 2010 to July 24, 2010, in connection with the Fête Blanche;
- c) July 25, 2010 to August 2, 2010, in connection with the Beach Volleyball Grand Slam;
- d) August 16, 2010 to August 22, 2010, in connection with the *Kärnten läuft* running event;

- "Radio Maria Österreich – Der Sender mit Sendung": radio broadcasting licence for the period from May 9, 2010 to June 6, 2010, for radio coverage of the *Fest der Jugend* (youth festival) event organised by the Loretto prayer community in Austria;
- Livetunes Network GmbH: radio broadcasting licence for the period from July 16, 2010 to October 10, 2010 for the "Summer in the MQ 2010" radio service;
- Datamatix Datensysteme GmbH: radio broadcasting licence for the period from 2:00 pm to 7:00 pm on September 12, 2010, for coverage of the SK Rapid Wien – FK Austria Wien match in the Austrian Bundesliga;
- Entspannungsfunk Gesellschaft mbH: radio broadcasting licence for the period from October 11, 2010 to November 10, 2010 for coverage of the Viennale – Vienna International Film Festival 2010;
- Datamatix Datensysteme GmbH: radio broadcasting licence in connection with the matches of the Austrian Bundesliga for the following time periods:
 - a) September 26, 2010, 2:00 pm to 7:00 pm (SK Puntigamer Sturm Graz – FK Austria Wien match);
 - b) October 2, 2010, 4:30 pm to 9:30 pm (FK Austria Wien – SK Puntigamer Sturm Graz match), and
 - c) October 16, 2010, 4:30 pm to 9:30 pm (SK Rapid Wien – FC Wacker Innsbruck match);
- Entspannungsfunk Gesellschaft mbH: radio broadcasting licence for the period from November 11, 2010 to December 30, 2010 for the "Winter in the MQ" radio service;
- Datamatix Datensysteme GmbH: radio broadcasting licence for the period from November 13, 2010, 4:30 pm to November 14, 2010, 11:00 pm for coverage of the SK Puntigamer Sturm Graz – Red Bull Salzburg match in the Austrian Bundesliga;
- Datamatix Datensysteme GmbH: radio broadcasting licence for the period from November 27, 2010, 4:30 pm to November 28, 2010, 11:00 pm for coverage of the FK Austria Wien – SK Rapid Wien match in the Austrian Bundesliga;
- Datamatix Datensysteme GmbH: radio broadcasting licence for the period from December 4, 2010, 4:30 pm to December 5, 2010, 11:00 pm for coverage of the FK Austria Wien – SV Josko Ried match in the Austrian Bundesliga;
- Ypsilon Immobilienvermietungs GmbH: radio broadcasting licence for the period from March 28, 2011 to April 24, 2011 for coverage of the Vienna City Marathon;
- Entspannungsfunk Gesellschaft mbH: radio broadcasting licence for the period from December 31, 2010 to January 8, 2011 for the *Wiener Silvesterpfad* New Year's radio programme.

Pursuant to Art. 3 Par. 5 No. 2 PrR-G, educational radio refers to licences granted to education and training institutions for the surrounding local area if the programmes have a functional relationship to the duties to be fulfilled by those institutions. These licences can be granted for a maximum of one year.

*Educational radio
licences*

The following educational radio licences were granted in 2010:

- One educational radio licence was granted to Freies Radio B 138, an association established to promote independent, non-commercial radio projects in the Krems Valley; the station's purpose is to help enable school pupils and others interested in radio to work with media independently. The station's core programming feature is open access as a means of promoting the participation of local citizens.
- One educational radio licence was granted to a secondary school in Freistadt for self-produced radio broadcasting for pupils, teachers and parents, comprising music broadcasts, projects of the lower and upper school classes, interviews, information broadcasts as well as contributions from parents and teachers.
- One educational radio broadcasting licence was granted to the association "CAMPUS RADIO St. Pölten" for self-produced radio broadcasts for students and pupils within the framework of the study programmes at the St. Pölten University of Applied Sciences. The station's programming includes various music shows, talk shows, broadcasts on IT and media-related topics, chart shows and the like.
- One educational radio broadcasting licence was issued to the Basic Vocal association (Deutschlandsberg) for a self-produced radio service for youths and young/middle-aged adults in "hot adult contemporary" format with the exception of the genres techno and rock.
- One educational radio broadcasting licence was issued to the Radio Gymnasium association (Oberpullendorf) for self-produced radio content designed for the younger generation (10 to 35 years) by pupils within the framework of school classes. The radio station's verbal content is tailored to events in the central Burgenland region and broadcast in the language of the ethnic groups of the Burgenland province as well as the languages of instruction at the Oberpullendorf secondary school.

4.1.6 Satellite radio broadcasting

KommAustria is also responsible for issuing satellite radio broadcasting licences.

When the amendment to Austrian broadcasting law went into effect on October 1, 2010, a number of changes were made in the issuance of satellite broadcasting licences. Since that time, the legislation governing satellite broadcasting licences has been as follows:

The licensing requirement for satellite radio broadcasting is now governed by Art. 3 PrR-G, while the licensing requirement for satellite television broadcasting is governed by Art. 4 AMD-G. Prior to the amendment, all satellite broadcasting licences were governed by the Private Television Act (PrTV-G).

*Changes in satellite
radio licensing*

In the year 2010, two radio broadcasting licences (or changes in such licences) were approved:

- REDITUNE Österreich Bornhauser GmbH & Co KG: In an official decision issued on June 16, 2010, KommAustria approved broadcasting of an encrypted satellite radio service via the satellite ASTRA 3B, Transponder 3214 (digital).
- Dragana Mirkovic Bijelic KG: In an official decision issued on December 22, 2010, KommAustria approved broadcasting of the existing "DM Sat" radio service via the satellite EUTELSAT W2M, 16° east, Transponder F4, 12.593 GHz, vertical polarisation, to replace previous broadcasts via the satellite EUTELSAT W2, 16° east, Transponder F2, 12.557 MHz, vertical polarisation.

4.1.7 Procedures under telecommunications law in the field of radio broadcasting

*Procedures under
telecommunications
law*

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

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 many cases, this requires an international coordination procedure, in the course of which it is necessary to obtain the consent of the neighbouring countries affected. In applications for changes, it is then possible to approve the planned modifications to radio systems.

With regard to applications which are also subject to broadcasting law (allocation of frequencies to expand or improve existing coverage areas), the procedure provided for under broadcasting law is continued and the telecommunications permit is issued together with the final broadcasting permit.

*Private radio
broadcasters*

In the year 2010, KommAustria approved 30 changes to radio systems for private broadcasters; two applications under telecommunications law were disputed and withdrawn in 2010, and another application was rejected. One application was dismissed. At the end of the year, another two applications were pending. In addition, KommAustria issued approvals for the launch of radio system operations in broadcasting frequency bands (e.g. to cover soccer stadiums, drive-in movie theatres, etc.) in 14 cases; in one case, the application to the Telecommunications Office was withdrawn before KommAustria could make an approval decision.

ORF

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

In the case of the ORF, KommAustria approved one application for changes in radio systems and two applications for permits to construct radio systems in 2010.

4.2 Regulatory activities in the field of private television broadcasting and audiovisual media services

4.2.1 Digital terrestrial television broadcasting

During the reporting period, the expansion of the MUX A platform continued, with KommAustria issuing permits for an additional 34 transmission facilities. At the end of the year 2010, MUX A provided coverage for approximately 93% of Austria's population.

34 new transmission facilities

The MUX B platform was expanded to include one additional broadcasting location. At the end of the year under review, MUX B provided coverage for approximately 88% of Austria's population.

One new MUX B transmission facility

4.2.2 Local digital terrestrial television broadcasting

In addition to the 16 licences to operate local multiplex platforms issued for various regions of Austria at the end of 2008, the MUX C invitation to tender from 2009 led to the issuance of three MUX C licences in 2010.

Three additional MUX C platforms

In total, 25 licences for digital terrestrial channels were issued during the year under review.

The licence for the MUX C platform in the Greater Vienna Area was relinquished.

Relinquishment of "MUX C – Greater Vienna Area" licence

4.2.3 Mobile television broadcasting

The licence to operate a nationwide multiplex platform for mobile terrestrial broadcasting (MUX D), which the BKS had issued to MEDIA BROADCAST GmbH on February 29, 2008 (Code 611.195/0004-BKS/2008), was relinquished at the end of 2010.

Relinquishment of MUX D licence

4.2.4 Satellite television broadcasting

KommAustria is also responsible for issuing satellite broadcasting licences. Until September 30, 2010, the procedure for the issuance of satellite radio and television broadcasting licences was uniformly governed by Article 4 et seq. of the Audiovisual Media Services Act (AMD-G, formerly PrTV-G).

When the amendment to Austrian broadcasting law went into effect on October 1, 2010, a number of changes were made in the issuance of satellite broadcasting licences. Since that time, the legislation governing satellite broadcasting licences has been as follows:

The licensing requirement for satellite radio broadcasting is now governed by Art. 3 PrR-G, while the licensing requirement for satellite television broadcasting is governed by Art. 4 AMD-G.

Substantial changes in satellite channels are subject to approval under Art. 6 AMD-G. Within the scope of its duties, KommAustria approved multiple changes in 2010.

Changes in satellite broadcasting licences subject to approval

New satellite broadcasting licences

In 2010, KommAustria granted new satellite broadcasting licences for the following ten television channels:

- Schneider Holding Wirtschaftsprüfungsgesellschaft mbH: In an official decision issued on January 27, 2010, KommAustria approved broadcasting of the Mediashop television channel broadcast in analogue form via the ASTRA 1KR satellite, Transponder 1050. Mediashop is an unencrypted teleshopping channel which broadcasts direct offers to sell goods for the kitchen, household, leisure purposes, wellness, beauty, fitness and jewellery on a daily basis from 5:00 pm to 5:00 am. In an official decision issued on February 24, 2010, KommAustria approved additional broadcasting of this channel in digital form via the ASTRA 1H satellite, Transponder 1087. In its official decision of March 19, 2010, KommAustria also approved broadcasting of this channel via the ASTRA 1H satellite, Transponder 1104 (digital), instead of the ASTRA 1H satellite, Transponder 1087 (digital).
- AMUSYS Amusement Systems Electronics GmbH: In an official decision issued on April 21, 2010, KommAustria approved digital broadcasting of the television channel BCC TV 2 via the EUROIRD 9A satellite, 9° east, Transponder 55, 11.823 MHz, horizontal polarisation. BCC 2 TV is an encrypted subscription-based television channel for sports cafés, betting agencies, bookmakers and similar venues for the transmission of events related to gambling, such as sporting events, races and matches. In addition, the channel broadcasts commentary, pre-event reports, background reports and retrospectives on these events.
- Franz Ressel Handels GmbH: In an official decision issued on July 6, 2010, KommAustria approved broadcasting of the EUROTIC TV satellite television service via the ASTRA satellite, 13° east, Transponder 125 (digital).
- RSL tirol tv Filmproduktion GmbH: In an official decision issued on December 22, 2010, KommAustria approved broadcasting of the existing channel "tirol tv" via the digital satellite ASTRA 1H, 19.2° east, Transponder 115, 12.633 GHz, horizontal polarisation, with a capacity of 1.3 Mbit/s. The previously existing permit for broadcasting this channel via ASTRA 19.2° east, Transponder 92, vertical polarisation, expired on December 31, 2010.
- Red Bull Media House GmbH: In an official decision issued on December 17, 2010, KommAustria approved broadcasting of the existing Red Bull TV channel using additional capacity on the satellite already in use, i.e. ASTRA 19.2° east, Transponder 115 (SD) and Transponder 7 (HD).
- ServusTV Fernsehgesellschaft m.b.H.: In an official decision issued on December 17, 2010, KommAustria approved broadcasting of the existing Red Bull TV channel using additional capacity on the satellite already in use, i.e. ASTRA 19.2° east, Transponder 115 (SD) and Transponder 7 (HD).
- ServusTV Fernsehgesellschaft m.b.H.: In an official decision issued on December 30, 2010, KommAustria approved digital broadcasting of the ServusTV Deutschland channel on the ASTRA satellite, 19.2° east, Transponder 115 (SD) and Transponder 7 (HD).
- Red Bull Media House GmbH: In an official decision issued on December 30, 2010, KommAustria approved broadcasting of the channel with a local-content window "Red Bull TV Deutschland" on the ASTRA satellite, 19.2° east, Transponder 115 (SD) and Transponder 7 (HD).

4.2.5 Audiovisual media services

Since October 1, 2010, RTR's media regulation activities have also included broadcasts of linear audiovisual media services (Internet television, e.g. Web TV and live streaming on mobile networks) as well as non-linear audiovisual media services (on-demand audiovisual media services such as video-on-demand portals, online video shops) in electronic communications networks outside of the classic broadcasting transmission platforms (terrestrial, satellite, cable broadcasting).

By December 31, 2010, a total of five media service providers had notified such audiovisual media services.

Five notifications of audiovisual media services

4.3 Approval and notification of new ORF services

Under Articles 6 to 6b ORF Act (ORF-G) KommAustria is to approve new ORF services if they comply with the provisions of the law and serve social, democratic and cultural needs, and if they are not expected to have adverse effects on the competitive situation on the relevant market in question or on the diversity of content offered for viewers, listeners and users.

Preliminary review procedure pursuant to Articles 6 to 6b ORF Act

For certain services, the ORF Act also requires the ORF to submit a service plan. Under Art. 5a ORF Act, service plans serve to specify the channels and services offered within the framework of the ORF's public mandate. In certain cases provided for in the ORF Act (ORF-G), a service plan must be submitted, for example in the course of the preliminary review mentioned above.

Service plan pursuant to Art. 5a ORF Act

The requirement of submitting a service plan in the cases specified by the law and (under certain circumstances) the ensuing preliminary review support the precise definition of the public mandate for ORF's channels and services in order to ensure funding in accordance with state aid regulations pursuant to EU law and to ensure adequate monitoring of compliance with that mandate.

Standards under EU state aid regulations

The public mandate assigned to ORF in Art. 3 ORF-G now also includes an information and special-interest culture channel pursuant to Art. 4c ORF-G as well as online content linked to that channel pursuant to Art. 4e ORF-G. With regard to the information and special-interest culture channel, Art. 4c Par. 4 ORF-G calls for mandatory preliminary reviews, while such reviews are only required for the online content pursuant to Art. 4e ORF-G in cases where commercial exploitation is planned and the criteria under Art. 6 ORF-G are fulfilled.

Information and special-interest culture channel, online content

In accordance with Art. 6a Par. 2 ORF-G, ORF submitted a proposal for an information and special interest channel and for the accompanying online content to KommAustria on November 8, 2010 for the purpose of a preliminary review. This proposal was also submitted to the Austrian Federal Economic Chamber and to the Federal Chamber of Labour. In addition, the proposal was published on ORF's web site for consultation purposes, with an indication that all parties affected by the planned services may submit comments and opinions on the proposal within a period of six weeks. On December 23, 2010, once the period for the submission of comments and opinions had passed, ORF submitted the proposal along with the comments and opinions received to KommAustria with a request for approval of the

information and special-interest culture channel as well as the accompanying online content pursuant to Art. 6a Par. 3 ORF-G. In early January 2011, KommAustria forwarded all of the documents to the Public Value Review Board with a request for comments pursuant to Art. 6a Par. 4 No. 1 ORF-G, and to the Austrian Federal Competition Authority with a request for comments pursuant to Art. 6a Par. 4 No. 2 ORF-G. The procedure will be completed in the first half of 2011.

4.4 Public communications networks and services

Communications networks must be reported under Art. 15 TKG 2003

The obligation to report the planned operation or provision of a public communications network or service for broadcasting transmission (radio and television) and additional broadcasting services refers in particular to dissemination by means of radio networks and cable networks. The launch, modification and discontinuation of such operations are each to be reported separately. 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 need to be resolved in connection with new, convergent transmission modes for broadcasting or broadcasting-related services. In the reporting period, KommAustria issued eight confirmations for cable network operators in accordance with Art. 15 Par. 3 TKG 2003. In some cases, KommAustria did not issue a confirmation because the cases did not involve broadcasting transmissions or incomplete reports were not supplemented appropriately.

Competition regulation for broadcasting networks

Public communications networks and services for broadcasting are also subject to competition regulation by KommAustria under the TKG 2003. The relevant activities in the course of the market analysis are described in Section 4.5.

4.5 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").

After carrying out a consultation at the national level and coordinating the results at the EU level, the regulatory authority adopted the new ordinance on the relevant national markets for broadcasting transmission services for the provision of broadcasting content to end-users, subject to sector-specific regulation (Broadcasting Market Ordinance 2009, or RFMVO 2009) on April 30, 2009. In the new ordinance, KommAustria defined the following relevant markets:

1. Market for the analogue terrestrial transmission of FM radio broadcasting signals to end-users;
2. Market for access and digital terrestrial transmission of television signals to end-users using the MUX A and MUX B multiplex platforms;
3. Market for access to transmission facilities and the digital terrestrial transmission of television signals to the end-user.

*Broadcasting Market
Definition Ordinance
2009 (RFMVO 2009)*

In geographical terms, each of these markets comprises the entire federal territory of the Republic of Austria.

In early 2009, KommAustria had instructed RTR's official experts to carry out market analyses on the basis of the new market definition ordinance. The purpose of these market analysis opinions is to examine whether effective competition prevails on each market from an economic perspective and whether self-sustaining competition exists in the absence of sector-specific regulation. In addition, the opinions are to identify those factors and competition problems which stand in the way of effective competition on the three markets. For this purpose, it was again necessary to collect data from market participants.

Market analysis

In some cases, this data survey required an information procedure under Art. 90 TKG 2003. The official decisions issued by KommAustria for this purpose were contested before the BKS; however, the latter authority confirmed KommAustria's decision in each case. As the market participants in question still did not provide the data requested, it was then necessary to carry out administrative enforcement procedures. As a result, it was not possible to begin preparing the market analysis opinions until the second and third quarters of 2010.

The market analysis opinions were subsequently delivered to ORS for comments at the end of the third quarter of 2010. ORS requested multiple extensions of the deadline and did not submit its comments in the course of the market analysis procedure until November 30, 2010. The parties potentially affected by any KommAustria decisions will be included in the market analysis procedures in early 2011.

4.6 Administration and coordination of broadcasting frequencies

In the year 2010, Austria was involved in a larger number of international coordination procedures for DVB-T transmitters in neighbouring countries to the east. In addition, the regulatory authority continued to receive coordination requests with regard to FM radio frequencies; these procedures were often difficult because it is hardly possible to find new frequencies which do not affect the frequencies already in use.

*International broad-
casting frequency
coordination*

In the reporting period, the authority did not receive any international coordination requests regarding analogue television frequencies. New frequencies are occasionally used temporarily in neighbouring countries in order to enable as smooth a transition to digital television as possible for viewers in a given region.

A considerable number of coordination procedures were carried out for digital radio transmitters. Many of those procedures related to GE06 plan optimisation measures or the preparations many authorities are making for potential T-DAB frequency allocations in the future.

4.6.1 Frequency coordination procedures

The number of frequency coordination procedures handled in the field of broadcasting in 2010 is shown in the table below.

Table 1: Number of coordination procedures in 2010

Frequency coordination procedures

Country	Analogue radio (VHF)	Digital radio (T-DAB)	Digital television (DVB-T)
Austria	62	4	44
Germany	46	118	21
France	102	0	2
Croatia	9	134	65
Poland	5	8	8
Switzerland	25	53	12
Slovakia	9	0	8
Slovenia	11	22	96
Czech Republic	75	0	8
Hungary	0	50	30
TOTAL	344	389	294

Source: RTR

In the course of coordination procedures for broadcasting transmitters, numerous bilateral and multilateral coordination negotiations were held in 2010.

International negotiations on digital frequencies

In March, a meeting involving frequency administrations from Hungary, Austria, Croatia and Slovenia was held in Budapest. Two additional meetings were held in Zagreb in July and in Vienna in December. One meeting between the Austrian and Czech authorities took place in October. The negotiations dealt with DVB-T implementations as well as the optimisation of the GE06 plan with regard to the potential uses of DVB-T and T-DAB. Moreover, the regulatory authority was also involved in frequency planning measures for regional and local television broadcasters.

A working group which included Austria, Germany, Switzerland and Liechtenstein also negotiated the potential deployment of further DVB-T and T-DAB resources. The specific objective of those negotiations was to enable the use of additional frequency resources in densely populated areas.

4.6.2 Participation in licensing and allocation procedures

RTR's Frequency Management Department was again called upon to prepare expert opinions on technical issues related to frequencies in the course of KommAustria licensing procedures in 2010.

In the year under review, the full rollout of the MUX A platform was completed in the provinces of Upper Austria and the Tyrol. This means that the rollout process has been concluded in all but three federal provinces, in which the transition will take place in the first half of 2011. According to current plans, some 18 transmission facilities in Carinthia and Styria and approximately eight transmission facilities in Lower Austria are planned for digital broadcasting. These changeovers are scheduled for late April and early June 2011.

MUX A rollout

In various regions, MUX C operations were also launched or existing coverage was expanded further. In the densely populated areas of Graz and Salzburg, a large number of viewers can now receive terrestrial broadcasts of local channels.

In addition to the opinions prepared for KommAustria's allocation procedures, it was also necessary to conduct technical reviews of applications for frequencies to be used temporarily for event radio broadcasts or audio transcription services for football matches in the Austrian Bundesliga; in the majority of cases, it was also necessary to coordinate these frequencies with neighbouring countries.

Another major focus of expert opinions related to the re-allocation procedures for radio broadcasting licences.

4.6.3 Frequency register

At present, some 1,200 radio transmitters in the FM band are listed in the regulatory authority's frequency register and transmitter map.

Broadcasting transmitter map

Approximately 850 of those frequencies can be attributed to the ORF, while the remaining 350 are used by private broadcasters.

In the television broadcasting range, the frequency register contains more than 500 television transmitters.

These include analogue television transmitters as well as DVB-T transmitters (multiplexes). Analogue television transmitters will not be removed from the frequency register until the relevant permit holders have relinquished the corresponding frequencies.

Of the roughly 500 transmitters in total, just under 150 analogue television transmitters are operated by the ORF and municipal transmission facilities. As of December 31, 2010, private broadcasters held permits for eleven analogue television transmitters. Therefore, a total of approximately 160 analogue television transmitters were still licensed at the end of 2010.

The DVB-T transmitters approved in the frequency register as of late 2010 are distributed among the individual multiplex platforms as follows:

Table 2: Number of approved DVB-T transmitters (as of December 31, 2010)

DVB-T Multiplex A (ORS multiplex)	282 transmitters
DVB-T Multiplex B (ORS multiplex)	20 transmitters
DVB-T Multiplex C (local multiplex)	41 transmitters

Source: RTR

As of December 31, 2010, permits had been issued for a total of 343 DVB-T transmitters.

The data on approved broadcasting transmitters are also made available to the public in the form of a graphic transmitter map as well as tables on the RTR web site (<http://www.rtr.at>).

4.6.4 Measurement activities

*More than
20 measurement
projects*

In the reporting period, just over 20 major measurement projects were carried out and the results analysed in the process of preparing expert opinions and in international coordination activities. Most measurement activities were intended to verify whether reception at existing transmitters would be disrupted if a new broadcasting transmitter were put into operation.

Cross-border measurement activities were carried out in cooperation with Germany's Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway (BNetzA) in the area surrounding the town of Füssen, Germany.

4.6.5 Participation in international working groups

*International
working groups*

In the course of frequency management activities, it is necessary to participate in international working groups which address broadcasting topics and the spectrum used for broadcasting purposes.

Frequency Management Project Team 45 (FM PT45)

In the year 2010, this team held three meetings on the digitisation of the FM broadcasting band.

One important topic addressed by this working group in 2010 was the assessment of options for introducing digital radio, in particular based on a comparison of the systems available on the market. The group will also continue to discuss this topic in the year 2011. In this context, the group will focus heavily on the technical parameters of the individual systems (e.g. DRM+) and the resulting regulatory issues.

In December 2010, the project team developed a questionnaire on the future use of the L Band, which is designated for broadcasting use in the 1.5 GHz range, and the questionnaire was submitted to each CEPT administration for comments.

Spectrum Engineering Project Team 43

This working group is devoted to the topic of cognitive radio systems and the possibility of using the "white spaces" in the 470-790 MHz frequency spectrum.

One important issue addressed by this group is the protection of existing systems in this frequency range, especially for broadcasting (DVB-T, DVB-T2), programme making and special events (PMSE), radio astronomy (RAS), aeronautical navigation (ARNS) as well as mobile/fixed services.

In order to prevent mutual interference, a number of solutions for these future systems are under investigation, the most important being geo-location and sensing.

The working group plans to hold three further meetings in 2011.

RSPG (Radio Spectrum Policy Group) Sub Working Group

This working group was established by the RSPG in order to develop proposals describing how to support the introduction of digital radio in Europe. In the reporting period, the group convened twice, and the resulting report is available on the RSPG web site (http://rspg.groups.eu.int/consultations/index_en.htm).

In addition, the group sent a questionnaire to frequency administrations, manufacturers and international organisations dealing with broadcasting-related topics, and the results were used to prepare a report on this topic. At the end of the year, the report was presented in the RSPG. At the moment, a European consultation is being conducted with regard to this report.

The future work of the RPSG will determine which proposals are ultimately implemented.

4.6.6 Regional cross-border EU project: SEE Digi.TV

In response to an invitation from the Slovenian regulatory authority, RTR's Broadcasting Division took part in the application for an EU-funded project. The application documents were submitted to the relevant coordination office in Budapest in September 2010. The project involves 14 organisations from ten different countries, predominantly in the Balkan region and the adjacent areas.

The goal of the project, which is slated to last two years, is to cooperate in the further advancement and development of television digitisation (depending on the current status in each country), in particular with regard to regulatory, economic and technical aspects. Within the framework of the project, RTR will contribute in particular to the development of strategies for the changeover from DVB-T to DVB-T2 with regard to technical issues related to frequency management.

4.7 Legal supervision of private broadcasters and ORF

In addition to monitoring compliance with regulations on commercial communication, KommAustria is also responsible for the legal supervision of private broadcasters and media service providers (as well as multiplex operators) under the provisions of the Austrian Private Radio Act (PrR-G) and Audiovisual Media Services Act (AMD-G). Under the ORF Act (ORF-G), KommAustria also serves as the legal supervisory authority for ORF and its subsidiaries.

Content-related supervision

In this context, violations of those laws may be identified in programming (in addition to advertising violations, these may include violations of fundamental programming principles such as youth protection) as well as other activities of broadcasters and media service providers (e.g. violations of notification requirements or imposed requirements).

In general, KommAustria can initiate procedures on the basis of a complaint (where certain legally defined prerequisites are fulfilled), on the basis of a petition (regarding ORF) or by virtue of office. Such procedures may result in an official decision identifying a legal violation, and in the case of repeated or severe violations (except in the case of ORF), the authority may ultimately even revoke a broadcaster's or media service provider's licence or prohibit further broadcasting or media service activities. In the case of further persistent violations of Austrian law by one of ORF's decision-making bodies, KommAustria can overturn the relevant decision of that body, in which case ORF is required to comply with KommAustria's legal interpretation immediately. Should the decision-making body in question refuse to do so, it may be discharged or dissolved.

Penal procedures

Where certain regulations are violated, KommAustria is also required to conduct administrative penal procedures, which may lead to monetary fines.

Programming changes

In the course of issuing a private broadcasting licence, the programming plan submitted is also approved by way of an official decision: As a rule, the programming plan is a decisive factor in the decision to allocate available transmission capacity to one of multiple qualified applicants. Therefore, a licensee can only make fundamental changes to the nature of its programming at a later point in time if such changes fulfil certain requirements and a special procedure is carried out before the authority. Should a broadcaster make such fundamental changes without approval, the broadcaster's licence may be revoked.

Supervision of ownership structures and investors

Finally, the authority's legal supervisory duties also include supervision of the ownership structures of broadcasting and media service companies. In this context, certain (significant) changes in ownership must be approved by the authority in advance, while others need only be notified after the fact.

Specific supervision of ORF

In addition, KommAustria has specific powers for the legal supervision of ORF and its subsidiaries, especially with regard to the business purpose of the corporation, its legal mandate and the supervision of its business activities (see Section 4.7.4).

4.7.1 Compliance with commercial communication regulations

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

Monthly samples

Until September 30, 2010, KommAustria was responsible for deciding on the programmes of private broadcasters in enforcement of the advertising regulations stipulated in the Private Radio Act and Private Television Act. As the legal supervisory authority for the ORF and its channels, the BKS was responsible for deciding on violations of advertising regulations in the ORF Act on the basis of reports from KommAustria.

Since October 1, 2010, KommAustria has been responsible for deciding on advertising violations on ORF channels as well as those of private broadcasters and media service providers in enforcement of the advertising regulations stipulated in the ORF Act, the Private Radio Act and the Audiovisual Media Services Act. In determining the frequency of evaluations and selecting the sample reviewed, KommAustria accounts for the market shares of the respective broadcasters and tries to obtain a representative cross-section of programmes from various areas (culture, sports, reports, news, entertainment shows, feature films, etc.).

Channels monitored

In the reporting period, ORF channels as well as those of private broadcasters were evaluated in KommAustria's official advertising monitoring activities. The lists below do not include procedures initiated on the basis of complaints.

As for ORF's channels, KommAustria monitored the regional radio stations in the provinces of Vienna, Vorarlberg, the Tyrol, Carinthia, Upper Austria, Styria and Burgenland as well as the nationwide radio stations Ö3 and the television channels ORF 1 and ORF 2 (in many cases without identifying violations).

Austrian Broadcasting Corporation (ORF) stations reviewed multiple times

The procedures have not yet been completed with regard to the samples from the ORF's Radio Salzburg station and the TW1 and ORF 2 television channels; the latter two samples involved annual advertising time. The BKS identified legal violations on the television channel ORF 1.

Among the private radio broadcasters, the following stations were evaluated (or samples were requested): Vienna: Antenne Österreich GmbH, Klinger Wolfgang, Radio Arabella GmbH and N & C Privatrado Betriebs GmbH; Vorarlberg: Vorarlberger Regionalradio GmbH; Upper Austria: Privatrado Arabella GmbH & Co KG and Antenne Oberösterreich GmbH; Tyrol: Antenne Österreich GmbH and Lokalradio Innsbruck GmbH; Styria: Verein Freies Radio Steiermark; Burgenland: Privatrado Burgenland GmbH; Salzburg: Antenne Österreich und Medieninnovationen GmbH and Arabella Privatrado GmbH; Carinthia: Privatrado Wörthersee GmbH & Co KG and Agora Korotan AKO Lokalradio GmbH. In this process, a violation of advertising regulations was identified by KommAustria in only one case, and one other procedure has not yet been completed.

Three legal violations identified on the part of private broadcasters

As for the private television broadcasters, broadcasts were selected from the following channels: ATV, K-TV Fernseh GmbH & Co KEG, FASHION TV Programmgesellschaft mbH, PULS 4 TV GmbH & Co KG (PULS 4), Elektrizitätswerke Frastanz Gesellschaft m.b.H., the Municipality of Kindberg, and NMTV New Media Vertriebs GmbH. In two of those cases, KommAustria identified a violation of advertising regulations. One procedure has not yet been completed, and an appeal is pending with the BKS in one other case.

4.7.2 BKS decisions on violations of commercial communication regulations

In the year 2010, the BKS completed numerous legal supervisory procedures initiated by a KommAustria report regarding ORF as well as procedures regarding those private broadcasters which submitted appeals regarding KommAustria's identification of advertising violations. Once again, the BKS concurred with KommAustria's legal views regarding advertising violations in a majority of cases.

BKS decisions on daily advertising time and "public service announcements"

In this context, it is worth mentioning the BKS decisions on daily advertising time (BKS, March 1, 2010; 611.009/0003-BKS/2010 [ORF-G]), on the definition of programmes (BKS, June 2, 2010; 611.009/0013-BKS/2010 [ORF-G]), and on broadcasts entitled "Public service announcement" (BKS, October 18, 2010; 611.919/0005-BKS/2010 [ORF-G]), as well as one Administrative Court ruling on the differentiation of advertising and product placement (Austrian Administrative Court, April 22, 2010; 2006/4/0060 [PrR-G]).

4.7.3 Other legal violations

KommAustria decides on violations of the Private Radio Act (PrR-G), the Audiovisual Media Services Act (AMD-G) and the ORF Act (ORF-G) by virtue of its office or on the basis of complaints pursuant to Art. 25 PrR-G, Art. 61 AMD-G or Art. 36 ORF-G.

Procedures based on complaints

During the reporting period, KommAustria received 20 complaints regarding private broadcasters. In five procedures, KommAustria concurred with the complaints and identified a violation of the law in each case. In one procedure, no violation was identified. Five of the decisions issued in those procedures have not yet taken legal effect because appeals were submitted to the BKS. The remaining 14 procedures for complaints regarding private broadcasters had not yet been completed at the end of the year. Two complaints were submitted regarding the ORF in 2010; these procedures were likewise still pending at the end of the year.

Failure to provide recordings

In the year under review, official monitoring activities largely focused on reviewing compliance with advertising regulations (see Section 4.7.1 on monitoring compliance with commercial communication regulations) as well as the accompanying procedures concerning legal violations. In addition, KommAustria also initiated legal violation procedures against three television broadcasters in 2010 due to their failure to provide recordings. Two of those procedures were concluded with legally effective decisions during the reporting period, while one procedure is still pending.

Programming changes

In another procedure concluded with a legally effective official decision, KommAustria established that a radio broadcaster had changed the nature of its programming from that described in its licence application by broadcasting content which was not specified or approved in the corresponding licence decision.

Another major area of legal supervision covered by KommAustria involves monitoring the ownership structures of private broadcasters. In the reporting period, KommAustria identified violations of provisions stipulated in the Private Radio Act (PrR-G) and the Audiovisual Media Services Act (AMD-G) in four cases due to the broadcasters' failure to notify KommAustria of ownership changes, some of which would have required regulatory approval. The official decisions on legal violations issued in those cases have taken legal effect.

Changes in ownership

Moreover, in eight cases KommAustria identified violations of requirements imposed in official decisions regarding licences for the operation of terrestrial multiplex platforms. KommAustria initiated procedures due to repeated legal violations with regard to three of the multiplex operators in question. However, only one official decision regarding legal violations has been issued in those procedures, and that decision has not yet taken legal effect; one procedure was discontinued, and the other procedure had not been completed at the end of the year. Furthermore, KommAustria initiated a procedure regarding legal violations against a broadcaster which had broadcast its channel via a multiplex platform without the corresponding licence. The official decision identifying this violation has taken legal effect.

Violations of requirements stipulated in official licence decisions

Unlicensed broadcasts

In another case, KommAustria established with legal effect that a broadcaster had violated its obligation to publish a specific item from an official decision. Finally, KommAustria initiated one procedure regarding the expiration of a licence as well as one procedure due to delayed notification pursuant to Art. 6 AMD-G during the reporting period. These procedures have not yet been completed.

In the reporting period, KommAustria conducted eight penal procedures, seven of which were concluded with a penal order. Six of those orders have taken legal effect; regarding the remaining decision, an appeal was filed with the Independent Administrative Board. In one procedure, KommAustria merely issued a warning pursuant to Art. 21 of the Administrative Penalties Act (VStG).

Penal procedures

4.7.4 Specific supervision of ORF

Since October 1, 2010, KommAustria has also been responsible for the legal supervision of the ORF and its subsidiaries.

In addition to content monitoring and the approval of new ORF services, KommAustria also has specific powers for the legal supervision of the ORF and its subsidiaries. Above all, these activities refer to the business purpose of the corporation, its legal mandate and business supervision (e.g. post-hoc reviews of the setting of licence fees, post-hoc reviews of the fulfilment of legal requirements and compliance with structural measures with regard to refunding licence fee revenues lost by ORF with funds from the federal budget, acceptance of separated accounts, appointment of the Auditing Commission).

Since 2010, Art. 31 Par. 13 ORF-G has required the ORF to define measures in connection with indicators and targets for the purpose of a structural reduction of personnel expenses, including a reduction of capacity and a reduction of costs per capita, a sustainable reduction of materials costs not directly connected to programming investments, and the optimisation of technological and infrastructure modernisation for the upcoming calendar year. The measures envisaged for the year 2011 were presented to the regulatory authority.

Structural measures

Fee structures

In 2010, the ORF also submitted several fee schedules in accordance with Art. 31 Par. 19 ORF-G, which are available at <http://www.enterprise.orf.at> (in German).

Accounting separation

In accordance with Art. 39 Par. 5 ORF-G, a manual for the separation of accounts was also submitted. The ORF is required to prepare such a manual in order to define transparent cost accounting principles and operational instructions regarding the allocation of costs and revenues to specific business areas, especially for the sake of separating activities financed by licence fees from those financed by commercial activities.

4.7.5 Changes in ownership of private broadcasters/providers

Ongoing monitoring of ownership structures

Another major area of legal supervision covered by KommAustria involves monitoring the ownership structures of private broadcasters, audiovisual media service providers and multiplex operators. These activities are intended to ensure that the legal requirements for broadcasting and the provision of audiovisual media services (Art. 5 Par. 3 and Articles 7 to 9 PrR-G, and Art. 4 Par. 3 and Articles 10 and 11 AMD-G), such as professional, financial and organisational 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 licence is issued or a notification is submitted. Violations of or lapses in the fulfilment of these (licensing) requirements constitute grounds for the revocation of broadcasting licences or for orders prohibiting broadcasts.

Notification obligations of broadcasters, media service providers and multiplex operators

In order to enable the regulatory authority to monitor radio broadcasters' 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

Likewise, Art. 10 Par. 7 AMD-G stipulates that television broadcasters must notify the regulatory authority of any and all changes in their ownership or partnership structures. In cases where more than 50% of the shares in a television broadcaster are to be 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. 8 AMD-G).

Finally, Art. 15b Par. 6 PrR-G and Art. 25 Par. 7 AMD-G also provide for an obligation to give advance notification of share transfers subject to regulatory review (over 50% of shares) in the case of multiplex licensees. Within a period of no more than eight weeks, the regulatory authority is to determine whether the changed structure will still comply with the provisions of Austrian law. After conducting a public verbal negotiation, KommAustria is to revoke the corresponding licence if the multiplex operator transfers the shares in contravention of the regulatory authority's assessment.

During the reporting period, the regulatory authority received numerous notifications of changes in ownership structure under Art. 22 Par. 4 PrR-G which did not exceed the 50% threshold. In this context, it is worth mentioning the transfer of shares in Entspannungsfunk

Gesellschaft mbH, Außerferner Medien Gesellschaft m.b.H., Lokalradio Innsbruck GmbH and Superfly Radio GmbH to existing shareholders in each company. In the case of Privat-Radio Betriebs GmbH, Ennstaler Lokalradio GmbH and Mur-Mürztal Radiobetriebs GmbH, a transfer of 100% of the shares was notified at the fifth level, that is, from Media Süd-Ost Beratungs- und Beteiligungsgesellschaft m.b.H. Nfg & Co KG to N & C Privatrado Betriebs GmbH.

On October 5, 2010, IQ - plus Medien GmbH notified KommAustria of the takeover of all shares in Media Süd-Ost Beratungs- und Beteiligungsgesellschaft m.b.H. Nfg & Co KG by N & C Privatrado Betriebs GmbH. N & C Privatrado Betriebs GmbH is now IQ - plus Medien GmbH's sole shareholder. This change in ownership was approved in an official decision issued by KommAustria on September 7, 2010 (KOA 1.467/10-002).

In the reporting period, several assessment decisions were issued on the basis of Art. 22 Par. 5 PrR-G, including KommAustria's approval of the transfer of all shares in Media Süd-Ost Beratungs- und Beteiligungsgesellschaft m.b.H. Nfg & Co KG to N & C Privatrado Betriebs GmbH, thus making the latter company the sole shareholder of the Graz-based radio broadcaster IQ - plus Medien GmbH.

In addition, KommAustria approved the transfer of all shares held by Fellner Medien GmbH in the radio broadcaster Antenne Österreich GmbH to Innovation Entwicklung Lizenzen Medien GmbH, and in a subsequent step the assignment of 100% of the shares owned by MGÖ Privatstiftung (Commercial Register No. 295786f, Vienna Commercial Court) in Antenne Österreich GmbH and Medieninnovationen GmbH (previously Antenne Österreich GmbH) to Alpha Medien AG für Wirtschaftskommunikation, which was transformed into a limited liability company (GmbH).

Finally, KommAustria also confirmed the lawfulness of the transfer of all shares held by Moser Holding AG in the radio broadcaster Regionalradio Tirol GmbH to Schlüsselverlag J.S. Moser GmbH.

A number of notifications pursuant to Art. 10 Par. 7 AMD-G were submitted, including a change in ownership structure within the corporate group of SevenOne Media Austria GmbH.

On the basis of the provision in Art. 10 Par. 8 AMD-G, KommAustria determined during the reporting period that the transfer of 58.5% of the shares in television broadcaster Austria 9 TV GmbH to Josef Andorfer would still comply with the provisions of Art. 4 Par. 2 and Art. 3 PrTV-G (now the AMD-G).

In the year under review, no notifications were received from multiplex operators pursuant to Art. 15b Par. 6 PrR-G and Art. 25 Par. 7 AMD-G.

4.7.6 Programming changes in private broadcasting and media services

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

Programming changes pursuant to the PrR-G

Since an amendment to the Private Radio Act (PrR-G) went into effect in August 2004 (Federal Law Gazette I No. 97/2004), under Art. 28a Par. 2 PrR-G private analogue 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 licence 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 licence was issued.

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

During the reporting period, the "Medienprojektverein Steiermark" association (Radio Soundportal) requested an assessment pursuant to Art. 28a Par. 2 PrR-G in connection with its licences in "Graz and parts of the Voitsberg and Deutschlandsberg districts" and "Eastern Styria" as to whether the purchase of international and national news broadcasts for its on-the-hour news block instead of the self-produced news reports broadcast to date would be considered a fundamental change in the station's programming as defined in Art. 28 Par. 2 in conjunction with Art. 28a Par. 1 PrR-G. KommAustria concluded that the intended change would not constitute a fundamental change in programming on the basis of the official licence decisions.

In addition, Superfly Radio GmbH (Radio Superfly in Vienna) requested an assessment pursuant to Art. 28a Par. 2 PrR-G as to whether restructuring the station's share of verbal content and eliminating weather and traffic service messages would constitute a fundamental change in programming. KommAustria concluded that the intended change would not constitute a fundamental change in programming on the basis of the official licence decision.

Programming changes pursuant to the AMD-G

The amendment to the Audiovisual Media Services Act (AMD-G; Federal Law Gazette I No. 50/2010) eliminated the provision under Art. 63a PrTV-G which governed programming changes in analogue terrestrial television and existed in parallel to Art. 28a PrR-G. Programming changes for satellite television channels as well as digital terrestrial television channels are now governed by Art. 6 AMD-G.

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

As licences are issued without a selection procedure in these cases, the range of permissible programming changes is somewhat broader than in the case of analogue terrestrial television, which makes use of limited frequency resources. Satellite and digital terrestrial television licensees are required to notify the regulatory authority in advance of material changes in the programming category, duration of broadcasts as well as the number and duration of channels offering tailored local content.

Programming changes in satellite and digital terrestrial television broadcasting

Likewise, television broadcasters are required to notify the regulatory authority in advance of plans to broadcast a channel via additional satellites or additional terrestrial multiplex platforms (including multiplex platforms for mobile terrestrial broadcasting). The same applies to any plans to broadcast the channel additionally on the other transmission platform. Such notifications must include documentation of an existing agreement with a satellite or multiplex operator.

Notified changes are to be approved by the regulatory authority as long as they comply with the provisions of Sections 3, 7 and 9 of the Audiovisual Media Services Act or with requirements imposed in a multiplex licence decision.

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

Programming changes

During the reporting period, one digital terrestrial television broadcaster submitted a notification indicating that the channel's programming was to be restructured from one hour per week to two half-hour broadcasts per week. In this case, an approval was not necessary because the change was not considered material. In addition, the regulatory authority received multiple notifications from Red Bull Media House GmbH indicating changes in the "Red Bull TV" programming window on the ServusTV channel; likewise, these measures were not considered to qualify as material changes.


Finally, one procedure was carried out during the reporting period for the approval of changes in the transmission platforms used by Red Bull Media House GmbH for the ServusTV channel and the "Red Bull TV" programming window. In this case, the regulatory authority approved the additional transmission of these channels via the terrestrial multiplex platform operated by Ortsantennenbau Ausserfern GmbH & Co KG in the "MUX C – Ausserfern" region.

Change in transmission platform

4.7.7 Conciliation activities related to media

RTR can also act as a conciliation body for complaints regarding communication services in the Media Division. The duty of dispute resolution, which is assigned to KommAustria under Art. 122 TKG 2003, was delegated to RTR. The main prerequisite for the initiation of a conciliation procedure is that the customer and operator have unsuccessfully attempted to reach an agreement on their own. In the course of these procedures, RTR makes efforts to negotiate an amicable solution or communicate its opinion on the case in question.

Conciliation in the Media Division: 21 complaints



In the reporting period, RTR's conciliation body received 21 complaints regarding matters assigned to the Media Division. Compared to the number of conciliation cases handled in the Telecommunications and Postal Services Division (cf. Section 8.1.1), this figure accounts for a mere 0.48% of all conciliation cases submitted in the year 2010.

The procedures in this field related to general disputes regarding contracts and fees/charges, e.g. complaints arising from the increasing prevalence of video on demand (disputed film orders).

4.8 Brief reporting rights under Art. 5 FERG

Brief reporting rights

Art. 5 of the Exclusive Television Rights Act (FERG) grants television broadcasters the general right to use brief excerpts from the broadcast signal for the purpose of news reporting on "events of general informational interest" even in cases where another television broadcaster has acquired exclusive rights to broadcast the event. Under Art. 5 Par. 1 FERG, an event is considered to be of general informational interest when it can be expected to see broad coverage in Austrian media reporting or in another country which is a signatory to the Agreement on the European Economic Area or to the European Convention on Transfrontier Television.

Art. 5 FERG defines the general conditions for the granting of brief reporting rights. In cases where the regulatory authority is called upon to enforce these rights, the authority must always account for the balance of interests between the restriction of ownership to the holder of exclusive rights and the brief reporting rights of the other party, which serve the interests of the general public with regard to information rights.

ORF request regarding Sky Österreich GmbH

In the reporting period, ORF requested brief reporting rights from Sky Österreich GmbH, but with a specific request for an assessment to the effect that on the basis of the provision under Art. 5 Par. 4 FERG, the obligated television broadcaster only has a right to reimbursement of the additional costs directly associated with granting access (where no other agreement has been concluded).

In accordance with the legal requirements of Art. 5 Par. 7 FERG, a mediation meeting was held at KommAustria in which the authority attempted to negotiate an amicable agreement between the parties. As such an agreement was not reached, KommAustria was compelled to make a decision with regard to ORF's request. In its official decision, KommAustria defined the procedures for exercising brief reporting rights more specifically for ORF. As appeals were submitted, the official decision had not taken legal effect at the end of the reporting period.







5. Digitisation progress report

The digitisation process has made great advances in Austrian television households: At the end of 2010, nearly all of Austria's satellite and terrestrial households received digital television signals, and even in cable households, where the changeover to digital reception has been sluggish for years, the digitisation trend clearly began to accelerate.

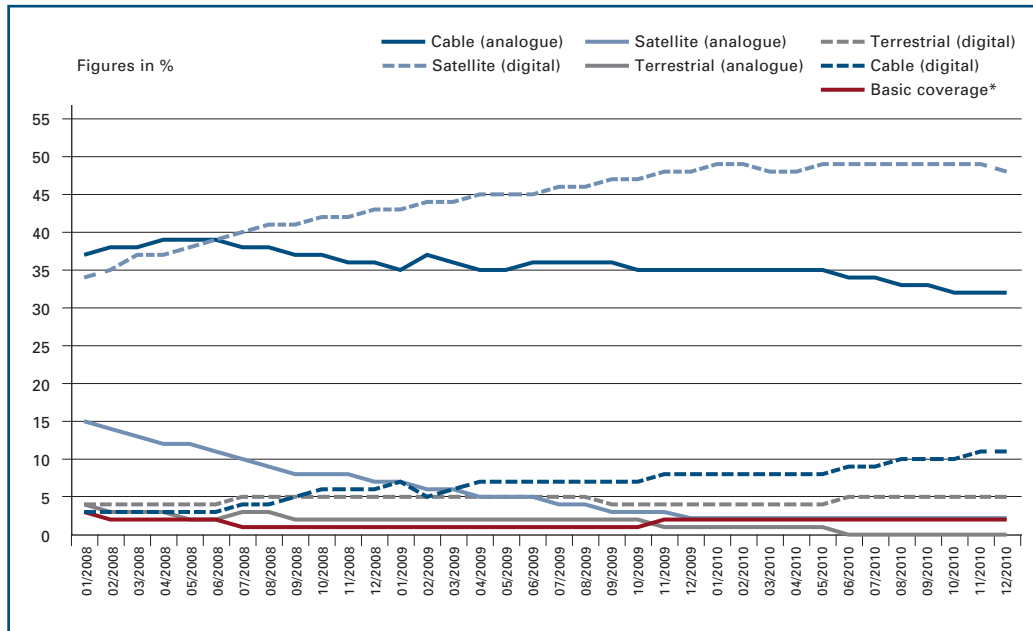
By the end of 2010, nearly two-thirds of the country's 3.495 million¹ television households were using a digital reception mode on their only television set or on their main television set. This means that the overall share of digital television households rose from 60% to 64% between December 2009 and December 2010. When the Austrian Digitisation Plan 2007 was published, this figure stood at 40%.

For the first time ever, the largest increase in the number of digital television households within a single year was observed almost exclusively in the cable household category; however, this can be attributed in particular to the high digitisation rate on the terrestrial and satellite platforms as well as the fact that the slow digitisation of cable households since mid-2008 has now developed into a more stable trend.

The data on digital television in Austria presented in this section reflect the situation as of December 31, 2010 and are predominantly based on the monthly television usage surveys conducted in Austria by GfK Austria GmbH (GfK Austria) on behalf of the TELETEST working group (AGTT). Percentage values have been rounded off and may therefore diverge from the absolute figures.

¹ TELETEST working group (AGTT), GfK Austria 2010

Figure 2: Development of reception modes in Austrian television households



Source: TELETEST working group (AGTT), GfK Austria 2010

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

The most frequently used broadcasting transmission platform is still satellite, via which 50% of Austria's television households receive their television signals. This share has remained unchanged in recent years. As of December 2010, more than 96% of those households received digital television signals. However, the share of digitised satellite households in Austria had already reached this level at the end of the year 2009.

The most substantial development was observed among digital cable households, which for the first time reached a double-digit share (11%) of Austria's overall number of television households at the end of 2010; this means that more than one fourth of all cable households in Austria have switched to digital television. For comparison purposes, the share of Austrian television households with digital cable television had only reached 8% (approximately 18% of Austria's cable households) at the end of 2009.

Compared to December 2009, the overall share of cable households has not changed: The share of Austrian households which use cable television on their main television set is still 43% of the overall number of television households. Therefore, three quarters of Austria's cable households still receive analogue television signals.

After losing substantial ground in the wake of the digitisation of terrestrial television in 2007, the share of digital terrestrial households has remained relatively stable at approximately 5% of Austria's television households since mid-2008. With a share of less than 0.5%, analogue terrestrial households now play a negligible role. According to the plan prepared by ORS (Austria's transmitter network operator), the last analogue transmission facilities, which are still in use in small rural coverage areas, will either be switched over to digital technology or be shut down completely in June 2011.

In terms of the overall television digitisation rate, Austria has attained a sound position in the middle range among European countries.

Austrian digitisation rate in middle range among European countries

By the end of the year 2009, some 60% of European television households² had gone digital. At that time, this share was exactly the same as the level of digitisation attained in Austria.³ In Western Europe, the digitisation rate had reached 68% of television households at that time, while the corresponding figure in Central and Eastern Europe stood at 32%. The leaders in television digitisation in Europe were Finland (100% of television households digitised), the UK (just under 90%), Spain (83%), Italy (72%) and France (70%). With a television digitisation level of approximately 55% each, the Netherlands and Germany were behind Austria, where digitisation has been slowed only by sluggish development in cable households.

Despite the very positive developments observed in 2010, Austria is still below the European average with regard to the digitisation of cable households. Although digital cable reception has seen the lowest growth rates compared to satellite and terrestrial reception throughout Europe, 34% of all European cable television households had switched to digital technology at the end of the year 2009; in Austria, this share had only reached 19% at that time. By European comparison, therefore, the increase in the digitisation level to approximately 25% of Austrian cable households in the year 2010 can be considered a significant – yet still below-average – development.

A total of 7.1 million television viewers over the age of 12 live in Austria's television households, and 67% (4.8 million) of those viewers live in a digitised television household.

5.1 Digitisation of terrestrial television (DVB-T)

The process of digitising terrestrial television in Austria, which began in October 2006, was continued by the transmitter network operator ORS at numerous transmitter locations in 2010. This process is scheduled for completion in mid-2011. As a result of these efforts, the share of television households which use digital terrestrial reception on their only television set or on their main television set rose from 4% to 5% of all television households in Austria between December 2009 and December 2010.


As of December 31, 2010, the nationwide DVB-T multiplex known as MUX A covered 96% of Austria's population; this figure rose by three percentage points year on year. The television channels ORF 1, ORF 2 and ATV as well as ORF's MultiText media service are broadcast on the MUX A platform.

DVB-T covers 96% of Austria's population

By the time the final analogue terrestrial broadcasting transmission facilities are switched over or shut down at the end of June 2011, MUX A's population coverage will be nearly 97%. This means that another 40 transmission facilities will have to be changed over to digital technology in the first half of 2011.

² Based on 244 million European television households; source: SES ASTRA Satellite Monitor

³ SES ASTRA Satellite Monitor, March 2010



With the rollout of the Kitzbüheler Horn transmitter location, the second nationwide digital terrestrial multiplex (MUX B) attained a population coverage level of 88% in the autumn of 2010.

In addition to the television channels on MUX A, households in the coverage area served by MUX B can receive the channels 3sat, ORF SPORT PLUS, PULS 4 and (since October 2009) ServusTV by terrestrial means.

MUX C refers to another nationwide multiplex which is reserved exclusively for regional and local area coverage with regionally or locally oriented broadcasting channels; this multiplex is therefore subdivided accordingly.

In the reporting period, the number of approved MUX C platforms came to 19, most of which are already in operation with one or two television channels and in some cases with radio stations as well.

5.2 Mobile terrestrial television (DVB-H)


Efforts to establish digital terrestrial broadcasting for mobile handsets using the DVB-H standard did not meet with a sufficient level of interest among consumers in Austria.

As of December 31, 2010, MEDIA BROADCAST GmbH relinquished its licence for nationwide DVB-H broadcasting operations. MEDIA BROADCAST GmbH and its partners, the mobile network operators mobilkom austria AG (now A1 Telekom Austria AG), Orange Austria Telecommunication GmbH (Orange) and Hutchison, cited the small selection of available handsets and the resulting low level of interest among consumers as the main reasons for DVB-H's lack of success on the market. However, the consortium's very moderate marketing activities may have also contributed to this development. Official figures were never published with regard to the number of subscribers, but according to industry estimates these figures were in the low five-digit range.

5.3 Digitisation of satellite television (DVB-S)

Two factors in particular have facilitated the rapid transition to digital satellite reception in Austria, a process which is now nearly complete:

The first major driver of this process was the fact that Austrian channels were never broadcast via analogue satellite. The second (and closely related) factor was the transition from analogue terrestrial television to DVB-T, which was launched in October 2006. In the autumn of 2006, analogue satellite households which also received Austrian channels via a terrestrial antenna thus had to make a choice between purchasing a DVB-T box and switching completely to digital satellite television right away. In most cases, financial and practical considerations favoured the digital satellite option.



As a result, the digitisation rate among satellite households rose from 50% to more than 96% between December 2006 and December 2010.

Satellite television, which has held steady at 50% of television households, still represents the most popular reception platform in Austria; 52% of television viewers over the age of 12 live in digital satellite households.

5.4 Digitisation of cable television (DVB-C, IP)

August 2010 marked a milestone in the digitisation of cable households, as the cable digitisation rate finally reached a double-digit percentage of all television households in Austria. At the end of December 2010, digital cable households accounted for 11% of all television households (approximately 25% of cable television households) in the country.

As of December 2009, just under 19% of Austria's cable television households had switched to digital reception. Over a period of several years – even until June 2008 – the percentage of digital cable television households amounted to a mere 7% of all cable households (3% of all television households) in Austria.

5.5 Radio digitisation

In a few individual cases, certain Austrian radio broadcasters have taken initial steps toward offering their channels using digital technology in addition to analogue broadcasting. However, digital radio broadcasting still largely relies on IP-based transmission platforms, for example using UMTS in entertainment packages sold by mobile service providers or in the form of an Internet stream (Internet radio). Given the lack of specific platforms for digital radio broadcasting, this form of transmission has relied on the DVB-T technology introduced for digital television and on DVB-H (until the latter was shut down in December 2010).

A total of five radio stations (FM4, KRONEHIT, LoungeFM, Ö1, Ö3) in Austria were broadcast using DVB-H technology.

On the DVB-T platform MUX C for local and regional digital terrestrial television, the religious radio programme "Radio Maria" was broadcast in Vienna and parts of Lower Austria from the Wien-Kahlenberg transmitter in Vienna. However, the company responsible for the MUX C platform in Vienna relinquished its licence when it became clear that these broadcasting operations were not economically viable.

At the moment, digital radio is still broadcast on the nationwide DVB-T platform MUX B, where the ORF's Ö3 radio station can be heard during certain times and alternates with the ORF SPORT PLUS television channel. Apart from those broadcasts, the Styrian youth station "Soundportal" broadcasts its content using DVB-T via three MUX C transmission facilities (Feistritzerwald, Galgenberg, Wartbergkogel) in the Mur-Mürztal region in the province of Styria.

5.6 Digital Radio Interest Group

In 2010, the Digital Radio Working Group, which was established by RTR in 2009 in order to investigate the market demand for the rollout of a separate digital terrestrial radio platform in Austria, implemented the resolution taken at the end of 2009 and continued its activities as the Digital Radio Interest Group.

The group's main objective is to closely monitor European developments in digital radio with a view to identifying an appropriate time for a potentially successful and economically viable introduction of digital radio in Austria.

The Digital Radio Interest Group was established on March 23, 2010 and convenes at roughly semi-annual intervals. Its members include representatives of relevant market participants from Austria, Germany and Switzerland.

*Recommendations of
the Digital Radio
Working Group for
the PrR-G and
Digitisation Plan*

At the end of the year 2009, the Digital Radio Working group had submitted a report describing the introduction of digital radio as a probable future scenario, but not as an endeavour to be tackled immediately in Austria. This assessment was largely based on the rather unsuccessful attempts to introduce this form of broadcasting in other European countries. At the same time, the group recommended that the Austrian legislature create a sound basis for the introduction of digital radio in order to be prepared for any potential changes in the situation. This recommendation was taken into account in the amendment to the Private Radio Act (PrR-G) in 2010. This also forms the basis for the group's task in 2011, namely to specify key principles for the potential introduction of digital broadcast radio in a plan to be prepared as a follow-up to the Austrian Digitisation Plan from 2007. Above all, this will involve defining the transmission technologies favoured by the Working Group and Interest Group. The technologies in question are the DAB+ transmission standard and – pending its future standardisation – the DRM+ transmission technology for local radio broadcasting in VHF Band III. At the end of 2010, the Digital Platform Austria was also consulted in this regard.





6. Administration of funds

6.1 Austrian Digitisation Fund

In 2010, the Austrian Digitisation Fund received an endowment of EUR 500,000.00. The purpose of the Digitisation Fund is to promote digital transmission technologies and digital applications on the basis of European standards in connection with broadcasting. These funds are derived from Austrian broadcasting fees which are collected jointly with ORF programming fees but are generally allocated to the federal budget.

Endowment

6.1.1 Digitisation Fund activity report


On April 30, 2009, RTR issued special guidelines governing grants to support the digital terrestrial transmission of regional and local channels via regional and local DVB-T multiplex platforms and transmission systems (known as "MUX C" in Austria). The MUX C grants are a form of de minimis state aid. Grants can be allocated for the planning, acquisition and construction costs arising from a MUX C platform, with the maximum amount available per channel fed into the multiplex and per platform amounts to EUR 20,000.00 and must not exceed 50% of the broadcaster's total costs during the grant period. In 2010, grant agreements were concluded with three local and regional broadcasters in accordance with the guidelines mentioned above, and a fourth application was still being processed at the end of the year. Up to this point, grants in the amount of approximately EUR 44,000.00 have been allocated.

MUX C grants

In order to promote the digitisation of cable infrastructure, consumers have been offered subsidies for the early adoption of digital broadcasting using HD-ready cable receivers since December 2008. On the one hand, grants from the Digitisation Fund have benefited customers of UPC Austria who have switched from analogue to digital broadcasting reception using an HD-ready DVB-C device. At the request of UPC Austria, the grant period was extended until May 31, 2010. Since the grant was designed as a degressive subsidy, qualifying customers received grants from RTR in the amount of EUR 40.00 in the period from December 2008 to December 31, 2009 and EUR 30.00 from January 1, 2010 to May 31, 2010. The grants were passed on to customers in the form of a monthly credit against the rental fee for the HD box provided by UPC Austria (total grant volume: EUR 800,000.00). In addition, communication and implementation costs were also subsidised (total grant volume: EUR 400,000.00). In the course of the promotion campaign with UPC Austria, approximately 6,700 customers were persuaded to make the transition from analogue to digital cable broadcasting reception.

Grants for HD-ready cable receivers

At the same time, RTR cooperated with the Austrian Federal Economic Chamber in a project designed to promote the early transition of Austria's consumers from analogue to digital cable television using HD-ready DVB-C receivers. A total of 20 cable network operators took part in the campaign and signed grant agreements with RTR. The campaign was launched on September 1, 2009, and a number of cable network operators extended the grant period from February 28, 2010 to May 31, 2010. This grant campaign again provided for degressive sub-



sides: Customers who switched to digital cable by May 1, 2010 received a grant of EUR 40.00, while those who switched on or before May 31, 2010 received EUR 30.00. In this campaign, grants were allocated for a total of 5,180 HD-ready DVB-C receivers.

*DVB-T receivers
for disadvantaged
consumers*

Until December 31, 2009, RTR had cooperated with Digitales Fernsehen Förder GmbH (DFFG) to provide grants for disadvantaged consumers to purchase DVB-T receivers for nationwide digital terrestrial television. This subsidy, which covered up to 50% of the price of the receiver, benefited those customers in the DVB-T switchover regions who were exempt from the broadcasting licence fees collected by GIS and who purchased an MHP-compatible DVB-T receiver. Since early 2010, RTR has continued to provide the grants previously handled by DFFG for the purchase of DVB-T receivers by disadvantaged consumers. Retail consumers can now request grants by submitting a predefined application form to RTR along with the receipt for the receiver purchased. Once RTR has reviewed the application requirements, especially the exemption from broadcasting licence fees, and the other grant requirements, approved grants are paid out directly to the applicants.

DVB-T2 trials

In May 2010, RTR concluded a grant agreement with ORS for broadcasting transmission trials using the DVB-T2 standard. DVB-T2 is the next-generation development of the existing DVB-T standard. The purpose of the project is to operate a multiplex and to carry out pilot DVB-T2 transmissions of ORF channels on the "WIEN 1 (Kahlenberg) Channel 65" frequency. In addition to broadcasting the ORF's content, ORS plans to broadcast other channels and to test broadcasting encryption on the DVB-T2 platform. The grant approved for the project amounts to EUR 463,982.40.

Cable multiplex

From December 2007 onward, RTR supported an ORF project for the operation of digital cable multiplex platforms which deliver ORF channels, ATV and various additional services in high quality. The project was completed in December 2010.

For several other applications submitted in 2010, grant decisions had not yet been made at the end of the reporting period.

6.1.2 Notes on the 2010 annual accounts

In 2010, the Digitisation Fund received an endowment of EUR 500,000.00.

The funds allocated by the Federal Ministry of Finance as of January 30, 2010 and the existing amount in the Digitisation Fund (trustee account balance as of December 31, 2009: EUR 7,654,624.89) generated interest revenues in the amount of EUR 86,308.04 during the reporting period (including interest on the repayment of unused grants in the amount of EUR 3,683.22). Including the repayment of unused grants (EUR 443,400.97) and the repayment of administrative expenses from 2009 (EUR 111,031.26), total credits to the fund came to EUR 1,140,740.27 in the year 2010.

Of the total amount available in the Digitisation Fund, grants paid out in 2010 amounted to EUR 729,825.49, while administrative expenses and RTR's participation in projects came to EUR 537,240.00. Therefore, the fund paid out a total of EUR 1,267,065.49 in the year under review.

The remaining amount of EUR 7,554,576.40 (including the EUR 26,276.73 returned to the fund as it was not required for administrative activities and RTR's participation in projects) has been carried forward to the year 2011.

Table 3: Austrian Digitisation Fund: Excerpt from 2010 financial statements

Income and expense statement	EUR	EUR
Balance in trustee account as of December 31, 2009		7,654,624.89
Income		
Increase from credits in 2010	500,000.00	
Surplus from administrative expenses in 2009	111,031.26	
Repayment of grants	443,400.97	
Interest	86,308.04	1,140,740.27
Payments		
Administrative expenses and RTR's participation in projects in 2010	-537,240.00	
Grant payments in 2010	-729,825.49	-1,267,065.49
Balance of initial funds, debits and credits in 2010 = Balance in trustee account as of December 31, 2010		7,528,299.67
Administrative expenses to be repaid to the fund in 2011 and RTR's participation in projects in 2010	26,276.73	26,276.73
Balance of trustee obligations as of December 31, 2010		7,554,576.40
Grants approved but not yet paid out		-889,940.00
Funds available in 2011		6,664,636.40


Source: RTR

6.2 Austrian Television Fund

Articles 9f and 9g in conjunction with Articles 9c to 9e of the KommAustria Act (KOG),⁴ which went into effect on January 1, 2004, previously formed the basis for the activities of the Austrian Television Fund (FERNSEHFONDS AUSTRIA). Under the 2010 amendment to the KommAustria Act (Federal Law Gazette I No. 50/2010), which went into effect on October 1, 2010, the Television Fund's activities are now governed by Articles 26 and 27 in conjunction with Articles 23 to 25 KOG.

As the Television Fund's endowment was increased as of June 30, 2009, a total of EUR 13.5 million in grants is available each year. The funds are derived from the broadcasting licence

⁴ Federal Law Gazette I No. 71/2003



fees which are collected in accordance with Art. 3 Par. 1 Broadcasting Fees Act (RGG) and generally allocated to the federal budget. The objectives of the fund, namely to enhance the quality of television productions and the capacity of the Austrian film industry, have remained unchanged and will be supported even more effectively by this increase in funding. In addition, the fund is also intended to help maintain a diverse cultural landscape, to strengthen Austria as a media location and to contribute to the audiovisual sector in Europe.

In addition to the provisions of the KommAustria Act, which define how the funds are obtained and the decision-making basis for allocations, the grant guidelines for the Television Fund specify the purpose of grants from the fund, the costs which can be subsidised, personal and material qualification requirements, etc.

Grant decisions are made by the managing director of RTR's Media Division, Alfred Grinschgl, on the basis of the grant guidelines and after due consideration of the Review Board's comments.

The members of the Review Board who supported the Television Fund from 2006 to 2009 were reappointed for another three-year term in 2010.

6.2.1 Grant guidelines

The guidelines for grants from the Television Fund were approved by the European Commission until June 30, 2013. Due to the increase in available funds and the amendment to the KommAustria Act (Federal Law Gazette I No. 50/2010), the guidelines were revised in 2010 in order to broaden the fund's activities, to implement the amended legal requirements, and to account for experience as well as changes in the film industry in recent years. The guidelines were revised in cooperation with Austrian producers' associations, the Austrian Association of the Audiovisual and Film Industry, key German television broadcasters, and the Review Board. In this way, it was possible to ensure that the needs of all parties involved were taken into account.

The guidelines will go into effect as soon as they have been approved by the European Commission.

The changes planned in the KommAustria Act include the introduction of a new grant which covers up to 80% of the actual and documented costs for the production of film versions for people with visual and hearing impairments, and up to 50% for the production of foreign-language versions. Moreover, in the future it will be possible to finance up to 30% of the production budget for projects which fulfil certain requirements. The previous funding limit was 20%.

Apart from language revisions, the most important changes in the guidelines for the Television Fund are as follows:

- The investment made by television broadcasters must amount to at least 30% of overall production costs.
- The licence period must begin no more than 12 months after the final acceptance of the production.

- Put and call options are no longer permitted.
- In cases where the objectives of the fund are fulfilled to an especially high degree, the Television Fund may cover up to 30% of the overall production costs.
- In addition to overall production costs, the production of more accessible versions of a project can also be supported.
- The maximum amounts for production grants were increased.

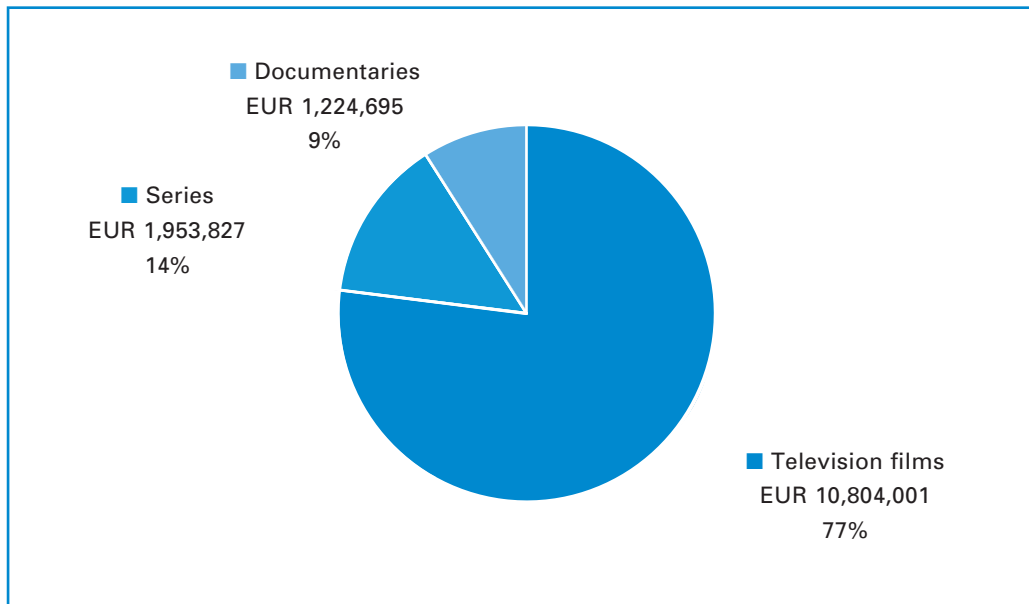
The current version of the guidelines can be found on the Television Fund's web site (<http://www.fernsehfonds.at>). The new guidelines will be published online as soon as they have entered into force.

6.2.2 Projects supported

Over the four application dates held in 2010, a total of 56 projects were approved, with grants totalling EUR 13,982,523.00. The projects approved included 27 television films, three series and 26 documentaries.

The total production costs projected for those projects amounts to EUR 90.3 million, of which approximately EUR 46.3 million will be spent in Austria. Therefore, the expenditures will come to 3.3 times the sum of grants approved by the Television Fund.

Figure 3: Austrian Television Fund: Grants approved in 2010



Source: RTR

Grants by application date

First application date (January 26, 2010)

Of the 26 proposals submitted as of this application date, 18 were selected for funding (eleven television films, one series and six documentaries), one was withdrawn, and seven were rejected.

Table 4: Austrian Television Fund: Grants awarded (1st application date 2010)

Television films	EUR
Dor Film-Produktionsgesellschaft m.b.H. Isenhart	700,000.00
EPO – Filmproduktionsgesellschaft m.b.H. Löwenstein	500,000.00
Wega-Filmproduktionsgesellschaft m.b.H. Hannas Entscheidung (AT: Bewegte Zeiten)	477,582.00
EPO – Filmproduktionsgesellschaft m.b.H. Das Mädchen auf dem Meeresgrund	450,000.00
Dor Film-Produktionsgesellschaft m.b.H. Bauernopfer	380,000.00
MONA Film Produktion GmbH Die Liebe kommt mit dem Christkind	369,591.00
MONA Film Produktion GmbH Glücksbringer	360,000.00
Aichholzer Filmproduktion GmbH Spuren des Bösen (AT: Das Verhör – SANDAG)	348,710.00
ALLEGRO Filmproduktionsgesellschaft m.b.H. Willkommen in Wien	339,753.00
SK-Film- und Fernsehproduktionsgesellschaft m.b.H. Aschenputtel	300,000.00
Graf Filmproduktion GmbH Lilly Schönauer X – Wo die Liebe hinfällt (AT: Sommerkleid und Anzug)	215,000.00
Total	4,440,636.00
Series	EUR
Satel Film GmbH Soko Donau / Season 6 (13 episodes)	1,184,827.00
Total	1,184,827.00
Documentaries	EUR
Gesellschaft für Video – Produktion m.b.H. Nfg & Co KG First on Mount Everest	130,000.00
Interspot Film-Gesellschaft m.b.H. Der Anschlag (AT: Terror am Flughafen)	54,835.00
Blackbox Film & Medienproduktion GmbH Der Ball ist rund	40,000.00
ON-MEDIA TV- und Filmproduktionsgesellschaft m.b.H. Schuhe tragen	39,700.00
Dor Film-Produktionsgesellschaft m.b.H. Bruno Kreisky. Menschen. Jahre. Leben	32,000.00
Cult-Filmproduktionsgesellschaft m.b.H. Karl Merkatz – Vom Tischler zum echten Wiener	18,000.00
Total	314,535.00
Overall total	5,939,998.00

Source: RTR

Second application date (April 13, 2010)

Of the 20 applications received in this round, 15 were approved (six television films, one series and eight documentaries). Mischief Films later relinquished its grant for the documentary *Robert Bosch*. One application was withdrawn, and four were rejected.

Table 5: Austrian Television Fund: Grants awarded (2nd application date 2010)

Television films	EUR
Graf Filmproduktion GmbH Der Mann mit dem Fagott (2 parts)	1,200,000.00
MR-Film Kurt Mrkwicka Gesellschaft m.b.H. Vermisst (2 parts)	862,500.00
LISA Film Produktion GmbH Oma wider Willen (AT: Meine Oma ist die Beste)	397,681.00
Film27 Multimedia Produktions GmbH Bollywood lässt Alpen glühen (AT: Und Bollywood kam in die Berge)	331,734.00
Graf Filmproduktion GmbH Lilly Schönauer XI – Heiratsantrag mit Hindernissen	215,000.00
Lotus-Film Gesellschaft m.b.H. Der Chinese	85,000.00
Total	3,091,915.00
Series	EUR
Dor Film-Produktionsgesellschaft m.b.H. Die Steintaler (12 episodes)	700,000.00
Total	700,000.00
Documentaries	EUR
MR-Film Kurt Mrkwicka Gesellschaft m.b.H. Mutter Teresa	95,000.00
FISCHER FILM GmbH Gas Monopoly	60,000.00
Kubefilm GmbH Universum – Am Wagram: Der Wiedehopf in seinem Paradies	55,000.00
Power of Earth Productions TV & Film Produktions Ges.m.b.H. Universum Wörthersee	50,000.00
ON-MEDIA TV-Produktion GmbH Die Notaufnahme II (8 Folgen)	50,000.00
Thomas Strasser Login 2 Life	41,970.00
AMOUR FOU Filmproduktion GmbH Judenburg findet Stadt	32,400.00
Total	384,370.00
Overall total	4,176,285.00

Source: RTR

Third application date (July 27, 2010)

Of the 27 applications received, 16 were approved (seven television films, one series and eight documentaries), one was dismissed without review, one was withdrawn and nine were rejected.

Table 6: Austrian Television Fund: Grants awarded (3rd application date 2010)

Television films	EUR
MONA Film Produktion GmbH Die lange Welle hinterm Kiel	576,229.00
MR-Film Kurt Mrkwicka Gesellschaft m.b.H. Edelweißkönig	357,497.00
FRAMES filmproduktion GmbH Weihnachtsengel küsst man nicht	320,000.00
Dor Film-Produktionsgesellschaft m.b.H. Rote Sonne Afrika	300,000.00
MONA Film Produktion GmbH Die Alpenklinik 6	260,000.00
Tellux Film GmbH Der Rote Kardinal	208,000.00
Dor Film-Produktionsgesellschaft m.b.H. Restrisiko	200,000.00
Total	2,221,726.00
Series	EUR
Neue Sentimental Film Austria AG Neue Wiener (12 episodes)	69,000.00
Total	69,000.00
Documentaries	EUR
Interspot Film-Gesellschaft m.b.H. Otto Skorzeny – SS-Agent für Hitler (AT: Hitlers James Bond)	105,357.00
Interspot Film-Gesellschaft m.b.H. Hanna Reitsch – Hitlers Fliegerin (AT: Hitlers Eiserner Engel)	83,628.00
Felix Breisach Medienwerkstatt GmbH Auf der Suche nach Mahler	50,356.00
Navigator Film Produktion & Co KG Erwin Wurm – Der Künstler, der die Welt verschluckt	45,000.00
ON-MEDIA TV-Produktion GmbH Pfusch am Bau (7 episodes)	45,000.00
Vincent Lucassen – WILDart Film 50 Jahre Anti-Baby-Pille	28,439.00
Walter Wehmeyer Filmproduktion Musik nach dem Krieg	18,077.00
Thomas Rilke Filmproduktion Die Spanische Hofreitschule (2 episodes)	10,000.00
Total	385,857.00
Overall total	2,676,583.00

Source: RTR

Fourth application date (October 5, 2010)

Of the 19 applications received in this round, nine were approved (three television films, one series and five documentaries). Kids TV later relinquished its grant for the series *No Jungs*, while three applications were withdrawn and seven rejected.

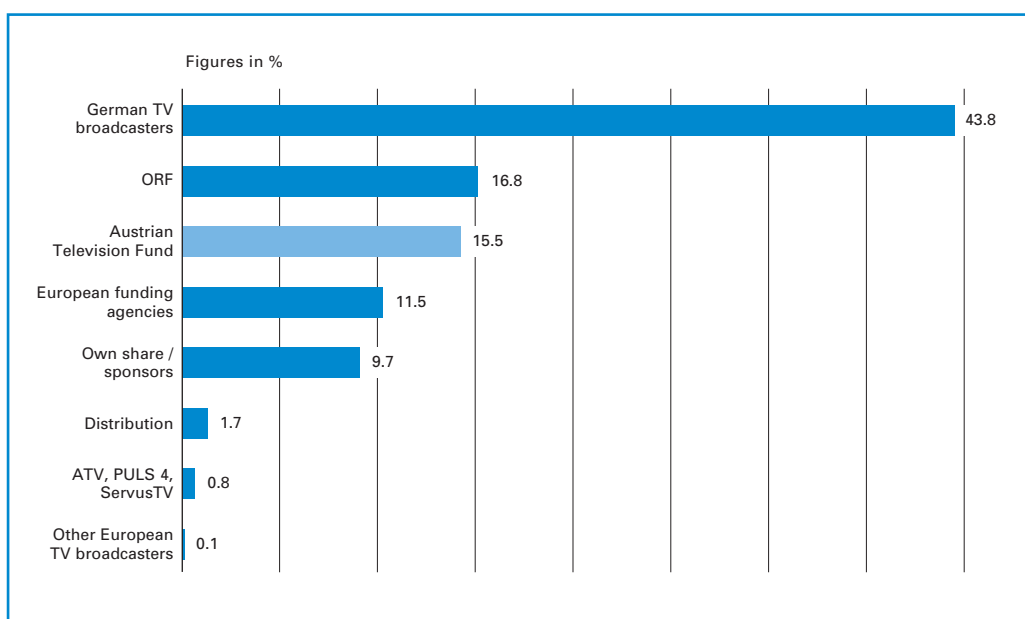
Table 7: Austrian Television Fund: Grants awarded (4th application date 2010)

Television films	EUR
EPO – Filmproduktionsgesellschaft m.b.H Die Tänzerin	370,000.00
MR-Film Kurt Mrkwicka Gesellschaft m.b.H. Die Putzfrau und der Banker	349,724.00
Graf Filmproduktion GmbH Das Wunder von Kärnten	330,000.00
Total	1,049,724.00
Documentaries	EUR
ON-MEDIA TV- und Filmproduktion GmbH In der Schuldenfalle (8 episodes)	53,000.00
Alternative Productions GmbH Falco 3	33,300.00
Alternative Productions GmbH Face Human Rights	30,220.00
OTTO PAMMER FILMPRODUKTION Südtirol – Zwischen Hoffnung und Gewalt	13,413.00
Prospera Medienproduktion GmbH Geheimnisvolles Almtal	10,000.00
Total	139,933.00
Overall total	1,189,657.00


Source: RTR

6.2.3 Contributions to funding

Figure 4: Austrian Television Fund: Contributions to funding of television film projects in 2010



Source: RTR



The largest individual share (43.8%) of the total production costs (approximately EUR 90.3 million) is to be covered by German television broadcasters, while the ORF has committed to funding 16.8%. The grants approved by the Television Fund will account for 15.5% of the total. The share of funding attributable to all other Austrian and European funding agencies amounts to 11.5%. The producers' own share (including sponsorship) amounts to 9.7%, while distribution companies will contribute 1.7%. In addition, ATV, ServusTV and (for the first time) PULS 4 will cover a total of 0.8%. Finally, other European television broadcasters are responsible for funding 0.1% of overall production costs in the projects approved.

6.2.4 Co-productions

A large number of the 56 projects approved in 2010 are co-productions with television broadcasters and production companies outside of Austria. This warrants the conclusion that the Television Fund is making a significant contribution to Austria's attractiveness as a location for film production.

a) Cooperation with Austrian television broadcasters

The ORF was involved in 46 projects, and in twelve projects ORF was the only participating television broadcaster. The overall production costs associated with those projects amount to some EUR 82.7 million, of which the Television Fund will cover some 16.6% and the ORF will cover approximately 18.3%.

Seven productions involving the Austrian private broadcasters ATV, ServusTV and PULS 4 were approved in 2010. The total production costs for those projects amounted to approximately EUR 1.4 million. In those productions, the Television Fund will provide funding for approximately 19% of the costs, while the private television broadcasters are to finance 51%.

b) Cooperation with European television broadcasters

Thirty-seven of the projects approved for funding were developed in cooperation with European television broadcasters. German broadcasters (ARD, ARTE Deutschland, BR, Deutsche Welle, Planet TV, ProSieben, SAT.1, SWR, WDR, ZDF) are involved in all of those projects. Additional European television broadcasters are only involved in two of the projects (Duna/Hungary, MTV/Finland, SF/Switzerland).

c) Cooperation with production companies outside of Austria

Twenty of the projects approved are co-productions with German television production companies, while one project involves a Swiss production company. The overall production costs projected for those projects amounts to approximately EUR 56.5 million, and the share to be covered by Austrian producers amounts to some EUR 20.2 million.

d) Cooperation with funding agencies

In the year 2010, 48 of the 56 projects which received funding were also supported by regional and European funding institutions. The Austrian funding agencies supporting those projects include the Federal Ministry for Education, Arts and Culture, Cine Styria, Cine Tirol, the Vienna Film Fund, the Carinthian Tourist Board, the Province of Carinthia, the Province of Lower Austria, the Province of Upper Austria, the Province of Salzburg, the Province of Styria, the Province of Tyrol, and Salzburg Agentur. As for other European sources, funding also came from the Aargauer Kuratorium (Switzerland), the Swiss Federal

Office of Culture (BAK, Switzerland), Filmstiftung NRW (Germany), Filmboard Berlin-Brandenburg (Germany), FilmFernsehFonds Bayern (Germany), Filmförderung Hamburg (Germany), Teleproduktionsfonds (Switzerland) and from EU funding programmes such as PRINCE and MEDIA. In eight projects, the Television Fund was the only funding agency involved.

6.2.5 Funds allocated as of December 31, 2010

As of December 31, 2010, a total of EUR 5,694,492.17 had been allocated for 76 projects from the years 2008, 2009 and 2010.

Table 8: Austrian Television Fund: Funds allocated as of December 31, 2010

Number of projects	Funds allocated for projects from 2007	EUR
3	Ongoing projects as of January 1, 2010	150,000.00
-3	Completed projects	-150,000.00
0	Ongoing projects as of December 31, 2010 (funds allocated)	0.00
Number of projects	Funds allocated for projects from 2008	EUR
9	Ongoing projects as of January 1, 2010	192,934.00
-7	Projects completed, payments for ongoing projects	-156,255.18
-	Reduction after final accounts in 2010	-1,206.82
2	Ongoing projects as of December 31, 2010 (funds allocated)	35,472.00
Number of projects	Funds allocated for projects from 2009	EUR
48	Ongoing projects as of January 1, 2010	4,933,313.83
-25	Projects completed, payments for ongoing projects	-2,831,489.13
-1	Transfer to grant agreement in 2010 (Der Chinese)	-1,000,000.00
-1	Relinquished grant (Im Blutkreis)	-370,000.00
-	Reduction due to lower total production costs and final accounts in 2010	-152,096.02
21	Ongoing projects as of December 31, 2010 (funds allocated)	579,728.68
Number of projects	Funds allocated for projects from 2010	EUR
56	Projects supported	13,982,523.00
-3	Projects completed, payments for ongoing projects	-9,902,261.42
+	Transfer from 2009 agreement (Der Chinese)	1,000,000.00
-	Reduction after final accounts	-970.09
53	Ongoing projects as of December 31, 2010 (funds allocated)	5,079,291.49
	Overall total	5,694,492.17

Source: RTR

6.2.6 Notes on the 2010 annual accounts

Art. 23 Par. 4 of the KommAustria Act stipulates that a report on the allocation of funds and the annual accounts are to be submitted to the Austrian Federal Chancellor each year. The funds not paid out as well as the funds allocated in grant approvals but not yet paid out are to be allocated to reserves (Art. 23 Par. 5 KOG). A separate statement of revenues and expenses for the year 2010 is presented below in order to ensure transparency in the funds required and available.

Table 9: Austrian Television Fund: Excerpt from 2010 financial statements


Income and expense statement	EUR	EUR
Balance in trustee account as of December 31, 2009		7,540,654.69
Income		
Increase from credits in 2010	13,500,000.00	
Surplus from administrative expenses from 2009	11,727.36	
Interest	101,955.80	13,613,683.16
Payments		
Administrative expenses in 2010	-579,750.00	
Grant payments from 2007	-150,000.00	
Grant payments from 2008	-156,255.18	
Grant payments from 2009	-2,831,489.13	
Grant payments from 2010	-9,902,246.42	-13,619,740.73
Balance of initial funds, debits and credits in 2010 = Balance in trustee account as of December 31, 2010		7,534,597.12
RTR administrative expenses from 2010 to be repaid to the fund in 2011	9,429.87	9,429.87
Balance of trustee obligations as of December 31, 2010		7,544,026.99
Grants approved but not yet paid out		
Allocated amounts from 2008	-35,472.00	
Allocated amounts from 2009	-579,728.68	
Allocated amounts from 2010	-5,079,291.49	-5,694,492.17
Funds available in 2011		1,849,534.82

Source: RTR

With the funds available as of December 31, 2009 in the amount of EUR 7,540,654.69 and the endowment of EUR 13,500,000.00 allocated by the Federal Ministry of Finance, plus the credit from administrative expenses from the year 2009 in the amount of EUR 11,727.36 and interest revenues of EUR 101,955.80 in 2010, the Television Fund had a total of EUR 21,154,337.85 at its disposal in 2010.

Of that amount, EUR 579,750.00 was paid out for administrative expenses and EUR 13,039,990.73 was paid out in grants. Total payments from the fund thus came to EUR 13,619,740.73.

The balance in the trustee account as of December 31, 2010 therefore amounted to EUR 7,534,597.12. With the repayment of administrative expenses (EUR 9,429.87) for the year 2010, the balance of trustee obligations amounted to EUR 7,544,026.99 as of December 31, 2010.



On the basis of grant agreements concluded by the fund, the amount of grants approved but not yet paid out came to EUR 5,694,492.17 at the end of the year 2010. Therefore, as a result of the economic and expedient use of resources, additional funds in the amount of EUR 1,849,534.82 will be available for the year 2011.

6.2.7 Events

Forum to promote cooperation between private broadcasters and Austrian film and television producers

In cooperation with the Austrian Directors Association (ADA), the Television Fund organised a forum to promote cooperation between private broadcasters and Austrian film and television producers in connection with the possibility of applying for grants from the Television Fund. The event was held on April 25, 2010. Specifically, the forum provided the private broadcasters ATV, PULS 4, Austria 9 TV GmbH (AUSTRIA 9), ServusTV and gotv Fernseh-GmbH (gotv) with an opportunity to present their programming requirements and discuss them with the other forum participants. Approximately 40 people took advantage of this opportunity and also discussed their experiences and ideas at the ensuing reception.

Essential Legal Framework

With the support of the Television Fund, the Austrian Film Institute, the Vienna Film Fund and MEDIA, the Erich Pommer Institute (EPI) organised a workshop on rights clearance in Baden from December 1 to 5, 2010 in the course of the three-part "Essential Legal Framework" seminar.



This educational workshop dealt with essential knowledge on copyright issues, rights of publicity, trademarks and music rights. Numerous examples and case studies, including *The Baader-Meinhof Complex* and *Friendship!*, were used in order to illustrate the complex problems addressed in this field. The main target group of this cooperative education campaign consists of film and television producers; employees of funding agencies were also invited to advance and update their knowledge.

6.3 Non-Commercial and Private Broadcasting Funds

The Fund for the Promotion of Private Broadcasting (Private Broadcasting Fund) and the Fund for the Promotion of Non-Commercial Broadcasting (Non-Commercial Broadcasting Fund) were established by an amendment to the KommAustria Act in 2009.

In the reporting period, the two funds were endowed with a total of EUR 6 million (EUR 5 million for private broadcasting and EUR 1 million for non-commercial broadcasting); this endowment will be increased regularly until the year 2013. The funds are derived from broadcasting licence fees collected under Art. 3 Par. 1 RGG and generally allocated to the federal budget.

RTR is responsible for administering these funds and awarding grants for the purpose of promoting private and non-commercial broadcasting. Grant decisions are made by the managing director of RTR's Media Division with due attention to Austrian law, the grant guide-



lines and the opinions of the Review Board for the purpose of promoting the dual broadcasting system in Austria and helping broadcasters deliver diverse and high-quality programming.

The funds are allocated in accordance with the provisions of applicable law and a set of guidelines which were subject to approval by the European Commission under the state aid rules of the EC Treaty. In Decisions N 631/2009 and N 632/2009 of January 27, 2010, the European Commission concluded the approval procedure for those guidelines, and the guidelines were then put into effect.

Broadcasters whose activities require a licence or notification pursuant to the Audiovisual Media Services Act (AMD-G, formerly the Private Television Act) or Private Radio Act (PrR-G) are eligible to apply for grants.

Grants are available for three types of projects, which can be submitted individually by the applicants and are also subject to different funding ratios.

Content creation and project grants are intended to create incentives to produce and broadcast programmes, series and projects, to stimulate the creative scene, to ensure diversity in programming, and to maintain the regional identity of the respective channel.

In general, the projects supported must be self-produced (in-house or commissioned productions), and 80% of the eligible costs of the production must be incurred in Austria.


The grant guidelines also create an advantage for programmes which exhibit innovative technical or content-related characteristics; in this context, it is also important to achieve broad diversity in terms of topics and formats.

Eligible production costs include personnel expenses, material costs, project planning and development costs as well as general indirect costs in the amount of 10% of direct costs; all of these expenses must be related to the project supported.

Education grants serve to enhance professional and industry-specific continuing education for employees involved in programme design and technical broadcasting as well as other employees in the industry. The purpose of the grants is to enhance the quality of broadcasting in Austria.

Grants for reach surveys and quality studies serve the purpose of investing in higher data reliability and reducing statistical fluctuations by increasing the number of cases studied and test households involved, especially for local and regional broadcasters. However, individual studies commissioned by broadcasters may also be supported where certain quality criteria are fulfilled.

In general, the process of allocating grants is as follows: Depending on the fund in question, either one or two application dates are scheduled each year. Once RTR has reviewed the applications and the Review Board has submitted its opinions, the managing director of RTR's Media Division makes the funding decisions. After sending a written decision on the grant amount allocated to the applicant, RTR concludes a grant agreement with the broadcaster in question.



The full grant amount indicated in the decision cannot be paid out until all accounts and documents have been reviewed in the form of a final project report. Upon request, it is possible to pay out a 50% advance on the grant amount to the applicant once the grant agreement has been signed. For non-commercial broadcasters, the guidelines provide for two advances, one in the amount of 50% and another in the amount of 30% of the amount granted.

6.3.1 Non-Commercial Broadcasting Fund

Each grant awarded by the Non-Commercial Broadcasting Fund is allocated to cover costs in the year following the allocation. However, as the European Commission did not issue a decision on the fund guidelines until January 2010, the 2010 application date was delayed until April 9, 2010.

Due to their special structure and the general conditions for the creation of open access, non-commercial broadcasters are allowed a funding ratio of up to 90%.

6.3.1.1 2010 application date

Funds in the amount of EUR 1.576 million were available for the 2010 application date. This sum comprises the funds still available from 2009 plus the EUR 1 million endowment received for 2010, minus the fund's share of administrative expenses. Grant applications were received from 16 broadcasters.

For the year 2010, independent radio broadcasters received grants ranging from EUR 82,142.86 to EUR 99,285.71, depending on the amount requested.

In addition, a grant in the amount of EUR 20,000.00 was awarded to the Austrian Association of Independent Radio Broadcasters (*Verband Freier Radios Österreich*, or VFRÖ) for educational measures in which employees of all independent radio broadcasters can participate.

In the field of television broadcasting, the community television station Okto received grants in the amount of EUR 171,428.57 for content creation as well as EUR 33,680.00 for educational measures and studies.

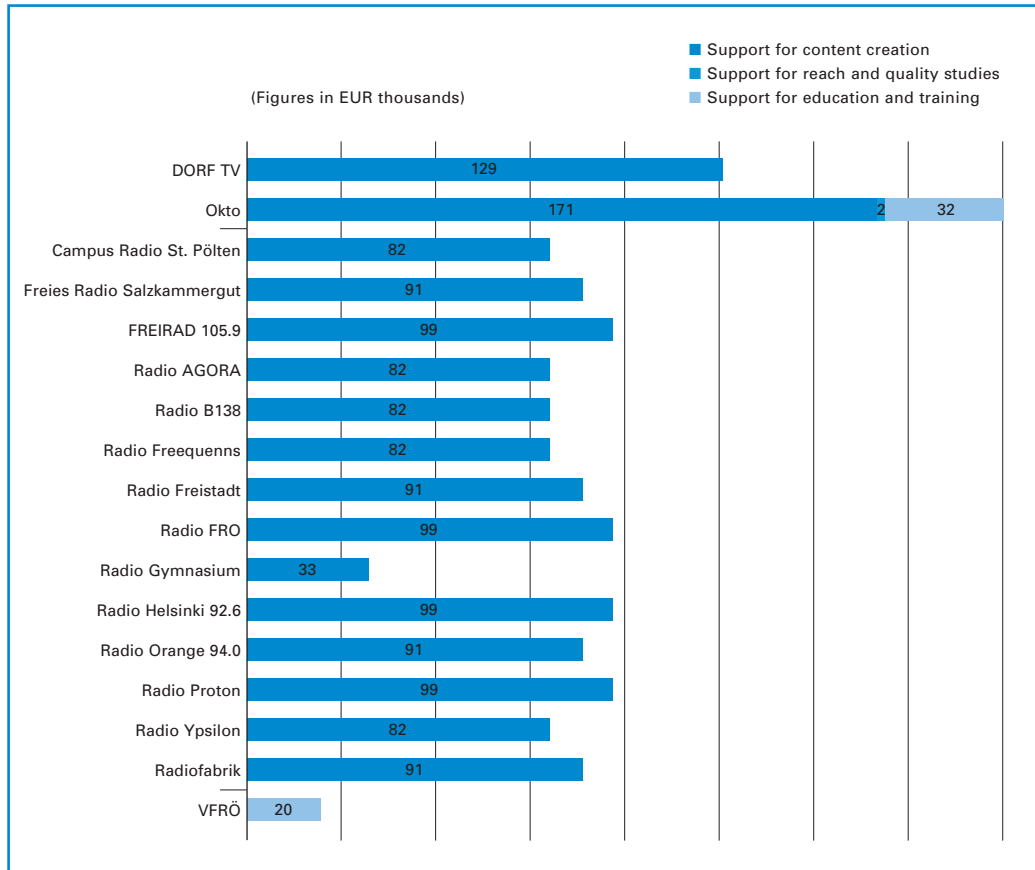
The newly established DORF TV channel received its first grant in the amount of EUR 128,571.43.

The shows funded address topics such as ethnic groups, art and culture, equal opportunities and generations, social affairs and information as well as multicultural shows and radio broadcasts produced by and for migrants.

The vast majority (EUR 1.504 million, or 96.55%) of the funds available were awarded for content creation, while the remaining grants were allocated for educational measures (EUR 52,000.00, or 3.33%) and for reach surveys and quality studies (EUR 1,840.00, or 0.12%).

The chart below shows the distribution of grant amounts by applicant and grant type.

Figure 5: Non-Commercial Broadcasting Fund: Total grants for 2010 application date



Source: RTR

6.3.1.2 2011 application date

The application round for the year 2011 was also held during the reporting period. The deadline for applications was September 10, 2010, and a total of 19 grant applications were received.

In this round, grants in the amount of EUR 1.774 million were awarded for content creation, EUR 163,000 for educational measures and EUR 44,000.00 for reach surveys and quality studies.

In television broadcasting, a total of EUR 199,900.00 was allocated to the community television broadcaster Okto, while EUR 197,060.00 was allocated to DORF TV, an Upper Austrian broadcaster established in 2009. Community TV Salzburg, which will launch broadcasting operations in the first half of 2011, was awarded EUR 128,500.00.

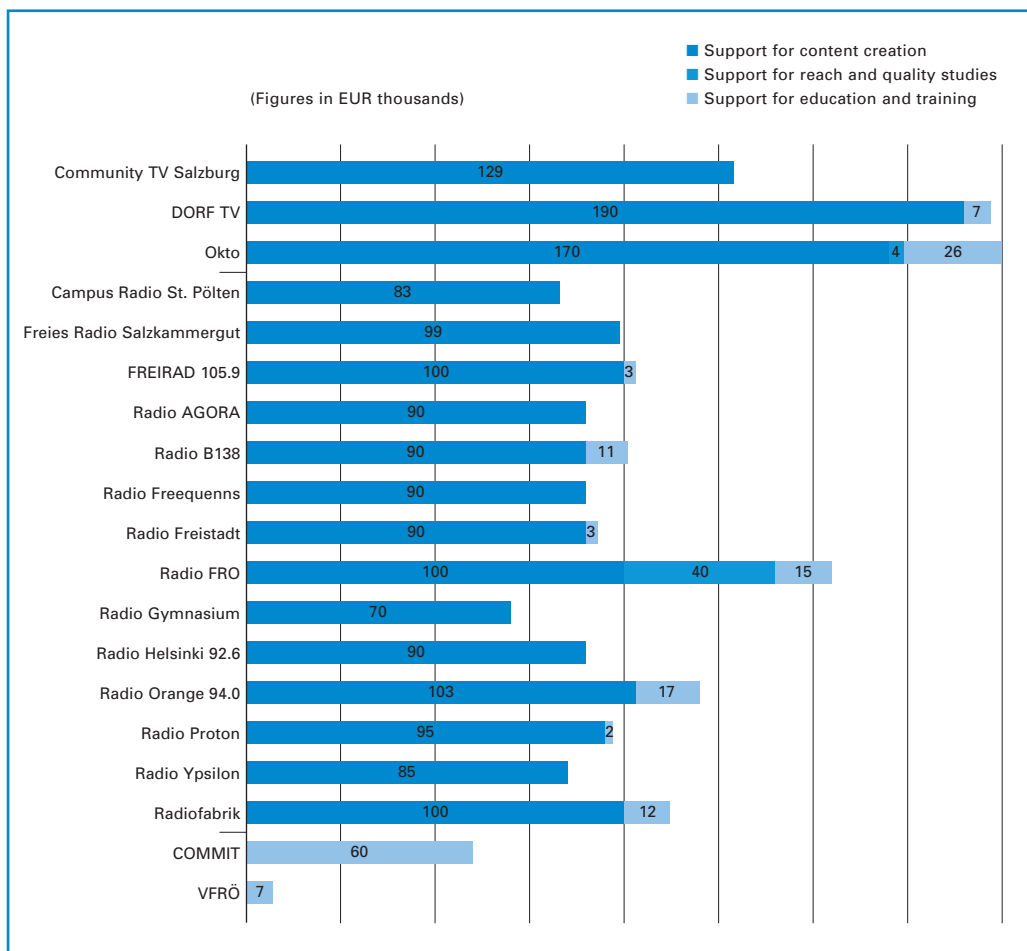
Grants totalling EUR 1.285 million were awarded to radio broadcasters for content creation; broadcasters with large/urban coverage areas were allocated approximately EUR 100,000.00. The remaining grant amounts ranged from EUR 70,000.00 to EUR 95,000.00.

With regard to grants for educational measures, the fund supported initiatives launched by the Austrian Association of Independent Radio Broadcasters (VFRÖ) as well as the COMMIT association (*Community Medien Institut*) with grants of EUR 6,832.00 and EUR 60,000.00, respectively.

A grant of EUR 40,000.00 for quality studies was allocated for an extensive project involving Upper Austrian radio broadcasters under the auspices of Radio FRO, an independent radio broadcaster in Upper Austria.

The chart below shows the distribution of grant amounts by applicant and grant type.

Figure 6: Non-Commercial Broadcasting Fund: Total grants for 2011 application date



Source: RTR

6.3.2 Private Broadcasting Fund

6.3.2.1 2010 application dates

Once the notification procedure had been completed, it was possible to set the first application deadline for March 26, 2010. As EUR 5 million was carried forward from the year 2009, a total of approximately EUR 10 million in grants were available in the year under review.

As of the first application date, a total of 343 applications for nationwide, local and regional television as well as nationwide, local and regional radio broadcasters were received. Of the EUR 9.848 million in funds available in 2010, some EUR 6.759 million were awarded; EUR 4.082 million went to television broadcasters, while EUR 2.678 million went to radio broadcasters.

Therefore, 68.64% of the available grant funds were allocated after the first application date in 2010.

In the second application round, which ended on September 10, 2010, the funds available came to EUR 3.075 million. A total of EUR 1.886 million was allocated to television broadcasters, while EUR 1.188 million was awarded to radio broadcasters.

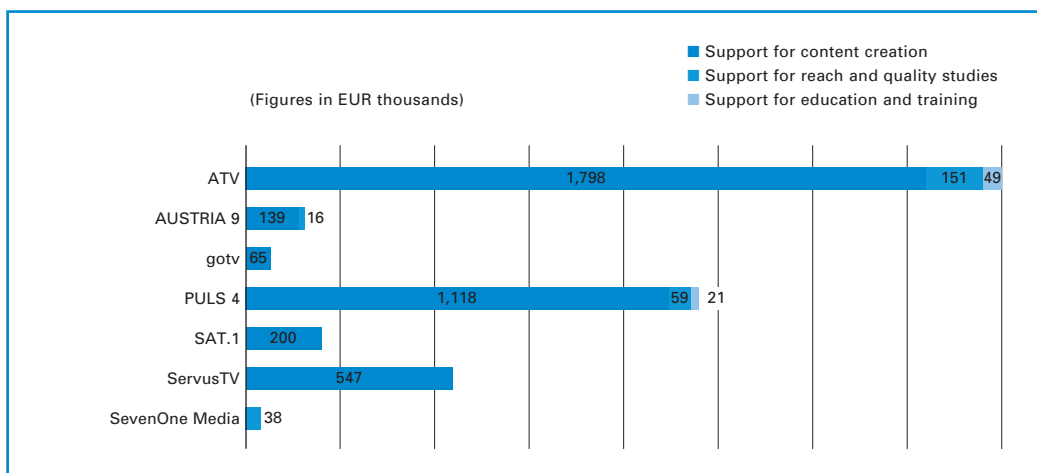
The applications from smaller radio broadcasters with a technical range of less than 100,000 listeners were fulfilled in their entirety with an amount of EUR 14,000.00. Radio broadcasters with a range between 100,000 and 300,000 listeners received a total of EUR 172,000.00, or 88% of the total grant amount requested in this category. Finally, broadcasters with a range of more than 300,000 listeners received a total of EUR 702,450.00, or 48% of the overall amount requested.

The *Privatsenderpraxis* association, a joint training initiative of all broadcasters, was awarded a grant of approximately EUR 530,000.00 for educational measures in 2010.

In total, some EUR 8.614 million (88.05%) was allocated for content creation in 2010, EUR 602,000.00 for educational measures (6.16%) and approximately EUR 567,000.00 (5.79%) for reach surveys and quality studies by private broadcasters.

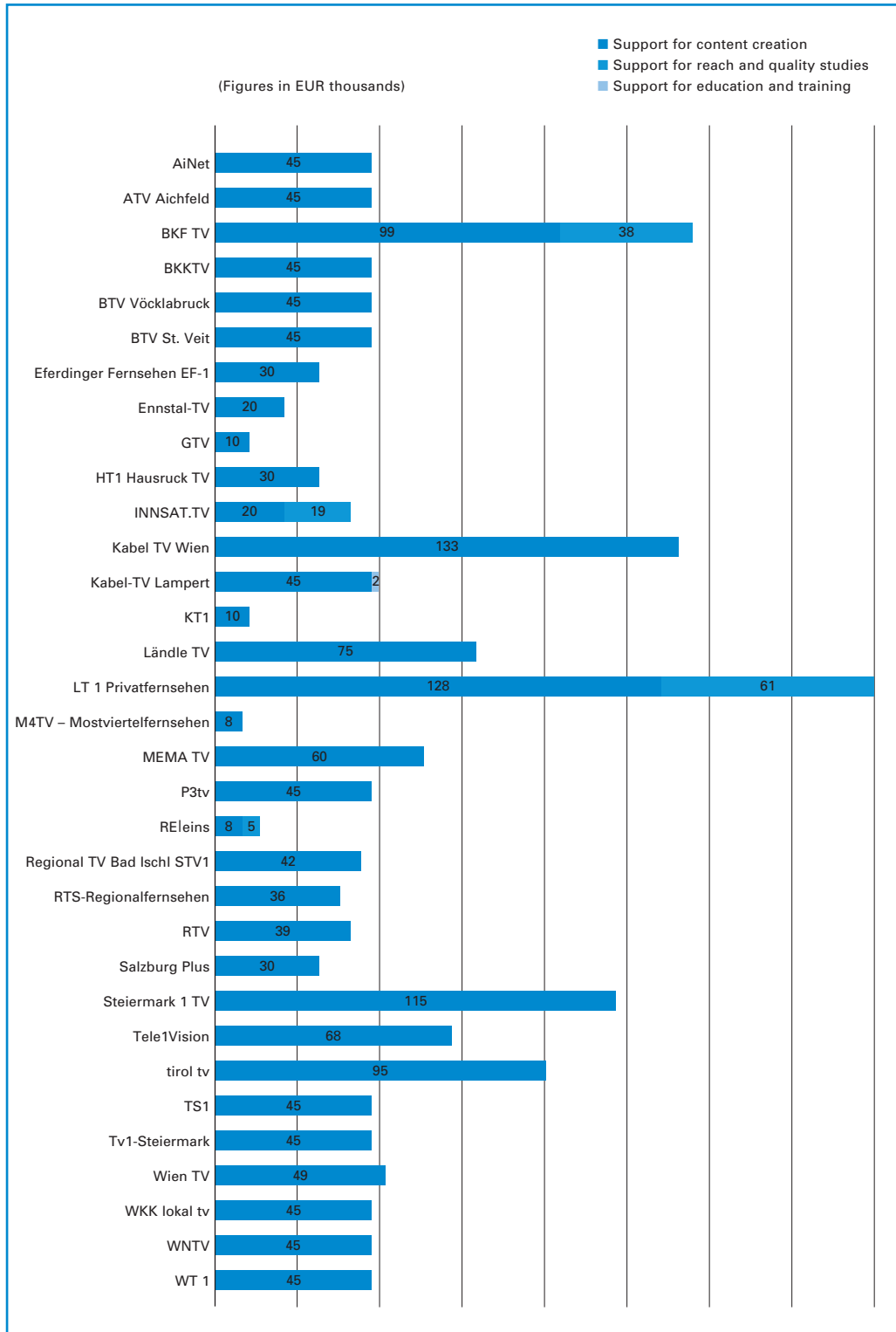
The total grant amounts awarded to each broadcaster are shown in the charts below. The figures are presented separately for television and radio broadcasting and broken down by technical range.

Figure 7: Private Broadcasting Fund: Total grants for 2010 application dates (nationwide TV broadcasters)



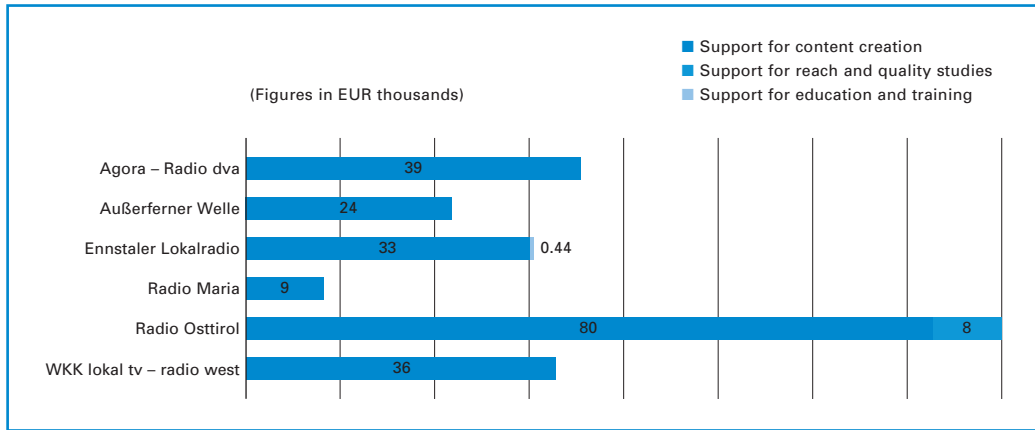
Source: RTR

Figure 8: Private Broadcasting Fund: Total grants for 2010 application dates (regional TV broadcasters)



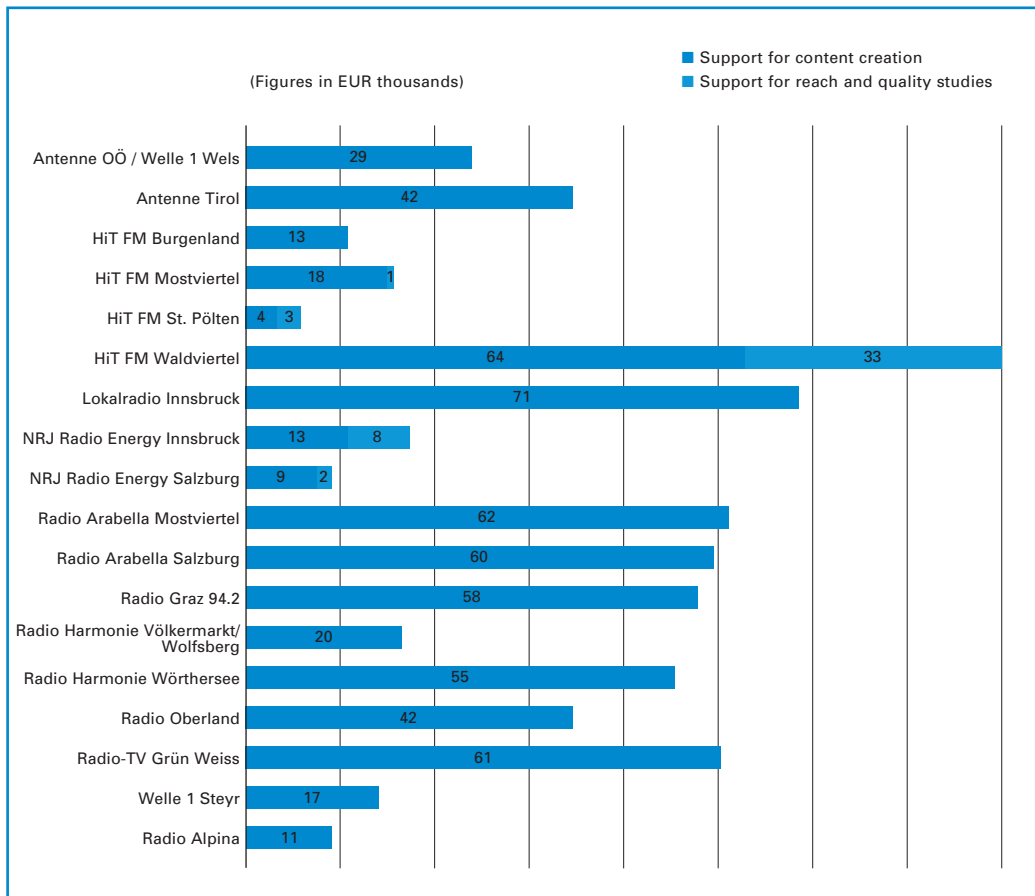
Source: RTR

Figure 9: Private Broadcasting Fund: Total grants for 2010 application dates (regional radio broadcasters, technical range < 100,000)



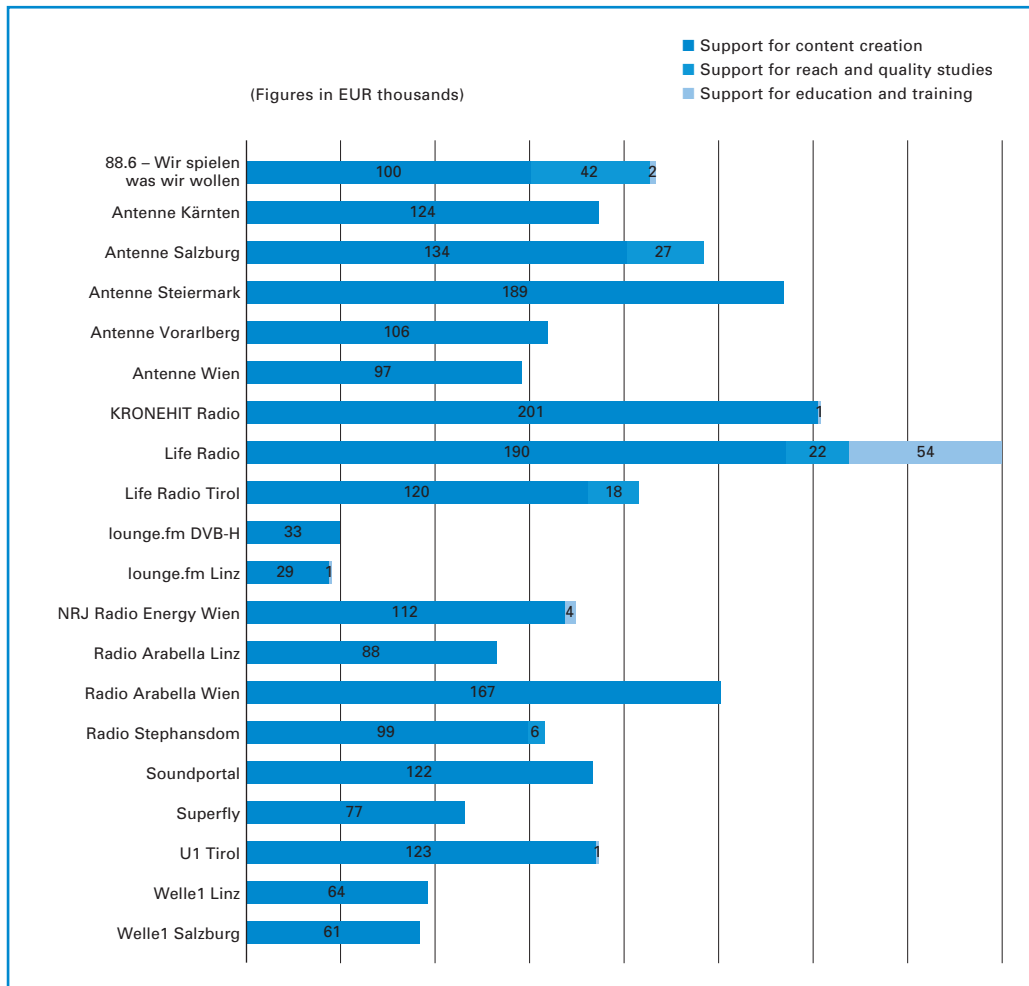
Source: RTR

Figure 10: Private Broadcasting Fund: Total grants for 2010 application dates (regional radio broadcasters, technical range < 300,000)



Source: RTR

Figure 11: Private Broadcasting Fund: Total grants for 2010 application dates (regional radio broadcasters, technical range > 300,000)



Source: RTR

6.3.3 Notes on the 2010 annual accounts

The Non-Commercial Broadcasting Fund (Art. 9i KOG [previous version]) was endowed with EUR 1 million in 2010, while the Private Broadcasting Fund (Art. 9j KOG [previous version]) received an endowment of EUR 5 million. In accordance with Art. 9k KOG (previous version), both funds are presented in a joint report. For each fund, a separate statement of revenues and expenses for the year 2010 is presented below in order to ensure transparency in the funds required and available.

6.3.3.1 Non-Commercial Broadcasting Fund

The EUR 1 million in funds allocated by the Federal Ministry of Finance generated interest income in the amount of EUR 5,241.33 in the year 2010. In addition, in order to pay out the first funding instalment in 2011, a loan was taken from the Private Broadcasting Fund in the amount of EUR 625,794.19 (EUR 626,000.00 minus interest). Therefore, payments into the Non-Commercial Broadcasting Fund totalled EUR 1,631,035.52 in 2010.

Including the funds available from the year 2009 (EUR 629,759.78), the Non-Commercial Broadcasting Fund therefore had a total of EUR 2,260,795.30 in funds available in the reporting period.

Of that amount, EUR 2,061,402.93 was paid out in grants in 2010. Administrative expenses paid out came to EUR 19,845.23 in 2009 and EUR 33,150.00 in 2010. Total payments from the fund thus came to EUR 2,114,398.16.

The balance in the trustee account as of December 31, 2010 came to EUR 146,397.14. After the payment of administrative expenses from 2010 in the amount of EUR 1,361.42 and the repayment of the loan from the Private Broadcasting Fund, the fund showed a balance of EUR -478,688.22 as of December 31, 2010.

Due to the previously awarded grants for 2010 (last instalment) and the repayment of the loan (including interest), the amount available for 2011 is negative. However, this shortfall will be covered by the first instalment from the federal budget (EUR 1 million) on January 30, 2011.

Table 10: Non-Commercial Broadcasting Fund: Excerpt from 2010 financial statements

Income and expense statement	EUR	EUR
Balance in trustee account as of December 31, 2009		629,759.78
Income		
Increase from credits in 2010	1,000,000.00	
Loan from Private Broadcasting Fund (including interest)	625,794.19	
Interest	5,241.33	1,631,035.52
Payments		
Administrative expenses from 2009	-19,845.23	
Administrative expenses in 2010	-33,150.00	
Grant payments in 2010	-2,061,402.93	-2,114,398.16
Balance of initial funds, debits and credits in 2010 = Balance in trustee account as of December 31, 2010		146,397.14
Administrative expenses from 2010 to be repaid in 2011	1,361.42	
Repayment obligation to Private Broadcasting Fund (including interest)	-626,446.78	-625,085.36
Balance of trustee obligations as of December 31, 2010		-478,688.22
Grants approved but not yet paid out		-311,479.01
Funds available in 2011		-790,167.23

Source: RTR

6.3.3.2 Private Broadcasting Fund

The EUR 5 million in funds allocated by the Federal Ministry of Finance generated interest income in the amount of EUR 47,504.18 in the year 2010; therefore, payments into the fund totalled EUR 5,047,504.18 in the year under review.

Including the funds available from the year 2009 (EUR 5,024,629.71), the Private Broadcasting Fund therefore had a total of EUR 10,072,133.89 in funds available in the reporting period.

Of that amount, EUR 4,802,757.82 was paid out in grants, and another EUR 626,000.00 was paid out as a loan to the Non-Commercial Broadcasting Fund. The administrative expenses paid out came to EUR 9,922.61 in 2009 and EUR 166,800.00 in 2010. Total payments from the fund thus came to EUR 5,605,480.43.

The balance in the trustee account as of December 31, 2010 therefore amounted to EUR 4,466,653.46. With the repayment of administrative expenses for 2010 in the amount of EUR 6,807.10 in 2011 and the repayment of the loan (including interest) in the amount of EUR 626,446.78, the balance of trustee obligations came to EUR 5,099,907.34 as of December 31, 2010.

On the basis of grant agreements concluded by the fund, the amount of grants approved but not yet paid out came to EUR 4,857,321.68 at the end of the year 2010. Therefore, as a result of the economic and expedient use of resources, additional funds in the amount of EUR 242,585.66 will be available for the year 2011.

Table 11: Private Broadcasting Fund: Excerpt from 2010 financial statements

Income and expense statement	EUR	EUR
Balance in trustee account as of December 31, 2009		5,024,629.71
Income		
Increase from credits in 2010	5,000,000.00	
Interest	47,504.18	5,047,504.18
Payments		
Administrative expenses from 2009	-9,922.61	
Administrative expenses in 2010	-166,800.00	
Grant payments in 2010	-4,802,757.82	
Loan to Non-Commercial Broadcasting Fund	-626,000.00	-5,605,480.43
Balance of initial funds, debits and credits in 2010 = Balance in trustee account as of December 31, 2010		4,466,653.46
Administrative expenses from 2010 to be repaid in 2011	6,807.10	
Repayment from Non-Commercial Broadcasting Fund (including interest)	626,446.78	633,253.88
Balance of trustee obligations as of December 31, 2010		5,099,907.34
Grants approved but not yet paid out		-4,857,321.68
Funds available in 2011		242,585.66

6.4 Press and journalism subsidies

The federal press and journalism subsidies administered by RTR are direct support measures administered in the form of financial contributions. Decisions on the allocation of funds are made by KommAustria, which bases its decisions on the opinions prepared by the Press Subsidies Commission (for press subsidies) and the recommendations of the Journalism Subsidies Advisory Board (for periodicals subsidies). RTR provides professional and administrative support.

The legal basis for the allocation of funds is formed by the Press Subsidies Act (PresseFG) 2004, the press subsidy guidelines to be published by KommAustria every year, and Section II of the Journalism Subsidies Act (PubFG).

Originally passed in 1975, the Press Subsidies Act 2004 defines support measures for the following target groups:

- Publishers of daily and weekly newspapers;
- Institutions for journalist education;
- Research projects on the press;
- Press clubs;
- A self-regulation body for press-related affairs (since 2009).

Subsidies pursuant to Section II of the Journalism Subsidies Act are intended for periodicals which deal with political and cultural topics as well as world views. The objective of these subsidies, which have been granted since 1972, is to make a contribution to maintaining the diversity and number of periodicals which serve the purpose of educating citizens. The funds are used to support a number of periodicals which also deal with topics of lower mass appeal.

It was not until June 2009 that the legal basis was established for the promotion of self-regulation bodies in the media field.

6.4.1 Press subsidies

Applications and budget

*96% of applications
approved*

In the year 2010, KommAustria received 124 applications for subsidies under the Press Subsidies Act 2004. Subsidies were granted for 119 of those applications, while four were rejected due to non-fulfilment of legal requirements and one was withdrawn.

Table 12: Development of grant amounts, applications and approval rates since 2006

	Grant amount (EUR)	Number of applications	Number of approvals	Approval rate in %
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
2009	12,837,999.50	130	124	95.4
2010	12,837,999.50	124	119	96.0

Source: RTR

6.4.1.1 Distribution subsidies for daily newspapers in 2010

In the year 2010, 14 applications were received for subsidies for daily newspapers in accordance with Section II of the Press Subsidies Act 2004 (distribution subsidies). The group of recipients remained unchanged compared to the year 2009.

All requests for subsidies were granted, and a total of EUR 2,443,499.50 was paid out in distribution subsidies for daily newspapers in 2010.

The subsidy amounts were allocated to individual daily newspapers as follows:

Table 13: Distribution subsidies for daily newspapers in 2010

Name of daily newspaper	Subsidy amount in 2010 (EUR)
Kleine Zeitung (Styria and Carinthia)	187,961.50
Kurier	150,369.20
Neue Kärntner Tageszeitung	187,961.50
Neue Kronenzeitung	187,961.50
Neue Vorarlberger Tageszeitung	150,369.20
Neues Volksblatt	187,961.50
OÖ Nachrichten	187,961.50
Die Presse	150,369.20
Salzburger Nachrichten	187,961.50
Der Standard	187,961.50
SVZ – Salzburger Volkszeitung	187,961.50
Tiroler Tageszeitung	187,961.50
Vorarlberger Nachrichten	187,961.50
WirtschaftsBlatt	112,776.90
Total	2,443,499.50

Source: RTR

6.4.1.2 Special subsidies to maintain regional diversity in daily newspapers in 2010

In the year 2010, the regulatory authority received nine applications for subsidies pursuant to Section III of the Press Subsidies Act 2004; two of those applications referred to weekly newspapers. As these subsidies are intended for daily newspapers only, the requests from weekly newspapers could not be fulfilled.

A total of EUR 6,645,000.00 in special subsidies was paid out in 2010.

The subsidy amounts were allocated to individual daily newspapers as follows:

Table 14: Special subsidies in 2010

Name of daily newspaper	Subsidy amount in 2010 (EUR)
Neue Kärntner Tageszeitung	1,026,352.40
Neue Vorarlberger Tageszeitung	812,704.00
Neues Volksblatt	881,137.80
Die Presse	1,250,777.80
Der Standard	1,162,710.00
SVZ – Salzburger Volkszeitung	864,570.00
WirtschaftsBlatt	646,748.00
Total	6,645,000.00

Name of weekly newspaper	Rejection pursuant to PresseFG 2004
Format	Non-fulfilment of requirements pursuant to Art. 8 in conjunction with Art. 2 Par. 1 No. 2
profil	Non-fulfilment of requirements pursuant to Art. 8 in conjunction with Art. 2 Par. 1 No. 2

Source: RTR

Further details on the grants and subsidies allocated can be found on the RTR web site (<http://www.rtr.at>).

6.4.2 Press Council

First subsidy for Austrian Press Council

After years of efforts, the Austrian Press Council was re-established at the end of March 2010.

The associations supporting this body are as follows:

- Association of Austrian Newspapers (*Verband Österreichischer Zeitungen*, or VÖZ);
- Austrian Trade Union Federation, represented by the Union of Journalists (in the Union of Private Sector Employees, Printing, Journalism and Paper, abbreviated GPA-DJP);

- Austrian Association for Periodicals and Specialist Media (ÖZV);
- Austrian Regional Media Association (VRM);
- Austrian Association of Editors-in-Chief (VdC) and Concordia Press Club (PCC).

Franz C. Bauer, President of the Union of Journalists in the GPA-DJP and editor at the magazines *trend* and *profil*, was elected president of the association, and Thomas Kralinger, Managing Director at Mediaprint/Kurier, was elected vice president.

With the appointment of a managing director in November 2010, the Austrian Press Council commenced operational activities.

In December 2010, after consulting the Press Subsidies Commission, KommAustria decided to award the Press Council a grant in the amount of EUR 50,000.00 for the year 2010. The legal basis for the promotion of representative self-regulation bodies in the Austrian press industry was created in 2009 by the amendment to the Press Subsidies Act 2004. In mid-2010, the practice of allocating subsidies in arrears was replaced with an allocation procedure for the current year.

EUR 50,000 for the Austrian Press Council

The following objectives of subsidies are listed in Art. 12 Press Subsidies Act 2004: to ensure the independence of the body supported, to ensure that the duties set forth in its articles of association are carried out, and to effectively enforce its decisions and resolutions.

The Fund for Self-Regulation Bodies in the Press Industry established under KommAustria is allocated an annual endowment of EUR 150,000.00, which is derived from the revenues from broadcasting licence fees.

6.4.3 Promotion of self-regulation in the field of commercial communication in the media (Advertising Council)

Since the year 2009, it has also been possible to grant subsidies for a recognised self-regulation body in the field of commercial communication in the media. The objectives of these subsidies are listed in Art. 33 of the KommAustria Act 2001: to ensure the independence of the body in question, to ensure that the duties set forth in its articles of association are carried out, and to effectively enforce its decisions and resolutions.

As in 2009, the Austrian Advertising Council was again the only applicant for a subsidy and received the entire amount allocated to the Fund for the Promotion of Self-Regulation in Commercial Communication (EUR 50,000.00) to cover the costs incurred in the course of fulfilling its duties.

EUR 50,000 for the Austrian Advertising Council

The fund is endowed using revenues from broadcasting licence fees.

6.4.4 Journalism subsidies – Promotion of print periodicals

KommAustria's duties also include the promotion of journalism which serves the purpose of educating citizens pursuant to Section II of the Federal Act on Subsidies for Political Education Work and Journalism (Journalism Subsidies Act; PubFG) 1984. These subsidies are provided for periodicals which address issues related to politics, culture, and world views at a high level. The purpose of the subsidies is to help maintain the diversity and multitude of periodicals in this category.

Subsidies can be allocated to publishers in cases where the print periodicals fulfil the requirements specified in Art. 7 Par. 1 Nos. 1 to 8, where none of the reasons for exclusion specified under Art. 7 Par. 2 and 3 apply, and where the owner, editor and publisher undertake to use the funds exclusively to cover expenses associated with the specific print periodical supported.

Advisory Board

The amounts granted are 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. The subsidy allocated for an individual periodical may be no less than 4‰ and no more than 4% of the funds provided for this purpose in the Federal Finance Act.

Under Item 1/10446, the Federal Finance Act 2010 provided for subsidies in the amount of EUR 361,000.00 for the promotion of print periodicals in accordance with Section II of the PubFG 1984.

In the 2010 fiscal year, a total of 96 applications for subsidies were received. The Advisory Board established in accordance with Art. 9 reviewed whether each application was worthy of funding and then made funding recommendations with due attention to the budget allocated under the Federal Finance Act.

91 periodicals supported, five rejected

In 91 cases, the Advisory Board recommended the approval of subsidies, while in five cases the Board recommended a rejection because the relevant legal requirements were not fulfilled.

In its decisions, KommAustria followed the Advisory Board's recommendations in their entirety.

Subsidy amounts between EUR 1,444 and EUR 9,300

The subsidy amounts ranged from EUR 1,444.00 to EUR 9,300.00. The periodicals supported represent a wide variety of topics and content, with topics ranging from feminism to religion and discussions of political and scientific issues. In addition, subsidies were also allocated to associations which operate in the fields mentioned above and deal with practical experience in those areas.

Table 15: : Journalism subsidies awarded (detailed list)

Periodicals supported	Subsidy amount (EUR)
ACADEMIA: Periodical published by the association of Catholic student fraternities in Austria (ÖCV, ÖAHB)	6,642.50
AEP-INFORMATIONEN – Feminist periodical on politics and society published by the <i>Arbeitskreis Emanzipation und Partnerschaft</i> (emancipation and partnership working group)	3,985.40
AKIN: Periodical published by the FÖJ socialist movement	3,985.40
ALLEINERZIEHENDE AUF DEM WEG: Periodical published by the Austrian platform for single parents	3,985.40
DIE ALTERNATIVE: Periodical published by the Alternative und Green Party union representatives	3,985.40
ALTKATHOLISCHE KIRCHENZEITUNG: Periodical published by the Old Catholic Church in Austria	3,985.40
AMT UND GEMEINDE: Periodical published by the Evangelical Church in Austria	5,314.00
Der APFEL: Periodical published by the <i>Österreichisches Frauenforum Feministische Theologie</i> (Austrian women's forum for feminist theology)	3,985.40
DIE ARBEIT: Periodical published by the GLB fraction in the Austrian Federation of Trade Unions	2,166.00
ASYL AKTUELL: Periodical published by <i>Asylkoordination</i> , an Austrian association of aid organisations and advisors for foreigners and refugees	3,985.40
AUF – Eine Frauenzeitschrift: Periodical published by the <i>Verein zur Förderung feministischer Projekte</i> (association for the promotion of feminist projects)	5,314.00
Der BAGGER – Grabungen zwischen Ernst und Satire: Periodical published by the <i>Verein für Diversität in der Medienlandschaft</i> (association for diversity in the media)	3,985.40
BALLESTERER fm Fußballmagazin: Periodical published by the <i>Verein zur offensiven Erweiterung des Fußballhorizonts</i> (football-related publication)	6,642.50
BEDROHTE VÖLKER: Periodical published by the eponymous human rights organisation for ethnic and religious groups and minorities	3,985.40
BEHINDERTE MENSCHEN (previously <i>Behinderte in Familie, Schule und Gesellschaft</i>): Periodical published by the <i>Verein Initiativ für behinderte Kinder und Jugendliche</i> (Austrian initiative for children and youths with disabilities)	7,971.00
BIZEPS-Info: Periodical published by an advising centre for people with disabilities	1,444.00
CAFÉ KPÖ: Periodical published by the Upper Austrian Communist Party	1,444.00
CHRISTLICH PÄDAGOGISCHE BLÄTTER: Periodical published by the <i>Interdiözesanes Amt für Unterricht und Erziehung</i> (Interdiocesan office for education)	3,985.40
COULEUR: Periodical published by a school pupils' association of Catholic fraternities in Austria	3,985.40
CUBA SI: Periodical published by the Austro-Cuban Society	3,985.40
DIALOG – Du Siach: Periodical published by the Coordinating Committee for Christian-Jewish Cooperation	3,985.40
EFA: Periodical published by the EFA (Evangelical women's association)	3,985.40
EHE UND FAMILIEN: Periodical published by the <i>Katholischer Familienverband Österreichs</i> (Austrian Catholic family association)	3,985.40
FREIDENKER/IN (previously <i>Geist und Gesellschaft</i>): Periodical published by the <i>Freidenkerbund Österreichs</i> (Austrian association of free thinkers)	1,444.00
FRIEDENS-FORUM: Periodical published by the Austrian Study Center for Peace and Conflict Resolution	3,985.40
FRISCHE BÖE: Periodical published by the <i>Bundesverband österreichischer elternverwalteter Kindergruppen</i> (Austrian federal association of parent-managed children's groups)	2,166.00

Periodicals supported	Subsidy amount (EUR)
GEDENKDIENT: Periodical published by the Austrian Holocaust Memorial Service (<i>Gedenkdienst</i>)	3,985.40
Die GEMEINDE: Periodical published by the Jewish Community in Vienna	3,985.40
The GLOBAL PLAYER. Medium für Würde, Gerechtigkeit und Demokratie (previously <i>Die Bunte Zeitung</i>): "A Medium for Dignity, Justice and Democracy" published by the association <i>Die Bunten</i>	7,971.00
GLOBAL VIEW: Independent magazine of the Academic Forum for Foreign Affairs	3,985.40
GRUNDRISSE – Zeitschrift für linke Theorie & Debatte: Periodical for leftist theory and debate (Karl Reiter)	3,985.40
GUERNICA: Periodical published by the <i>Werkstatt Frieden und Solidarität</i> (peace and solidarity workshop)	1,444.00
HISTORISCHE SOZIALKUNDE: Periodical published by the <i>Verein für Geschichte und Sozialkunde</i> (association for history and social studies)	3,985.40
INDABA: Periodical published by the Southern Africa Documentation and Cooperation Centre (SADOC)	3,985.40
INTERNATIONAL: Periodical published by the <i>Arbeitsgemeinschaft für internationale Publizistik</i> (international journalism and media science working group)	3,985.40
JESSASMARIA: Periodical published by the <i>Allianz für Humanismus und Atheismus</i> (alliance for humanism and atheism, AHA)	1,444.00
JOHANN WILHELM KLEIN: Periodical published by the <i>Bundes-Blindenerziehungs-institut</i> (Austrian federal institute for the education of the blind)	3,985.40
JOURNAL FÜR SCHULENTWICKLUNG: Periodical published by Studienverlags GmbH	3,985.40
JUNGE GEMEINDE: Periodical published by the <i>Evangelische Jugend Österreich</i> (Austrian Evangelical youth association)	3,985.40
JUNGE KIRCHE: Periodical published by the <i>Katholisches Jugendwerk Österreichs</i> (Catholic youth association)	3,985.40
JURIDIKUM – Zeitschrift für Kritik, Recht, Gesellschaft: Periodical published by the Context association (criticism, law and society)	3,985.40
Die KINDER (previously <i>Familienmagazin</i>): Periodical published by the <i>Österreichische Kinderfreunde</i> (Austrian association for families and children's interests)	3,985.40
KINDERSCHUTZ AKTIV: Periodical published by the <i>Verein für gewaltlose Erziehung</i> (association for nonviolent parenting)	1,444.00
KIRCHE IN: Rudolf Schermann GmbH	7,971.00
Der KONAK: Periodical published by the <i>KonaK</i> association for research and culture in continental America and the Caribbean	3,985.40
Der KRANICH: Periodical published by the <i>Friedensbüro Salzburg</i>	1,444.00
KRITISCHES CHRISTENTUM: Periodical published by the <i>Aktion Kritisches Christentum</i> (campaign for critical Christianity)	1,444.00
KURSWECHSEL: Periodical published by the BEIGEWUM advisory board for social, economic and environmental policy alternatives	6,642.50
LAMBDA-Nachrichten: Periodical published by the <i>Homosexuelle Initiative</i> (Homosexual Initiative)	3,985.40
LATEINAMERIKA ANDERS: Periodical published by <i>Informationsgruppe Lateinamerika</i> (Latin America information group)	3,985.40
MALMOE: Periodical published by the <i>Verein zur Förderung medialer Vielfalt und Qualität</i> (association for the promotion of media diversity and quality)	5,314.00
MEDIEN & ZEIT: Periodical published by the <i>Arbeitskreis für historische Kommunikationsforschung</i> (historical communications research working group)	5,314.00

Periodicals supported	Subsidy amount (EUR)
MITBESTIMMUNG: Periodical published by the <i>AG zur Demokratisierung der Arbeitswelt</i> (working group for democratisation in the working world)	3,985.40
MITEINANDER – Welt und geistliche Berufe: Periodical published by the <i>Kirchliches Institut Canisiuswerk</i> (institute for religious vocations)	5,314.00
MOLECOOL – Die Welt der Naturwissenschaften: Periodical published by the <i>Verband der Chemielehrer/-innen Österreichs</i> (Austrian association of chemistry teachers)	3,985.40
NACHRICHTEN und Stellungnahmen der Katholischen Sozialakademie Österreichs: Periodical published by the Catholic Social Academy of Austria	3,985.40
Der NEUE MERKER: Periodical published by the eponymous association (opera, dance and theatre criticism)	1,444.00
NICARAGUA-Nachrichten: Periodical published by the <i>ARGE für Informationen über Nicaragua</i> (Nicaragua information working group)	1,444.00
NU – NEWS ÜBER UNS: Periodical published by the <i>Arbeitsgemeinschaft Jüdisches Forum</i> (Jewish forum working group)	6,642.50
ÖZP – ÖSTERREICHISCHE ZEITSCHRIFT für POLITIKWISSENSCHAFT: Periodical published by the Austrian Political Science Association	6,642.50
PAX: Periodical published by the <i>Pax Christi Österreich</i> peace movement	1,444.00
PRIDE: Periodical published by the <i>Verein zur Förderung der Information über Schwule, Lesben und Transgender-Personen</i> (association for the promotion of information on LGBT persons)	3,985.40
PRO ZUKUNFT: Periodical published by the Robert Jungk Library for Questions about the Future	3,985.40
PUT: Periodical published by the <i>Burgenländisch-kroatischer Kulturverein</i> (Burgenland Croatian culture association)	3,985.40
QUART (previously actio catholica): Periodical published by the <i>Forum katholischer Akademikerinnen und Akademiker Österreichs</i> (forum of Catholic university graduates in Austria)	3,985.40
REFORMIERTES KIRCHENBLATT: Periodical published by the <i>Evangelischer Oberkirchenrat H.B.</i> (Evangelical executive committee)	7,971.00
RELIGIONEN UNTERWEGS: Periodical published by the <i>Kontaktstelle für Weltreligionen</i> (agency for mutual relations among world religions)	3,985.40
SAAT: Periodical published by the Evangelical press association in Austria	9,300.00
SCHOTTENGASSE: Periodical published by the <i>Verein der Freunde der Katholischen Medien Akademie</i> (association of friends of the Catholic Media Academy)	3,985.40
SCHULHEFT: Periodical published by the <i>Verein der Förderer der Schulhefte</i> (pedagogical publishing house)	6,642.50
Die SEITEN: Periodical published by the <i>Verein für kulturelle Informationen</i> (association for cultural information)	1,444.00
SIO – SOZIALARBEIT in Österreich: Periodical published by the Austrian professional association of certified social workers	3,985.40
SOL: Periodical published by the association <i>Menschen für Solidarität, Ökologie und Lebensstil</i> (people for solidarity, ecology and lifestyle)	3,985.40
SOZIALE TECHNIK: Periodical published by the Inter-University Research Centre for Technology, Work and Culture (IFZ)	3,985.40
SPINNRAD – Forum für aktive Gewaltfreiheit: Periodical published by the International Fellowship of Reconciliation (Austrian branch)	3,985.40
STANDPUNKT: Periodical published by the <i>Evangelischer Bund</i> (Evangelical association) in Austria	5,314.00
SUDETENPOST: Periodical published by the <i>Sudetendeutscher Presseverein</i> (Sudeten German press association)	3,985.40
SWS-RUNDSCHAU: Periodical published by the <i>Sozialwissenschaftliche Studiengesellschaft</i> (society for social science studies)	3,985.40

Periodicals supported	Subsidy amount (EUR)
TALK TOGETHER: Periodical published by the <i>Kommunikation & Kultur association</i> (communication and culture)	3,985.40
TARANTEL. Zeitschrift für Kultur von unten: Periodical published by the <i>Werkkreis Literatur der Arbeitswelt association</i> (literature of the working world)	3,985.40
UNSER AUFTRAG: Periodical published by the Austrian Officers' Association in Vienna	1,444.00
URSACHE & WIRKUNG – Buddhistische Aspekte: Periodical published by the eponymous association (Buddhism, spirituality)	3,985.40
VCÖ-MAGAZIN: Periodical published by the <i>Verkehrsclub Österreich</i> (Austrian traffic and transport association)	3,985.40
VOLKSSTIMMEN: Periodical published by the <i>Verein für Gesellschaftskritik</i> (association for social criticism)	1,444.00
VORWÄRTS: Periodical published by the Socialist Left Party	1,444.00
Das WORT: Periodical published by the <i>Evangelisches Schulamts Wien</i> (Evangelical school board in Vienna)	3,985.40
YOU! MAGAZIN: Periodical published by the <i>Jugendverein für christlich-katholische Werte</i> (youth association for Christian/Catholic values)	3,985.40
YPSILON – Männermagazin: Periodical published by the Catholic men's movement in the St. Pölten Diocese	1,444.00
ZEBRATL: Periodical published by the ZEBRA association (centre for sociomedical, legal and cultural support for foreigners in Austria)	3,985.40
ZEITZEICHEN: Periodical published by the <i>Katholischer Arbeiterverein auf der Landstraße in Wien</i> (Catholic workers' association in Vienna)	3,985.40
ZUKUNFT: Social democratic periodical	1,444.00
Periodicals rejected	Rejection pursuant to PubFG
CENTRALBLATT für das gesamte FORSTWESEN: Periodical published by Agrarverlag Druck und Verlags GmbH (agricultural publisher)	Art. 7 Par. 1 No. 1 (frequency of publication) No. 3 (specialist journal) Art. 7 Par. 3 No. 2 (subsidy received from another territorial authority)
FRIEDENSDIENST: Periodical published by the <i>Verein zur Förderung von Friedensarbeit</i> (association for the promotion of peace work)	No longer in print
GEBÄRDENSACHE (until 2008: "Österreichische Gehörlosenzeitung"): Periodical published by the Austrian association of the deaf	Art. 7 Par. 3 No. 2 (subsidy received from another territorial authority)
LOGISTIK EXPRESS. (specialist publication for logistics)	Art. 7 Par. 1 No. 1 (free publication) No. 3 (specialist journal) No. 8 (no economic need)
YENI HAYAT – NEUES LEBEN: Periodical published by the Jukus association for youth, culture and sports	No. 7 (Not yet published regularly for one year at the time of submission)

Source: RTR





7. Activities of the TKK

7.1 Market definition and analysis

The market analysis process consists of three stages:

3 stages

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

Under Art. 36 TKG 2003, RTR is required to conduct periodic reviews of the relevant national markets susceptible to sector-specific regulation according to national circumstances and in line with the principles of general competition law, taking into account the requirements of sector-specific regulation. If necessary, RTR is to issue the corresponding amendments to the Telecommunications Markets Ordinance (TKMV) in accordance with Art. 36 TKG 2003.

*Market definition
by RTR*

The second stage requires the TKK to conduct an analysis of competition on all markets defined by RTR with a view to determining whether effective competition prevails or one or more companies have significant market power on those markets (Art. 37 Par. 2 and 3 TKG 2003).

*Market analysis
by TKK*

Finally, depending on whether significant market power is identified, the third stage may involve imposing regulatory instruments (i.e. specific obligations under Articles 38 et seq. TKG 2003) which can be used to resolve the current and potential competition problems identified (Art. 37 Par. 1 and 2 TKG 2003).

Obligations

In the year under review, the regulatory authority largely completed the procedures initiated in 2009 in accordance with Art. 37 TKG 2003 in order to determine whether effective competition prevails or (at least) one company possesses significant market power on the relevant markets defined in the TKMV 2008.

Procedures continued

7.1.1 Leased lines


Market definition

In the course of the market analysis procedures initiated by the TKK in January 2009, three markets for leased lines were investigated once again: the retail market for leased lines with a capacity of 2.048 Mbit/s or less, as well as the wholesale markets for terminating segments of leased lines with low bandwidths (2.048 Mbit/s or less) and with high bandwidths (over 2.048 Mbit/s up to and including 155.52 Mbit/s). The two wholesale markets comprise leased lines as well as Ethernet services with guaranteed bandwidths which are used as upstream products by communications network operators and service providers in order to offer their own leased-line products and Ethernet services to retail customers. Terminating segments refer to all leased lines or sections of leased lines and Ethernet services with guaranteed bandwidths at the whole-

Leased-line markets

Retail leased lines

*Terminating segments
with bandwidths up
to / higher than
2.048 Mbit/s*



sale level which are not routed via any of Austria's 28 "trunk" towns, which are only routed through one of those towns, or which are routed only within one of those towns. "Trunk" towns refer to those 28 Austrian towns where Telekom Austria realised its points of interconnection for the telephone network in November 2005 (Vienna, Graz, Linz, Salzburg, Innsbruck, Klagenfurt, Villach, Wels, Sankt Pölten, Dornbirn, Steyr, Wiener Neustadt, Feldkirch, Baden, Amstetten, Mödling, Spittal an der Drau, Bruck an der Mur, Telfs, Lienz, Vöcklabruck, Ried im Innkreis, Eisenstadt, Korneuburg, Wörgl, Hollabrunn, Judenburg, and Bruck an der Leitha).

In contrast, the retailed leased line market comprises analogue leased lines which have a capacity of 2.048 Mbit/s or less with a bandwidth for voice services in normal or especially high quality, as well as digital leased lines with a capacity of 64 kbit/s and 2.048 Mbit/s (in the latter case: structured and unstructured). Moreover, this market includes leased lines with a capacity in multiples of 64 kbit/s up to 2.048 Mbit/s, but unlike the wholesale market it does not include Ethernet services with guaranteed bandwidths.

The geographical area covered by the retail and wholesale market for leased lines with a capacity of 2.048 Mbit/s or less is the federal territory of Austria; for the wholesale market for terminating segments with a capacity over 2.048 Mbit/s up to and including 155.52 Mbit/s, however, this does not include terminating segments where both ends are located in one of the following municipalities: Bregenz, Dornbirn, Feldkirch, Graz, Hallein, Innsbruck, Klagenfurt, Linz, Salzburg, Steyr, Wels and Vienna.

Market analysis

Competition problems: Excessive prices, barriers to market entry

After the corresponding procedures were initiated by the TKK (Retail market for leased lines with a capacity of 2.048 Mbit/s or less [M 6/09]; Wholesale markets for terminating segments with low bandwidths of 2.048 Mbit/s or less [M 7/09] and terminating segments with high bandwidths over 2.048 Mbit/s up to and including 155.52 Mbit/s [M 8/09]), RTR's official experts prepared analysis opinions on the markets in question using the data collected by RTR for this purpose. These opinions addressed the question of whether effective competition prevails on those markets and which specific obligations pursuant to the TKG 2003 would be suitable from an economic standpoint in order to address any competition problems identified on each relevant market. The expert opinions identified competition problems on all of the leased line markets mentioned above. In the absence of regulatory remedies, these problems could include excessively high prices or price discrimination and market entry barriers due to long contract periods, penalties for the premature termination of contracts, or the loss of discounts on the retail market for leased lines up to and including 2.048 Mbit/s.

Reference offer for wholesale leased lines not effective

Although suitable regulatory measures with regard to terminating segments at the wholesale level can make a substantial contribution to lowering the barriers to market entry on the retail market in the long term, in the absence of additional measures it can be expected that alternative operators will only be able to establish themselves slowly on the retail market. In terms of access to terminating segments, the services specified in the reference offer for wholesale leased lines did not achieve the expected level of positive effects on competition, which is why a new approach was taken in wholesale regulation. Moreover, demand-side barriers to switching providers on the retail market have made it difficult for alternative operators to increase their market share.

Demand-side barriers to switching

The competition problems identified on the retail market also exist on the two wholesale markets for terminating segments. In addition, the latter markets are also susceptible to transfers of market power into neighbouring markets, both from the market for terminating segments into the market for trunk segments by offering (non-reproducible) bundles of trunk segments and terminating segments, and from the wholesale markets into the retail market. Such transfers of market power may take place if A1 Telekom refuses to provide those companies which wish to offer nationwide end-to-end connections using A1 Telekom's terminating segments with sufficient access to terminating segments or if A1 Telekom employs strategies such as price discrimination (which may even lead to a margin squeeze), quality discrimination or delay tactics in providing services, thus significantly raising the barriers to entry on the retail market.

*Competition problem:
Transfer of market
power*

Analysis of the wholesale market for low-bandwidth terminating segments (M 7/09)

After a consultation and coordination procedure, the market analysis procedure for the wholesale market for terminating segments with low bandwidths (2.048 Mbit/s or less) was concluded on May 17, 2010 with an official decision in which A1 Telekom was identified as possessing significant market power on this market. At the same time, the company was subjected to specific obligations. For example, in response to reasonable demand, A1 Telekom is required to provide non-discriminatory access to terminating segments of leased lines and Ethernet services with guaranteed bandwidths (wholesale Etherlink services). This requirement stipulates that A1 Telekom is required to enable access to terminating segments of various bandwidths at locations specified by the customer, or (upon request) the interconnection of terminating segments to its own infrastructure as well as that of third parties. Due to a lack of demand for this service among alternative operators, the previous obligation to enable the connection of terminating segments to 2 Mbit/s and 155 Mbit/s interfaces in certain towns subject to the "city/town tariff" was not imposed again. Instead, A1 Telekom was obligated to offer a resale discount of 10% to wholesale customers which provide leased lines for retail customers and to extend its discount terms (previously limited to retail customers) to wholesale customers as well. On this market, the resale discount does not apply to Ethernet services or to terminating segments of leased lines which are used for the wholesale customer's own purposes or resold at the wholesale level. In addition, A1 Telekom was required to comply with certain limits on its leased line prices. Until the completion of the next market analysis procedure, the sum of revenues divided by the sum of capacity (in 64 kbit/s equivalents) in the calendar year 2011 must not be higher than the corresponding ratio from 2009.

*A1 Telekom identified
as SMP operator*

Resale discount

Price limit

For all of the services mentioned above on the market for terminating segments, A1 Telekom was required to publish reference offers within two months with regard to terminating segments of leased lines and terminating segments of Ethernet services with guaranteed bandwidth. These reference offers must contain provisions regarding rates and charges which include resale and quantity discounts, rates/charges and service descriptions, provisions on the indication of fees and charges, quantity breakdowns and unit values in individual offers, accounts and performance records for internal and external services, provisions regarding enhanced quality in the form of service level agreements (SLAs), and a six-month special termination privilege where existing contracts are migrated to new wholesale offers.

Reference offers

Analysis of the retail market for leased lines with a capacity of 2.048 Mbit/s or less (M 6/09)

*Retail leased lines
up to and including
2.048 Mbit/s*

*A1 Telekom identified
as SMP operator*

After conducting a consultation and coordination procedure, the TTK issued an official decision on September 6, 2010 identifying A1 Telekom as an SMP operator on the retail market for leased lines with a capacity of 2.048 Mbit/s or less. In accordance with the TKG 2003, the regulatory authority imposed specific obligations on A1 Telekom in order to counteract the competition problems identified on this market.

Obligations

Among other obligations, A1 Telekom is required to notify the regulatory authority of the general terms and conditions of service as well as the provisions regarding rates and charges (including service descriptions) applicable to the retail leased lines it offers on this market prior to putting such terms and conditions into effect. In cases where certain consumer protection regulations are violated, the regulatory authority has the right (as in Art. 25 TKG 2003) to object to those terms and conditions within eight weeks of their publication. Moreover, A1 Telekom is obliged to base its prices for the leased lines in this market on the same price limit as the one applicable to terminating segments. In addition, A1 Telekom is not allowed to favour certain retail customers inappropriately or to increase the demand-side costs of switching providers by way of contractual terms and conditions.

Finally, in connection with the provision of leased lines on this market, A1 Telekom is required to publish its general terms and conditions of service and provisions regarding rates and charges (including the indication of fees and charges, volume breakdowns and unit values with regard to preparations for new line sections to be laid and for protective measures, as well as rates for material, labour and transport costs) on its website.

In addition, the operator was subjected to an obligation to maintain accounting separation.

Analysis of the wholesale market for high-bandwidth terminating segments (M 8/09)

With regard to the wholesale market for terminating segments of leased lines with bandwidths over 2.048 Mbit/s up to and including 155.52 Mbit/s, the TTK adopted a draft measure in which A1 Telekom is assumed to be an SMP operator on this market and which imposes various specific obligations on that operator (obligation to provide access, price regulation as in low-bandwidth terminating segments, extension of quantity discount to wholesale customers, reference offer, accounting separation). In the ensuing consultation procedure, various market participants submitted comments and opinions, and the European Commission also expressed its views on the draft measure. At the end of the reporting period, the analysis procedure for this market was still in progress.

Review of compliance with specific obligations

Reference offers for terminating segments of leased lines and Ethernet services with guaranteed bandwidths (S 12/10)

*Publication of
reference offers*

In accordance with the obligation imposed in the TTK's official decision (M 7/09-111, May 17, 2010) regarding the wholesale market for terminating segments, A1 Telekom published reference offers for terminating segments of leased lines and for Ethernet services with guaranteed bandwidths on July 19, 2010.

On July 26, 2010, the TKK decided to instruct RTR to review the reference offers submitted by Telekom Austria in order to ensure compliance with the obligations stipulated in the market analysis decision. Between July 26 and August 17, 2010, RTR carried out a public consultation on these reference offers. In this context, the various points of criticism voiced by market participants proved valuable in the assessment of the reference offers. In the initial versions of the reference offers published by A1 Telekom, the following points in particular were considered problematic:

RTR instructed to review offers

Public consultation

- One-off payment for the use of an electronic interface for orders, disruption reports, etc.;
- Obligatory planning rounds with financial penalties for falling short of a defined order quantity;
- Possibility of unilateral rate increases by A1 Telekom;
- Preclusion of migration for leased lines / Ethernet services under construction;
- Unclear wording with regard to the applicability of discounts;
- Long implementation times for change transactions such as relocations of end-nodes, bit rate changes and interface changes;
- Technical and commercial terms of fault elimination;
- Specific terms related to the migration of existing contracts to new reference offers.

Problems identified

Subsequently, the regulatory authority held talks with A1 Telekom regarding a revision of the reference offer, and A1 Telekom expressed its willingness to adopt the desired revisions. Once the reservations expressed by the regulatory authority had been eliminated, the TKK decided on September 20, 2010 not to make changes to the above-mentioned reference offers submitted by A1 Telekom and to discontinue the review procedure.

Revision of reference offers

Procedure discontinued

7.1.2 Mobile termination

Analysis of the mobile termination market (Mundio Mobile [Austria] Limited; M 11/09)

On February 22, 2010, the TKK issued an official decision regarding Mundio's mobile termination market.

As an MVNO, Mundio produces mobile communications services and sells them to retail customers and/or operators and providers of communications networks and services. In contrast to conventional mobile network operators such as A1 Telekom, T-Mobile, Orange and Hutchison, Mundio itself does not operate a complete mobile radio network because it does not have frequency usage rights. Instead, Mundio substitutes part of the mobile network infrastructure (i.e. the radio network) by purchasing these services wholesale from a mobile network operator (under a national roaming agreement with a host network operator).

Mundio as an MVNO

Price regulation

In the decision, the TTK determined that Mundio possesses significant power pursuant to Articles 35 and 37 of the Austrian Telecommunications Act (TKG) 2003. In order to address the competition problems which would arise on this individual mobile termination market in the absence of regulation, the TTK subjected this operator to specific obligations related to non-discrimination and interconnection, the obligation to publish a reference offer for mobile termination services, and an obligation to ensure cost-based pricing. In implementing the cost-based pricing obligation, the regulatory authority defined the following specific charges (in euro cents, excluding VAT) for Mundio's mobile termination services:

Table 16: Mobile termination charges defined for Mundio Mobile (Austria) Limited

From delivery of decision until June 30, 2010	3.50 euro cents
From July 1, 2010 until December 31, 2010	3.01 euro cents
From January 1, 2011 until May 31, 2011	2.51 euro cents
From June 1, 2011 until the completion of a new procedure pursuant to Art. 37 TKG 2003 (or other relevant follow-up regulations) regarding the relevant market for termination in an operator-specific public mobile network	2.01 euro cents

Source: RTR

These charges are the same as those allowed for the other mobile operators given their positions of significant market power as identified in 2009 (cf. the decisions of June 15, 2009 in Procedure M 1/08).

7.1.3 Physical access

Analysis of the market for physical access to network infrastructure (M 3/09)

In an official decision issued on September 6, 2010, the TTK redefined the general conditions for the rollout of broadband access networks.

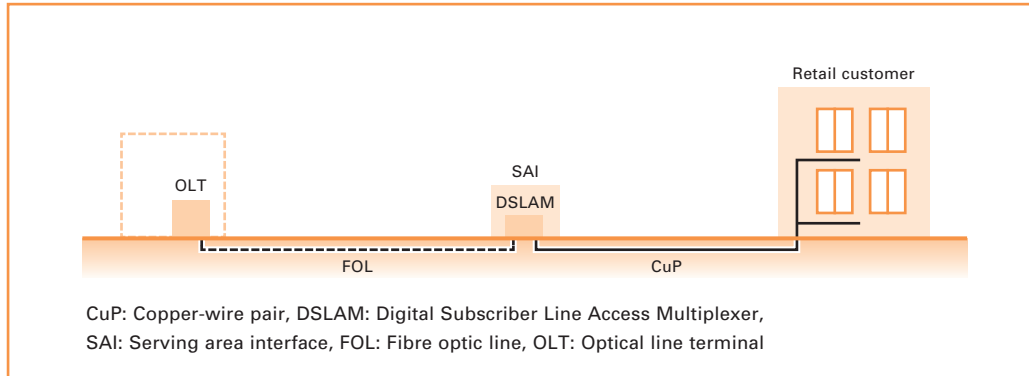
Increasing bandwidth needs

In the future, broadband service providers will have to provide consumers with data transmission speeds which can no longer be realised using A1 Telekom's copper wire access network alone (at least in the medium term). With the current copper-based transmission systems such as ADSL2+, bandwidths above 30 Mbit/s cannot be realistically attained, but under favourable technical conditions, such speeds can indeed be reached with the new VDSL2 transmission standard. In this way, the deployment of VDSL2 from collocation facilities at the main distribution frame (VDSL@CO) can be regarded as an initial step toward implementing next generation access (NGA). This step can also be realised at comparatively low cost by operators which already maintain their own infrastructure (collocations) at certain MDFs by exchanging the transmission systems without making large investments in new (fibre) infrastructure on their own. However, the conditions for deploying VDSL@CO in the A1 Telekom network had not been defined prior to Decision M 3/09. The TTK's decision enables telecommunications service providers (whose activities still focus on unbundling copper subscriber lines) to deploy the VDSL2 transmission standard, a change which has often been called for due to the higher performance of this technology. At the same time, the decision also acknowledges and supports the priority of more advanced fibre broadband networks (fibre to the curb [FTTC] and fibre to the building [FTTB]) by enhancing the deployment opportunities for potential investors and thus creating incentives to roll out fibre networks.

VDSL2 from MDF

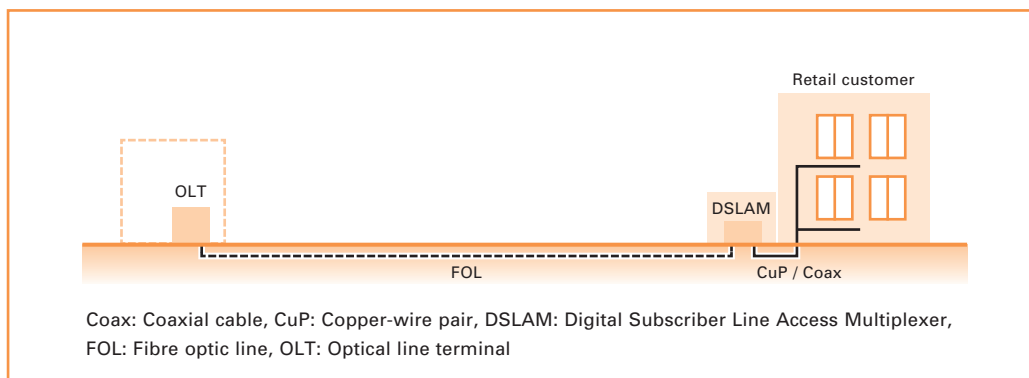
Priority for FTTC/B

Figure 12: Fibre to the curb



Source: RTR

Figure 13: Fibre to the building (FTTB)



Source: RTR

The TKK imposed an obligation on A1 Telekom to allow VDSL@CO as a network-compatible standard without spatial (deployment radius) or temporal limitations. However, in order to accord the appropriate priority (which is desirable from a regulatory perspective) to the more progressive and thus preferable technologies FTTC/B, the decision also includes provisions which enable restrictions on this general approval of VDSL@CO (to a certain coverage radius around the MDF) in favour of FTTC/B. In this way, the problem of mutual electromagnetic interference between (copper-based) transmission systems can be avoided. Under certain conditions, these provisions enable A1 Telekom (as well as alternative operators; see below) to plan an FTTC/B rollout without spectrum shaping (which only takes partial advantage of the technical possibilities), as the required protection of alternative operators is handled in another way, namely by using a different wholesale product known as "virtual unbundling." To this end, the official decision stipulates that this product – although it is a service and does not involve direct sharing of physical infrastructure – must be as similar as possible to physical unbundling, especially with regard to the product design and pricing possibilities on the part of the wholesale customers. For this purpose, the decision defines eight requirements to be imposed on virtual unbundling as a wholesale product (see below) which are intended to ensure the required similarity to physical unbundling. In addition, newly introduced advance notification obligations for rollout projects and planning rounds also enable and facilitate the identification of potential cooperation arrangements.

No need for spectrum shaping

Planning rounds and virtual unbundling

Increased access and transparency obligations for A1 Telekom

The TKK's decision also imposes expanded and specifically defined access and transparency obligations on A1 Telekom which are intended to further improve the general conditions for alternative operators' investments in fibre access networks. With regard to its copper access network, which will still be required to cover the "last mile," A1 Telekom is required to provide the information (such as line lengths and the geographical locations of switching points) necessary to plan these new networks. Moreover, A1 Telekom is required to publish reference contract offers stating the conditions for access to unbundled subscriber lines in order to ensure rapid and non-discriminatory access for all interested parties. In addition, A1 Telekom is also required to offer new wholesale products such as access to ducts or dark fibre for the purpose of connecting upstream unbundling locations to the operators' core networks; this will serve to lower the investment costs (excavation costs) for alternative operators.


Reference contract offers

The TKK's decision therefore creates incentives for alternative operators to invest in VDSL@CO rollout projects and for both alternative operators and A1 Telekom to invest in FTTC/B rollout projects, as well as incentives to cooperate in rollout efforts. In this way, the decision forms a sound basis for investments in the rollout of broadband networks in the future.

Review of reference contract offers

In accordance with the TKK's instructions, A1 Telekom published its initial reference offers in October and December 2010, after which the TKK instructed RTR to review those offers for compliance with the imposed obligations. In this review, RTR established that the reference offers largely complied with the operator's obligations, but the terms of the reference offer for virtual unbundling had to be subjected to closer examination. Under the offer published, customers could choose among four different access bandwidths (8, 16, 20 and 30 Mbit/s, asymmetric) in the line between the end-user and the DSLAM. In the line between the DSLAM and the point of interconnection (which is at the main distribution frame), it was also necessary to choose among various backhaul bandwidths with four classes of service (CoS) to which traffic could be assigned using the appropriate labels. This product design raised doubts regarding compatibility with A1 Telekom's regulatory obligations, as the large price differences between bandwidths and service classes suggested an unacceptable restriction of wholesale customers in pricing or an excessively close link to A1 Telekom's retail products. In terms of the wholesale customers' flexibility in pricing, this made the product appear more similar to bitstreaming services than to physical unbundling as required in the decision. A1 Telekom was instructed to revise and publish the reference offer accordingly. Subsequently, A1 Telekom and RTR held intensive talks in which the regulatory authority specifically informed A1 Telekom of the minimum changes which would be required in key commercial and technical aspects of the reference offer in order to meet the operator's regulatory obligations.

A1 Telekom then published a revised reference offer. The main changes in this new offer were a reduction of price differences and a reduction of absolute price levels. Specifically, the number of access bandwidths was reduced from four to three (from 8/16/20/30 to 8/20/30), and the number of service classes was reduced from four to one (within which traffic can be prioritised / transported at two different quality levels). These changes were accompanied by drastic price decreases, thus providing wholesale customers with far more latitude in pricing and largely eliminating the close link to A1 Telekom's retail products. The new price levels also make it possible for wholesale customers to obtain non-overbooked bandwidth in sufficiently high quality at a price which enables competitive retail offers. After a preliminary review of this improved reference offer, the TKK decided not to initiate the planned supervisory procedure



under Art. 91 TKG 2003 with regard to A1 Telekom because the operator had responded to the regulatory authority's reservations to such an extent that it submitted a reference offer which appears to comply with regulatory requirements (although it will still be subjected to detailed examination).

As an initial step in the detailed review of the new reference offer, the TKK subjected the offer to a public consultation in the course of the review of the overall unbundling package (including other new annex products such as access to ducts and dark fibre). At the end of the reporting period, the consultation procedure was still under way.

Additional information:

Eight requirements imposed on virtual unbundling as a wholesale product:

1. A degree of design freedom which enables innovation at a level comparable to passive access (as in unbundling);
2. A maximum of transparency for higher layers;
3. Possibility of providing multicast services;
4. Technological neutrality;
5. Flexible choice of terminal equipment on the basis of an expandable white list;
6. Interconnection at least at the main distribution frame or a comparable point in the next generation network;
7. Traffic handover/takeover on behalf of third parties;
8. Configuration access to all relevant connection parameters with a maximum of flexibility for the wholesale customer, provision of a non-overbooked bandwidth between the retail customer and the point of interconnection.

7.1.4 Wholesale broadband

Analysis of the wholesale market for the provision of broadband access for non-residential customers (M 1/10)

On February 1, 2010, the second amendment to RTR's Telecommunications Markets Ordinance (TKMV) 2008 went into effect.


With the amendment, the wholesale market for the provision of broadband access for non-residential customers (Art. 1 No. 11 TKMV 2008) was defined as susceptible to sector-specific regulation pursuant to Art. 36 Par. 1 TKG 2003.

Analysis of wholesale broadband market (non-residential customers)

On the basis of the TKK's resolution on January 25, 2010, Procedure M 1/10 was initiated for this market in accordance with Art. 37 TKG 2003. One special characteristic of this procedure arose from the fact that the market definition – especially its restriction to the wholesale market for the provision of access for non-residential customers due to especially high competitive pressure from mobile broadband services in Austria – drew a high level of attention, also at the international level. However, the "serious doubts" previously voiced by the European Commission on this market definition were eliminated in a consultation procedure. This limitation of the market definition to non-residential customers was again the subject of further discussions in the course of the procedure.

Market definition

Wholesale services for non-residential customers



The procedure was completed with a decision issued on November 15, 2010 in which the regulatory authority determined that A1 Telekom possesses significant market power on the market in question.

Access A1 Telekom was therefore subjected to numerous specific obligations in order to address the competition problems identified. In addition to the "classic" obligation to provide broadband bitstream access on the basis of the wholesale profiles described in the relevant A1 Telekom reference offer, the obligations now also include a requirement based on the decisions regarding the access markets (M 1/09 and 2/09), specific voice over broadband (VoB) options with required bandwidths and data volumes included in connection with naked DSL wholesale service profiles. With regard to price regulation, the regulatory authority ordered A1 Telekom to use the "retail minus" calculation method (based on non-residential retail prices) in particular with regard to those wholesale profiles with regional traffic handover, which A1 Telekom also uses to provide its own retail products.

Non-discrimination Another key element in the decision was related to non-discrimination obligations, which require A1 Telekom to offer all wholesale services to other customers on the same terms and in the same quality as offered for its own services or those of associated or other enterprises. Likewise, A1 Telekom was also subjected to the obligation to make these wholesale products available at the latest simultaneously with the introduction of its own retail products and to provide information on the planned introduction of new wholesale products at least four weeks prior to the launch of its own new retail products in order to enable alternative providers to launch similar products simultaneously.

Reference offer The obligations imposed on A1 Telekom were rounded off by an order to maintain the existing wholesale reference offer for broadband access solutions in accordance with Art. 38 TKG 2003 and to revise the offer in line with the official decision.

7.1.5 Wholesale fixed-link services

Analysis of the fixed-link origination market (M 4/09)

On July 26, 2010, the TTK completed the market analysis procedure for fixed-link origination services and determined that A1 Telekom possesses significant market power on this market as defined under Articles 35 and 37 TKG 2003.

In order to address the competition problems which would arise on the fixed-link origination market in the absence of regulation, the TTK subjected A1 Telekom to specific obligations related to non-discrimination, interconnection, the publication of a reference offer for fixed-link origination services, accounting separation, and cost-based pricing. In light of the transition to next generation networks (NGNs) and the expected conversion of A1 Telekom's entire network, the operator was also instructed to prepare a detailed plan for the migration process with due involvement of alternative operators by May 2011.

In order to implement the cost-based pricing obligation, the TTK set specific charges for A1 Telekom's fixed-link origination services (charges in euro cents excluding VAT):

Table 17: Fixed-link origination services – A1 Telekom Austria AG

Traffic type / Network elements / Traffic direction	Peak (euro cents)	Off-peak (euro cents)
Regional access service (single tandem) A1 Telekom ANO (service) – Regional access from the A1 Telekom network to service numbers in the contract partner's network	1.28	0.71
Local origination (local switch) A1 Telekom ANO (carrier network operator) – Local access from the A1 Telekom network to the contract partner's carrier network (network switching centre, local switching centre)	0.82	0.48
Local access service (local switch) A1 Telekom ANO (80400x) – Local access from the A1 Telekom network to numbers in the 804 range on the contract partner's network (network switching centre, local switching centre)	0.82	0.48

Source: RTR

Analysis of the fixed-link termination market (M 5/09)

On July 26, 2010, the TTK also completed the market analysis procedure for fixed-link termination services and determined that A1 Telekom and 21 other operators possess significant market power on those markets as defined under Articles 35 and 37 TKG 2003.

22 mobile operators possess SMP on their own individual termination markets

These 21 operators are as follows: aicall telekommunikations-Dienstleistungs GmbH, Aplus Informationstechnologie G.m.b.H., COLT Telecom Austria GmbH, Hutchison 3G Austria GmbH, Informations-Technologie Austria GmbH, "IT-Technology" Gesellschaft für industrielle Elektronik und Informationstechnologie mbH, LIWEST Kabelmedien GmbH, mediainvent Service GmbH, MITACS Telekomservice GmbH, MultiKom Austria Telekom GmbH, NeoTel Telefonservice GmbH & Co KG, Orange Austria Telecommunication GmbH, Telecomservice GmbH, Teleport Consulting- und Systemmanagement Gesellschaft m.b.H., Tele2 Telecommunication GmbH, T-Mobile Austria GmbH, UPC Telekabel Wien GmbH, Verizon Austria GmbH, WNT Telecommunication GmbH, xpirio Telekommunikation & Service GmbH, and 1012-Festnetz-Service GmbH.

In these cases as well, specific obligations were imposed on the operators in order to address the competition problems which would arise in the absence of regulation. A1 Telekom was subjected to obligations related to non-discrimination, interconnection, the publication of a reference offer for fixed-link termination services, accounting separation, and cost-based pricing. In light of the planned conversion to a next generation network (NGN), A1 Telekom was also instructed to prepare a detailed migration plan by May 2011 for this market as well.

The other 21 operators were subjected to an obligation to ensure cost-based pricing. In order to implement this obligation, the TTK set specific fees for the fixed-link termination services provided by A1 Telekom as well as the other 21 operators (charges in euro cents excluding VAT):

Table 18: Fixed-link termination services – A1 Telekom Austria AG

Traffic type / Network elements / Traffic direction	Peak (euro cents)	Off-peak (euro cents)
Local termination from the contract partner's network to the A1 Telekom network (network switching centre, local switching centre)	0.82	0.48

Source: RTR

Table 19: Fixed-link termination services – Alternative network operators

Traffic type / Network elements / Traffic direction	Peak (euro cents)	Off-peak (euro cents)
Termination from the interconnection partner's network to one of the 21 subscriber network operators subject to cost-based pricing obligations	1.28	0.71

Source: RTR

7.1.6 Retail markets

In 2009, the TTK initiated two market analysis procedures under Art. 37 TKG 2003 with regard to the retail markets for access to the public telephone network at a fixed location for residential and non-residential customers in order to determine whether effective competition prevails or certain operators possess significant market power (and thus require specific obligations) on those markets.

Completion of third round of market analysis procedures for retail markets

In addition, the TTK likewise initiated a market analysis procedure pursuant to Art. 37 TKG 2003 in 2009 with regard to the retail market for publicly available telephone services provided at a fixed location for non-residential customers as defined in Art. 1 No. 10 TKMV 2008.

All three procedures were concluded by means of an official decision in 2010.

Analysis of the market for access to the public telephone network at a fixed location for residential customers (M 1/09)

Access services for residential customers

On the retail market for access to the public telephone network at a fixed location for residential customers as defined in Art. 1 No. 1 TKMV 2008, the TTK determined that A1 Telekom possesses significant market power.

In accordance with Art. 37 Par. 2 TKG 2003, A1 Telekom was thus subjected to the following specific obligations:

- Obligation to enable carrier (pre-)selection;
- Access and non-discrimination obligations;
- Obligation to publish a reference offer;
- Ex ante approval of retail products;
- Price regulation (price cap);
- Obligation to maintain accounting separation.

In this context, it is important to note that in contrast to the previous round of market analyses (M 1/06), the regulatory authority's decision no longer provided for cost-based pricing, but a price cap on retail rates and charges. The obligations to obtain ex ante approval for retail rates and charges and for contractual terms and conditions were maintained on this market.

Analysis of the market for access to the public telephone network at a fixed location for non-residential customers (M 2/09)

On the retail market for access to the public telephone network at a fixed location for non-residential customers as defined in Art. 1 No. 2 TKMV 2008, the TTK likewise determined that A1 Telekom possesses significant market power.

Access services for non-residential customers

In accordance with Art. 37 Par. 2 TKG 2003, A1 Telekom was thus subjected to the following specific obligations:

- Obligation to enable carrier (pre-)selection;
- Access and non-discrimination obligations;
- Obligation to publish a reference offer;
- Ex ante approval of retail products;
- Price regulation (price cap);
- Obligation to maintain accounting separation.

On the non-residential market as well, price regulation was no longer imposed in the form of cost-based pricing, but in the form of a price cap. The obligation to obtain ex ante approval for retail products was likewise maintained on this market.



Analysis of the market for publicly available telephone services provided at a fixed location for non-residential customers (M 10/09)

Telephone services for non-residential customers

On the retail market for publicly available telephone services provided at a fixed location for non-residential customers as defined in Art. 1 No. 10 TKMV 2008, the TTK determined that A1 Telekom possesses significant market power.

In accordance with Art. 37 Par. 2 TKG 2003, A1 Telekom was thus subjected to the following specific obligations:

- Notification requirement for retail products;
- Price regulation (price cap);
- Obligation to maintain accounting separation.

In the second round of market analyses, specific obligations were imposed separately on the market for fixed-link domestic calls and on the market for fixed-link international calls for non-residential customers (M 06/06). Since the amendment to the Telecommunications Market Ordinance, there has been only one defined market for fixed-link telephone services for non-residential customers (Art. 1 No. 10 TKMV 2008).

On the market for telephone services for residential customers, the specific obligations previously imposed were overturned by an official decision in 2009.

7.2 Network access

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

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. 121 TKG 2003), which will then issue an official decision in lieu of such an agreement (Articles 50 and 121 TKG 2003).

Definition of fixed-link interconnection charges (Z 1/10, Z 2/10)

Definition of fixed-link interconnection charges

In an official decision issued in Procedure Z 1/10 on August 23, 2010, the TTK redefined the fixed-link interconnection charges between Hutchison and A1 Telekom for the period from January 1, 2010 onward.

In Decision Z 9/07 of August 6, 2009, which involved the same parties as in Z 1/10, the TTK for the first time ordered these charges in two annexes: Annex 6 (Charges dependent on SMP) and Annex 7 (Charges not dependent on SMP). Moreover, Decision Z 9/07 specified that Annex 6 would remain valid until "the next decision is issued by the TTK in a relevant procedure under Art. 37 TKG 2003." The charges defined in Annex 7 were ordered for an indefinite period of time.

Therefore, for the period from January 1, 2010 to July 28, 2010, Hutchison's petition regarding Annex 6 was rejected on the basis of the existing decision (Z 9/07). For the period from July 28, 2010 onward, the regulatory authority defined those charges which were ordered in the market analysis decisions M 4/09 and M 5/09 (fixed-link origination and termination) of July 26, 2010. Appropriate charges were also defined for Annex 7.

In an official decision issued in Procedure Z 2/10 on October 18, 2010, the TTK also redefined the fixed-link charges between Verizon and A1 Telekom for the period from January 1, 2010 onward. The charges were also defined in two annexes in this procedure. For the period from January 1, 2010 to July 28, 2010, the charges in Annex 6 were defined as in Procedure Z 9/07. As in Procedure Z 1/10, appropriate charges were also ordered for Annex 7.

Therefore, Procedures Z 1/10 and Z 2/10 resulted in two largely identical orders defining interconnection charges.

VDSL2 switching guidelines (A1 Telekom Austria AG vs. Tele2 Telecommunication GmbH, UPC Austria GmbH, Silver Server GmbH and others; Z 3-7/09, Z 3/10, Z 5-14/10)

At the end of July 2009, A1 Telekom submitted petitions for the issuance of partial unbundling orders pursuant to Art. 50 TKG 2003 with regard to Tele2 and UPC. The purpose of the petitions was to issue switching guidelines which significantly limit any deployment of VDSL2 on the part of unbundling partners from main distribution frames within the four access areas in the city of Villach in order to avoid mutual interference (Procedures Z 3, 4/09). In mid-September 2009, additional petitions with generic provisions to limit the deployment of VDSL2 from the main distribution frame followed with regard to Tele2, UPC and Silver Server; these petitions called for switching guidelines with more stringent restrictions in approximately 400 more densely populated access areas and less stringent restrictions in approximately 1,000 less densely populated access areas in which no unbundling partners operated (Procedures Z 5-7/09). On the basis of a draft prepared by Tele2, Tele2 (counter petition in Procedure Z 5/09) and Silver Server (Procedure Z 3/10) requested the issuance of separate generic switching guidelines for the deployment of VDSL2 in A1 Telekom's access network. The preceding dispute resolution procedure did not bring about an agreement between the parties in any of these procedures.

Finally, in July 2010 A1 Telekom submitted petitions for the issuance of partial unbundling orders with regard to the three companies mentioned above (Procedures Z 12,13,14/10) as well as seven additional unbundling partners (Procedures Z 5-11/10) requesting an order of general switching guidelines for the deployment of VDSL2 from the main distribution frame as well as switching guidelines for the deployment of VDSL2 at certain upstream units. As the market analysis decision M 3/09-103 issued on September 6, 2010 with regard to the wholesale market for access to physical network infrastructure contained detailed provisions with regard to the

*A1 Telekom petitions:
VDSL2 switching
guidelines in Villach*

*A1 Telekom petitions:
VDSL2 switching guide-
lines in different areas*

*Counter petitions
from Tele2,
Silver Server*

*A1 Telekom petitions:
Switching guidelines
for VDSL2@CO and
VDSL2@"remote
locations"*



Procedures discontinued due to bilateral agreements

deployment of VDSL2 in A1 Telekom's access network, most of the procedures mentioned above were discontinued due to mutual agreements between the parties. The exception was Procedure Z 11/10, in which the opponent's counter petition was rejected due to a lack of demand.

Partial unbundling order on VDSL2 between A1 Telekom and Tele2

In the related procedures Z 3/09, Z 5/09 and Z 12/10, the TKK issued a partial unbundling order on December 20, 2010 with regard to the use of VDSL2 in A1 Telekom's access network. In the decision, the regulatory authority essentially ordered the generic provisions contained in the market analysis decision discussed above for the deployment of VDSL2@CO, in this case applied to bilateral legal relations between the parties. Moreover, the order contains special provisions with regard to the deployment of VDSL2 in four access areas in Villach, in eight access areas in Klagenfurt and with regard to the deployment of VDSL2 at certain upstream locations, as well as rules with regard to upstream PSD shaping for ADSL/ADSL2+-based services provided from the main distribution frame. When shaping is employed, the technical potential of the VDSL2 transmission standard is only utilised to a limited extent, as the signal levels are reduced in certain frequency ranges in order to protect the xDSL signals transmitted through neighbouring lines.

Special rules for Villach, Klagenfurt, "remote locations" with PSD shaping

Interconnection between 1012-Festnetz-Service GmbH and Mundio Mobile (Austria) Limited (Z 4/10)

1012 versus Mundio

In an official decision issued in Procedure Z 4/10 on August 23, 2010 on the basis of a petition regarding Mundio submitted by 1012-Festnetz-Service GmbH under Art. 48 Par. 1, Art. 50 Par. 1 in conjunction with Art. 117 No. 7 TKG 2003, the TKK ordered general provisions for the interconnection of these providers' communications networks because the parties to the procedure were unable to reach a mutually acceptable agreement.

7.3 Shared use of communication lines and site sharing

Wayleave rights and rights of joint use

Section 2 Art. 5 et seq. of the TKG 2003 provide for regulations regarding "Wayleave rights and rights of joint use." Procedures concerning the shared use of infrastructure which can be used for communication lines or the shared use of antenna masts are handled before the TKK. In the summer of 2009, these provisions were changed in terms of content as well as procedural regulations by an amendment to the TKG 2003 (Federal Law Gazette I No. 65/2009); the new provisions formed the basis for Procedure D 1/10, which was carried out during the reporting period.

Shared use of A1 Telekom Austria AG's dark fibre by Silver Server GmbH (D 1/10)

Silver Server requests shared use of dark fibre

In March 2010, Silver Server requested an order for the shared use of one pair of unused fibre optic cables (dark fibre) belonging to A1 Telekom in each of six different line sections in Vienna. The rules of procedure stipulate that the authority's official decision, for which the TKK is responsible, serves to replace the agreement on shared use which the parties were unable to reach under private law.

The TKK instructed official experts at RTR to prepare an opinion on the technical and economic feasibility and appropriateness of the shared use requested by Silver Server. In this context, it was necessary to address the issue of the current and planned near-term use of the existing infrastructure by A1 Telekom to meet its own needs as well as the appropriate charges for the shared use as requested.

RTR prepares expert opinion

On July 26, 2010, the TKK issued six decisions (one per line section requested) defining the conditions for shared use of A1 Telekom's infrastructure by Silver Server. For all of the lines requested, Silver Server received the authorisation to use the line sections which A1 Telekom did not require for its own needs.

Shared use ordered by TKK

7.4 Supervisory procedures

Discrimination in access services (Tele2 Telecommunication GmbH – A1 Telekom Austria AG; W 2/02)

In Ruling No. 2005/03/0002 of October 29, 2009, the Austrian Administrative Court overturned the TKK's official decision of November 22, 2004 in Procedure W 2/02-237, and the procedure in question had to be continued as a result. Tele2 requested further investigation of the points criticised by the Administrative Court. However, in the procedures concerning the retail fixed-link markets for residential and non-residential customers (Procedures M 1/09 and M 2/09), RTR's official experts had already prepared a market analysis decision in which they recommended imposing an obligation to offer a VoB product instead of requiring A1 Telekom to provide a reference offer for the resale of access services (wholesale line rental, or WLR). For that reason, the TKK decided to wait before issuing a new decision in Procedure W 2/02 until the decision was made in the two market analysis procedures in order to account for those decisions in Procedure W 2/02. The obligation to offer a wholesale line rental service was, in fact, not imposed again in the market analysis decisions regarding the retail access markets (M 1/09-86 and M 2/09-86 of September 20, 2010); instead, A1 Telekom was required to offer a stand-alone VoB product.

Procedure continued after Administrative Court overturned TKK decision

No obligation to offer WLR service in market analysis decisions

As a result, the TKK issued an official decision on October 4, 2010 in which it rejected the petition submitted by Tele2. The petition had stated that A1 Telekom did not offer Tele2 the wholesale line rental service on non-discriminatory terms and was thus abusing its market power. In this context, the TKK made it clear that not only the current circumstances (as in the previous official decision, which had not been disputed in this regard), but also the legal situation at the time of the decision must be taken into account in the procedure in question, meaning that it was necessary to decide on the basis of the TKG 2003 and the current market analyses. As the new market analysis decisions no longer called for an obligation to publish a WLR reference offer, the alleged discrimination was no longer possible.


Petition rejected

Basis: Current circumstances and legal situation

Supervisory procedure regarding Mundio Mobile (Austria) Limited (R 1/10)

In the TKK's decision of February 22, 2010 regarding Procedure M 11/09-56, Mundio was subjected to a specific obligation to provide a reference offer for (mobile) termination: Point B.4. of the official decision reads as follows: "In accordance with Art. 38 Par. 3 TKG 2003, Mundio Mobile (Austria) Limited must publish a reference offer for the service of termination

Obligation to publish a reference offer



in its public mobile network on its web site in German language within four weeks of this decision's entry into force and to update said reference offer on an ongoing basis. This reference offer must include the following minimum content to be described in greater detail: Forms and costs of realising interconnection links, information on the locations of exchanges, traffic types and charges."

*Procedure pursuant to
Art. 91 TKG 2003*

In early 2010, a search for a reference offer published by Mundio for termination in its mobile network yielded no results, which is why the TKK initiated a procedure pursuant to Art. 91 TKG 2003 against Mundio (Code R 1/10) on May 17, 2010. Mundio subsequently fulfilled this obligation and published a reference offer. As a result, the regulatory authority was able to discontinue the supervisory procedure.

Supervisory procedure against A1 Telekom Austria AG for charging a "deinstallation fee" for mobile number porting (R 10/08)

*Deinstallation fee
again pending before
the TKK*

As suggested by various operators, the TKK conducted a review in 2008 to ascertain whether mobilkom austria AG (now A1 Telekom Austria AG) had violated its legal obligations with regard to number porting under Art. 23 TKG 2003.


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

Among other effects, 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, the TKK was of the opinion that charging customers such a deinstallation fee contradicts the intention of number porting.

In an official supervisory decision issued on December 22, 2008, the TKK therefore prohibited mobilkom from charging a deinstallation fee to customers who wished to have their numbers ported to a different operator. This referred to subscribers who had already chosen an A1 Network rate plan with various additional services and to subscribers who do so in the future.



In a ruling handed down on August 25, 2010, the Austrian Administrative Court overturned the TKK's supervisory decision. In principle, the Administrative Court confirmed the TKK's legal opinion that the deinstallation fee qualifies as a fee under Art. 23 Par. 2 TKG 2003. However, the official decision in question was overturned on the grounds that specific assessments had not been carried out with regard to the costs arising for the complainant and that consequently the relationship to those costs was not taken into account in assessing the "deterrent effect" of the charges imposed in connection with number porting.

As the supervisory decision was overturned, the procedure is again pending before the TKK. Given the need to collect additional data, the procedure had not been completed at the end of the reporting period.

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

Operators identified as possessing significant market power on a relevant market under telecommunications law can, among other things, be subjected to an obligation to have their retail rates and charges as well as their general terms and conditions of business approved by the regulatory authority.

The regulatory authority is required to issue a decision on each request for approval within eight weeks. Should the regulatory authority fail to issue a decision within that period, the rates or general terms and conditions submitted are considered to be approved (Art. 45 Par. 2 TKG 2003).

When a company subject to this requirement requests approval for its rates and charges, it is necessary to ensure that those rates and charges 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.


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.

ex ante approval on access markets

In the year 2010, A1 Telekom (as well as the former mobilkom austria AG) was subject to specific obligations in this regard. The ex ante approval requirement was still applied only to the markets for access to the public telephone network at a fixed location for residential and non-residential customers.

During the reporting period, operators on the markets for publicly available international and domestic telephone services provided at a fixed location for non-residential customers (now a single retail market, "Publicly available telephone services provided at a fixed location for non-residential customers," since the amendment to the TKMV 2008) were only subject to a notification requirement in which the TKK had the right to object to notified general terms and conditions (including service descriptions) and rates and charges within eight weeks of receiving the notification.

Notification requirement with possible objection by TKK on carrier markets



Since 2009, operators on the residential carrier markets have only been subject to the notification requirements resulting from Art. 25 TKG 2003.

In the year 2010, the general terms and conditions (including service descriptions) as well as the rates and charges submitted by Telekom Austria TA AG (now A1 Telekom) for the "TikTak Business Komfort" product were approved by the TKG in Decision G 60-10/09 of June 28, 2010. The "TikTak Business Komfort" product provides access to the public telephone network. Subscribers are offered three options: a telephone line, a basic ISDN line, or a multi-ISDN line. The connection charges notified were addressed in the objection procedures under M 04/06 and M 06/06 where those charges belong to the market in question.

7.6 General terms and conditions / rates and charges under Art. 25 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 Par. 1 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.

General terms and conditions: TTK authorised to raise objections under Art. 25 Par. 6 TKG 2003

Under Art. 25 Par. 6 TKG 2003, the TTK may raise objections to notified general terms and conditions (including service descriptions) within a period of eight weeks if they are not in line with the review standards stipulated in Art. 25 Par. 6 TKG 2003, which are as follows: the TKG 2003; ordinances issued on the basis of the TKG 2003; Articles 864a and 879 General Civil Code (ABGB), and Articles 6 and 9 Consumer Protection Act (KSchG).

Provisions regarding rates and charges: TTK not authorised to raise objections under Art. 25 Par. 6 TKG 2003

Under Art. 25 Par. 6 TKG 2003, the TTK does not have the right to raise objections to notified terms and conditions regarding rates and charges, meaning that under that provision the TTK cannot review whether such terms and conditions comply with the review standards. In 2009, the regulatory authority received a total of 173 notifications regarding rates and charges. These notifications were published by the regulatory authority and can be retrieved from the RTR web site.

In addition, the regulatory authority received a total of 159 notifications of general terms and conditions (and service descriptions) in accordance with Art. 25 TKG 2003 in the reporting period. After their conclusive review by the TTK, these notifications are also published on the RTR web site (<http://www.rtr.at>).

Where notified general terms and conditions or service descriptions do not meet the review standards set forth in Art. 25 Par. 6 TKG 2003, the operator in question is generally informed of the TTK's objections.

In all procedures handled in 2010, the operators revised the clauses questioned by the TTK, which meant that the TTK did not have to issue any official objection decisions in the reporting period.

Payment Services Act (ZaDiG)

As mentioned in the 2009 Communications Report, the Austrian Payment Services Act went into effect on November 1, 2009.

Art. 27 Par. 6 (second sentence) of this act stipulates the following: "The collection of charges by the payee in cases where a certain payment instrument is used shall not be permitted."

When the 2009 Communications Report was prepared, the TTK had not yet completed its conclusive assessment of contractual provisions, as all notifications where the general terms and conditions contained such clauses were withdrawn for revision. The regulatory authority did not have to issue any objection decisions in the year 2010 because all clauses providing for a special charge for the use of payment slips or additional charges for not issuing a direct debit authorisation were adapted or eliminated accordingly in the course of the relevant procedures.

Austrian Bankruptcy Law Amendment (IRÄG 2010)

The Austrian Bankruptcy Law Amendment (IRÄG 2010) went into effect during the year 2010. This amendment made substantial changes to Austrian bankruptcy legislation.

*Bankruptcy Law
Amendment 2010*

In connection with reviews of general terms and conditions, Art. 25a Par. 1 of the Austrian Bankruptcy Code (IO) is especially relevant, as the paragraph in question provides for a restriction on the termination of contracts, with the following key provision:

*Restrictions on
termination of
contract*

"In cases where termination of the contract could endanger the continued operation of the undertaking, the debtor's contract partners may only terminate contracts concluded with the debtor for important reasons within the six months following the opening of bankruptcy proceedings."

The Bankruptcy Code further specifies that neither a deterioration of the debtor's economic situation nor a delay in settlement of claims due prior to the opening of bankruptcy proceedings is considered an important reason.

This provision is intended to facilitate the continued operation and restructuring of business undertakings. Therefore, the provision only applies to cases where maintaining the contract is necessary for the continued operation of the business.

Clauses in general terms and conditions which allowed operators to effect an extraordinary termination of a telecommunications contract in the case of bankruptcy proceedings therefore had to be reviewed for compliance with the provisions of Art. 25a IO.

7.7 Universal service

Scope 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. Provision of a directory assistance service covering all operators;⁵
3. Creation of a comprehensive subscriber directory across all operators as well as access to this directory;
4. Nationwide coverage with public pay telephones.


The company currently obliged to provide universal service in Austria is A1 Telekom. Compliance with this obligation is to be reviewed at regular intervals.

In this context, access to public telephone services also includes the provision of "functional" Internet access; this term is not explained in detail in the Telecommunications Act with regard to specific bandwidths. In order to account for the developments on the telecommunications markets, the European Commission (in the course of a public consultation in 2010) asked the question of whether the inclusion of broadband Internet access in the scope of universal service would be justified at the time. RTR submitted its comments on this topic accordingly. The compilation of comments/opinions and the results of the consultation have not yet been published by the European Commission.

Financial compensation 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 those costs constitute an unreasonable burden. As in previous years, the universal service provider (A1 Telekom) was once again able to reach private-law agreements with each of the alternative telecommunications operators regarding the amount of compensation to be paid (for 2009); this meant that it was not necessary to define the compensation amounts officially or to establish a Universal Service Fund to cover the costs.

Quality criteria 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 supply time for initial connection setup, the fault rate, call setup time, voice transmission quality and the number and features of public pay telephones in operation. Under Art. 27 Par. 3 TKG 2003, A1 Telekom

⁵ As the universal service provider, A1 Telekom was relieved of this obligation in an official decision issued in 2006 once it had been established that this service is provided in a competitive environment.



is required to provide RTR with a report on the extent to which it fulfilled those criteria on a yearly basis. The regulatory authority's review of the 2009 report did not give rise to any objections to key parameters. An overview of the quality criteria attained by A1 Telekom in 2009 can be found at http://cdn1.a1.net/final/de/media/pdf/UDV_Qualitaetskriterien.pdf (in German). The Universal Service Ordinance, which defines the basis for those measurements, is available at <http://www.rtr.at>.

Charges and planned changes in the charges for services provided under the universal service mandate may be reviewed by the regulatory authority if there is reason to suspect that those charges are not in line with the principle of affordability or other provisions of the TKG 2003. Up to now, the criteria used to determine affordable price levels have been the Austrian consumer price index as well as gross per capita income and a basket of goods on the basis of changing call rates over time. A comparison of these indicators then makes it possible to assess whether the (planned) increase in charges over time is reasonably proportionate to the rise in consumer prices and income. In 2010, A1 Telekom made one change in the charges for services to be provided within the scope of universal service. However, the assessment criteria did not reveal any reason to suspect that this change would conflict with the principle of affordability. Therefore, it was not necessary to initiate a procedure pursuant to Art. 26 Par. 3 TKG 2003 in order to review affordability further.

Changes in rates/charges

7.8 Frequencies

With regard to frequency administration, the year 2010 was dominated by two key topics: the allocation of frequencies in the 2.6 GHz band and the discussion regarding the future use of the "digital dividend."

Allocation of frequencies in the 2.6 GHz band

As early as October 2008, the TTK initiated the procedure for the allocation of frequencies in the 2.6 GHz band and asked the federal minister in charge to provide information on the temporal availability of the frequencies. The federal minister conveyed the specific terms of use to the TTK in April 2009.

In preparing for the allocation of UMTS frequencies in the year 2000, the TTK had developed an auction design and had an auction software programme developed on the basis of that design. In various adapted versions, this software was used in every frequency auction from the year 2000 onward. In light of certain advances in the field of auction theory, RTR considered it necessary to adapt its auction design. In addition, the age of the previously used software provided another compelling reason to acquire a new auction programme. In contrast to other European regulatory authorities, the TTK decided not to outsource the development of this programme. Although parts of the auction design process were assigned to a consulting company, the software itself was programmed by an Austrian IT company on the basis of RTR's specifications. This development procedure offers the advantage of retaining the know-how with regard to auction design as well as the software at RTR, meaning that the programme can be adapted and used for later auctions. Compared to full outsourcing, the process chosen by RTR was also clearly the more favourable option with regard to the costs, which are borne by the successful bidders.

The format chosen was a combinatory clock auction. This format provides bidders with a maximum of flexibility with regard to bidding strategies and also ensures efficient frequency assignment. For example, the auction's design ensures that operators are only able to acquire contiguous frequency packages, thus preventing fragmentation in spectrum assignments (as has been the case in the past).

The procedure is divided into the principal stage and the assignment stage. In the principal stage, a two-step procedure is carried out in order to determine how many frequency packages each winning bidder receives. The purpose of the assignment stage is to decide which specific frequency packages are assigned to the winning bidders. Therefore, the latter stage serves to determine the actual position of each winning bidder's frequency packages in the available spectrum. In contrast to the conventional simultaneous multi-round format, this type of auction requires bidders to submit combinatory bids on multiple blocks. In addition, a second-price rule is applied: Winning bidders do not actually pay the amount they bid, but the minimum price which still ensures that they remain the winning bidders. Determining the winning bidders and prices in a combinatory auction is a non-trivial task and places high demands on quality assurance.


Once the preparations had been completed, the tender documentation was published in April 2010. The tender submission period ended on July 12, 2010. At the end of that period, the regulatory authority had received four applications for frequency assignments. In contrast to previous auction procedures, the applicants were not announced until the end of the auction procedure in order to prevent potential collusion. The participating companies therefore did not know who their competitors were.

The auction started on September 13 and was completed on September 20 with the following results:

Table 20: Results of 2.6 GHz frequency auction

Operator	Range	Fee (EUR)
A1 Telekom	2 x 20 MHz in paired range 25 MHz in unpaired range	13,248,223.00
Hutchison	2 x 20 MHz in paired range 25 MHz in unpaired range	11,030,560.00
Orange	2 x 10 MHz in paired range	4,001,003.00
T-Mobile	2 x 20 MHz in paired range	11,247,323.00
Total proceeds from auction		39,527,109.00

Source: RTR



The frequencies assigned in this procedure are suitable for the deployment of LTE (Long Term Evolution) technology. The frequencies will primarily be used for fast mobile broadband services in high-density areas. LTE technology enables operators to offer wireless broadband access with top speeds of up to 100 MBit/s.

These additional frequencies are important because the use of mobile broadband has skyrocketed in recent years, which in turn has led to bottlenecks in coverage. The operators will now be able to offer their subscribers high-capacity mobile broadband services.

Use of the digital dividend

The term "digital dividend" refers to that part of the frequency spectrum which has become available due to the newer, more efficient technologies used in the digitisation of previously analogue broadcasting services. In early 2010, work began on examining various potential future usage scenarios for these frequencies. For this purpose, RTR commissioned the ABI working group to prepare a study on this subject. The authors came to the conclusion that the incremental benefit of the upper band of the digital dividend (790-862 MHz frequency range) to the population and businesses in Austria would be considered especially high if it were used completely for mobile broadband, especially for comprehensive coverage of rural areas. According to the study, the frequencies in the digital dividend in the 800 MHz range are extraordinarily well suited for this purpose thanks to their especially favourable propagation characteristics and due to the possibility of sharing 900 MHz GSM network sites.

On the basis of this study, a policy declaration was issued in May 2010 to announce the intention to use these frequencies for mobile communications. Preparations for the amendment to the Frequency Utilisation Ordinance (FNV) were launched in 2010, and the FNV amendment was published on February 25, 2011 (see also Section 11.4.).

The regulatory authority then began preparations for the allocation of these frequencies.

7.9 Electronic signatures

Electronic signatures represent the digital equivalent to handwritten signatures and serve the purpose of ensuring data authenticity and integrity. These signatures are based on a certificate (also in electronic form) issued to the signatory by a certification service provider (CSP). Whether or not an electronic signature is considered equivalent to a handwritten signature (i.e. a qualified electronic signature) depends on the quality of the certification service (qualified certificate) as well as the security of the technical components and processes used (secure signature creation device, etc.). The Austrian Signatures Act (SigG) created the legal basis for the recognition of electronic signatures as equivalent to handwritten signatures and defines the technical and organisational requirements for this purpose. The supervisory authority's monitoring activities serve to ensure that those requirements are fulfilled.

The Signatures Act designated the TKK as Austria's supervisory authority for electronic signatures. The TKK's duties under the Signatures Act are organisationally and financially separated from its activities under other federal acts. The authority's activities in this area are financed by fees as well as funds from the federal budget.

*Seven new procedures
under the
Signatures Act*

In 2010, seven procedures under the Signatures Act were initiated before the TTK, and five of those procedures (plus two additional cases that were still pending at the end of 2009) were completed in 2010.

The certification service provider A-Trust was once again the only provider of qualified certificates located in Austria in 2010. Four of the procedures initiated in 2010 as well as the two pending procedures from the previous year were related to this CSP.

Since 2009, A-Trust has been issuing a new generation of smart cards in connection with the "a.sign premium" certification service; these new cards mainly deliver benefits in terms of cryptography. The procedure before the TTK concerning these cards was still pending at the end of 2009. In 2010, A-Trust also introduced a new generation of Austrian social insurance smart cards (known as "e-cards") which also provide benefits in terms of cryptography. Due to the similarity of these products, the procedure concerning these cards was combined with the ongoing procedure regarding smart cards. Both types of smart cards are secure signature creation devices whose compliance with the requirements of signature legislation has been confirmed by certification authorities. In particular, the TTK reviewed whether the CSP meets the required usage conditions resulting from those certifications. As the opinion prepared by a certification authority on behalf of the TTK did not point to any security-related shortcomings, the review was completed without the need for supervisory measures.

*Review of mobile-
phone based signature
service completed*


Since 2009, A-Trust has also been providing a mobile phone-based signature and certification service ("*Handysignatur*") in which the signature is created using a one-time password sent to the signatory in a text message. In this process, the signatory can create qualified electronic signatures without having his or her own secure signature creation device. The TTK reviewed this service with regard to the issuance of qualified certificates as well as the creation of qualified electronic signatures. In July 2010, the TTK decided that supervisory measures were not necessary on the basis of an opinion prepared by non-official experts as well as a report drawn up by RTR.

In May 2010, A-Trust notified numerous changes in its Certification Practice Statement. The TTK reviewed the changes, none of which proved to be relevant to security. The procedure was completed without orders for supervisory measures.

In August 2010, A-Trust notified the TTK of security-related changes in the technical components and processes used by the CSP. At the end of the reporting period, the TTK's review of these changes was still under way.

Another notification submitted by A-Trust in October concerned an extraordinary operating situation in the course of an emergency exercise. Thanks to the CSP's careful planning, there was no need to order supervisory measures in this case either.

In accordance with its legal mandate, the TTK again assumed responsibility for ensuring that electronic directories of CSPs and the certificates issued to CSPs were maintained in 2010. The TTK handled two procedures concerning the directories of CSPs and of certificates issued to CSPs to be maintained by RTR. One of those procedures was still in progress at the end of the reporting period.



An amendment to the Signatures Act announced in August 2010 ensures that, if a CSP discontinues its activities, its certification services will be continued if it is in the public interest. A related amendment to the Austrian Signatures Ordinance 2008 (SigV 2008) was announced in December 2010. The TKK and RTR jointly contributed extensive comments on the two amendments in the course of assessment procedures.



8. Activities of RTR's Telecommunications and Postal Services Division

8.1 Conciliation procedures

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

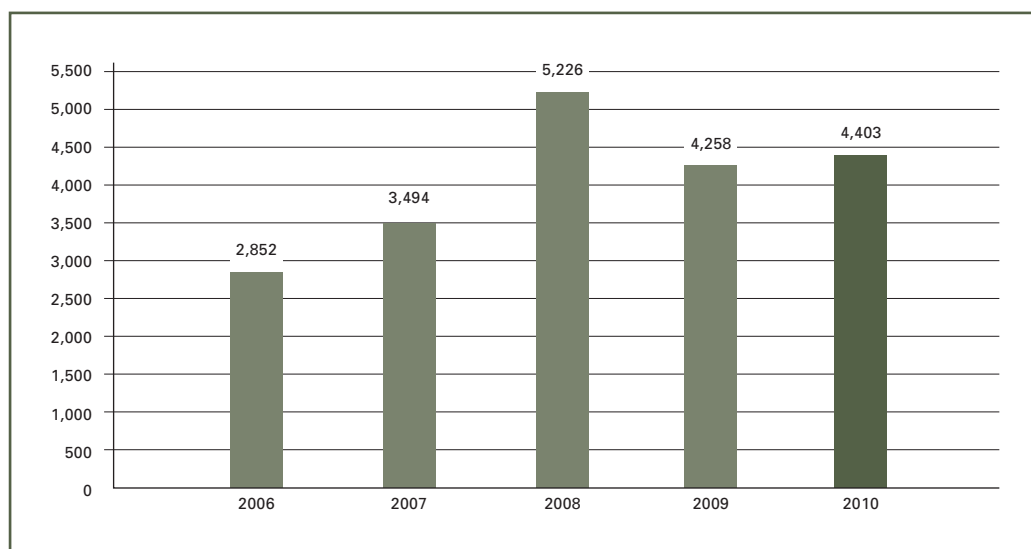
The TKG 2003 makes it possible to direct complaints regarding communications services to RTR's conciliation body. The procedure to be followed in this context is governed by Art. 122 TKG 2003, while further details are set out in the procedural guidelines for the conciliation body. The main prerequisite for a conciliation procedure is that the customer has previously attempted to reach an agreement with the operator. Therefore, according to the relevant legislation, conciliation proceedings should only be available to the parties affected once they have exhausted their own possibilities and legal instruments (e.g. objections to invoices).

In the year under review, there were no major changes in the number of cases or the content of procedures in retail conciliation activities. The number of procedures changed only slightly (+3.4%) compared to 2009.

However, at 4,403 cases, the total number remained relatively high, and signs of a reduction in the number of complaints lodged in the telecommunications field still cannot be observed.

Number of cases remains high

Figure 14: Conciliation cases per year, 2006 to 2010



Source: RTR

*Mobile data services
as a lasting problem*

In terms of subject matter, procedures again focused largely on charges for mobile data services. In those procedures, customers mainly disputed the amounts charged for exceeding the data volume included in their contracts. As the prices per megabyte for data transmissions below and above these limits are often highly asymmetrical, customers can quickly run up large bills for data services. While each megabyte in the data volume included in the contract generally costs less than one euro cent, this figure rises rapidly once that data volume has been consumed, usually with charges of ten or more euro cents per megabyte. In light of the constantly increasing bandwidths available and the fact that it is not easy for users to perceive data transfers, excessively high bill amounts ("bill shock") to the tune of several hundred euros may accumulate. Even amounts exceeding EUR 1,000.00 are not uncommon in the regulatory authority's conciliation activities.

*Lack of cost control
functions*

In the regulatory authority's opinion, it is unfortunate that only some of Austria's network operators and service providers have begun to introduce cost-limiting systems which bring about greater certainty for the user. As for ways in which such a system could be designed, one example can be found in the EU Roaming Regulation: Since July 1, 2010, customers using data roaming services in the EU have generally not been able to incur surprising costs above a limit of EUR 60.00. The conciliation body is aware that comparable efforts are also being made at the national level, but at the time of this report it is not known whether these efforts will be successful and what the results might be.

In connection with mobile data services, however, one positive development observed is that several operators are already offering rate plans which ensure a high level of cost certainty for the user. In particular, this refers to rate plans which provide unlimited data transfers for a flat rate or in which additional use of the data service is not subject to charges, but to a decrease in the available bandwidth. Likewise, a number of offers have emerged in which the price asymmetry mentioned above is no longer a factor with regard to the data volumes included and not included in the customer contract; the "low" charges thus also apply when the agreed limit has been exceeded.

*Complaints due
to smartphones on
the rise*

Finally, another development worth mentioning in the context of data services is the increasing prevalence of smartphones. While conciliation cases in the past mostly concerned typical mobile Internet access, usually via a USB modem, the number of cases in which data volumes were consumed using a smartphone has now increased markedly. Unfortunately, the enormous market success of these phones also has a downside in the form of complaints and disputes. In many cases, users of those devices are not even aware that many smartphone functions rely on an Internet connection. Completely unsuitable rate plans and/or excessive use, for example by watching videos, often lead to unpleasant surprises when the monthly bill arrives.

*Value-added text
messages continue
to create problems*

Once again, the problems associated with value-added text message services are worth mentioning in this context. Although these services accounted for only 161 cases and were therefore not excessively common, it is important to note that the problems in this area have not subsided. It was also striking that not all Austrian mobile network operators were affected by these cases equally; in fact, a clear majority of cases related to a single operator. According to the information available to RTR, the operator in question has now made technical arrangements to combat this problem. The year 2011 will show whether or not these measures bring about improvements in this respect. In any case, RTR has monitored developments in

value-added text message services closely, as legislative measures may be necessary in the Communications Parameters, Fees and Value-Added Services Ordinance (KEM-V) in the case of further negative developments. In this context, it is also important to point out the insights generated by value-added service monitoring (see Section 8.2). The fact that users still receive completely unsolicited value-added text messages and either bear the costs of those messages or have to object to them actively must be considered completely unsatisfactory in any case.

The number of cases related to value-added voice services has remained at a consistently low level.

One positive development in 2010 was the fact that no new types of complaints (in terms of subject matter) emerged in significant numbers.

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

Notwithstanding the competence of the ordinary courts, Art. 122 Par. 1 TKG 2003 stipulates that RTR can be called in as a conciliation body in the case of disputes or complaints involving customers, providers/operators of communications services and networks, and interest groups. The conciliation body is available in cases where complaints regarding quality of service and invoice disputes between a customer and an operator cannot be settled in a satisfactory manner (No. 1) and in the case of alleged violations of the TKG 2003 (No. 2).

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, operators are obligated to take part in such proceedings and to provide all documentation and information necessary. RTR's duty in these procedures is to help negotiate an amicable solution or to communicate its opinion on the case in question to the parties.

No such cases arose in the year under review.

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

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. 24 Par. 2 TKG 2003. In this context, the Communications Parameters, Fees and Value-Added Services Ordinance (KEM-V) 2009, which went into effect on July 7, 2009 and was amended in April and October 2010, was a highly significant factor. This ordinance is a new version of the KEM-V originally adopted in 2004. For further details on this piece of legislation, please refer to the relevant sections of the Communications Report from previous years and, with specific reference to the KEM-V 2009, to Section 8.5.1 of this report.

*KEM-V 2009:
Fundamental
regulations on the
provision of
value-added services*

Number of complaints largely unchanged

After declining in 2008 and 2009, the number of complaints related to value-added services remained at roughly the same level in 2010. Whereas nearly 40% of the procedures handled in connection with RTR's duties as a conciliation body under Art. 122 TKG 2003 were related to complaints about value-added services in 2008, this share dropped to approximately 11% in 2009 and to approximately 9% in 2010. In many cases, the problem of "MT-billed" text message services (where charges are incurred not for messages sent, but for messages received) was often the reason why customers contacted the conciliation body. In such cases, however, the conciliation body was able to provide those users with effective assistance.

"Migration" into the Internet and m-commerce services

In general, certain trends have emerged in which services that could previously be used via mobile telephones are now offered via Web portals or Internet clients. In addition, services formerly offered under value-added service numbers are increasingly being offered as "m-commerce" services for which charges are collected by the relevant network operator, but on behalf of another company (similar to a credit card payment) and under special legally defined conditions. Such services can be offered using geographical or mobile telephone numbers, and up to now no conspicuous patterns in the number of cases of misuse have been observed in these services.

Monitoring of value-added services


As early as 2008, the regulatory authority prepared a web-based complaint form for value-added services in order to ensure that information is captured quickly; this form has been in use since April 2008 and still enjoys high acceptance among consumers. In 2009, some 500 complaints were received, and this figure rose by approximately 30% in 2010. The increase during the reporting period can be attributed in particular to a flood of complaints regarding MT-billed text message services around the middle of the year. The complaints were analysed carefully, and where conspicuously high numbers of complaints were identified, the regulatory authority discussed possible remedies with the network operators in order to find timely solutions in the interest of consumers. For further information on value-added service monitoring in general, please refer to the relevant sections of the Communications Report from previous years.

Consistent monitoring and countermeasures

In the year 2010, RTR continued to monitor compliance with the provisions regarding value-added services in the KEM-V 2009 consistently and to take appropriate measures wherever necessary. In the course of these activities, RTR reviewed whether fee information requirements were fulfilled and whether erotic services were offered in the (0)900 range. In this regard, the authority's supervisory measures generally produced satisfactory results. With the adoption of the KEM-V 2009 and the continued monitoring of compliance with the provisions of the ordinance, the regulatory authority was (and will be) able to continue on the path it has taken thus far.

8.3 International roaming in the European Union

Regulation (EC) No. 717/2007 on roaming on public mobile telephone networks within the Community and amending Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services as amended by Regulation (EC) No. 544/2009 has now been in force for three years. After initially regulating wholesale charges for voice roaming and introducing the "Eurotariff," a roaming tariff with a set price limit which mobile operators have been required to offer since mid-2007, the Roaming Regulation was



expanded in the summer of 2009 to include additional obligations for mobile operators. In addition to further annual price reductions for voice roaming at the wholesale and retail levels, the amended regulation also limits prices for SMS roaming services and requires enhanced transparency and consumer protection measures, especially for mobile data roaming services.

As a temporary regulatory measure, the Roaming Regulation will remain in force until June 30, 2012.

8.3.1 New obligations for mobile operators

In addition to the price regulations imposed at the wholesale level (i.e. on the roaming fees charged between mobile network operators) from July 1, 2009 onward, an obligatory protection mechanism for data roaming services and far-reaching transparency obligations vis-à-vis roaming customers were also introduced at the beginning of March and subsequently at the beginning of July 2010. Price regulations for data roaming services are not defined at the retail level. The price of wholesale data roaming services is now limited to 80 euro cents (excluding VAT) per megabyte and will be reduced further to 50 euro cents as of July 1, 2011.

*New provisions in
Roaming Regulation
in 2010*

Cost control function for data roaming services

Since March 1, 2010, mobile operators have been required to provide all customers who are able to use data roaming services with a function that imposes a specific limit on data roaming services; this limit may be defined in terms of data volume or costs. The limit selected for these services must not be exceeded in a given period (generally the billing period) without the express consent of the customer. This function is intended to protect consumers from "bill shock," that is, surprisingly high charges for the use of data roaming services, and to ensure a maximum of transparency.

For all roaming customers who do not actively choose a limit offered by the operator, the Roaming Regulation required a general cost limit of nearly 50.00 excluding VAT (60.00 including VAT) to be applied by July 1, 2010 at the latest. As a result, this limit now applies to all roaming customers unless they explicitly inform their operator that they wish to opt out of the cost control function.

*Cost control function
for data roaming
in the EU*

Once a customer has used 80% of the limit defined for data roaming services, mobile operators are required to send a message to the customer (e.g. in the form of a text message or pop-up window) informing him/her accordingly. Once the limit is fully exhausted, the operator is required to send the customer an additional message indicating how further data roaming services can be used as well as the costs incurred for each additional unit consumed. If the customer does not respond to this message and confirm the additional use of data roaming services, the operator is required to block the further provision of data roaming services immediately.

Mobile operators are required to offer at least one limit (approximately EUR 60.00 including VAT), but they may also offer their customers a selection of higher or lower limit amounts. Since November 1, 2010, mobile operators have been required to implement changes in the agreed limit or the activation/deactivation of a limit within one day.

The regulatory authority has observed that Austria's mobile operators now offer the mandatory cost control function for data roaming services. In addition to the general limit of EUR 60.00 (including VAT), a number of operators also provide for additional limits. The operators have taken different approaches to handling the warning messages sent when the agreed limit is reached, for example by means of a text message, a landing page or a pop-up window.

Despite the introduction of this cost control function, the regulatory authority also received a number of complaints regarding roaming and the use of data roaming services within the European Union in 2010.

Additional price reductions

Additional price reductions

Additional reductions of wholesale rate limits are planned for July 1, 2010 (22 euro cents) and July 1, 2011 (18 euro cents). At the retail level, additional reductions have also been (and will be) introduced in the Eurotariff: For outgoing calls, the rate limit was lowered to 39 euro cents per minute from July 1, 2010 and to 35 euro cents per minute from July 1, 2011. For incoming calls, the rate limit was lowered to 15 euro cents per minute from July 1, 2010 and to 11 euro cents per minute from July 1, 2011 (all rates excluding VAT). RTR has observed that nearly all Austrian operators' rates for regulated roaming services in the Eurotariff are still based on the maximum prices set in the Roaming Regulation.

Table 21: Maximum rate limits at the wholesale and retail level

Euro cents (excluding VAT)	July 1, 2010	July 1, 2011
Wholesale rate	22	18
Retail rate (outgoing)	39	35
Retail rate (incoming)	15	11

Source: RTR

Charges for receiving voice messages eliminated

From July 1, 2010 onward, mobile operators were no longer allowed to charge their subscribers for receiving voice messages (i.e. for receiving a call and message on their mobile voice boxes) when travelling abroad within the EU. However, this does not apply to listening to voice messages.

8.3.2 Review of Roaming Regulation

As was the case with the first Roaming Regulation adopted in the year 2007, which initially only regulated voice roaming services, the new regulations will also be subjected to a review. The European Commission is required to report to the European Parliament and the European Council on the effectiveness of this regulation by June 30, 2011. In this context, the European Commission will have to review how the wholesale and retail charges as well as the availability and quality of roaming services have developed. One of the essential criteria in this review is the intensity of competition on the market for roaming services at the wholesale and retail level. For example, it will be necessary to determine whether various products and rate plans which account for differences in usage behaviour are available to roaming customers.

Review of Roaming Regulation

For the sake of further harmonisation of the telecommunications markets in the European Union, the European Commission and Parliament have called for the full elimination of roaming charges within the EU as soon as possible. The solution to be implemented for this purpose had not emerged when this year's Communications Report was prepared, but a complete elimination of roaming regulation currently appears improbable.

8.4 Services subject to notification requirements

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 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 process 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.

As of December 31, 2010, a total of 1,568 active services had been notified to RTR by 748 providers. 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.

8.5 Communications parameters

8.5.1 KEM-V 2009

The KEM-V 2009 was amended twice in the year under review. The first amendment to the KEM-V 2009 went into force on April 14, 2010. The purpose of this amendment was to define short public numbers for harmonised services, specifically 116 006 (advising services for crime victims) and 116 117 (non-emergency on-call medical services), and to adopt retail market provisions concerning international shared cost numbers (ISCN; dialling code +808). In this context, the ordinance stipulates that subscribers are to be charged 20 euro cents per minute for calls to universal international shared cost numbers using the international dialling code +808.

The second amendment to the KEM-V, which went into effect on October 29, 2010, was adopted in order to ensure greater cost transparency in the (0)5 number range, which is designated for private networks. Due to the rising number of complaints regarding excessively high telephone costs and a lack of transparency in the rates charged for calls to numbers in private networks, new regulations were defined for calls to this number range. The new ordinance is designed to ensure that calls from mobile phones to (0)5 numbers in private networks cost the same as calls to conventional fixed-link numbers.

For the first time, a rate limit was defined for the (0)5 number range in the provisions of the second amendment to the KEM-V. From March 1, 2011, calls to numbers in the (0)5 range will be subject to a fixed price limit of 40 euro cents per minute. For retail customer contracts concluded on or after March 1, 2011 or extended in connection with another rate plan, callers must be informed by means of a recording free of charge in cases where calls to private networks cost more than calls to conventional fixed-link numbers. According to plans announced by the operators, however, new contracts signed on or after March 1, 2011 will be subject to rate plans in which calls to private networks will cost the same as calls to fixed-link numbers.

During the preparation of this year's Communications Report, additional rate plan options which included equal charges for calls to these numbers for existing contracts were offered by all operators. This means that by paying a small fee in addition to their normal monthly rate plan, existing customers can now make calls to private networks at the same cost as calls to fixed-link numbers.

In addition, a new short number for special services (pharmacy services; 1455) was defined in this amendment to the KEM-V. Possible services which can be offered under this number include information on pharmacies which are open outside of normal business hours, a medication hotline, or the forwarding of calls to an on-call pharmacy.

8.5.2 Statistical analyses in telephone number administration

Table 22 provides a quantitative overview of the telephone number allocation decisions issued over the last five years. The table shows that the number of allocation decisions issued in the year under review dropped by 10% compared to 2009. This decrease can be attributed to ongoing process optimisation in the operational administration of communications

parameters. Since the KEM-V 2009 entered into force, allocation holders have been informed in advance when they face a potential loss of number usage rights. In this way, a substantial number of new number requests have been rendered unnecessary. The quality of usage data conveyed by the operators has also been enhanced continuously.

Table 22: Number of decisions on telephone number requests

	2006	2007	2008	2009	2010
Number of affirmative decisions	834	1,036	991	786	710
for geographical numbers	150	247	314	239	187
for non-geographical numbers	684	789	677	547	523
Number of negative decisions	68	48	75	43	35
Total	902	1,084	1,066	829	745

Source: RTR

In its administration of special communications parameters,⁶ RTR issued a total of 13 official decisions (all affirmative) in 2010.

Under the TKG 2003, the regulatory authority is required to decide on number requests within three weeks of receiving the complete application. As shown in Table 23, the regulatory authority has continued to carry out these duties far more quickly than required and has again managed to shorten its processing times slightly compared to the previous years. Here it is important to note that the figures below are expressed in calendar days (not business days), meaning that an application received on a Thursday and completed on the following Monday is considered to have taken four days to process.

Table 23: Processing times for telephone number requests (days)

	2006	2007	2008	2009	2010
Average processing time	2.2	2.5	2.2	2.2	2.1
50% of all requests	1.3	1.4	1.2	1.2	1.1
90% of all requests	3.9	4.8	4.0	4.2	3.6

Source: RTR

⁶ The 2005 Communications Report contains an overview of the special communications parameters administered by RTR (e.g. mobile network codes, or MNCs). See also <http://www.rtr.at/en/tk/Nummerierung>.




Table 24 provides an overview of all telephone number ranges administered by RTR as of December 31, 2010,** including allocated numbers and numbers in use. One remarkable development was the 29% decline in subscriber numbers in use for convergent services (electronic number mapping, or ENUM) compared to the previous year. It is also worth noting that the number of subscriber numbers in use grew in the ranges for location-independent telephone numbers (+14%) and for services subject to regulated maximum prices (+10%). As for geographical subscriber numbers, the slight trend reversal observed in 2009 continued in the year under review. The number of geographical subscriber numbers in use (on the overall market) thus rose by approximately 5% compared to 2009. This development can be attributed to the fact that A1 Telekom once again began to see increasing numbers during the reporting period (+5%) as well as the fact that alternative operators recorded an additional increase of 12% in the use of geographical subscriber numbers.

The use of telephone numbers for dial-up Internet access (or the use of numbers in the dial-up access range by dialler programmes) has continued to decline. The substantial increase in the number of routing numbers in use, carrier preselection prefixes and telephone troubleshooting hotlines can be attributed to enhanced data quality in the operators' use notifications.

Table 24: Numbers allocated and in use in Austria as of December 31, 2010***

	Range	Allocated	Numbers	
			In actual use	Change from previous year
Geographical subscriber numbers A1 Telekom***	(0)1, (0)2xx, (0)3xx, (0)4xx, (0)5xx, (0)6xx, (0)7xx	25,828,900*	2,487,047	+5%
Geographical subscriber numbers Alternative network operators***	(0)1, (0)2xx, (0)3xx, (0)4xx, (0)5xx, (0)6xx, (0)7xx	2,778,900*	596,791	+12%
Area codes for private networks	(0)5	569	448	+3%
Area codes for mobile networks	(0)6xx	11**	9	+13%
Dial-up internet access	(0)718	7,100	44	-6%
Location-independent fixed network numbers***	(0)720	264,500	50,229	+14%
Convergent services	(0)780	2,331	2,331	-29%
Toll-free services	(0)800	82,978	17,033	+9%
Toll-free dial-up internet access	(0)804 00	230	24	-8%
Services with regulated fee limits	(0)810, (0)820, (0)821	100,639	20,730	+10%
SMS services in the range for services with regulated fee limits	(0)828 2	1,845	27	+8%
Value-added services	(0)900, (0)930	123,835	28,273	+4%
Value-added services subject to event-based charges	(0)901, (0)931	42,284	2,661	+1%
Diallers (value-added services)	(0)939	10,100	50	0%
Carrier selection prefixes (public carrier networks)	10	37	28	+17%
Telephone troubleshooting hotlines	111	67	62	+13%
Telephone directory assistance services	118	48	42	-2%
Routing numbers for number portability	86	51	41	+11%
Routing numbers for mobile number portability	87	14	12	+20%
Routing numbers for services	89	32	25	+14%

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.

** In some cases, this only refers to number ranges allocated under a mobile area code.

*** Due to incomplete data supplied with regard to Q4 2010, the usage data for geographical subscriber numbers in the (0)720 range are based on the September 30, 2010 cutoff date.

8.6 Activities focusing on NGNs/NGA

NGN/NGA still a key topic

The migration to NGNs and the accompanying fundamental changes in the economic, technical and regulatory landscape for telecommunications have remained a crucial field of activity for the regulatory authority and market participants alike. In the reporting period, the operators focused their attention on the emerging process of rolling out state-of-the-art access networks (next generation access, or NGA) in Austria and the directly related regulatory decisions at the Austrian and European level. This focus area also manifested itself in the activities of RTR during the year under review.

8.6.1 NGA industry working group

Industry working group as a central forum

This industry working group, which was established in February 2008 as a result of a public consultation and has since been organised and moderated by RTR, originally devoted its efforts to more general issues related to NGA migration. In 2009, its discussions increasingly turned to aspects of the actual rollout of NGA by A1 Telekom, and in 2010 the group shifted its focus to regulatory measures in the analysis of the wholesale market for access to physical infrastructure (formerly the market for unbundling). At the same time, the group closely monitored developments at the international level, especially the European Commission's preparation of a recommendation on regulated access to next generation access (NGA) networks. The official activities of the industry working group comprised a total of five events, which were accompanied by bilateral discussions on the issues addressed throughout 2010.

Switching guidelines and VDSL@CO

The group's work in early 2010 was characterised by discussions of A1 Telekom's rollout plans, with the specification of FTTC and FTTB switching guidelines remaining an important topic. The discussions were expanded in early 2010 to include aspects related to the deployment of VDSL2 technology from collocation facilities at the main distribution frame (VDSL@CO); at first, A1 Telekom only allowed the deployment of this technology to a limited extent, but subsequent regulatory decisions made full deployment possible.

Decision M 3/09 as a core topic

Finally, the long-awaited official decision of the TKK on the regulation of the wholesale market for access to physical infrastructure (Decision M 3/09) also turned out to be a significant topic of discussion in the industry working group, especially as the decision defines the regulatory framework in this field and can thus be regarded as a milestone in the rollout of broadband infrastructure in Austria. In this context, the group discussed the content and implementation of the official decision, especially the reference offers to be provided by A1 Telekom for a number of wholesale products. In these discussions, the industry working group served as a suitable forum of experts. The official decision issued by the TKK not only governs the full and partial unbundling of subscriber lines, but also the associated additional services. From late 2010 / early 2011 onward, operators will thus have access to new wholesale products such as ducts and dark fibre for the purpose of connecting upstream unbundling locations to their own core networks, as well as "virtual unbundling," which is designed to provide alternative operators in NGA rollout regions with an alternative to classic unbundling in cases where it has become unattractive for technical or economic reasons.

The core topics addressed by the industry working group in 2010 remained the general technical and regulatory conditions for the rollout of NGA in Austria with special attention to ensuring competition and at the same time providing investment incentives in the access segment. In the future, the working group will continue to serve as a forum for the Austrian telecommunications market in order to enable market participants and the regulatory authority to discuss relevant topics in connection with the rollout of broadband networks.

8.7 International activities

Depending on the relevant focus, RTR participates in a wide variety of international working groups, including the IRG/BEREC, CEPT/ECC, OECD and the FESA. In addition to its activities as a member of those working groups, and in many cases as a provider of text and editorial services, RTR also advises Austrian representatives in organisations such as the European Commission's Communications Committee (CoCom).

*IRG/BEREC
focus areas*

The work programme for 2010 comprised three major focus areas:

1. Review of the existing legal framework;
2. Further harmonisation of the framework and its implementation;
3. New challenges due to new technologies, new networks and convergence.

The issue of roaming also played a key role in international activities in the reporting period.

The following reports and results were produced by IRG/BEREC in the year 2010 (in chronological order; see also <http://berec.europa.eu>):

Table 25: IRG/BEREC documents in 2010

Publication date	Original title	Topic	Contents
March 2010	BEREC Report on NGA wholesale products	Network access	Comparison of best practices for access to new networks
March 2010	Annex to the BEREC Report on NGA wholesale products	Network access	Country analysis on the handling of access to new networks
March 2010	BEREC report on self supply	Market analysis	Report on calculation methods for market analysis
March 2010	BEREC Summary consultation business services	Network access	Analysis of specific products for business customers
March 2010	BEREC Roaming compliance report	Roaming	Comparison of compliance with and effects of roaming regulations

Publication date	Original title	Topic	Contents
March 2010	BEREC report on alternative roaming tariffs	Roaming	Report with country comparison on alternatives to roaming regulation for data and text messaging services
April 2010	BEREC International Roaming Report	Roaming	Report on roaming situation in member states
May 2010	BEREC Response to the European Commission's consultation on Universal Services principles in e-Communications	Universal service	BEREC position paper on the Commission's consultation on universal services
May 2010	BEREC Opinion to the Draft Recommendation on regulated access to Next Generation Access Networks (NGA)	Network access	BEREC position paper on the regulation recommendation regarding access to new networks
June 2010	BEREC Report on Universal Service	Universal service	Analysis of a potential redefinition of the scope of universal services
June 2010	BEREC Action Plan to achieve conformity with ERG Common Position on symmetry of termination rates	Termination charges	Plans for further harmonisation of termination rates toward symmetric application
June 2010	MTR Benchmark Snapshot (as of January 2010)	Mobile termination	Monitoring of developments in mobile interconnection charges
June 2010	Decision on the transparency and access to documents at the BEREC	Transparency	Resolution regarding transparency with regard to BEREC documents
June 2010	Consultation Report to the Common Statement "Next Generation Networks Future Charging Mechanisms / Long Term Termination Issues"	Rates and charges	Consultation on country comparison regarding future charging mechanisms, termination charges
June 2010	BEREC Common Statement on Next Generation Networks Future Charging Mechanisms / Long Term Termination issues	Rates and charges	Common position paper and country comparison regarding future charging mechanisms, termination charges
June 2010	Decision on the establishment of BEREC Expert Working Groups	Expert groups	Reorganisation of expert working groups within BEREC
June 2010	Joint RSPG-BEREC activity on competition issues	Frequencies	Possible frequency assignment solutions under competition law

Publication date	Original title	Topic	Contents
October 2010	International Roaming BERC Benchmark Data Report for January 2010 – June 2010	Roaming	Semi-annual report and country comparison of roaming data in member states
October 2010	BEREC Report Regulatory Accounting in Practice 2010	Cost accounting	Country comparison of cost accounting methods
October 2010	MTR Benchmark snapshot (as of July 2010)	Mobile termination	Monitoring of developments in mobile inter-connection charges
October 2010	BEREC Response to the European Commission's consultation on the open Internet and net neutrality in Europe	Network neutrality	BEREC position paper on network neutrality and Internet access
October 2010	BEREC report of the consultation on the best practices to facilitate switching	Retail customer affairs	Country comparison regarding customers' ability to switch providers
November 2010	BEREC procedures for public consultations held by BERC	Transparency	Regulations regarding public consultations on BERC papers
November 2010	Report on International Mobile Roaming Regulation	Roaming	Country comparison regarding roaming regulation in member states
December 2010	BEREC Report on convergent services	Convergence	Report on convergent services in member states
December 2010	BEREC Report on bundled offers	Competition regulation	Report on bundled offers and their regulation


Source: BERC

In addition to publishing those documents, BERC cooperated closely with the European Commission in 2010, especially in the following areas:

Additional statements submitted

- Further development of alternatives to roaming regulation, especially with regard to data roaming and text messaging;
- Discussion of the termination recommendation.

In its international activities, RTR also participated in several workshops related to EU assistance and promotion programmes (TAIEX), using its experience to support the regulatory authorities in multiple countries in Southern and Eastern Europe as well as EU candidate countries.



Finally, RTR also supported the Eastern Partnership (EaP) programme launched by the European Union in order to promote cooperation under the European neighbourhood policy with the countries of Armenia, Azerbaijan, Georgia, Moldova, Ukraine and Belarus with a workshop in Vienna in October 2010.

8.8 Electronic signatures

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

In its activities under the Signatures Act, RTR primarily supports the TKK and acts on its behalf. However, RTR also handles certain activities pursuant to the Signatures Act independently.

In line with its legal mandate, RTR continued to use the existing public key infrastructure to maintain electronic directories of CSPs and certificates issued to CSPs in the year 2010. In this context, certificates which expired in 2010 were re-issued and entered in the directories. The supervisory authority's certificate was also renewed. However, on the basis of an amendment to the Signatures Act which took effect in 2008, this certificate was not published in the Official Gazette of the *Wiener Zeitung* newspaper, but only in electronic form (<https://www.signatur.rtr.at/currenttop.cer>).

*Verification service
now also available for
PDF signatures and
certificates*

In connection with the directories it maintains, the signature verification service operated by RTR at <https://www.signaturpruefung.gv.at>, which generally serves to verify electronic signatures (especially qualified signatures and official signatures) is made available free of charge. In the year 2010, this service was expanded to include additional functions. While electronic signatures in the formats CMS, XML and PDF-AS have been supported since the initial version of the service, it now also supports electronic signatures based on Adobe's PDF specification, which are used especially often for private-sector purposes (e.g. for electronic invoices). In addition, it is now possible to check not only signed documents, but also certificates.

*Trusted list adapted
to amended
specifications*

In connection with the directories mentioned above, users also have access to the "trusted list of supervised/accredited CSPs," which each EU member state has been required to create, maintain and publish in accordance with European legislation since December 2009. RTR maintains this list for the Republic of Austria. RTR's cooperation with comparable authorities in other countries belonging to FESA brought about improvements with regard to the security and interoperability of the trusted list. In this regard, FESA prepared a number of proposals, several of which were taken up by the European Commission. As the specifications for the trusted list were changed by Commission Decision 2010/425/EU, technical adaptations were also required in Austria's trusted list.





9. Postal service regulation

9.1 Announcement of the Postal Market Act

On December 4, 2009, the Postal Market Act (PMG) was announced in Austria's Federal Law Gazette. However, the key provisions of this act, most notably the full liberalisation of the postal market, did not go into effect until January 1, 2011.

At the same time, the transitional provision set forth in Art. 64 Par. 2 stipulated that a number of provisions would already go into effect upon the announcement of the act. During the reporting period, this referred to the following in particular:

- New procedural provisions governing the closure of post offices, for which the PCK is now responsible under the Postal Market Act;
- Establishment of the Post Office Advisory Board as an advisory body to the PCK in matters related to ensuring comprehensive nationwide coverage with post offices;
- Ability of provincial governments, municipal governments or legal interest groups to submit complaints regarding the provision of universal services;
- Redefinition of access points and renaming of the TKK's Postal Service Regulation Committee to Post-Control-Kommission (PCK).

The Postal Market Act was amended by the Austrian Budget Act (Federal Law Gazette I No. 111/2010) with due indication of the PCK's competence in procedures regarding the closure of post offices.


9.2 Closure of post offices

One highly important area of activity in the field of postal service regulation in 2010 was the review procedures under Art. 7 PMG with regard to Österreichische Post AG's closure of its own post offices. Since Art. 7 PMG went into effect on December 5, 2009, the regulatory authority has been solely responsible for reviewing whether the prerequisites for the closure of Österreichische Post AG's post offices are fulfilled.

Up to this point, Österreichische Post AG has notified the planned closure of 532 post offices in total. In a number of cases, procedures have been initiated regarding these closures, but the corresponding decisions will not be issued until 2011. In the case of 22 post offices, Österreichische Post AG retracted its closure notification before the PCK could make a decision on the case. In the reporting period, the PCK made decisions on the closure of 477 post offices.

Closure of post offices operated by Österreichische Post AG

54 closures prohibited



Closures were prohibited in a total of 54 cases (approximately 11.3%); in 30 cases the comprehensive coverage requirement was not fulfilled, and in 24 cases the PCK ruled that it was not impossible to cover the costs of running the post office in the long term.

27 closures prohibited on a contingent basis

Moreover, in 27 cases the closure of post offices was prohibited on a contingent basis (until the postal partner announced during the procedure commences operation).

Österreichische Post AG submitted complaints to the Austrian Administrative Court regarding two PCK decisions; these appeal procedures were still pending at the end of the reporting period. In the course of the review procedures in the first few months of the year, it generally became clear that Österreichische Post AG's interpretation of key legal provisions often diverged heavily from that of the regulatory authority. Moreover, it is worth noting that only Österreichische Post AG is accorded the status of a party to procedures regarding the closure of post offices, while the towns and municipalities affected were informed of the relevant procedure's results in writing by RTR once the procedure had been completed.

Prerequisites for closure

A post office operated by Österreichische Post AG may only be closed down in cases where it is not possible to cover the costs of running the post office in the long term (i.e. "over a period of approximately two years, both retrospectively and in a forward-looking perspective") and the provision of universal service is ensured by another post office (including those operated by third parties, such as postal service partners, as well as other existing post offices). The PCK is required to issue a decision within three months of receiving complete documentation from Österreichische Post AG. In addition to documents evidencing compliance with the prerequisites mentioned above, the required documentation also includes invitations from Österreichische Post AG to the mayors of the municipalities concerned to meet and discuss alternative solutions.

Comprehensive coverage

In any case, comprehensive coverage with post offices must be ensured. Under Art. 7 Par. 1 PMG, the comprehensive coverage requirement is considered fulfilled if users have at least 1,650 post offices at their disposal throughout the country. In municipalities with more than 10,000 inhabitants and in all district capitals, it is necessary to ensure that over 90% of inhabitants have access to a post office within a distance of 2,000 meters. In all other regions – which, according to the PCK's interpretation, include municipalities up to 10,000 inhabitants – a post office must be located within a distance of 10,000 meters.

Municipalities affected by closures

In the course of reviewing comprehensive coverage, the regulatory authority verified the coverage levels in all municipalities affected by closures. Municipalities are considered to be affected by closures if at least part of their population is assigned to the post office designated for closure, that is, if their postal items (letters or parcels) are held for pickup at the post office in question.

Cost accounting review

In order to assess the cost accounting documents submitted, the PCK instructed official experts from RTR's staff to prepare opinions on whether it is, in fact, not possible in the long term to cover the costs of running the individual Österreichische Post AG post office designated for closure.

In addition, the Post Office Advisory Board was also consulted prior to each PCK decision regarding post offices. This board was established under Art. 43 PMG as an advisory body to the PCK in matters related to comprehensive coverage with post offices, and it includes representatives from the Austrian Association of Municipalities, the Austrian Association of Cities and Towns, and the Liaison Office of the Federal Provinces, as well as a non-voting member from RTR. The PCK may take the board's comments and opinions into account at its own discretion. RTR provides the Post Office Advisory Board with operational support.

Post Office Advisory Board

Another very important area of activity involved the supervisory procedures carried out due to the closure of post offices run by third-party postal service partners in the reporting period. In such cases, Österreichische Post AG is also required to provide universal service and ensure comprehensive coverage in any case (Art. 7 Par. 7 PMG). In the course of these supervisory procedures, therefore, it was necessary to review coverage levels in the municipalities affected by the closures. In total, 41 closures of post offices run by postal service partners were the subject of PCK supervisory measures. In just one case, the review revealed that comprehensive coverage would no longer be ensured after the closure. Österreichische Post AG was then instructed to ensure that comprehensive coverage was restored. After the opening of a new third party-operated post office, this procedure was also discontinued.

Closure of post offices operated by postal service partners

9.3 Additional RTR and PCK procedures

In addition to the extensive procedures regarding the closure of post offices pursuant to Art. 7 PMG, the PCK also handled several supervisory procedures and complaints regarding universal service in the reporting period, for example due to the hours of operation of post offices as well as the attainment of comprehensive nationwide coverage with at least 1,650 post offices.


In the year under review, the PCK acknowledged various adaptations of Österreichische Post AG's general terms and conditions pursuant to Art. 9 Par. 4 PostG 1997.

Apart from those procedures under the Postal Services Act (PostG) 1997 and the Postal Market Act, the PCK – in preparation for the start of full liberalisation from January 1, 2011 onward – devoted efforts to the task of defining universal service and published a position paper on the topic on the RTR web site.

According to the provisions of the 3rd Postal Directive (2008/06/EC) and the Postal Market Act, universal service comprises the minimum range of services necessary for the maintenance of a basic range of postal services for users.

This includes the following services:

- Clearance, sorting, transport and delivery of postal items up to 2 kg;
- Clearance, sorting, transport and delivery of postal parcels up to 10 kg;
- Services for registered and insured postal items.



In this context, the Postal Market Act very generally states that universal services both in Austria and abroad include those postal services which are necessary for the maintenance of a basic range of postal services for users, where the underlying agreements on the postal services to be provided are concluded by depositing postal items in letter boxes or different access points. The legislation explicitly mentions that newspapers, periodicals and official postal items are included in the definition of universal service.

According to the Postal Market Act, only return parcel items and postal items/parcels deposited at a distribution centre are excluded from universal service by law.

Under an order issued by the Austrian Federal Minister of Transport, Innovation and Technology in December 2010, the military postal service, which is governed by Art. 22 PMG, is also in the public interest and can therefore be considered part of universal service.

In contrast, services with "added value" as perceived by the customer are not classified as part of universal service. This added value is best determined by the higher price the customer is willing to pay for such services, which include express mail services (e.g. EMS). At the same time, ancillary services which can only be used in connection with universal services are regarded as universal services.

In another step taken in preparation for January 1, 2011, the PCK and RTR reviewed Österreichische Post AG's plan for the modification of private mailbox installations in buildings. As the universal service provider, Österreichische Post AG is obliged to exchange private mailbox installations in buildings which do not meet the requirements of Art. 34 PMG by December 31, 2012 in accordance with a plan to be submitted to the regulatory authority. In this context, the universal service provider is to be reimbursed for the non-prorated costs of replacement upon request.

Finally, in addition to its operational support activities for the PCK and the Post Office Advisory Board, RTR also accepted two notifications of postal services pursuant to Art. 15 PMG during the reporting period.





10. The Austrian communications markets

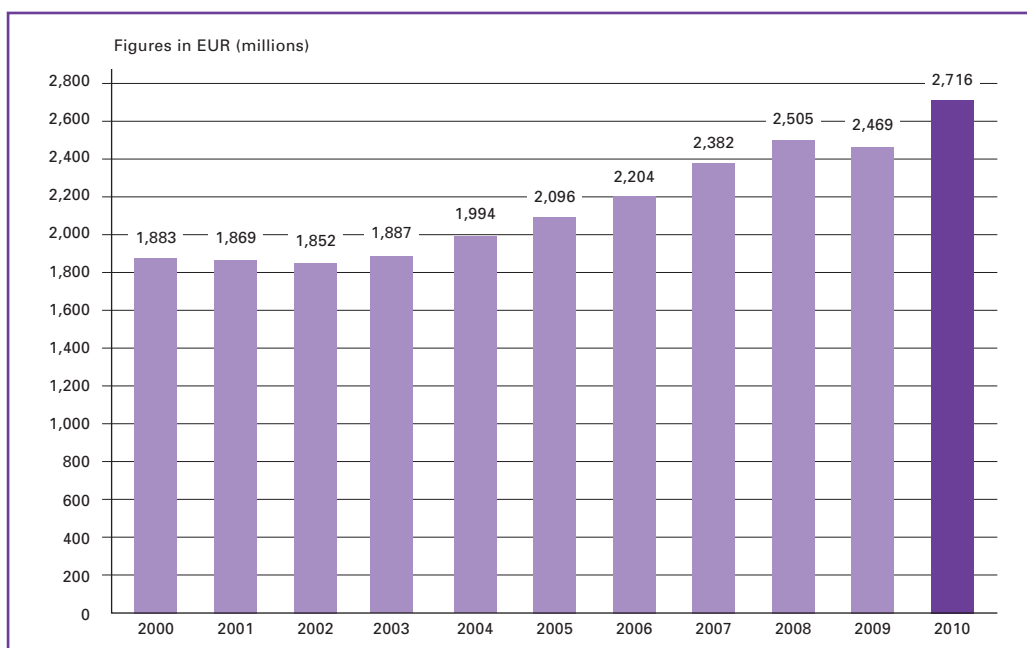
10.1 The Austrian communications and advertising market in 2010

10.1.1 Development of the advertising market in 2010

In the year 2010, traces of the economic crisis from the previous year were virtually unnoticeable. In fact, gross revenues from classic advertising increased more drastically than they had in any given year since 1999. According to FOCUS Media Research, gross revenues from classic advertising in 2010 jumped by approximately 10% compared to 2009, up EUR 247 million to EUR 2.716 billion (2009: EUR 2.469 billion). This not only compensated for the moderate decline observed in 2009 (approximately -1.5%, or EUR -36 million), but even nearly restored the average growth amount between 2003 and 2008 (EUR 108.8 million per year). Thus, the average increase in gross advertising revenues between 2003 and 2010 has now recovered to EUR 108 million per year.

10% increase in gross advertising revenues compared to 2009

Figure 15: Development of overall advertising expenditure in Austria



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

At the same time, the year 2010 also brought a number of striking individual developments:

*Daily newspapers:
Gross advertising
revenues approaching
EUR 1 billion mark*

Daily newspapers in particular reaped disproportionately high benefits from the recovery on the advertising market. With a gain of EUR 140.5 million (+17.6%) compared to 2009, these newspapers accounted for approximately 57% of the overall growth in gross advertising revenues, thus achieving an outstanding result of EUR 936.9 million. As a result, daily newspapers were once again able to further enhance their top position substantially among the media with the highest revenues on the advertising market.

*Free newspaper Heute
overtakes Kronen
Zeitung in Vienna*


However, the situation has not remained unchanged. The free daily newspapers *Heute* and *Österreich* (which is approximately 2/3 free, 1/3 paid) have triggered major changes and are very successfully establishing a business model which is often decried elsewhere as the "free culture" (especially on the Internet). In terms of daily reach among national daily newspapers *Heute* (12%) has caught up to *Kleine Zeitung*, followed by *Österreich* (9.6%), which has surpassed the *Kurier* (8.1%). The *Kronen Zeitung* remained the newspaper with the highest daily reach in Austria by a wide margin, but this paper has lost 1.5 percentage points and is now read by 38.9% of the 14+ age group in Austria. *Heute* has been especially successful on the Viennese market, where this daily caused a minor sensation in 2010: With a daily reach of 37.6% in Vienna, *Heute* actually overtook the *Kronen Zeitung* for the first time, as the latter's daily reach dropped approximately two percentage points (to 35.6%) in Vienna.

*Private television
boosts gross
advertising revenues
by 20.7%*

Another winner in 2010 was private television. In 2009, these broadcasters finally managed to surpass ORF's channels in terms of gross advertising revenues, and in 2010 they were able to widen their lead substantially. While the overall gross advertising revenues in television broadcasting only increased by EUR 47 million compared to 2009, commercial television broadcasters (Austrian private broadcasters and German channels with partly Austria-specific advertising and programming) were able to boost their gross advertising revenues by EUR 70 million compared to 2009 (+20.7%), thus bringing the total figure up to EUR 401.4 million. This figure also includes advertising revenues formerly earned by ORF's television channels. With a decline of 7.3% (EUR -21.7 million) compared to 2009, public television broadcasters lost a significant share of gross advertising revenues in 2010 (EUR 273.6 million). However, ORF television also lowered its rates by 3% during the reporting period. At the beginning of the year 2010, ORF still forecast that it would not see further declines in advertising revenues, in particular in the television segment. However, television advertising budgets are not only being increased, they are also being redistributed. At the same time, it is not entirely clear what the impressive gross figures achieved by private television broadcasters mean in terms of net revenues. One thing is certain: Their discounts on gross advertising rates are certainly higher than those of ORF. In terms of net advertising revenues, the difference between ORF and the private broadcasters is therefore substantially smaller. However, this does not change the fact that advertising minutes continue to migrate from ORF to private television.

*ServusTV focusing on
"globalisation"*

One interesting new development was the entry of ServusTV on the Austrian television market. This broadcaster is not only interesting because it has attracted positive attention with programming that one might only expect to see on classic public television. ServusTV has also made efforts to break out of the narrow scope of the Austrian advertising market and – not unlike German private broadcasters – is targeting the entire German-speaking region. Its core target markets outside of Austria are Switzerland, Alto Adige/Südtirol, Bavaria, Baden-Württemberg and North Rhine-Westphalia. In terms of licensing and dissemination, this is certainly a costly project. However, ServusTV's DACH region globalisation project could



actually pay off for the broadcaster. In Austria, ServusTV has attained a daily reach level of 2.7% in the 12+ age group, which is roughly equivalent to 190,000 viewers. If ServusTV were to reach 1% of the 14+ age group in Germany, another 600,000 viewers would be added; this provides an excellent calculation basis for cost-per-mille pricing.

Austrian private television broadcasters also require greater business success in order to make urgent investments, including the transmission of their channels in HDTV. This high-resolution option is increasingly becoming a standard feature in Austria's households. The main public television channels in Austria and Germany are now available in HD, and the special-interest channels of ARD and ZDF will follow in early 2012. The most-viewed German television channels are available in HD format via satellite for an annual fee of EUR 60.00; at present, this offer is only available in Germany, but the service may soon be launched in Austria by the AustriaSat pay TV platform. Moreover, Austria's consumers are well equipped with HD flat screens and receivers: Nearly two-thirds of the 352,000 satellite receivers sold in Austria in 2010 were HD-ready. In addition, nearly 880,000 flat screen televisions were sold in Austria in 2010, and almost all of those devices are at least HD-ready. HD-ready devices are completely adequate for the HD channels broadcast by ORF, ARD, ZDF and ARTE. Two thirds of the flat screen televisions sold in 2010 were even Full HD-ready (1080p). HDTV has also triggered a minor boom in the digitisation of cable households. For some time now, cable network operators have only offered HD receivers, as there is no longer any demand for less sophisticated devices. With the exception of ServusTV, however, none of Austria's private television broadcasters have launched their channels in HD. This situation will have to change if ATV and the other private broadcasters wish to avoid risking their currently strong position on the advertising market.

HDTV and hybrid TV as new challenges, especially for private broadcasters

Hybrid TV will also call for additional investments, but at the same time it will also create new spaces for advertising. The ability to watch shows and other content offered by broadcasters and other online video services on demand at any time via the Internet will be a defining topic in the industry in 2011. Compared to 2009, sales of television sets which support those functions (known as "connectable devices") more than tripled in Austria during the reporting period. Some 20% of the flat screen television sets sold in Austria in 2010 were connectable. If the European open middleware standard HbbTV is able to establish itself as the technology for such on-demand services on receivers (and there are many signs indicating that this seems probable), then on-demand television will truly see a boom compared to the present situation. The major German broadcasters – both public and private – are already offering on-demand services based on HbbTV. ORF is also developing a service of this kind, and the Austrian private television broadcaster ATV has also interpreted the signs appropriately and is offering on-demand videos (for viewing on televisions) to digital customers of the UPC cable network; however, this service is based on a UPC-specific technical solution.

HbbTV creates new advertising spaces

At the IFA trade show for consumer electronics in the autumn of 2011, many large manufacturers will offer HbbTV-compatible television sets. It will then probably be necessary for private broadcasters – and not just ATV – to upgrade their services to support HbbTV. After all, the new technology would also create a number of new advertising opportunities. For example, commercial advertisements can be shown before on-demand videos. In addition, HbbTV also supports a completely new form of teletext which bears a greater resemblance to the Internet; this will also enable many of the classic advertising formats used in that medium. ARD as well as the RTL Group and the ProSiebenSat.1 Group already offer this type of content.

Private radio stations successful in boosting market share

Among commercial radio broadcasters, the encouraging trend from recent years continued in the period under review. In 2010, private radio broadcasters once again saw gains in daily reach and market share, while ORF radio stations saw another slight decline. Overall, however, this development has continued to proceed in very small, gradual increments. Private radio stations were able to boost their daily reach in the 14 to 49 age group from 31.3% in 2009 to 33.1% in 2010 and at the same time increased their market share from 27% in 2009 to 29% in 2010. This development was reflected more moderately in terms of advertising revenues. Private radio broadcasters' gross advertising revenues rose to EUR 68.3 million in 2010, up approximately 6% (EUR 4 million) on the previous year.

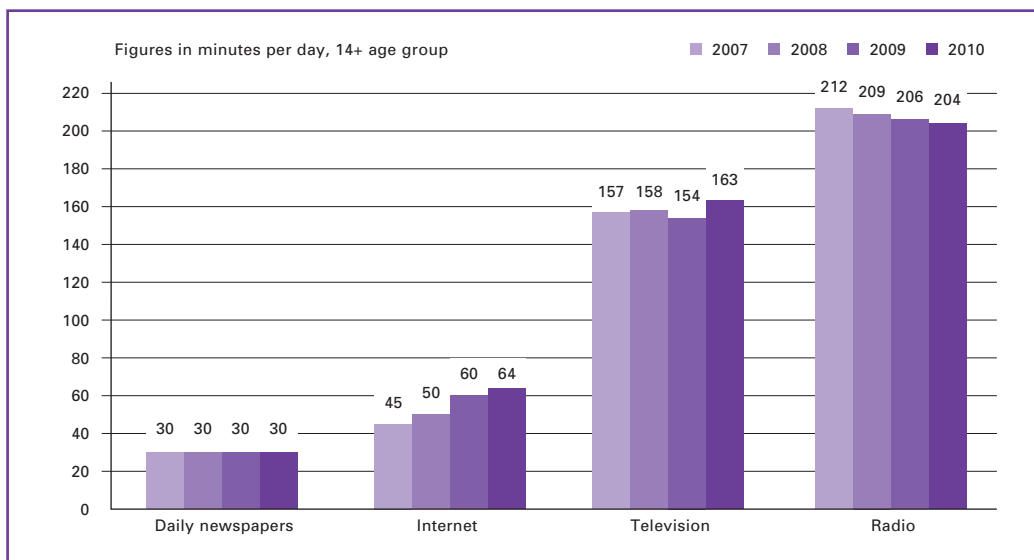
Ö3 loses in terms of daily reach, maintains market share

The daily reach of ORF radio stations in the 14 to 49 age group dropped a total of two percentage points to 65.1% in 2010. The Ö3 station, ORF's direct competitor to most private radio broadcasters, attained a daily reach level of 47.3% in this age group, down 1.2 percentage points from the year 2009. However, Ö3 did manage to maintain its market share of 43% among 14 to 49-year-old listeners.

Slower growth in online advertising

With an increase of nearly 16%, revenues from online advertising saw yet another significant increase in 2010. However, this result was still far lower than the growth rates observed in previous years, which averaged approximately 30%. Nevertheless, online advertising certainly remains one of the fastest-growing areas of the Austrian advertising market. The reach levels of online content have also continued to rise markedly. Compared to 2009, the Internet's daily reach level increased by 3.7 percentage points to 49.5%. This means that on average, more than 3.5 million people in the 14+ age group use the Internet on a daily basis in Austria.

Figure 16: Development of daily media usage time, 2007 to 2010



Sources: Radiotest, Teletest, MTUs, AIM

Once again, radio – a classic accompaniment to daily activities – was the most successful medium in terms of daily usage time in 2010. Listeners in the 14+ age group tuned in for an average of 204 minutes per day in the year under review; however, this figure was two minutes lower than the figure from 2009. Thus, the slight downward trend observed in recent years also continued in 2010. As for television, viewing time rose by nine minutes per day during the reporting period. The FIFA World Cup in South Africa and the XXI Olympic Winter Games in Vancouver probably had a considerable effect on this development in 2010. The significance of Internet usage has continued to increase, but the trend has slowed. Daily Internet usage saw an increase of four minutes (to 64 minutes in total), up nearly 7% compared to 2009. Between 2008 and 2009, however, Internet usage time rose by a full 20%.

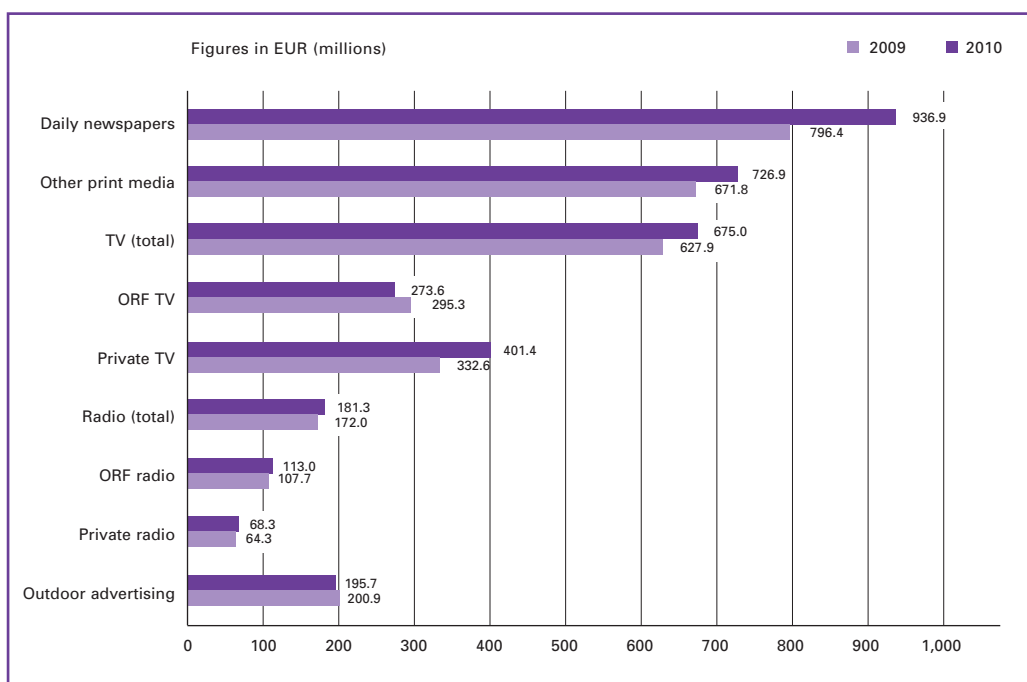
Television and Internet usage time increasing

At 30 minutes, the average time readers in the 14+ age group spend with daily newspapers each day remained the same as in the previous year.

10.1.2 Advertising expenditure

Nearly all categories of classic advertising (i.e. not including cinema advertising, classic brochure advertising and online advertising) also benefited from the upswing in the year 2010 and from the 10% increase in gross advertising expenditure to EUR 2.716 billion, up EUR 247 million on the previous year. The optimistic economic outlook, which had already begun to show effects in the second half of 2009, was maintained in the year under review. Advertising budgets which had previously been frozen during the crisis in the first half of 2009 were again activated in 2010 in order to take advantage of Austrian consumers' renewed confidence and willingness to spend, and to make up for the losses incurred in 2009. The major sporting events held in the year under review (Olympic games and FIFA World Cup) also had a positive impact on the advertising market.

Figure 17: Advertising expenditure in Austria, 2009 vs. 2010



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

Difference between gross and net advertising revenues

After the sharp decline in gross advertising expenditure in 2009, it appears that significant discount campaigns in print and electronic media buoyed the gross advertising revenues generated by conventional media in 2010. It can therefore be assumed that the increase in net advertising expenditure was substantially lower. Especially in television advertising, where advertising expenditure rose by some EUR 47 million to EUR 675 million in 2010 (+7.5% compared to 2009), one can generally assume that private broadcasters granted larger discounts than ORF. As a result, the difference in the net advertising revenues generated by ORF and the private broadcasters is likely to be far smaller than the comparison of gross advertising revenues implies at first glance. Thus the decline in ORF television's gross advertising revenues in the amount of EUR 21.7 million (-7.3%) and the gain of EUR 68.8 million among private television broadcasters (+20.7%) have to be qualified to a certain extent. However, a clear trend can still be perceived in the distribution of advertising revenues, as ORF's television channels already lost some EUR 25 million in gross revenues in 2009, while the private broadcasters picked up EUR 29.9 million in the same period.

Radio advertising revenues up 5.4%

With regard to the difference between gross and net advertising revenues, comparisons between ORF and private radio stations are subject to the same considerations as television advertising. In radio broadcasting, one can also assume that private radio broadcasters granted larger discounts, albeit not nearly to the same extent as in television advertising. However, with increases of 5% (ORF radio) and 6% (private radio stations), both public and commercial radio broadcasters recorded substantial gains in 2010. Just one year earlier, ORF's gross revenues from radio advertising had dropped 8.5% compared to 2008, while private radio stations saw their gross advertising revenues increase by 7% despite the economic crisis. Overall gross advertising revenues in radio broadcasting rose 5.4% in 2010 compared to the previous year.

Daily newspapers see 17.6% increase in gross advertising revenues

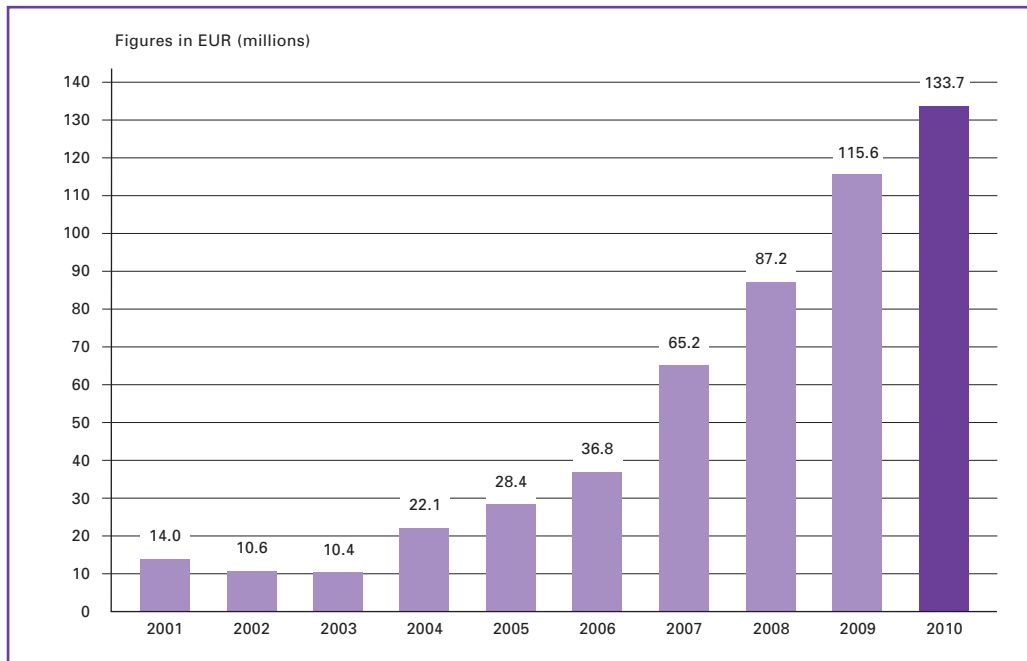
Gross and net advertising revenues also differ in print media, but the differences are more balanced among all market participants and are therefore not as significant a factor in reported advertising revenues. In 2010, the overall gross advertising revenues generated by print media (daily newspapers and other publications) grew by approximately 13.3%. However, with a total of EUR 936.9 million (+17.6%, or EUR 140.5 million), daily newspapers performed far better than other print publications, which saw their advertising revenues rise 8.2% (+EUR 55.1 million) to EUR 726.9 million in the year under review.

Besides ORF television, outdoor advertising also suffered losses in the year 2010. With revenues decreasing by 2.6% (EUR 5.2 million) to EUR 195.7 million, however, the losses in this segment were comparatively minor.

Online advertising expenditure rises by approximately 16%

According to the figures reported by the industry, online advertising once again saw significant gains in 2010. Whereas this form of advertising generated EUR 115.6 million in revenues in 2009, this figure jumped EUR 18.1 million to a total of EUR 133.7 million in the reporting period. However, this increase of "only" 16% is substantially lower than the expansion witnessed in previous years, when growth rates of approximately 30% were a common occurrence. For the first time in years, daily newspapers thus saw a more drastic year-on-year increase in advertising revenues (+17.6%) than online media.

Figure 18: Online advertising expenditure in Austria



Source: FOCUS Media Research

FOCUS Media Research indicates that its data cover approximately 60% to 70% of Austria's online portals. However, the actual revenues generated by online advertising in particular are especially difficult to capture reliably and are likely to diverge most heavily from the actual market situation. Moreover, these revenues are hardly comparable across various years. The discrepancy between gross and net advertising revenues in this segment is probably larger than in any other medium, thus making realistic assessments of market volumes considerably more difficult. Industry insiders speak of online portals granting discounts of 90% on the official prices in some cases. Additional challenges in this area include the wide variety of advertising formats and cost-per-mille pricing models. As a result, FOCUS Media Research has made constant efforts to generate more realistic statistics by modifying its survey methods in recent years. In addition, the number of online providers captured in this prosperous market has increased constantly and significantly over the years. Therefore, FOCUS Media Research itself advises readers not to overinterpret comparisons of annual figures for gross online advertising revenues.

Year-on-year comparisons of online advertising expenditure hardly possible

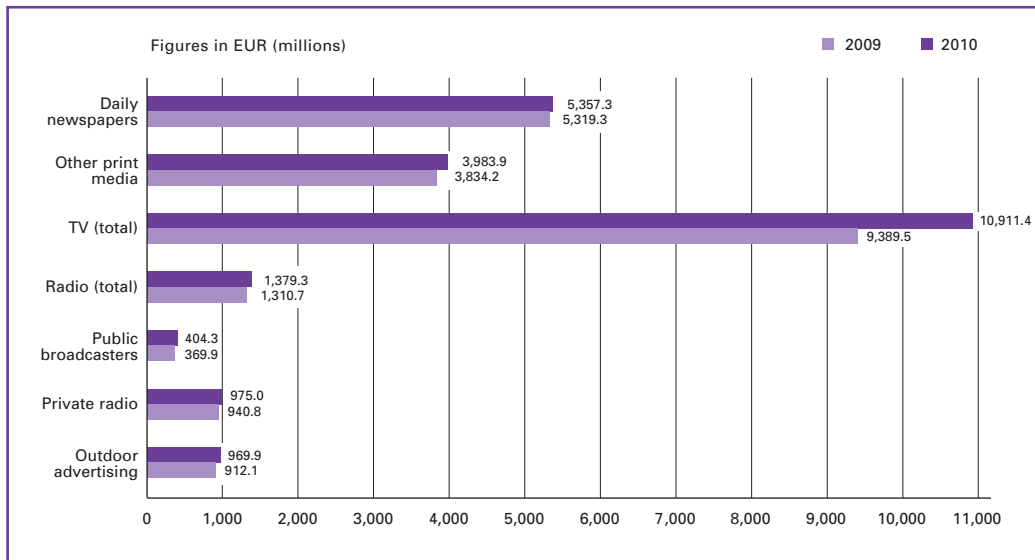
10.1.2.1 Comparison with the German market

The statistical problems associated with online advertising revenues in Austria also apply to the German market. According to Nielsen Media Research, gross online advertising expenditure in Germany rose from EUR 1.748 billion in 2009 to EUR 2.356 billion in 2010, which represents a growth rate of nearly 35%. As a result, the growth rate in online advertising in Germany clearly surpassed that of television advertising, which was by far the most successful segment in conventional advertising in 2010.

German television advertising market grows by 16% in 2010

Gross advertising revenues from television broadcasting saw an increase of 16%, more than double the growth rate observed in Austria, and thus grew at a rate comparable to Austria's daily newspapers (+17.6% in 2010).

Figure 19: Advertising expenditure in Germany, 2009 vs. 2010



Source: Nielsen Media Research

Overall growth rate in Germany slightly lower than in Austria

Overall, advertising revenues in Germany rose to EUR 22.656 billion in 2010, up 9% compared to 2009. Thus the overall growth rate in Germany was only slightly lower than that observed in Austria in 2010 (+10%). As gross advertising revenues dropped only marginally (by approximately 1.3%) in 2009, advertising expenditure in Germany also increased substantially in comparison to the result from the year 2008 (EUR 21.035 billion, up 7.7%). Compared to 2008, gross advertising revenues in Austria rose even more in relative terms (+8.4%).

Very little growth in German print media

The traditionally strong television advertising segment in Germany generated gross revenues of EUR 10.9914 billion in 2010, nearly double the amount generated by daily newspapers (EUR 5.3573 billion, +0.7%), which – like other print media (+4%) – recovered only very slightly from the level observed during the recession in 2009. The revenues of public broadcasters belonging to ARD and ZDF accounted for only 2.5% of the overall gross advertising revenues in this segment.

Public radio broadcasters contribute more to growth than private stations

German radio broadcasters saw revenues rise by approximately 5% in 2010, thus showing similar developments to their Austrian counterparts. However, Germany's public radio broadcasters accounted for a far larger share of this growth (+9%) than in Austria (German private radio stations: +3.6%).

10.1.3 Television

10.1.3.1 Television viewing

The usage, reach and market shares of television channels available in Austria are surveyed by the market research institute GfK Austria on the basis of data from the Teletest electronic measurement system. The TELETEST working group (AGTT), an association which includes ORF, ORF-Enterprise, the broadcasters ATV and ServusTV as well as IP Österreich (the Austrian marketing company for advertising on channels in the RTL Group in Austria and on the AUSTRIA 9 channel) and SevenOne Media Austria GmbH (the marketing company for channels in the ProSiebenSat.1 Group, including PULS 4), has commissioned these surveys since January 2007. Until the end of 2006, ORF was the only organisation behind the Teletest survey.

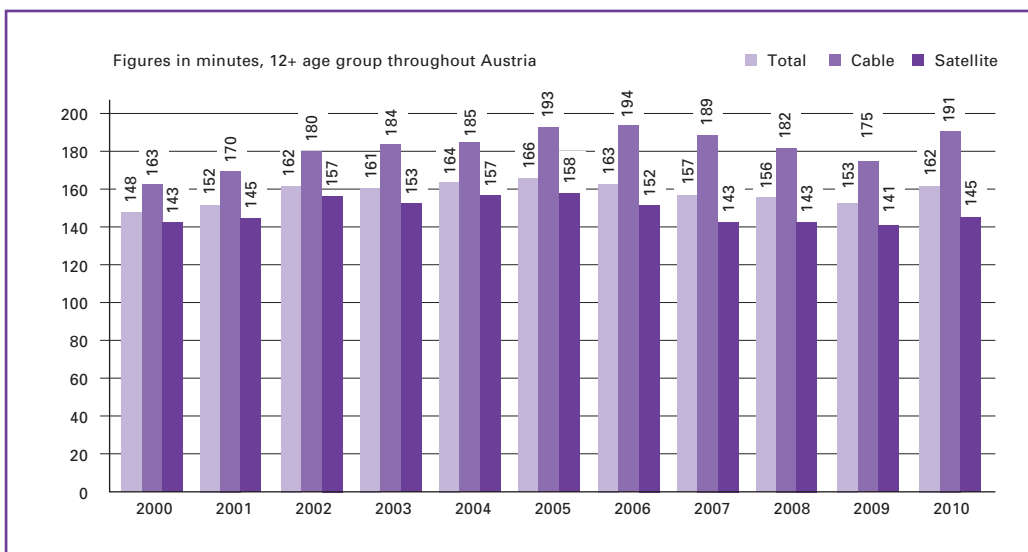
Since 2006, the panel size used in the Teletest (i.e. the number of households linked to the measurement system) has been increased gradually in order to keep the number of persons covered by the sample constant given the increasing number of single-person households. In 2009, a total of 1,560 households were included in the panel, whereas this figure rose to 1,570 in 2010 and will be increased to 1,590 in 2011. Austria's 1,570 Teletest households in 2010 represent an overall population of 3,495,000 television households. The panel comprises a total of approximately 3,560 viewers, including some 3,220 persons in the 12+ age group who represent the 7,106,000 adults in Austria's television households, and around 340 children aged 3 to 11, who represent the 748,000 children in television households in Austria.

1,570 Teletest households represent 3.495 million television households in Austria

After declining slightly each year from 2006 to 2009, the average television viewing time of persons in the 12+ age group living in television households in Austria rose noticeably in the year under review. Average viewing time came to 162 minutes in 2010 (2009: 153 minutes), nearly matching the historical high reached in 2005 (166 minutes). Observed over a period of ten years (from 2000 onward), viewing time has seen an overall increase of nearly 15 minutes despite the flagging developments between 2006 and 2009.

Viewing time sees substantial recovery in Austria

Figure 20: Development of viewing time



Source: Teletest



Longest viewing time among active viewers in 20 years

The average viewing time among those who actually watched television in 2010 even reached its highest level since the Teletest was established in 1991. This indicator measures the time actual viewers spend watching television each day, whereas the average viewing time also includes the usage time (i.e. zero minutes) of those individuals in television households who did not watch television at all during the observation period. The viewing time of actual television viewers came to 254 minutes (4 hours, 14 minutes) per day, a full ten minutes longer than in the previous year. This development was probably also supported by major media events held in 2010, namely the Winter Olympics and in particular the FIFA World Cup. It is also likely that those two events had an impact on television's daily reach, which rose in 2010 for the first time in years. The FIFA World Cup in June 2010 gave rise to the longest average viewing time (151 minutes) ever recorded in the month of June in Austria.

Sporting events, HDTV, flat screen televisions and weather boost television viewing in 2010

However, media researchers at ORF also cite additional reasons for the increase in average viewing time, viewing time among actual viewers, and daily reach. For example, the weather in 2010 is cited as a factor which should not be underestimated, as the year under review saw longer cold spells and more precipitation than 2009. Moreover, the number of hours of sunlight reached its lowest level since 1996. Another important factor cited by ORF's experts is the increasing prevalence of flat screen televisions and the reception of channels in HD format. Both of these factors boosted television viewing time because they enabled viewers to experience television at new levels of quality. In addition, the television sets replaced with flat screen televisions are frequently used as second or third televisions within the same household, which has also led to an increase in television viewing. Finally, developments on the television market (HD, 3D, television on new platforms) have been an important topic in recent years and have thus increased people's awareness of the medium in a more general sense.

From this perspective, the positive developments in the year 2010 should hardly raise hopes of a trend reversal in television viewing time (which has been declining for years now), but should largely be regarded as a response to specific conditions in the reporting period.

However, it is also important to account for the fact that average viewing time is mainly determined by the 50 to 59 age group (196 minutes) and the 60+ age group (245 minutes). Neither of those groups is considered relevant to advertising. In contrast, young adults (12 to 29 age group) exhibit an average viewing time of 94 minutes per day, while the 30 to 39 age group watches for an average of 120 minutes. In the 40 to 49 age group, however, this figure jumps to 151 minutes per day.

Viewing time rising at above-average rate among young people

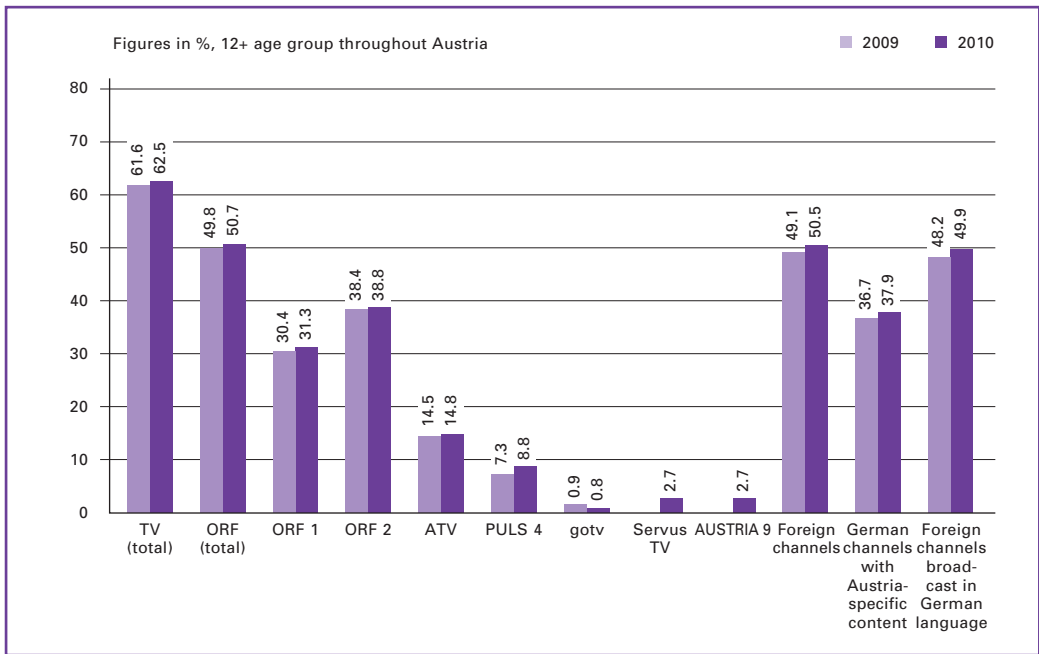
However, the year-on-year increase in television viewing time among people under 30 years of age was far larger (+11%, or +10 minutes per day) than in any other age group. This is particularly noteworthy because persons in the 12 to 19 age group watched exactly as much television in 2010 as they did ten years ago – despite the intensive use of the Internet in this age group.

10.1.3.2 Television reach and market shares

In 2010, the daily reach of television as a medium increased for the first time in years. Daily reach refers to the share of persons in the 12+ age group who live in television households and watch television for at least one full minute each day. In 2010, this was the case for approximately 4.44 million people in Austria, or 62.5% of the overall television-viewing population in the 12+ age group (7.1 million). As a result, television's daily reach rose by approximately one percentage point – or some 100,000 viewers – compared to 2009 (61.6%, or 4.36 million viewers per day).

Daily reach of television rises for first time in years

Figure 21: Daily reach of television, 2009 vs. 2010



Source: Teletest

In this context, the largest individual gain in daily reach figures was achieved by the channel PULS 4, which managed to increase its daily reach from 7.3% in 2009 to 8.8% in 2010. Other broadcasters which benefited from this development mainly included foreign channels broadcast in German language (+1.7%), specifically German channels which offer partly Austria-specific content (+1.2%) and foreign channels overall (+1.4%). The daily reach of ORF and the channel ORF 1 increased by 0.9%, while ORF 2 picked up 0.4%. Austria's television viewing market is still dominated by ORF with its overall daily reach of 50.7%, and by the foreign and German-language channels (50.5% and 49.9%). With a daily reach of 37.9%, the German television channels with partly Austria-specific programming and advertising are ahead of ORF 1, which attained a daily reach of only 31.3% – despite its comparable programming and lack of commercial interruptions.

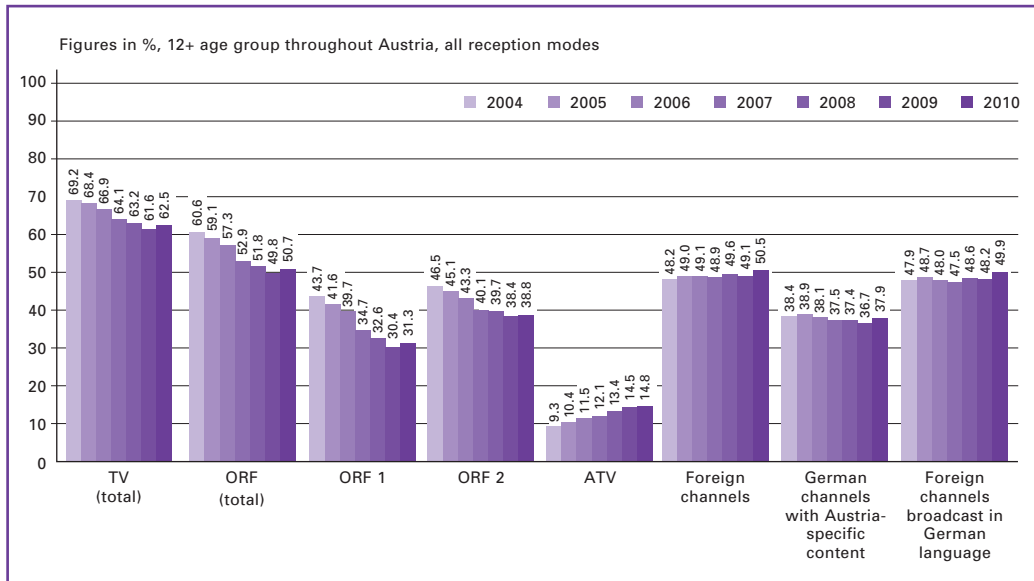
PULS 4 sees largest increase in daily reach

In contrast to average viewing time and viewing time among active viewers, daily reach has shown an overall decline in recent years despite the gain in 2010 (daily reach in 2000: 66.9%).

Reach levels declining, active viewing time on the rise

In summary, it is important to note that the number of persons in the 12+ age group in Austria who live in a television household and actually watch television has decreased in recent years, while the viewing time of those who actually do watch television has risen.

Figure 22: Long-term development of television's daily reach levels



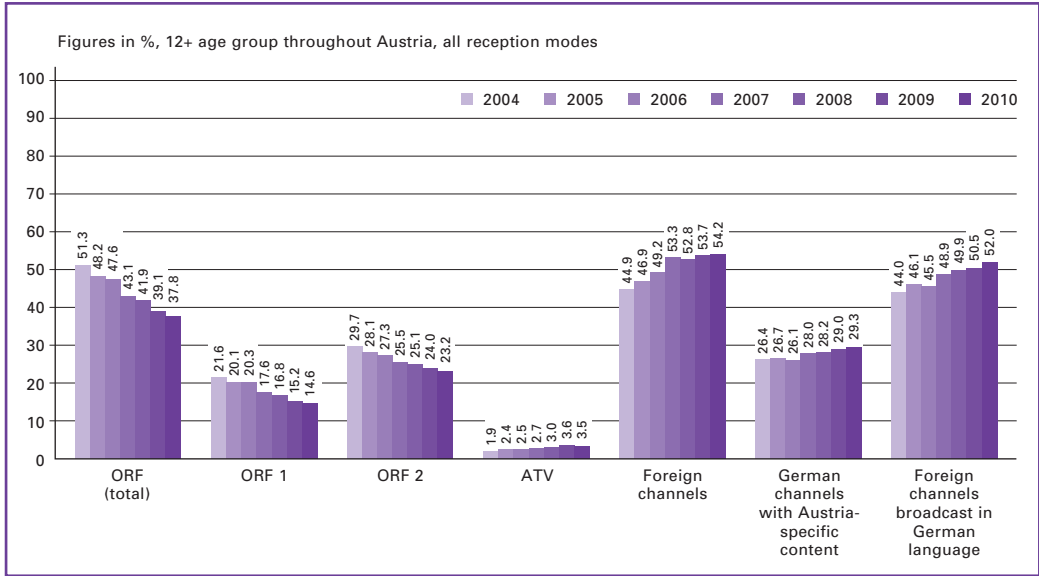
Source: Teletest

Foreign channels continue to gain market share

There were no dramatic changes in the market shares of the most popular television channels in Austria in 2010, but the developments do confirm the trend observed in recent years. ORF has continued to lose market share – which has benefited Austria's private television broadcasters only slightly – while foreign television channels have steadily increased their market shares. The market share of an individual television channel refers to its share of overall television viewing time.

In this context, ORF channels lost 1.3% of their overall market share, with ORF 1 and ORF 2 dropping by 0.6% and 0.8%, respectively. However, this also means that ORF has managed to decelerate its decline in market share. Between 2008 and 2009, this broadcaster lost a total of 2.8%, and between 2006 and 2007 the decline even came to 4.5%.

Figure 23: Long-term development of television market shares



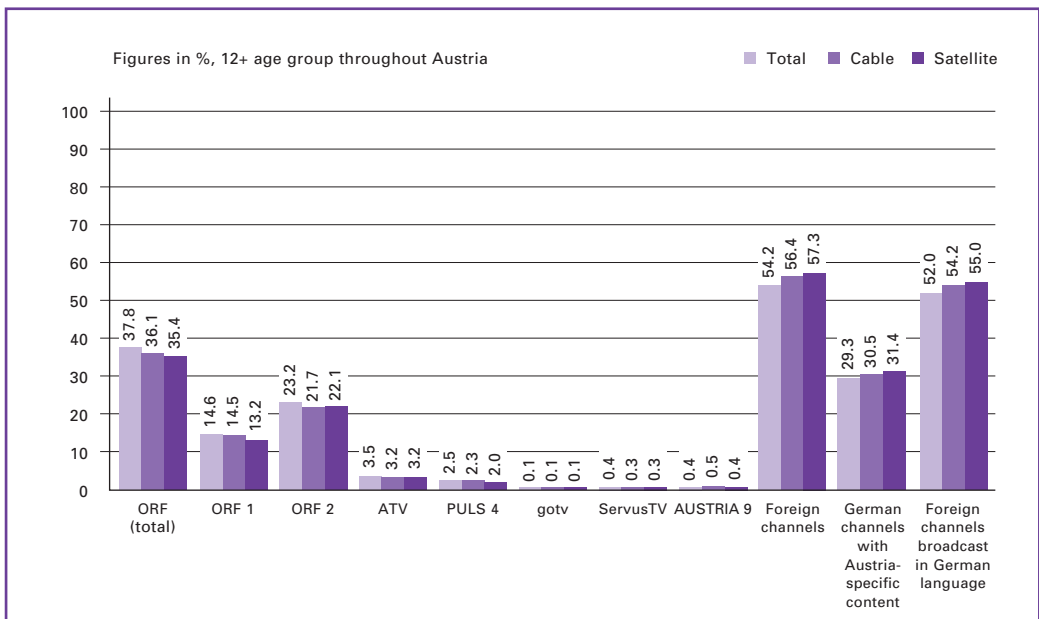
Source: Teletest

After gaining slowly but steadily over the years, ATV saw its first loss of market share in its eighth year of broadcasting operations, as its share dropped 0.1 percentage points to 3.5%. In contrast, PULS 4 managed to boost its market share from 2% to 2.5%.

ATV sees stagnation in market share

The foreign channels broadcast in German language in Austria increased their overall market share by 1.5 percentage points (from 50.5% in 2009 to 52% in 2010). The German private broadcasters which offer partly Austria-specific content saw a comparatively small increase of 0.3 percentage points (to 29.3%). Overall, the foreign channels available in Austria attained a market share of 54.2%, which represents an increase of 0.5 percentage points from 2009.

Figure 24: Television market shares in 2010



Source: Teletest 2010

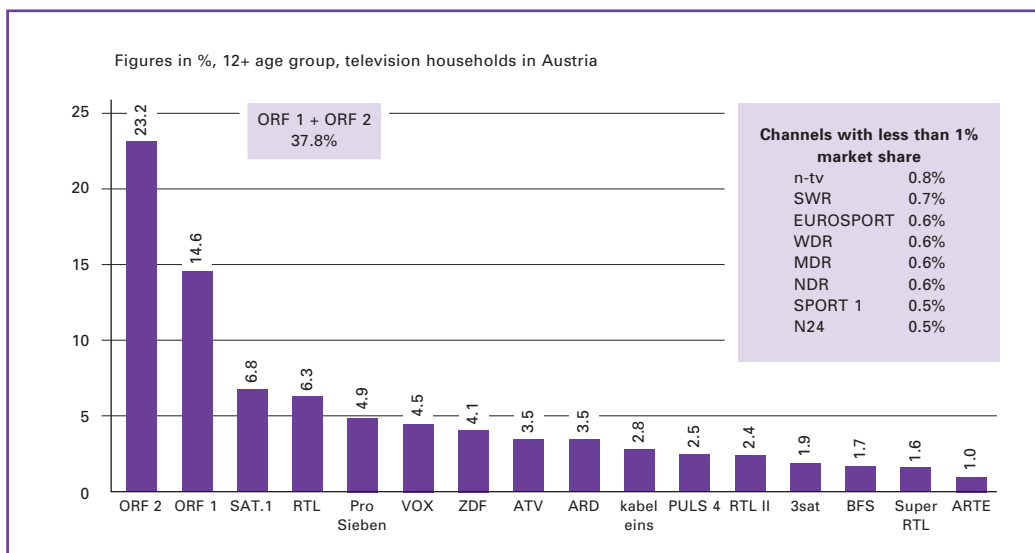
Austrian television subject to excessively strong competition from abroad

The digitisation of satellite households, a process which has practically been concluded in Austria, as well as the gradually accelerating digitisation of cable households (and thus the increasing diversity of available television channels) are certainly among the reasons for the ORF channels' loss of market share during the reporting period and for the low growth rates observed in the market shares of Austrian commercial television channels. However, this reasoning does not apply equally to the German channels, which have been established on the Austrian television market for years now. Their gradual but steady gains in market share also show that Austrian broadcasters face excessively strong competition in the battle for market share. Despite the high commitment of Austria's television broadcasters, the far higher programming and personnel budgets of the German channels are often visible on the television screen, and the rapid growth of advertising revenues on the German television market are widening this gap even further. This clearly militates in favour of the need for sustainable media promotion in Austria.

ORF channels dominate at the individual channel level

Compared to the overall comparison with German channels which offer partly Austria-specific content, an individual examination of the most-viewed channels in Austria based on market share reveals a different picture. This examination clearly shows the margin by which ORF channels in particular continue to dominate the Austrian television market, while Austria's private television broadcasters ATV and PULS 4 remain in the middle range among all private broadcasters. Within a relatively short time after its launch, ServusTV has also shown strong development by garnering a market share of 0.4%.

Figure 25: Television market shares in 2010 (all reception modes)



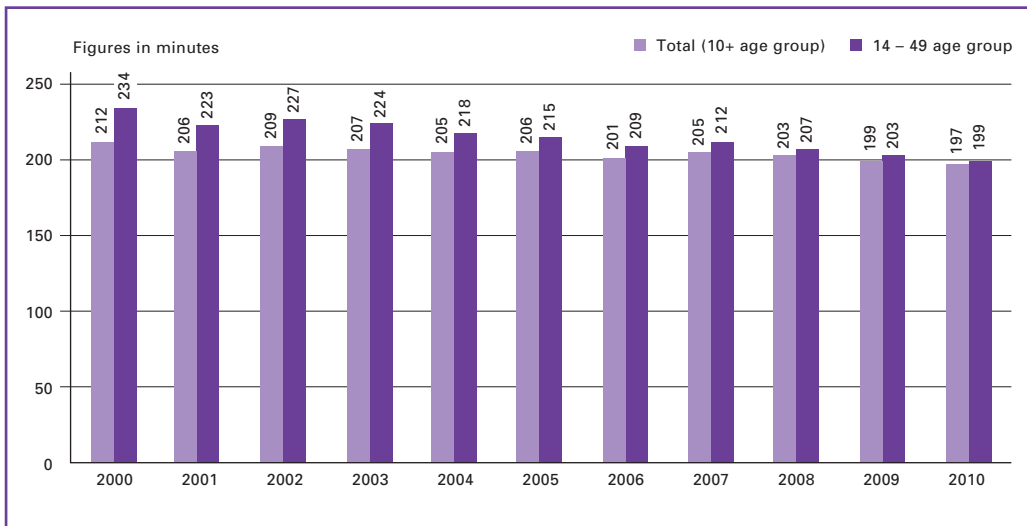
Sources: Teletest / Evogenius / ORF Medienforschung

10.1.4 Radio market

In the year 2010, a number of long-term trends continued without notable changes on the Austrian radio broadcasting market. Both the daily reach of radio broadcasting as well as listening time continued to decline slowly, a development which has been observed since the year 2000. For the first time, listening time even fell just below the 200-minute mark in both age groups included in the Radiotest survey (10+ and 14 to 49 years) in 2010. However, if we examine the radio broadcasting market separately for ORF stations and private stations, it becomes clear that ORF has again suffered slight losses (also in terms of market share), while Austria's private radio stations have continued to improve their positions on the market.

Radio listening time and daily reach continue to decline

Figure 26: Development of listening time

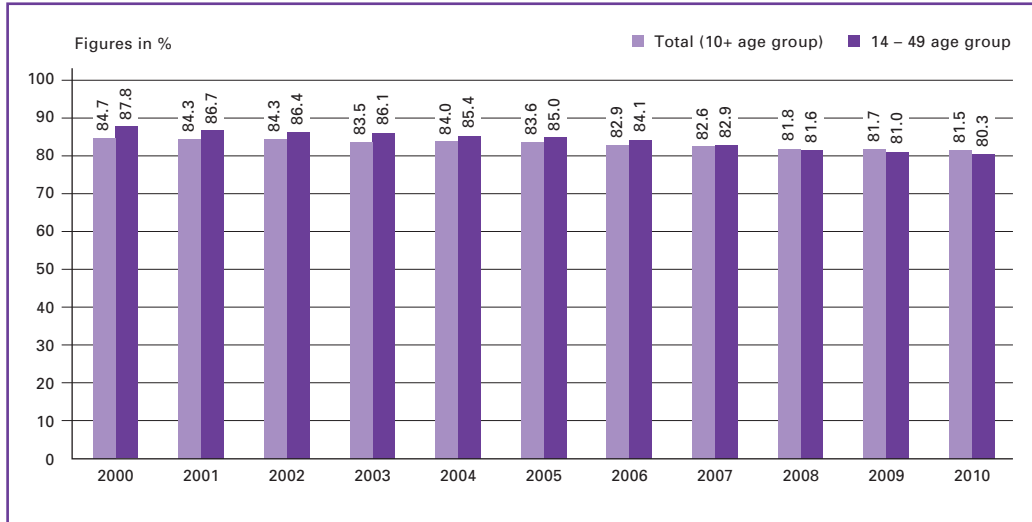


Source: Radiotest

The Radiotest survey is a semi-annual measurement of radio listening time commissioned by ORF and Austria's private radio broadcasters; the survey is conducted by the market research institute GfK Austria. The Radiotest publishes the most important performance indicators, namely daily reach figures and market shares, for the 50 radio stations included in the survey. Both performance indicators are calculated for two target groups: Persons in the 10+ age group and the core target group of 14 to 49-year-old listeners. The data are collected in 24,000 telephone interviews per year and are representative of the 7.436 million people over ten years of age and the 4.207 million people in the 14 to 49 age group in Austria.

Daily reach refers to the percentage of all persons in an age group who listened to the radio or a specific radio station for at least 15 minutes on the previous day. In 2010, radio stations had an overall daily reach of 81.5% in the 10+ age group in radio households, meaning that the medium reached an average of 6.06 million people per day.

Figure 27: Development of radio's daily reach levels

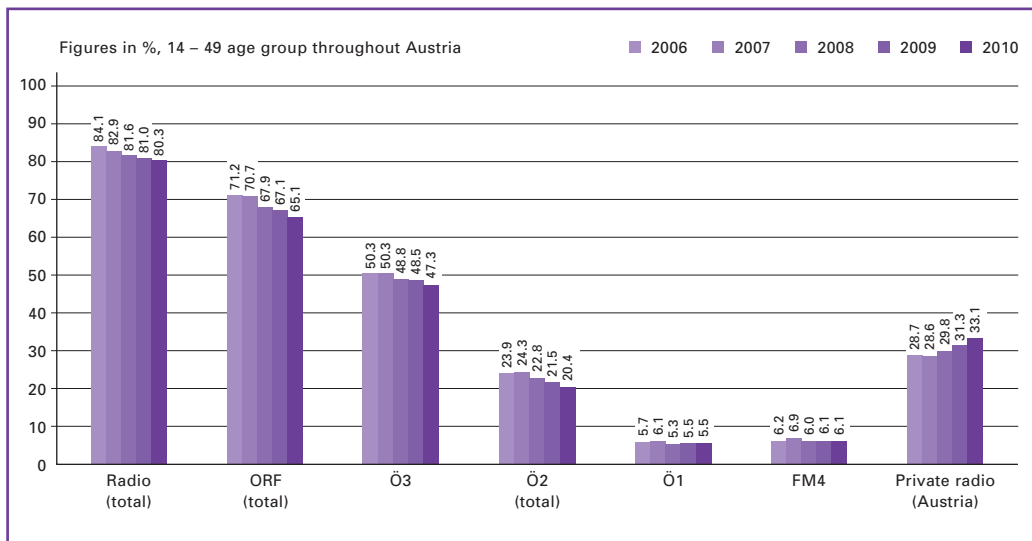


Source: Radiotest

Daily reach: ORF radio stations declining, private broadcasters gaining

Compared to the 10+ age group, radio has seen more substantial losses in daily reach in the core target group relevant to advertising (14 to 49 years) each year (2010: 80.3%, 2006: 84.1%), but this development has mostly affected ORF's regional channels (Ö2) and the Ö3 station, which – like most private radio broadcasters – specifically targets this age group. Compared to 2009, Ö3's daily reach dropped 1.2 percentage points to 47.3% (some 2 million listeners in the 14 to 49 age group). In 2006, Ö3's daily reach stood at 50.3%, meaning that this indicator has slipped by three percentage points (approximately 126,000 listeners in the 14 to 49 age group) since that time.

Figure 28: Development of daily reach levels: ORF vs. private radio stations



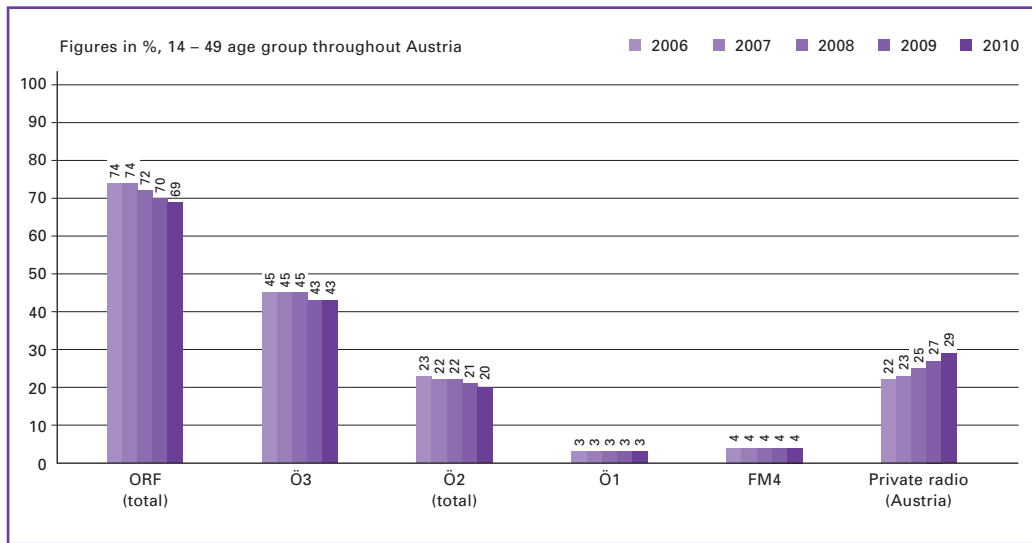
Source: Radiotest

In the 14 to 49 age group, private radio broadcasters managed to boost their daily reach by 1.8 percentage points compared to 2009, attaining a reach level of 33.1% (nearly 1.4 million listeners). Compared to 2006, these broadcasters have gained 4.4 percentage points (+185,000 listeners). The nationwide radio station KRONEHIT managed to increase its market share from 11% in 2009 to 12.6% in 2010. In the federal provinces of Austria, the most significant gains in daily reach were recorded by the large private broadcasters Antenne Steiermark (2009: 20.4%, 2010: 22.6%) and Antenne Kärnten (2009: 17.9%, 2010: 21%; see also Table 26).

In terms of market share at the national level, Austria's private broadcasters saw the most significant gains in the 14 to 49 age group in 2010. The market share of a radio station refers to its percentage of overall listening time. In this respect, private radio broadcasters boosted their share by two percentage points to 29% in 2010. At the same time, ORF radio stations lost one percentage point. However, the ORF station Ö3, which is the main competitor to the private radio stations, was able to maintain its market share at 43% despite the decline in its daily reach.

Private radio broadcasters boost market share in 14 to 49 age group

Figure 29: Development of radio market shares

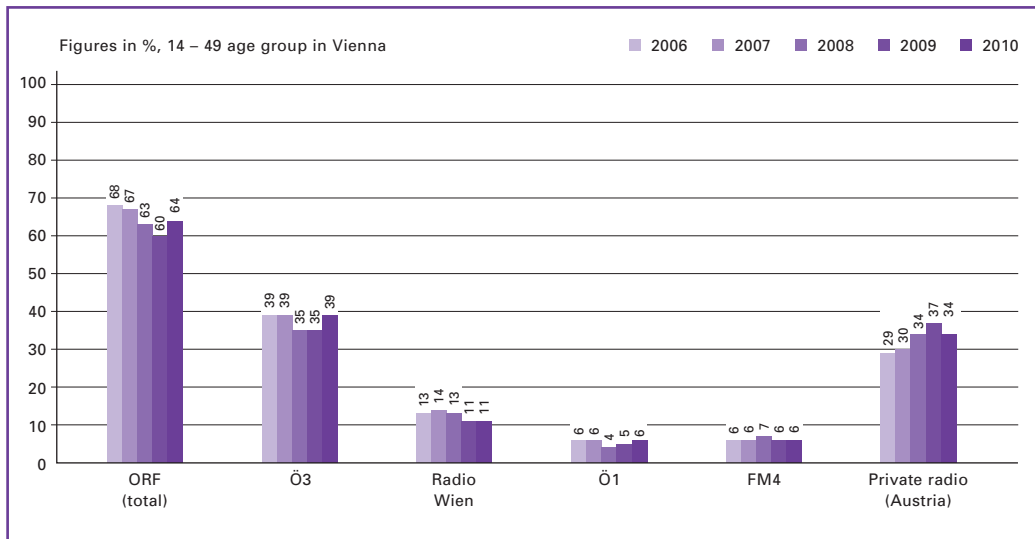


Source: Radiotest

Private radio stations
lose significant
ground to Ö3 in
Vienna

However, in Vienna – which is Austria's most populated and most fiercely contested province – private radio broadcasters suffered a significant setback in 2010.

Figure 30: Development of radio market shares in Vienna



Source: Radiotest

After managing to surpass Ö3's market share for the first time in 2009, the private radio stations in Vienna lost three percentage points in 2010 and thus saw their overall market share fall to 34%. In contrast, Ö3 boosted its market share by a full four percentage points to 39% and therefore single-handedly increased the ORF radio group's market share in Vienna from 60% in 2009 to 64% in 2010.

The hardest hit among Vienna's private radio broadcasters were Radio Arabella (market share in 2010: 5%) and 88.6 (market share in 2010: 7%), each of which lost 3% of the market. At the same time, KRONEHIT and Radio Energy managed to increase their market shares from 7% to 9% and from 7% to 8%, respectively.

Table 26: Daily reach of radio stations in Austria (2010)

	Total	Vienna	Lower Austria	Burgenland	Styria	Carinthia	Upper Austria	Salzburg	Tyrol (including Eastern Tyrol)	Vorarlberg
Total number of cases (unweighted)	15,704	2,185	2,196	1,320	1,765	1,423	1,759	1,539	1,991	1,526
Total daily reach										
Radio (total)	80.3	72.5	82.2	84.6	82.2	85.1	81.9	83.4	82.0	79.7
ORF (total)	65.1	53.5	70.9	74.5	65.8	70.8	65.6	68.8	67.1	66.9
Austrian private radio (total)	33.1	33.4	31.8	26.9	35.9	33.9	37.0	29.7	30.9	27.0
Other stations (total)	36.0	35.6	33.5	29.0	36.9	35.1	41.3	34.2	35.5	34.5
Minor stations (total)	4.1	3.0	2.4	3.0	2.1	2.1	6.3	6.8	6.2	9.9
Other minor stations	2.7	3.0	2.4	2.8	2.1	2.0	2.5	3.5	3.0	3.2
ORF's daily reach										
Ö1	5.5	8.1	4.8	5.5	5.2	5.6	5.0	4.7	4.3	3.0
Ö3	47.3	35.2	52.4	55.6	49.0	49.7	50.4	51.0	49.5	46.9
FM4	6.1	7.6	5.1	5.6	4.7	5.1	6.8	7.3	5.4	7.4
ORF regional stations (total)	20.4	14.3	24.0	32.4	20.4	29.1	15.5	20.9	22.9	25.6
Radio Wien	3.9	11.7	7.1	3.8	0.1	0.0	0.0	0.1	-	0.1
Radio Niederösterreich	4.0	2.3	17.1	2.4	0.9	-	0.7	0.1	0.2	-
Radio Burgenland	1.2	1.0	0.6	26.8	0.5	-	-	-	-	-
Radio Steiermark	3.0	0.1	0.3	2.6	19.3	0.5	0.1	0.3	-	-
Radio Kärnten	2.0	0.1	0.1	-	0.3	28.6	0.0	0.2	0.3	-
Radio Oberösterreich	2.7	0.1	1.1	-	0.3	0.1	14.3	0.6	0.1	-
Radio Salzburg	1.5	0.0	0.1	-	0.1	-	1.0	20.0	0.1	-
Radio Tirol	2.0	-	-	-	0.0	0.4	-	0.3	22.5	0.1
Radio Vorarlberg	1.2	-	-	-	-	-	-	0.1	0.4	25.5
Daily reach of private radio stations										
RMS Top	32.9	32.4	31.5	26.7	35.8	33.7	37.0	29.7	30.9	27.0
KRONEHIT	12.6	11.0	16.2	16.8	11.2	10.6	15.7	6.9	10.4	9.1
88.6	2.7	7.8	5.1	3.5	0.1	-	0.1	-	-	-
Antenne Wien	1.0	3.3	1.8	0.7	-	-	-	-	-	-
Radio Arabella (Vi/LA/B)	2.2	5.6	5.3	1.2	0.1	-	-	-	-	-
Radio Energy (Vi/LA/B)	3.0	11.3	3.3	1.0	0.1	0.1	-	-	-	-
98,3 Superfly	0.7	2.7	0.7	0.5	-	0.2	-	-	-	-
HiT FM total	1.2	0.3	5.1	3.5	0.4	-	-	-	-	-
Antenne Steiermark	3.5	0.1	0.5	3.7	22.6	0.5	0.1	0.4	0.0	0.1
Radio Graz/Radio Eins	0.2	-	-	-	1.7	-	-	0.0	-	-
Soundportal	0.6	0.0	-	0.1	3.8	0.1	-	-	0.0	-
Radio Grün-Weiß	0.2	-	-	-	1.1	-	-	-	-	-
Radio West	0.1	-	-	-	0.4	-	-	-	-	-
Antenne Kärnten	1.5	0.0	-	-	0.5	21.0	-	0.1	0.2	-
Radio Harmonie	0.3	-	-	-	-	4.5	0.0	-	-	-
Life Radio (Upper Austria)	2.9	0.0	0.6	-	0.1	-	16.0	0.4	-	-
LoungeFM	0.4	0.1	0.2	-	-	-	1.8	-	-	0.0
Radio Arabella (Upper Austria)	0.6	-	-	-	-	0.1	3.4	-	-	-
Antenne Salzburg	1.4	-	0.1	0.1	0.1	0.2	1.9	15.7	0.2	0.1
Radio Arabella (Salzburg)	0.0	-	-	-	-	-	-	0.5	-	0.0
Radio Energy (Salzburg)	0.3	-	-	-	-	-	-	5.4	-	-
Welle 1 total (Sbg/UA)/										
Antenne Wels	1.1	-	0.1	-	0.0	0.1	4.0	6.2	-	-
Life Radio (Tyrol)	0.8	-	-	-	-	0.3	-	-	8.6	0.0
Antenne Tyrol	0.4	-	-	-	0.2	-	-	-	3.9	-
Radio Energy (Tyrol)	0.2	-	-	-	-	-	-	-	2.6	0.0
Radio Osttirol	0.2	-	-	-	-	0.6	-	-	1.4	-
Radio U1 Tyrol	0.7	-	0.1	-	-	-	-	-	7.6	-
Welle (Tyrol)	0.2	-	-	-	-	-	-	-	2.5	-
Antenne Vorarlberg	0.9	-	-	-	0.2	-	-	-	0.1	20.0

Source: Radiotest 2010; vertical percentages; 14 – 49 age group, figures in %

10.1.5 Print media

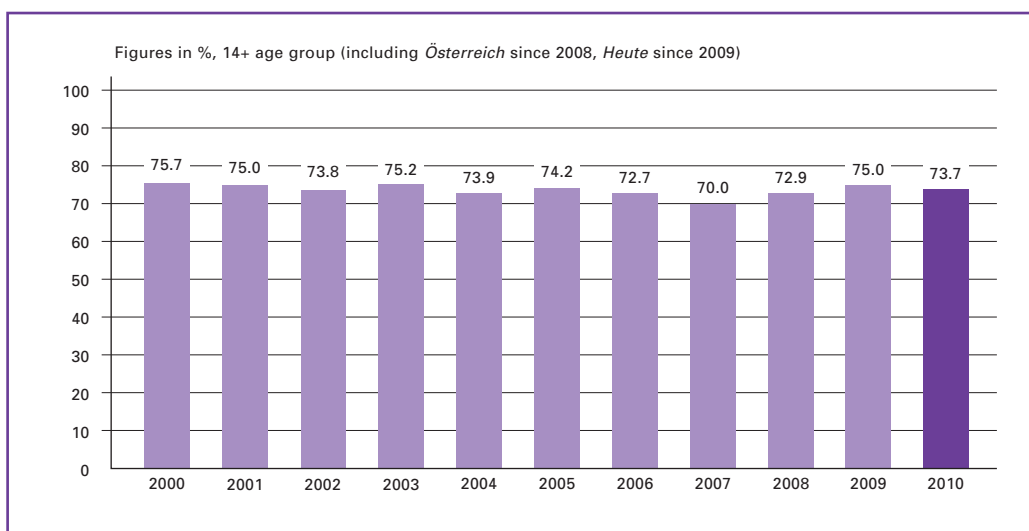
The Austrian Media Analysis for the year 2010 revealed two striking results: First, the upward trend in the daily reach of Austrian daily newspapers – which began in 2008 and continued in 2009 – was interrupted in the year under review. Second, the Austrian daily newspaper with the largest readership by far, namely the *Kronen Zeitung*, lost its leading position on the Viennese market for the first time, as it fell two percentage points behind the free newspaper *Heute*. The *Kronen Zeitung* also suffered a loss at the national level, with its daily reach falling below the 40% mark.

The Austrian Media Analysis is carried out on a yearly basis by the market research institutes GfK Austria, Gallup, IFES and H.T.S. Informationssysteme on behalf of the Media Analysis working group (*Arbeitsgemeinschaft Media-Analysen*). The survey examines the media usage behaviour of Austria's population in the 14+ age group (total: 7.1 million) by means of representative interviews, of which 15,984 were conducted in 2010.

Daily newspapers attract an average of 5,233,000 readers per day

On average, 5.233 million people over the age of 14 in Austria read a daily newspaper each day in 2010. This figure dropped by a full 100,000 compared to the previous year. For the daily newspaper market, which is characterised by relatively high stability, the resulting decline of 1.3 percentage points to a daily reach level of 73.7% (2009: 75%) is a remarkable development. Looking back over the last ten years, the daily reach of these newspapers dropped from 75.7% in 2000 to 70% in 2007 (with slight fluctuations). The Media Analysis' inclusion of the (partly) free daily newspaper *Österreich* in 2008 and the free newspaper *Heute* in 2009 then led to an increase in overall daily reach in both of those years.

Figure 31: Daily newspapers: Development of reach levels



Source: Austrian Media Analysis

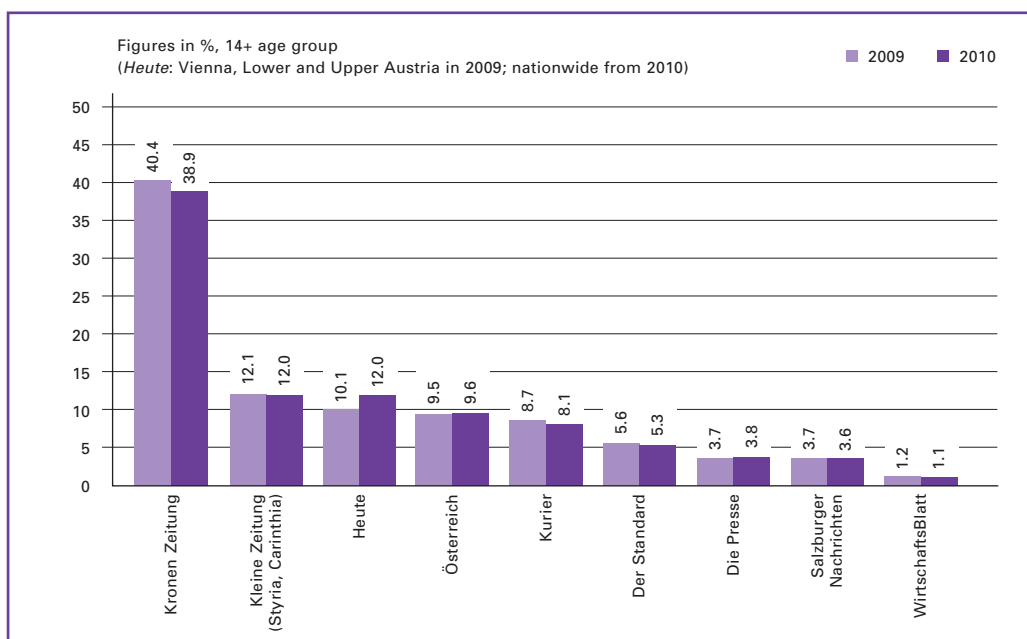
The development observed in the year 2010 could mean that the addition of *Österreich* and *Heute* only had short-term effects and that the long-term trend toward lower daily reach levels continued in the reporting period. The overall reach of daily newspapers dropped most sharply in the 14 to 19 age group, from 64.0% in 2009 to 59.5% in 2010.

Daily newspapers mainly losing young readers

The comparison of daily reach levels among national daily newspapers is dominated by the competition between the market leader *Kronen Zeitung* and the free newspaper *Heute*. At the national level, the *Kronen Zeitung* still leads the market by a wide margin (38.9% daily reach), but – as in the previous year – this newspaper lost 1.5 percentage points in 2010. On the other hand, *Heute* managed to boost its nationwide daily reach from 10.1% in 2009 to 12.0% in 2010. Thus *Heute* has clearly widened its lead over *Österreich* (9.6%) and is now tied with the *Kleine Zeitung* for second place among the most-read daily newspapers. This development is especially impressive because outside of Vienna, *Heute* is only distributed in the provinces of Lower Austria, Upper Austria and Burgenland. Measured in terms of its (comparatively low) daily reach, the *Kurier* saw a considerable decline of 0.6 percentage points compared to the previous year (2009: 8.7%, 2010: 8.1%), followed by *Der Standard*, which dropped from 5.6% to 5.3%. Additional changes in the daily reach of national daily newspapers (to the tune of 0.1 percentage points) remained within the range of normal fluctuations and are therefore hardly significant. However, one trend is clearly visible in these developments: The declines in daily reach among national daily newspapers have brought about gains for the free newspapers *Heute* and (to a lesser extent) *Österreich*. Nevertheless, the daily reach of newspapers in this category is still decreasing at the aggregate level. It appears likely that the Internet is in part responsible for this decline, as this medium's daily reach increased by 3.7 percentage points to 49.5% of the 14+ age group in Austria in 2010 (2009: 45.8%).

Free newspaper *Heute* already in 2nd place in terms of daily reach

Figure 32: Daily reach of national daily newspapers, 2009 vs. 2010



Source: Austrian Media Analysis

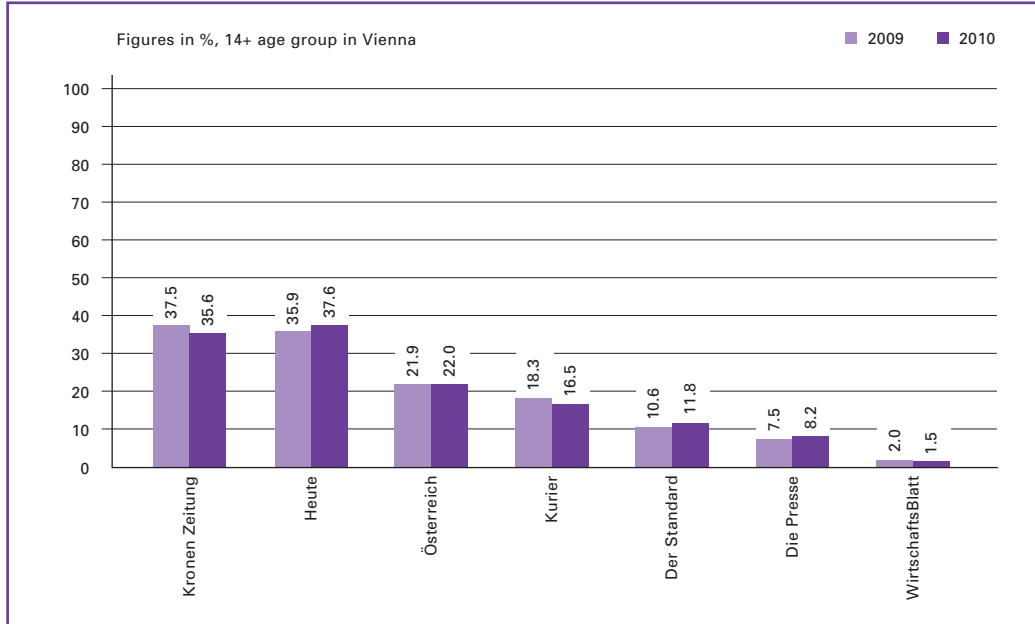
Kronen Zeitung drops below Heute in Vienna

On the (very important) daily newspaper market in Vienna, *Heute* overtook the market leader in terms of daily reach and for the first time surpassed the *Kronen Zeitung*, which slipped nearly two percentage points to 35.6%. In contrast, *Heute* reached an average of 37.6% of Vienna's population in the 14+ age group in 2010, thus increasing its daily reach by 1.7 percentage points compared to the previous year. Both *Heute* and *Österreich* (which has a paid circulation of approximately one-third) have a similar presence at nearly all points of access to public transport in Vienna, but *Heute's* lead over *Österreich* (22% daily reach in Vienna; 3rd place) is significant. In addition to content and design-related criteria, *Heute's* conveniently small format appears to impact the readers' choice.

Kurier continues to decline; Der Standard and Die Presse catching up

Along with the *Kronen Zeitung*, the *Kurier* newspaper clearly lost ground in terms of daily reach in Vienna, but this was probably less a matter of competition with *Österreich* and *Heute* than a loss in favour of *Der Standard* and *Die Presse*. In terms of daily reach, the *Kurier* dropped 1.8 percentage points in 2009, but still managed to hold on to fourth place with a daily reach of 16.5%. With a gain of 1.2 percentage points and a daily reach of 11.8% in 2010, *Der Standard* managed to narrow the *Kurier's* lead considerably. Whereas daily reach levels of these two newspapers differed by 7.7 percentage points in 2009, this margin narrowed to 4.7 percentage points in 2010. *Die Presse* boosted its daily reach to 8.2% (+0.7 percentage points), while *WirtschaftsBlatt* lost one-fourth of its readership in Vienna, where its daily reach fell to 1.5%.

Figure 33: Daily reach levels of daily newspapers in Vienna



Source: Austrian Media Analysis

Free periodical also earns top rank among magazines

In the magazine segment, the Austrian Media Analysis also ranked a free periodical – in its first year of inclusion in the analysis – at the top of the list in terms of daily reach: With approximately one million readers and a daily reach of 14.2%, the biweekly *Weekend Magazin* has now pulled ahead of *TV-Media*, whose daily reach fell 0.7 percentage points to 13.6% in 2010 (2009: 14.3%).

Overall, magazines are struggling with losses in daily reach, especially the top-ranked periodicals in this respect. For example, the daily reach of *NEWS* dropped from 11.6% in 2009 to 10.3% in 2010 (-1.3 percentage points), and *Die Ganze Woche* fell from 14.1% to 13.2%.

Moderate loss of daily reach among magazines

At the same time, the daily reach of women's magazines remained fairly stable, losing only slightly in the reporting period; the top-ranked magazine *Woman* even managed to boost its daily reach and widen its lead to 7.3% in 2010 (2009: 7.2% daily reach).

Magazines in the living and lifestyle segment likewise remained stable, with "internal" shifts in daily reach remaining in the range of 0.1 to 0.5 percentage points.

In contrast, automotive, motor sports and sports magazines saw declines in daily reach. In particular, the Austrian automobile club's *Auto Touring* – the leading magazine in this category – saw its daily reach drop 4.5 percentage points to 22.6%, despite the fact that the magazine is distributed for free and membership in the automobile club (ÖAMTC) has grown. The daily reach of other titles in this category ranges from 2.5% (*Sportwoche*) to 6.1% (*Freie Fahrt*).

Another periodical distributed free of charge to credit card holders is the monthly magazine *Complete*, which held steady with a daily reach of 6.6% and leads the category of business and news magazines. In this category, *Gewinn* (4.1%), *Trend* (3.7%) and *Format* (2.3%) suffered losses of 0.1 to 0.3 percentage points. At the same time, *profil* (6.3%) and *Top Gewinn* (1.7%) each gained 0.2 percentage points.

The significance of free newspapers is further evidenced by another new addition to the Austrian Media Analysis. Added to the analysis in 2010, the 125 regional/district weekly papers (*Bezirksblätter*, *Woche* in Carinthia and Styria, *Bezirkszeitung* in Vienna) belonging to Regionalmedien Austria AG (RMA, the free newspaper unit of Styria and Moser Holding) reached a total of 3.795 million readers in the 14+ age group throughout Austria and thus attained a daily reach of 53.5% in 2010, which is higher than any other print periodical in the country.

Regional/district newspapers "secretly" lead market in terms of daily reach

10.2 Development of the Austrian telecommunications markets

Finalisation of third round of market analyses

In the field of telecommunications, the regulatory authority focused its efforts on completing the third round of market analysis procedures in 2010. These procedures were still based on the EU's legal framework for electronic communications markets from 2002 and its implementation in Austrian law, namely in the Telecommunications Act (TKG) 2003 and the accompanying ordinances. The current European legal framework has undergone a review and revision process in recent years, and the result was ultimately published in the Official Journal of the European Union in December 2009. The implementation of the revised legal framework in Austrian law is planned for 2011; the legislative bill had already reached the assessment stage at the time of this publication. In this context, the bill stipulates that the market analysis cycles are to be extended to three years (instead of the current two-year cycles) and that the tasks of market definition, market analysis and the imposition of regulatory remedies are to be handled in a single official decision in each case.

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.

The data 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).

10.2.1 General market development

Further decline in retail revenues

The trend of declining telecommunications revenues on the retail markets continued in 2010. In the last two years, retail revenues from telecommunications services have fallen by 4.0% (2008 to 2009) and 2.9% (2009 to 2010) to EUR 4 billion.

Nearly two thirds of total revenues generated by mobile services

Table 27 shows how the revenues break down across the various business areas. Nearly two-thirds of these revenues (63.5%) can be attributed to mobile communications (including mobile broadband), while approximately one-fourth were generated by fixed-link telephone services and 11.3% by broadband services (not including mobile broadband).

In the field of mobile communications, it is also important to consider the growth in mobile broadband connections, which is not shown separately in Table 27 but was especially robust. Despite the increasing revenues from mobile broadband, retail revenues continued to decline, albeit only moderately.

Table 27: Development of retail telecommunications revenues

	2008 in EUR (millions)	2009 in EUR (millions)	2010 in EUR (millions)	Change in %, 2008 to 2009	Change in %, 2009 to 2010	Percentage of total revenues, 2008	Percentage of total revenues, 2009	Percentage of total revenues, 2010
Fixed-link network*	1,132	1,015	961	-10.3	-5.3	26.1	24.4	23.8
Mobile networks	2,613	2,606	2,561	-0.3	-1.7	60.3	62.7	63.5
Broadband**	506	462	457	-8.6	-1.0	11.7	11.1	11.3
Leased lines	82	74	56	-10.2	-24.3	1.9	1.8	1.4
Total	4,333	4,157	4,036	-4.0	-2.9	100.0	100.0	100.0

Source: RTR

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

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

Due to subsequent corrections by the network operators, the values differ slightly from those previously indicated in the 2009 Communications Report.

Table 28 shows the development of traffic volumes and the number of lines/connections in each business area. As in the case of revenues, the trend observed in traffic volumes in recent years also continued in nearly all areas in 2010. Call minutes from the fixed-link network continued to decline, although the number of fixed-link lines increased slightly for the first time in years; this development can largely be attributed to the combination packages marketed aggressively by A1 Telekom. At the end of 2010, there were approximately 2.7 million fixed-link telephone lines in Austria.

In mobile communications, the number of call minutes and subscribers (i.e. the number of activated subscriber numbers) continued to climb in 2010, but the rates of growth in call minutes have decreased in recent years. While the growth rate came to 7.7% between 2008 and 2009, it fell to a mere 4% between 2009 and 2010.

A similar picture can be observed in mobile broadband services, where the growth rate dropped from approximately 37% in 2009 to 30% in 2010. In contrast, the growth rate in fixed broadband connections has increased slightly in recent years. Mobile networks have recently established themselves as the fiercest competitor to the fixed-link network in Austria. This is not only the case in voice services (cf. the opposing developments in the number of call minutes in Table 28), but also increasingly in broadband services. 45.7% of all broadband connections in Austria are mobile connections, meaning that Austria has taken a leading position in the EU in terms of mobile broadband penetration.

Rapid growth in mobile broadband continues

In terms of 64 kbit/s equivalents, growth in the number of leased lines was constant in the year 2010. This can mainly be attributed to the fact that demand for leased lines with high bandwidths has risen in recent years, especially as those lines offer more favourable prices per kbit/s equivalent compared to low bit-rate leased lines. However, this increase is not reflected in the revenues shown in Table 27.

A comparison of trends in revenues from each segment in Table 27 with the corresponding traffic volumes and numbers of lines/subscribers in Table 28 reveals 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 has to be interpreted against the backdrop of a very high penetration rate, with over 12 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 of multiple retail services (fixed-link telephony, broadband, etc.), which have increasingly established themselves on the market in recent years. These package offers also make it more difficult to break down revenues from fixed charges by individual service, thus bringing about a certain degree of imprecision in the allocation of revenues to specific segments.

*Main driver of growth:
Mobile broadband*

Therefore, the main driver of growth is still the development of broadband access, in particular mobile broadband connections. However, due to a lack of available data, this development – which is highly significant in terms of volume (cf. Table 28) – cannot be depicted separately, and the specific revenues from mobile broadband connections cannot be reported separately in Table 27.

Table 28: Overall development of traffic volumes and lines/subscribers

	Unit	2008 (millions)	2009 (millions)	2010 (millions)	Change in %, 2008 to 2009	Change in %, 2009 to 2010
Fixed-link network*	Call minutes	8,025.86	6,714.62	5,805.66	-16.34	-13.54
	Lines	2.60	2.67	2.69	-0.51	0.60
Mobile networks	Call minutes	19,596.10	21,113.01	21,955.84	7.74	3.99
	Subscribers (contract and prepaid)**	10.37	11.10	12.24	6.95	10.32
Broadband	Fixed-link connections	1.74	1.88	2.03	8.15	8.21
	Mobile connections	0.97	1.32	1.71	36.85	29.37
Leased lines	Number of 64 kbit/s equivalents	2.78	3.80	4.64	36.69	22.11

Source: RTR

* Minutes including dial-up services and public pay telephones, not including service numbers.

** Number of activated subscriber numbers.

Due to subsequent corrections by the network operators, the values differ slightly from those previously indicated in the 2009 Communications Report.

10.2.2 Fixed-link telecommunications

10.2.2.1 Introduction

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

- As the former monopolist, A1 Telekom is the only telecommunications enterprise with nationwide fixed-link infrastructure and still holds the largest share of the access market by far (see also "Structural developments on the fixed-link market"). As A1 Telekom's market power gives the company incentives to deny alternative providers access to its customers and thus to frustrate competition, A1 Austria has been classified as a company with significant market power (SMP) up to this point. As a result, A1 Telekom is subject to special regulations regarding its prices as well as its terms and conditions of business. The company is also obliged to grant other competitors non-discriminatory access to certain parts of its network.
- 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 A1 Telekom (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 (e.g. in the form of bundled products) compared to carrier network operations alone, communications network operators certainly have incentives to develop new networks and to expand existing ones.
- In addition to ex ante price regulations, the obligation imposed on A1 Telekom to allow carrier selection was the most important regulatory instrument employed in the first stage of market liberalisation, as it allowed alternative operators to launch services on the retail market with relatively low investment costs. 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 require its own telecommunications network infrastructure; instead, the carrier network is generally interconnected with A1 Telekom's telecommunications network by means of a dialling 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, depending on whether the carrier code is a fixed setting (CPS) or not (CbC).
- Another major development is Voice over Internet Protocol (VoIP), which is becoming a powerful factor in the entire fixed-link sector and may have an impact on all of the business models mentioned in Table 29, as it enables the transition to subscriber network operation with moderate investment costs. VoIP refers to a technology which allows voice communication via IP-based networks. In this context, a distinction is made between VoB (Voice over Broadband) and Vol (Voice over Internet). In VoB, the service provider also makes the fixed-link line available to the customer, while Vol involves using VoIP services via an existing (broadband) Internet connection. Providers of VoB in Austria include Tele2, UPC and Silver Server, while Vol is offered by Skype and Sipgate, to name just a few examples.

Quasi-monopolist structures on the local access market

Carrier network operation enables rapid market entry with low investments

VoIP as a technology with high innovative potential

Table 29 provides an overview of the fixed-link business models discussed above. For the sake of typified classification, combined forms of these business models are not shown.

Table 29: Business models for voice telephony at fixed locations

Incumbent / former monopolist	A1 Telekom as the only nationwide, fully vertically integrated company		
(Alternative) communications network or service providers (types)	Purchased services (esp. from incumbent operator)	Self-provided services	Investment requirements
Access network operators	<ul style="list-style-type: none"> ▪ Interconnection ▪ Poss. leased lines ▪ Poss. unbundling 	<ul style="list-style-type: none"> ▪ Operation of access and core network (e.g. local loops, transmission and switching facilities) ▪ Service design ▪ Pricing ▪ Sales/billing 	High
Carrier network operators	<ul style="list-style-type: none"> ▪ Interconnection ▪ Poss. leased lines 	<ul style="list-style-type: none"> ▪ 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 dialling code or via a carrier network partner)	<ul style="list-style-type: none"> ▪ Connection minutes 	<ul style="list-style-type: none"> ▪ Pricing ▪ Sales/billing 	Low
Resellers (other) (e.g. calling cards, telephone shops, dial-in telephone service)	<ul style="list-style-type: none"> ▪ Connection minutes 	<ul style="list-style-type: none"> ▪ Pricing ▪ Sales/billing 	Low
Combined forms	Combinations of the alternative business models above		

Source: RTR

10.2.2.2 Retail markets for fixed-link communications

Market participants

Five operators currently cover more than 90% of demand

Table 30 lists the largest providers of fixed-link voice telephony services in Austria. Taken together, these operators cover more than 90% of the call minutes handled on the retail market.

Table 30: Largest providers on the retail fixed-link market

Company	Share of call minutes
A1 Telekom	approx. 60%
Tele2	< 25%
UPC	< 10%
COLT	< 5%
FINAREA	< 5%

Source: RTR

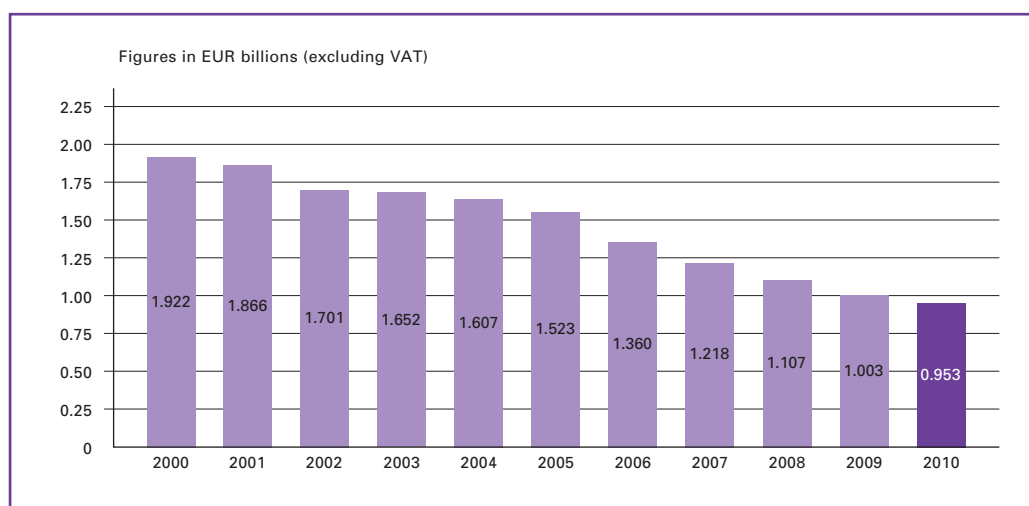
Structural developments on the fixed-link market

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 34). These revenues include connection charges (domestic regional calls, domestic long-distance calls, domestic calls to mobile networks, international calls, public telephones, online services), revenues from the sale of calling cards and minutes to resellers, base fees, charges for special coverage obligations and line setup charges.

Although revenues on the overall fixed-link retail market followed an upward trend in the early years of liberalisation, they have declined steadily since 1999, most recently losing as much as 4.98% between 2009 and 2010. In the last ten years, total revenues on the Austrian fixed-link market have decreased to half of their former level, even falling below the EUR 1 billion mark in 2010.

Substantial declines in overall fixed-link revenues

Figure 34: Development of retail fixed-link revenues, 2000 to 2010



Source: RTR

Due to subsequent corrections by the network operators, the values differ slightly from those previously indicated in the 2009 Communications Report.

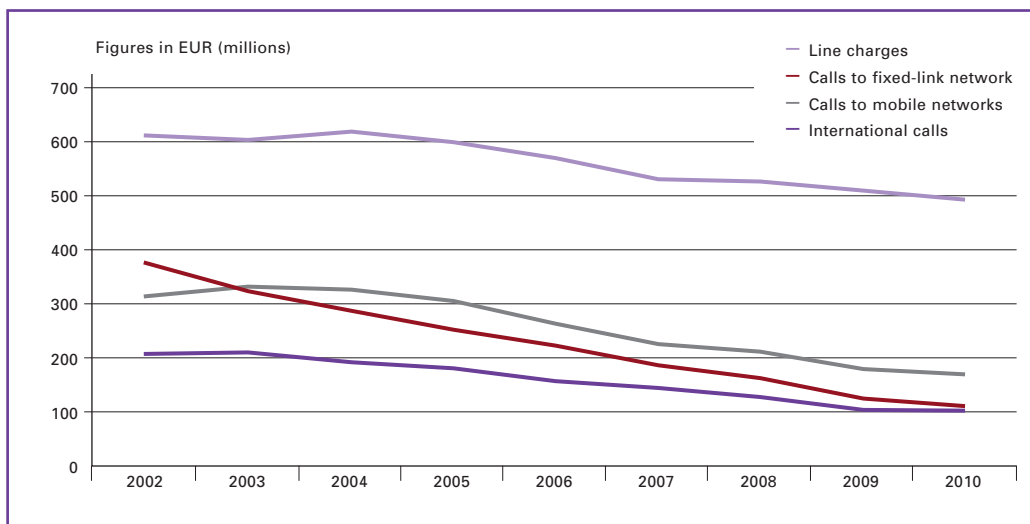


Continued decline in revenues from calls to fixed-link networks

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

Figure 35 shows the differences in the development of revenues in each charge category (line charges, calls to mobile networks, calls to fixed-link networks and international calls). The category affected most by declining revenues is connection charges, especially for calls to the fixed-link network, where revenues dropped 11% between 2009 and 2010. Revenues from calls to mobile networks have also decreased steadily since 2003 (most recently by 6%). The decreases identified in call charges can mainly be attributed to intermodal competition emanating from the mobile communications sector (price reductions resulting from reductions in termination charges). 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. These developments refer to the entire fixed-link sector, not just individual operators.

Figure 35: Development of retail fixed-link revenues by segment



Source: RTR

Due to subsequent corrections by the network operators, the values differ slightly from those previously indicated in the 2009 Communications Report.

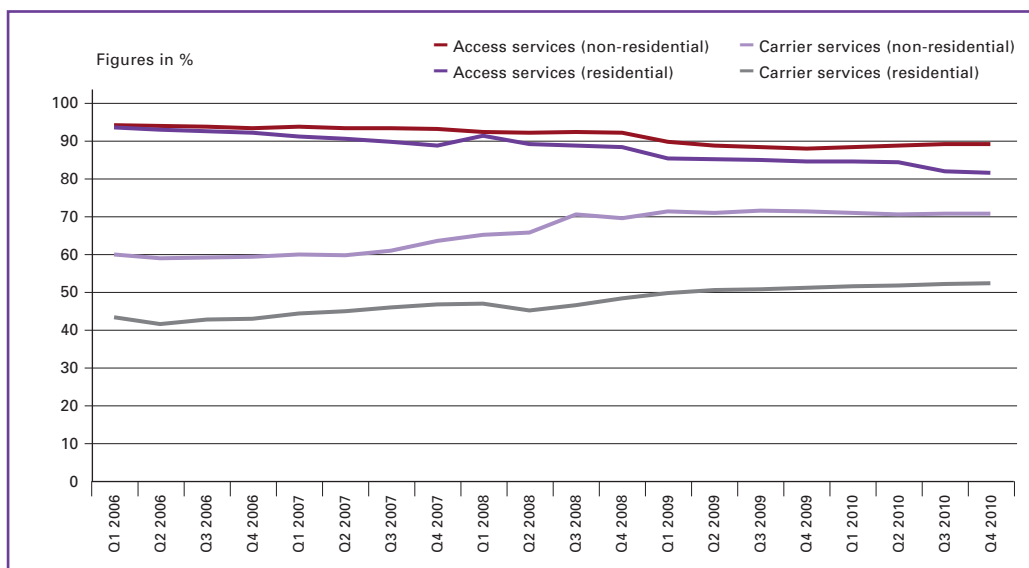
A1 Telekom commands large market share in access segment

The market share figures for A1 Telekom (Figure 36) also provide an (indirect) indication of how successful alternative network operators have been in individual segments of the fixed-link telephony market since the start of liberalisation. In terms of subscriber lines, A1 Telekom still held a relatively high and stable market share in 2010 (measured in terms of revenues from monthly base fees and setup charges), with a slight decline observed in the residential segment. In general, slightly more competitive developments can be observed in the residential segment compared to the non-residential segment; this can be attributed to Tele2's unbundling activities and the gains achieved by the cable network operator UPC.

In carrier services (calls to mobile networks, calls to fixed-link networks and international calls), on the other hand, the alternative operators have been able to garner far larger market shares, although A1 Telekom has seen slight gains in recent years. A substantial part of this development can be attributed to A1 Telekom's acquisition of eTel; this effect is included in the data from Q1 2007 onward. In 2010, A1 Telekom's market share rose once again in the residential segment. Apparently, it is becoming increasingly difficult for carrier network operators to sustain their business models economically in times of shrinking traffic volumes and profit margins as well as increasing competition in bundled products, which go well beyond the scope of call services alone.

A1 Telekom's market share increases slightly in residential carrier services

Figure 36: A1 Telekom's share of revenues from access and carrier charges by customer segment

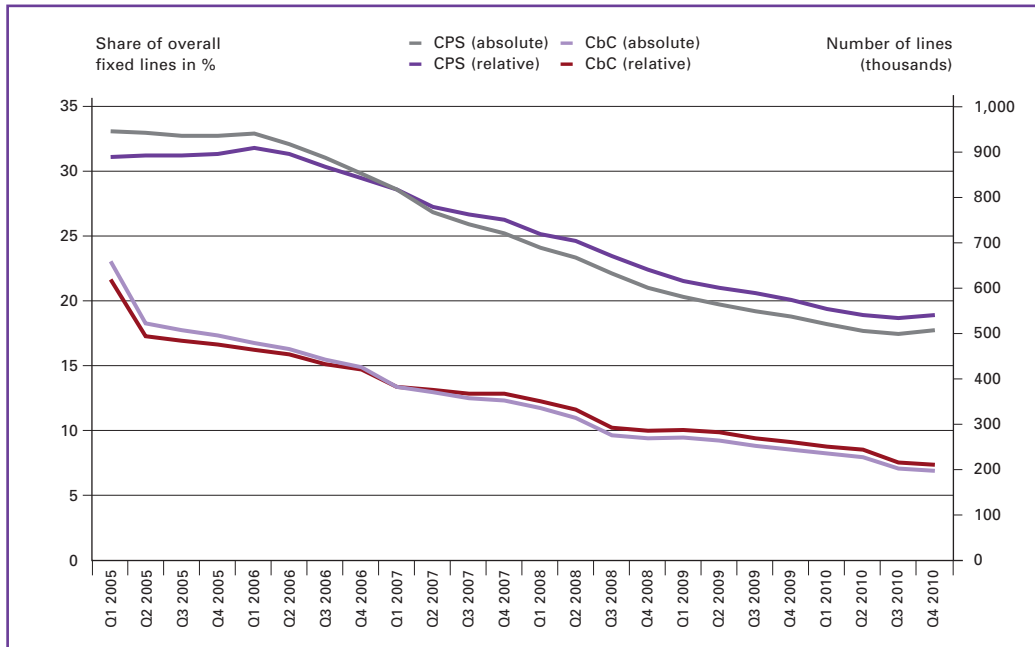


Source: RTR

The stagnation of the alternative network operators' market shares in terms of carrier services, which is only implicitly shown in Figure 36, is closely linked to the development of the market for call-by-call (CbC) and carrier pre-selection (CPS) services. In addition to the absolute figures, Figure 37 also shows the share of CPS lines and CbC customers in relation to the overall number of fixed lines. CPS in particular gained popularity quickly in its early years, although this segment has shown a steadily declining trend in recent years. At the end of 2010, approximately 500,000 subscribers still used an alternative operator and carrier preselection; this figure represents 19% of the total number of fixed lines in Austria.

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

Figure 37: Development in number of CPS and CbC customers



Source: RTR

CPS and CbC used on some 30% of all fixed lines in Austria

The figures shown for CbC customers are based in part on estimates and should therefore be interpreted with caution. At present, we can assume a basic level of just under 200,000 CbC customers. As CbC is sometimes also used in combination with CPS, it is not possible to calculate a reliable total. However, we can state that the two forms of access are currently still used on approximately 30% of all lines at fixed locations. Moreover, the CPS and CbC levels shown above reflect the respective aggregate values for residential as well as non-residential customers, although these services are primarily used in the residential segment.

10.2.2.3 Wholesale fixed-link markets

Wholesale markets important to competition on retail 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 requirement for functioning competition. On the one hand, the interconnection of networks (which brings about transactions on the wholesale markets) serves to enable the customers of one 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" connectivity would not be ensured. On the other hand, network operators can purchase wholesale services from A1 Telekom or other operators, which serves to lower their infrastructure investment costs for the provision of retail services. This substantially reduces the barriers to market entry.



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

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.

Depending on the infrastructure they have at their disposal, operators can either provide origination services themselves or purchase those services on the wholesale market. If an operator has customers connected directly to its network, the operator itself provides the origination service (i.e. as a self-provided service) and does not generate revenues at the wholesale level. This is the case in a vast majority of calls.

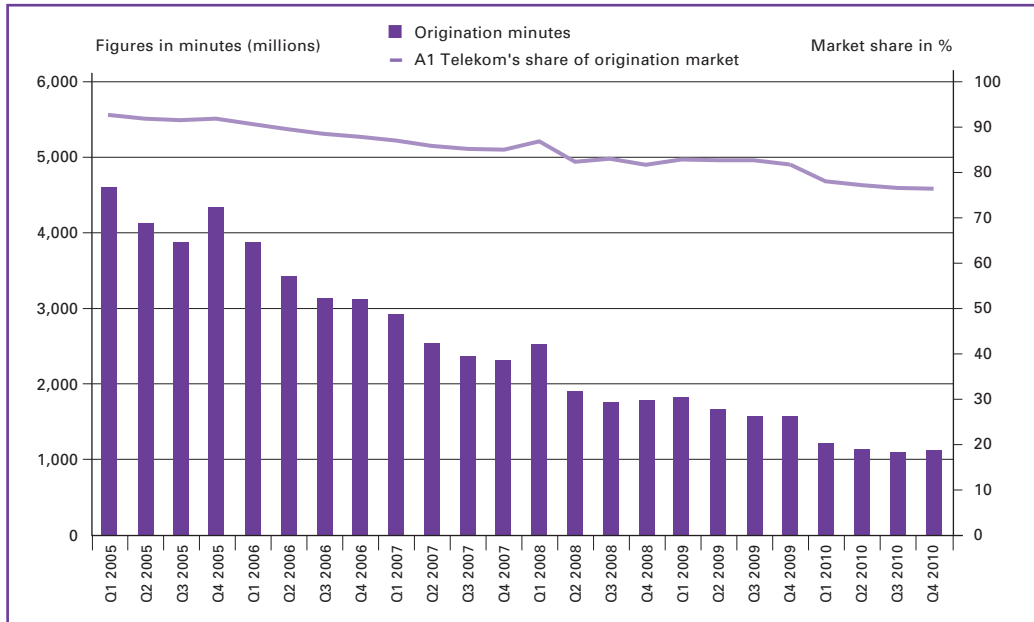
Carrier network operators which do not have customers connected directly to their networks purchase origination services from A1 Telekom within the framework of carrier (pre-)selection. Due to its position of significant market power on the fixed-link access markets, A1 Telekom is obliged to offer this service. This arrangement substantially lowers the barriers to entry into carrier markets at the retail level.

In line with the development on the retail markets, the overall number of origination minutes has declined steadily and substantially for years now (cf. Figure 38). Two of the main reasons for this development are the sharp decline in the significance of narrowband dial-up Internet services and fixed-link/mobile substitution in voice services (primarily domestic calls) in the residential segment.

*Minutes declining, but
A1 Telekom's market
share remains high*

A1 Telekom still commands a very large share of the origination market (cf. Figure 38). The largest alternative operators which have their own subscribers connected directly to their networks (via unbundling or cable networks) – and thus provide origination services – are Tele2 and UPC.

Figure 38: Development of origination minutes and market share (A1 Telekom)



Source: RTR

Table 31 shows A1 Telekom'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 31: A1 Telekom's origination charges as of December 31, 2010 (euro cents, excluding VAT)

Local origination	Peak	Off-peak
A1 Telekom to carrier network operators	0.82	0.48

Source: RTR

Termination

Termination is a wholesale service provided by every subscriber network operator for the purpose of transporting incoming traffic from the last interconnectable exchange to the subscribers connected to the operator's network.

Termination monopoly creates operator-specific market power

As termination services can only be rendered by the provider network to which the subscriber is connected, termination markets are delineated for each individual operator. Each subscriber network operator thus has its own termination market, in which that operator has a market share of 100%; this qualifies as significant market power in accordance with Art. 35 TKG 2003. Therefore, all operators are subject to price regulations. The regulated (local) charges are shown in Table 32.

**Table 32: Termination charges of A1 Telekom and ANOs as of December 31, 2010
(euro cents, excluding VAT)**

Termination	Peak	Off-peak
A1 Telekom	0.82	0.48
Alternative operators	1.28	0.71

Source: RTR

Due to its large number of connected subscribers, its size and its power on other markets, in the absence of regulation A1 Telekom would create different competition problems compared to smaller network operators. These problems require additional regulatory remedies such as obligations to provide a reference interconnection offer (RIO), to maintain accounting separation and to ensure non-discrimination.

Transit

Transit services refer to carrying traffic between two exchanges which are interconnectable with different networks or between two zones around interconnectable exchanges. Therefore, these services are provided and used by communications network operators in order to cover certain line sections and cannot be regarded as origination or termination as described above.

Transit serves to cover distances and to interconnect networks

All network operators which transport traffic from one exchange to another provide services on the transit market. This service may be provided within as well as beyond the boundaries of the operator's own network. The operators which offer services on this market thus include subscriber network operators and "pure" transit network operators, as well as carrier network operators which e.g. 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. Carrier network operators as well as all other companies which are directly interconnected offer transit services as part of direct interconnection via joining links (i.e. lines connecting networks). When traffic flows via a joining link, a transit service is provided from one network to another.

As multiple companies offer services on the transit market and compete heavily with one another, effective competition prevails on this market. Therefore, none of the companies are subject to sector-specific ex ante regulation.

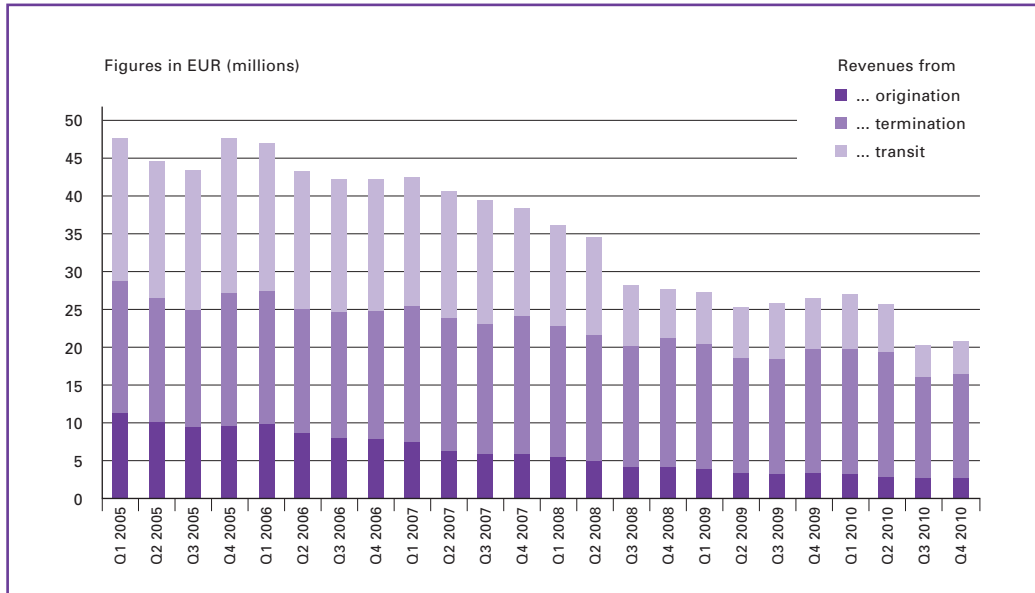
Transit market competitive

Development of revenues on wholesale markets

After sharp declines, revenues on this market have largely stabilised since the second quarter of 2008. The decline between the second and third quarters of 2010 can be attributed to the integration of mobilkom (A1) and Telekom Austria to form A1 Telekom, as the revenues between those two companies have now been eliminated from this market.

Revenues drop due to integration of mobilkom and Telekom Austria

Figure 39: Development of revenues on wholesale fixed-link markets



Source: RTR

10.2.3 Mobile communications

10.2.3.1 Market participants

Four MNOs operating on the Austrian market

During the reporting period, there were four mobile network operators (MNOs) operating 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. Austria's fully integrated mobile network operators are A1 Telekom, T-Mobile, Orange and Hutchison.

Table 33 provides a summary of the year in which each MNO entered the market and the frequencies allocated to each operator. Hutchison has been assigned frequencies in the 2.1 GHz and 2.6 GHz bands. The other three network operators also hold frequency assignments in the 900 MHz and 1800 MHz bands.

Table 33: Austria's MNOs: Frequency assignments and years of market entry

	A1 Telekom	T-Mobile	Orange	Hutchison
Market entry	1994	1996	1998	2003
900 MHz	2 x 17.0	2 x 12.8	2 x 4.0	
1800 MHz	2 x 15.0	2 x 25.4	2 x 33.0	
2.1 GHz – FDD (paired spectrum)	2 x 14.8	2 x 15.0	2 x 14.8	2 x 14.8
2.1 GHz – TDD (unpaired spectrum)	10	10		5
2.6 GHz – FDD (paired spectrum)	2 x 20	2 x 20	2 x 10	2 x 20
2.6 GHz – TDD (unpaired spectrum)	25			25

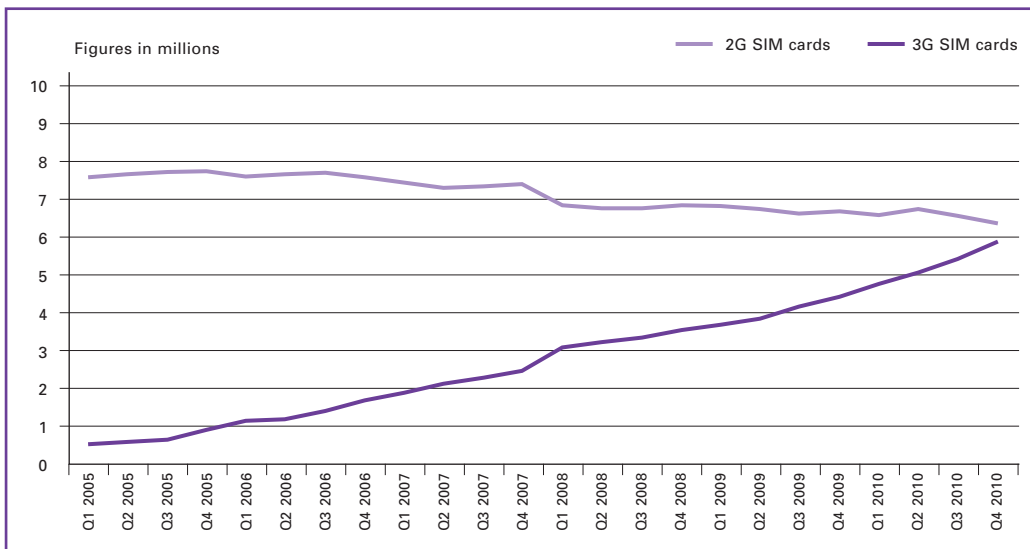
Source: RTR

10.2.3.2 Market development

Development in number of 2G vs. 3G-compatible SIM cards

Figure 40 shows the number of activated SIM cards in Austria, broken down into 2G (GSM) and 3G (UMTS) SIM cards. As the chart shows, the number of 3G SIM cards has continued to rise, while the number of 2G SIM cards has slowly declined since the second quarter of 2010, falling to just under 6.4 million at the end of the year. By the end of 2010, nearly 50% of all SIM cards in Austria were already 3G-compatible. This development can be attributed to the fact that most mobile network operators are now only issuing 3G SIM cards, even in cases where the subscriber only uses GSM services, and that the number of mobile data cards and data modems has continued to grow rapidly.

Figure 40: Development in number of 2G vs. 3G-compatible SIM cards



Nearly half of all SIM cards are 3G-compatible

Source: RTR

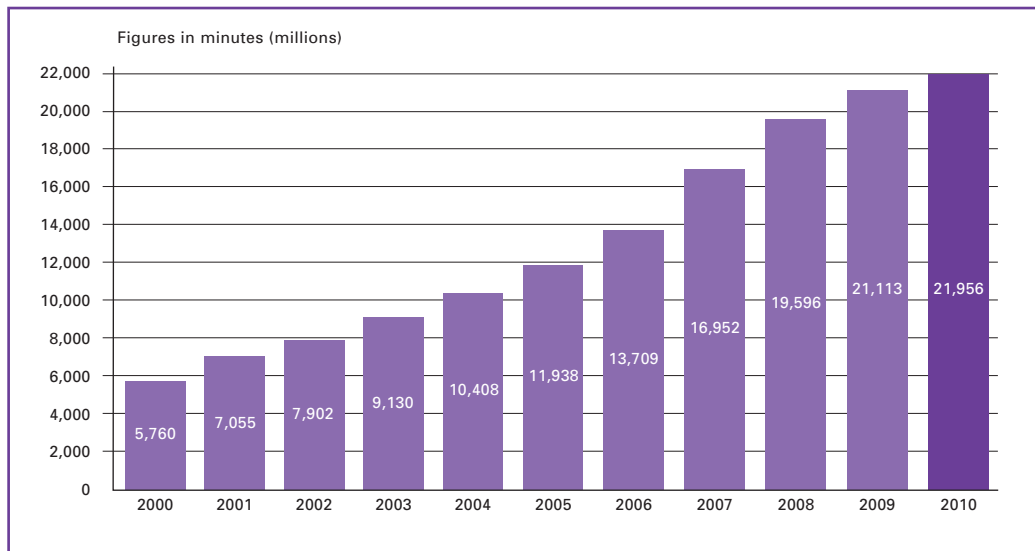
Due to subsequent corrections by the network operators, the values differ slightly from those previously indicated in the 2009 Communications Report.

Development of call minutes and text messages

Significant growth was also recorded in the number of call minutes and text messages in 2010, although the rates of growth declined markedly compared to the previous year. Figure 41 shows the number of technical call minutes on the retail mobile communications market, which amounted to nearly 22 billion in 2010. Call minutes showed consistently high growth rates of about 15% per year from 2003 to 2006, after which the growth rate reached a peak of 24% in 2007 (when flat rate packages were introduced). In the ensuing years, the growth rate declined, falling to just under 8% in 2009 and 4% in 2010.

Rapid growth in traffic volumes continues

**Figure 41: Call minutes on the retail mobile communications market
(technical measurement*)**

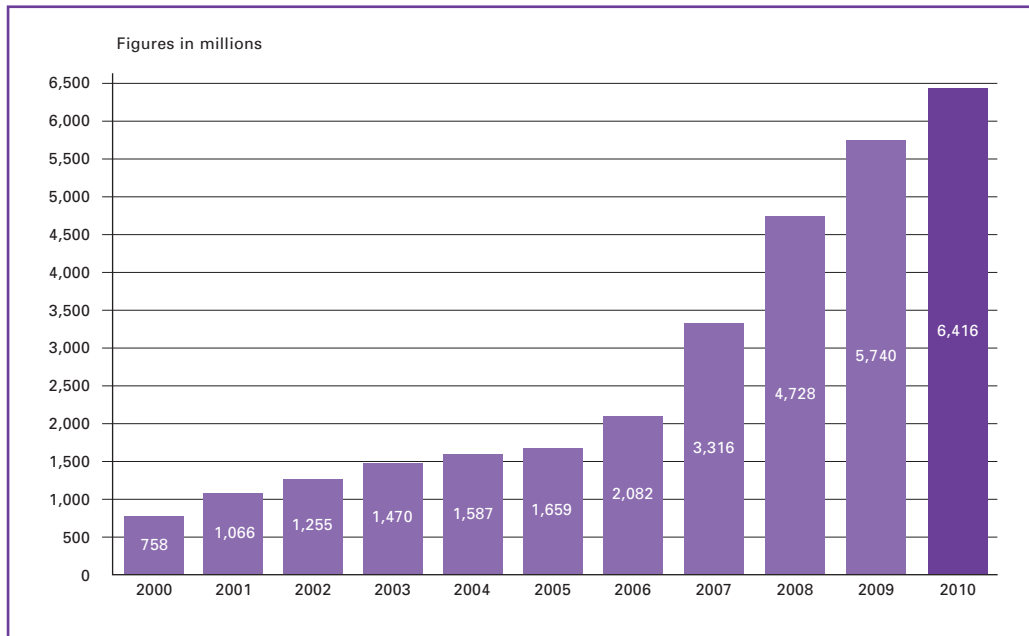


Source: RTR

* Actual call minutes of retail customers (without billing increments). In contrast, billed call minutes refer to the number of call minutes charged to retail customers (using the applicable billing increments).

The rate of growth in the number of text messages likewise reached a peak (59%) in 2007 and has dropped steadily since that time. In 2010, this rate fell to 12%, its lowest level in the last five years. As shown in Figure 42, customers of Austrian mobile network operators sent approximately 6.4 billion text messages in 2010.

Figure 42: Text messages on the retail mobile communications market (technical measurement*)



Source: RTR

* 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.

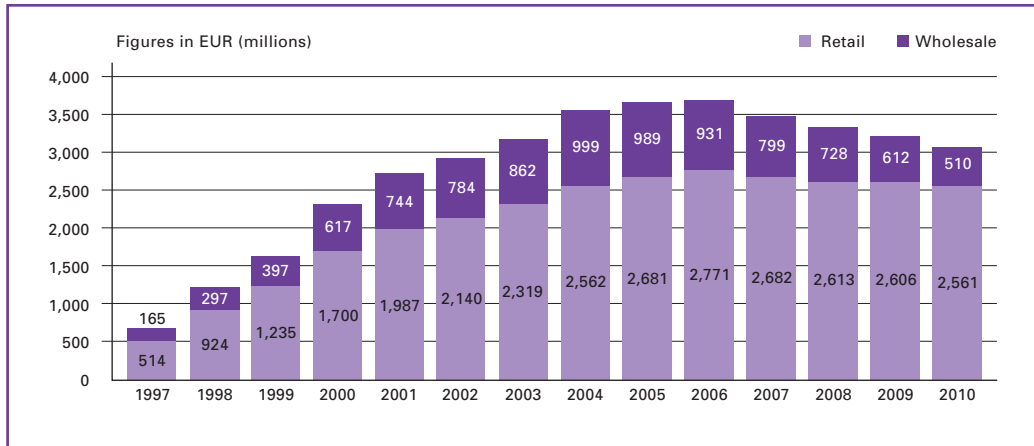
Development of revenues

The trend observed in revenues on the mobile communications market continued in 2010. Despite the rising number of subscribers and higher traffic volumes, overall revenues on this market dropped slightly once again (by some EUR 147 million; cf. Figure 43). The main factor driving this development is wholesale revenues, which dropped some 20% – from EUR 612 million to EUR 510 million – between 2009 and 2010. This can largely be attributed to the gradual reduction of termination charges as well as the further reduction of charges for international roaming under the EU Roaming Regulation.

Overall revenues continue to decline

As far as revenues at the wholesale level are concerned, this also means that expenses and costs have been reduced. Given equal traffic volumes between two operators, this development would even yield a balance of zero. For this reason, the decline in revenues has only had a partial effect on profits.

Figure 43: Development of revenues in mobile communications



Source: RTR

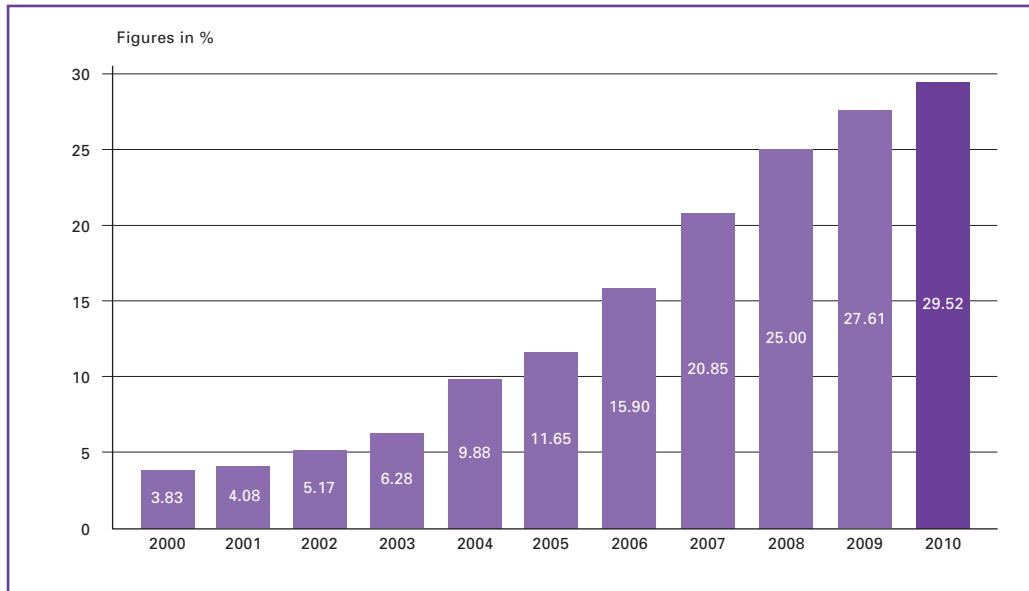
The calculation of revenues in Figure 43 is based on the following income types:

- Retail revenues: Connection charges for voice calls, text messages and data services, periodic base fees and activation fees;
- Wholesale revenues: Revenues from voice termination and text messages, revenues from inbound international roaming (i.e. customers from abroad making calls in Austria).

Mobile data services continue to gain importance

In the year under review, the revenues from data services and value-added data services (including text messages and multimedia messages) continued to follow the trend to date and rose sharply once again. At EUR 756 million, these revenues already accounted for nearly 30% of the total revenues on the retail mobile communications market at the end of 2010. This can mainly be attributed to rapid growth in the number of mobile broadband users.

Figure 44: Share of revenues from mobile data and value-added data services (including SMS and MMS) in overall retail mobile communications revenues



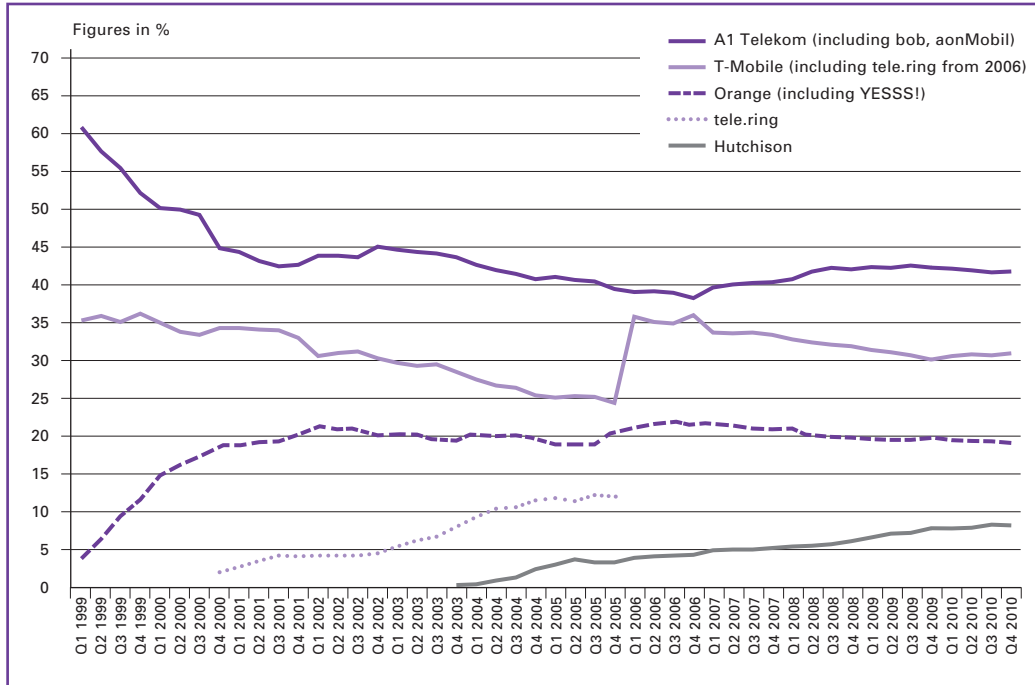
Source: RTR

10.2.3.3 Market shares and concentration

Figure 45 below shows the market shares of mobile network operators in terms of subscribers. The market shares of airtime resellers owned by Austria's mobile network operators are included in the data for each host network (i.e. the operator whose network the reseller uses in order to provide services).

The chart shows that the market shares of the two largest providers nearly converged in the year 2006 due to T-Mobile's takeover of tele.ring. After the merger, A1 Telekom's market share increased slightly and has remained stable around 42% since early 2008. T-Mobile's market share has dropped steadily since the company took over tele.ring, but it appeared to reach a plateau around 30% in the course of the year 2010. Likewise, the market share of Austria's third-largest MNO, Orange, has remained quite stable around 19% in the last two to three years. Hutchison, Austria's smallest MNO, continued to grow steadily, reaching a market share of 8.2% at the end of the reporting period.

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



Source: Information compiled from operator web sites for RTR's Telecom Monitor.

10.2.4 Broadband

10.2.4.1 Introduction

In the last decade, the Internet has become the most important platform for information and communication in our society. For private households and businesses alike, Internet access has become a decisive factor for participation in society and the business world. As more and more applications require high bandwidths, a broadband connection has practically become a requirement for users in order to use the Internet adequately. In this context, broadband refers to Internet connections which are not based on dial-up modems (via POTS or ISDN with a maximum of 144 kbit/s) but rely on DSL, cable networks, fibre optics or 3G mobile networks. At the beginning of 2011, 98.8% of private Internet users and virtually all businesses in Austria had broadband Internet access.⁷

Nearly all Internet connections in Austria are broadband connections

This section first discusses the essential broadband technologies in use and the wholesale products available on the basis of regulatory obligations. On that basis, developments in recent years on the retail broadband market and on the wholesale broadband market are described. The section ends with a discussion of key developments in the construction of next generation access (NGA) networks.

⁷ See RTR (2011): Die österreichischen Telekommunikationsmärkte aus Sicht der Nachfrager im Jahr 2011, available at <http://www.rtr.at> (in German).

10.2.4.2 Broadband basics

Access technologies

This section presents the most important broadband technologies as well as their availability and the largest providers on the market. The providers shown in the table below provide approximately 95% of all broadband connections.

DSL, cable broadband and mobile broadband as most important access technologies

Table 34: Broadband access technologies

Access technology	Largest providers	Availability (in % of population)
(x)DSL: Copper-based access technology	A1 Telekom, Tele2, UPC (unbundled lines)	> 95% Unbundled lines: approx. 65%
Cable broadband: DOCSIS coaxial cable-based access technology	UPC, LIWEST, Salzburg AG, Kabelsignal, B.net, Teleport, Cablecom	approx. 50%
Mobile broadband: UMTS/HSPA/LTE access technology in mobile networks	A1 Telekom (including bob, aonFlex), T-Mobile (including tele.ring), Orange (including yesss!), Hutchison	approx. 95%

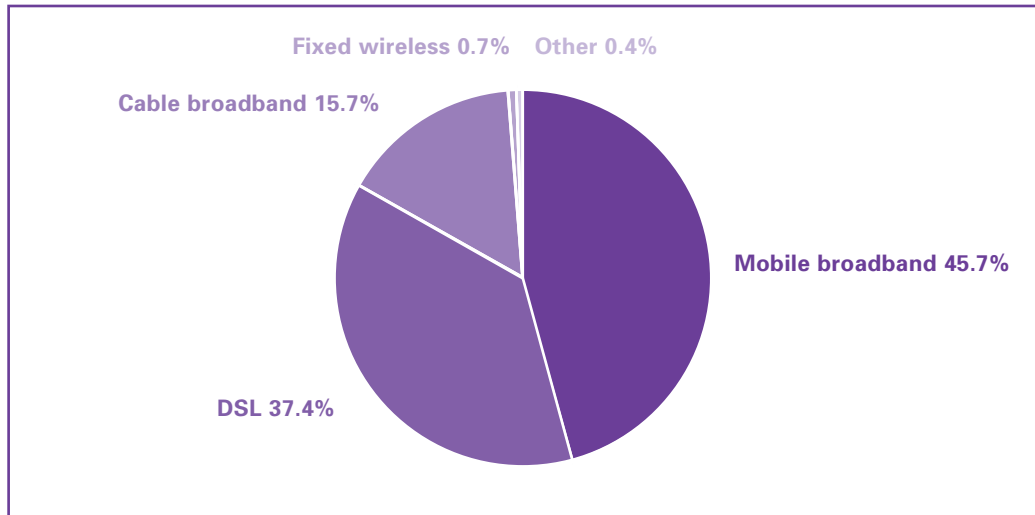
Source: RTR

Taken together, other broadband technologies such as wireless networks (W-LAN/WiFi/WiMAX), PLC (power line communications), fibre optics (FTTH) and satellite accounted for an overall share of approximately 1% of all broadband connections in Austria. In this context, however, it is important to emphasise the importance of FTTH, as further developments can be expected in this area in the coming years (see Section 10.2.4.5).

Based on the number of active lines/connections, Figure 46 shows the relative shares of the various access technologies at the end of 2010. Mobile broadband includes all connections in which at least 250 MB are included in the monthly base fee or, in the case of prepaid cards, through which at least 750 MB were downloaded in the relevant quarter. The share of mobile broadband connections has now surpassed DSL and cable broadband by a substantial margin. These figures also include connections used as a complement to fixed broadband access as well as multiple connections in a single household.

Mobile broadband ahead of DSL

Figure 46: Share of broadband access technologies (as of December 31, 2010)



Source: RTR

Wholesale products

Alternative operators without their own access networks can rely on bitstreaming or unbundling in order to offer DSL connections

Wholesale products and services refer to those which are offered by companies for other providers on the market and which enable the provision of communications services for retail customers. The most important wholesale products for the provision of broadband Internet services for retail customers are unbundling and bitstreaming services. Both products are offered by A1 Telekom in accordance with its regulatory obligations. In 2010, A1 Telekom was also subjected to an obligation to offer "virtual unbundling" in NGA rollout areas.

- **Unbundling of the local loop (ULL):** Unbundling means that alternative operators rent their customers' local loops (or sections thereof) from A1 Telekom and offer telecommunications services on those lines using their own technical equipment. The term "local loop" refers to the copper-wire pair between the subscriber and the main distribution frame (MDF). In order to unbundle lines at one of A1 Telekom's MDFs, of which there are over 1,400, the alternative operator requires a space at the MDF where the line can be handed over (collocation space) as well as a "backhaul" connection from the MDF to the alternative operator's own network. Most unbundled lines are used to provide broadband Internet services, which are usually bundled with voice telephony services. At the end of 2010, the number of broadband lines realised by means of ULL came to approximately 240,000, or some 6% of all broadband connections and 17% of all DSL connections in Austria.
- **Virtual unbundling:** In an official decision (M 3/09) issued by the TTK on September 6, 2010 (Market for physical access to network infrastructure), A1 Telekom was subjected to the obligation to offer "virtual unbundling" in NGA rollout areas (see also Section 10.2.4.5). In contrast to physical unbundling (see above), this form of unbundling does not involve the use of the copper-wire pair itself, but a service which allows alternative operators to offer

the same retail products as they can in physical unbundling.⁸ This product is a substitute for physical unbundling in cases where the latter is no longer technically or economically feasible for the alternative operator. A1 Telekom published a reference offer for virtual unbundling in early 2011.

- **Bitstream access:** In this arrangement, a data stream (bitstream) is handed over to the wholesale customer at a higher level in the network (e.g. at one of A1 Telekom's nine points of interconnection). This requires lower investments on the part of alternative operators than in the case of unbundling, but it also imposes greater limitations with regard to pricing and product design. Bitstream access for the provision of broadband access for business customers is offered by A1 Telekom on the basis of its regulatory obligations⁹ and by some alternative operators (unbundling companies, cable network operators). At the end of 2010, A1 Telekom bitstream access was used to provide approximately 45,500 broadband connections.

10.2.4.3 Development of retail markets

In line with RTR's market definitions from the year 2009,¹⁰ it is necessary to distinguish between the market for residential customers, which includes DSL as well as cable and mobile broadband access, and the market for business customers, which includes DSL access only. Whereas the TKK determined on November 15, 2010 (Procedure M 1/10) that A1 Telekom possesses significant market power on the wholesale broadband market for the provision of access for non-residential customers and thus imposed specific obligations (especially the provision of bitstream access products), the regulatory measures were abolished on the residential market. However, the depiction of the development of retail markets in 2010 (see below) cannot be subdivided into residential and business customers, as the corresponding data for this period of time are not available at this level. Therefore, it is only possible to present the development of the overall number of connections. A majority of the connections (approximately 85%) are used by residential customers.

Figure 47 shows the development in the number of broadband connections separately for the most important transmission technologies. At the end of 2010, the total number of broadband connections came to approximately 3,745,000. This number has continued to grow substantially faster than the number of DSL and cable broadband connections. After the price reductions for mobile broadband in early 2007, the growth curves for DSL and cable broadband both saw a slight change of direction. The separate trend lines for the periods from Q1 2005 to Q4 2006 and Q1 2007 to Q3 2010 are intended to illustrate this development. The chart also shows that 2010 did not bring any major changes in the trends observed since 2007.

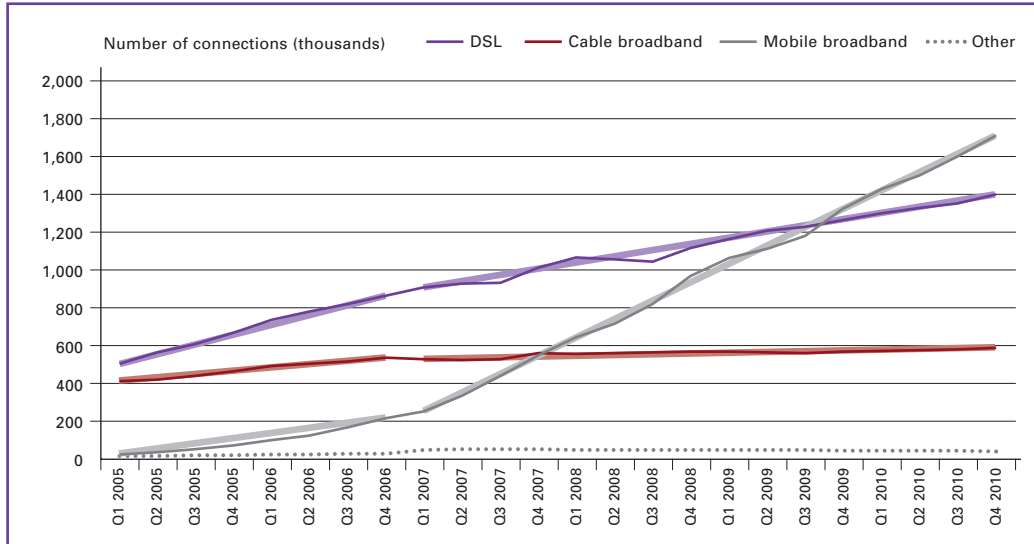
Rapid growth in mobile broadband continues

⁸ Where technically possible in the A1 Telekom network

⁹ The regulatory obligation only refers to bitstream products for the provision of lines for non-residential customers.

¹⁰ cf. RTR's delineation of the wholesale broadband access market (August 2009), available at http://www.rtr.at/de/komp/Konsultation_TKMV08/Begleittext_zur_Novelle_der_TKMV_2008.pdf (in German).

Figure 47: Development in number of broadband connections, 2005 to 2010



Source: RTR

Continued competitive pressure on DSL and cable broadband

Data from the demand-side survey in January 2011 show that a majority (approximately 70%) of residential customers use mobile broadband access as a stand-alone solution, that is, as their only broadband connection. This stands in sharp contrast to the use of mobile broadband in businesses, where nearly 60% of mobile broadband connections are used as a complement to fixed broadband access.

After the major price reductions for mobile broadband in early/mid-2007 and for fixed broadband in late 2007 / early 2008, the prices of residential mobile and fixed broadband were decreased even further in 2009 and 2010. In some cases, the price remained the same, but the performance was enhanced (in terms of bandwidth or the download volume included in the contract). As a result, it can be assumed that mobile broadband exerts significant competitive pressure on fixed broadband in the residential segment.

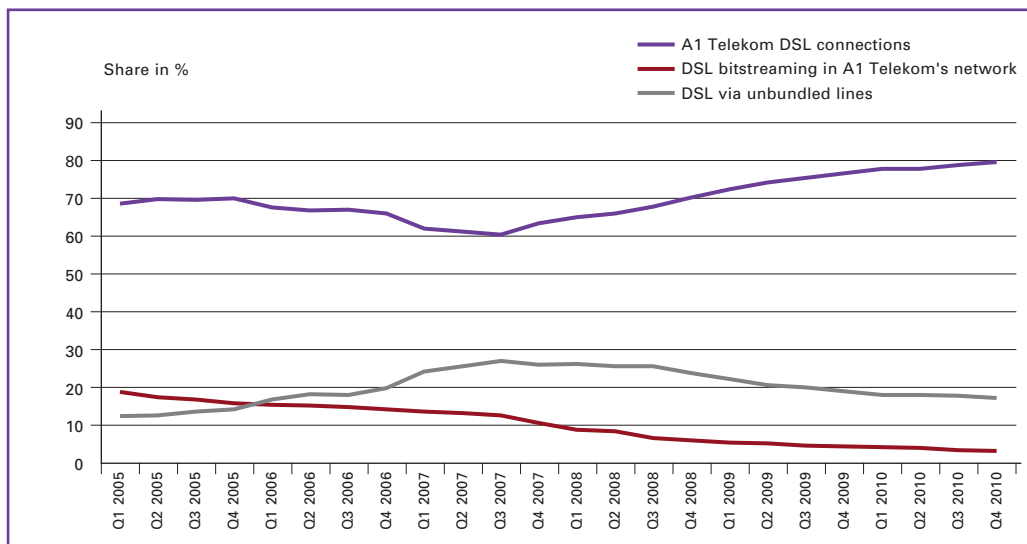
10.2.4.4 Development of wholesale markets

This section describes the development of the broadband markets for bitstream access products and for unbundled subscriber lines (see also "Wholesale products"). The discussion below focuses on the (partly) regulated wholesale products of A1 Telekom, as those products easily account for the largest share of wholesale products sold.

Unbundling and bitstream access losing market share

Figure 48 shows the share of DSL-based broadband connections realised at the retail level by A1 Telekom itself and by alternative operators using bitstream access or unbundling. While the share realised by A1 Telekom showed a declining trend until late 2007, it has risen steadily since Q4 2007 and had already recovered to 80% of DSL connections at the end of 2010.

Figure 48: Share of DSL connections based on bitstreaming and unbundling, 2005 to 2010



Source: RTR

This development can be attributed to the drastic price reductions introduced by A1 Telekom in late 2007, which themselves were a response to the price reductions for mobile broadband. Although the wholesale charges for bitstream access and unbundled lines were also reduced substantially, overall it has become significantly more difficult for alternative operators using those products to undersell A1 Telekom, cable network operators and mobile broadband providers to an extent that allows substantial growth. As a result, the number of unbundled lines and bitstream connections declined in 2008 and 2009. Although this number also fell in 2010, the number of unbundled lines largely remained stable over the year.


However, these developments cannot necessarily be equated to a decrease in competition on the retail broadband market. As discussed in the previous section, the prices of DSL lines for residential customers (including those of A1 Telekom) continued to drop in 2010. This can mainly be attributed to competitive pressure from operators who are not dependent on A1 Telekom's wholesale products (i.e. cable network operators and especially mobile operators).

10.2.4.5 Developments in the NGA rollout

"Next generation access" (NGA) refers to the rollout of fibre optic networks to the end-user. In this context, there are various options in which the fibre optic cable might be laid all the way to the customer (fibre to the home, or FTTH) or where the last section of the line might still rely on the existing copper-wire pair (fibre to the cabinet [FTTC] and fibre to the building [FTTB]).

Available bandwidths increasing thanks to rollout of fibre optic networks and use of new transmission technologies

In 2010, A1 Telekom rolled out FTTC in the cities of Villach and Klagenfurt, where the operator now offers download bandwidths of up to 30 Mbit/s. In 2011, the company also plans to launch this technology in the 15th and 19th districts of Vienna (FTTC/B/H).



In some cases, bandwidths in cable networks were increased substantially by implementing fibre optics and the DOCSIS 3.0 transmission technology. For example, UPC already began to offer its customers bandwidths of up to 100 Mbit/s in 2009 (at first only in Vienna, later in other areas). In 2010, LIWEST, Salzburg AG, Kabelsignal and B.net followed suit with bandwidths of up to 100 Mbit/s.

Finally, a number of mobile network operators began to use HSPA+ in their networks in 2010; this technology enables transmission speeds of up to 42 Mbit/s. Several operators have also begun to test the next generation of mobile transmission technologies, referred to as LTE (Long Term Evolution, also known as 4G), with which even higher transmission speeds can be achieved. In order to realise these higher data transfer rates, however, it is necessary to connect base stations ("antennas") using fibre optic cables. Moreover, the bandwidth that can actually be attained in mobile networks will always depend on the number of (simultaneous) users in a radio cell.

10.2.5 Leased lines

10.2.5.1 Introduction

Leased lines are exclusive lines for data transmission

Leased lines refer to symmetrical, bidirectional point-to-point connections which provide transparent transmission capacity between two network termination points located in Austria, but without allowing on-demand switching. The user does not have individual control capabilities; the data are 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. Leased lines can be realised partly or entirely using radio links, copper-wire pairs, coaxial and fibre cables.

Leased lines required mainly by communications service providers, network operators and businesses

Many communications services and other business activities (e.g. banking or logistics services) would not be possible without leased lines. Communications service providers and network operators which do not have (sufficient) infrastructure of their own also rely on leased lines to build or expand their networks. For example, leased lines can be used to connect mobile communications stations to a higher network level or to connect subscribers to a network. Because communications service providers and network operators use leased lines to offer retail communications services (e.g. mobile communications, Internet access), those providers and operators are referred to as wholesale customers on the market for leased lines.

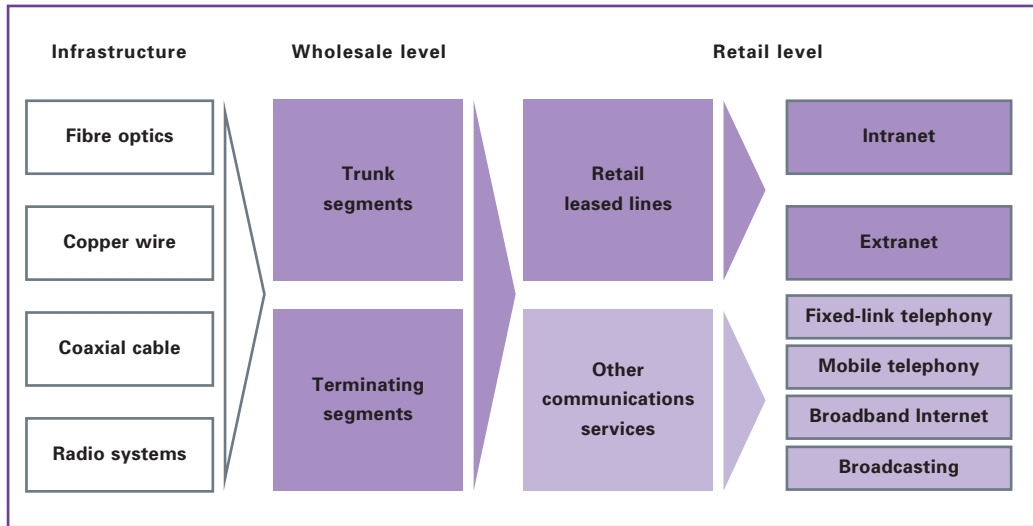
On the retail side, companies generally use leased lines to network two or more business locations, for example in order to connect a branch and headquarters (intranet) or to connect business partners, suppliers and customers (extranet).

Distinction between trunk segments and terminating segments at the wholesale level

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. At the wholesale level, it is also necessary to distinguish between trunk segments and terminating segments. 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 A1 Telekom has realised points of interconnection (POIs) to other telecommunications operators. In contrast, terminating segments refer to those leased lines (or sections thereof) at the wholesale level which are not classified as trunk segments.

The figure below illustrates the relationship between wholesale and retail leased lines as well as other communications services.

Figure 49: Levels of value creation in leased lines



Source: RTR

10.2.5.2 Market data

Market participants

Table 35 lists the largest providers in the leased line sector (in terms of revenues) and indicates the markets on which those companies operate.

Table 35: Largest providers on the leased line markets

Company	Market for retail leased lines	Market for trunk segments	Market for terminating segments
A1 Telekom	■	■	■
Tele2	■	■	■
COLT	■	■	■
EVN		■	■
Salzburg AG	■		■
Elektrizitätswerk Wels	■	■	■
Energie AG Oberösterreich		■	■
Vorarlberger Kraftwerke AG	■		■
Wienstrom			■

■ Operator is active on the market.

Source: RTR

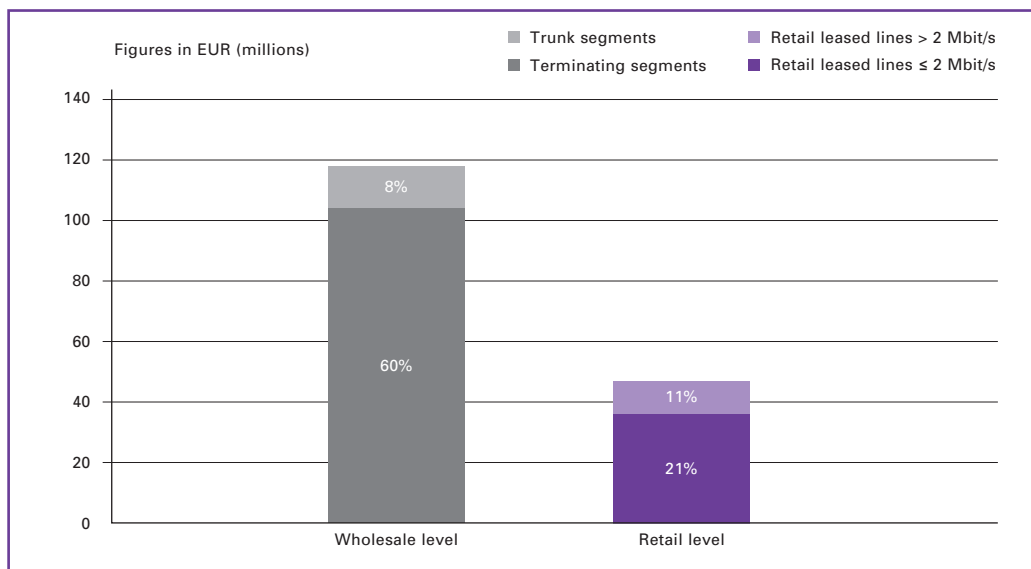
A total of 39 companies serve the national market for leased lines in Austria, and A1 Telekom is by far the largest provider on the market. Table 35 shows that many of the largest companies operate on both the retail and wholesale leased line markets, albeit to different degrees (not shown).

Market volume

Highest demand generated at the wholesale level

Figure 50 shows the revenues generated by national leased lines of various types in the year 2010. Most of the revenues from national leased lines are still generated at the wholesale level, in particular by terminating segments (60%). The retail market accounts for 32% of 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. 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 50: Revenues by area in 2010



Source: RTR







11. RTR's activities as a competence centre

11.1 Media Division

11.1.1 Research Institute for Electronic Mass Media Law (REM)

The Research Institute for Electronic Mass Media Law (*Forschungsinstitut für das Recht der elektronischen Massenmedien*, or REM), which was founded in early 2005, continued its efforts in academic research on electronic mass media law at the national and international level in 2010.

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), Prof. Michael Holoubek (Vienna University of Economics and Business), Alfred Grinschgl (RTR), Hans Peter Lehofer (Austrian Administrative Court), Michael Ogris (KommAustria) and Matthias Traimer (Austrian Federal Chancellery).

Each year, the association organises the Austrian Broadcasting Forum in order to promote the exchange of ideas between academics, researchers and practitioners. In the fall of 2010, the institute held the Sixth Austrian Broadcasting Forum, which was entitled "Independence of the Media" and dealt with various perspectives on this highly topical subject throughout Europe. The topic was addressed in terms of its sociological significance and from the perspective of national law, fundamental rights, labour law and Community law. The participants also discussed issues related to the independence of media players at numerous conceivable levels.

Fall 2010: Sixth Austrian Broadcasting Forum

In addition, the REM also produces a publication series on the topics discussed at each year's Broadcasting Forum. In 2010, the institute published its sixth volume of conference proceedings, which was devoted to "Public Value in Broadcasting Law," the topic of the Fifth Austrian Broadcasting Forum.

11.1.2 Scientific studies commissioned by RTR

For information on the studies commissioned in RTR's activities as a competence centre, please refer to Sections 11.4 and 11.5.

11.2 Telecommunications and Postal Services Division

11.2.1 Information and communications technologies (ICTs)

ICT competence centre

KIG established by Austrian Council of Ministers on February 9, 2010

On February 9, 2010, the Internet Society Competence Centre (*Kompetenzzentrum Internetgesellschaft*, or KIG) was established on the basis of a declaration of the Austrian Council of Ministers. The KIG comprises the Board of Directors and the General Assembly. The Board of Directors includes two representatives each from the Federal Chancellery (BKA), the Federal Ministry of Finance (BMF), the Federal Ministry of Transport, Innovation and Technology (BMVIT), the Federal Ministry of Economy, Family and Youth (BMWFJ), RTR and the Austrian Internet Initiative; each representative is appointed for a term of two years. The representatives of federal ministries are voting members of the board, while the other members act in an advisory capacity.

The KIG's General Assembly includes the members of the board as well as representatives from all other federal ministries, Austria's social partnership institutions, as well as additional representatives from science and research as well as the business world. The General Assembly convenes twice per year.

RTR is responsible for providing administrative support and managing the operations of the KIG.

Four key objectives of the KIG


The four main objectives of this competence centre are as follows:

- to position Austria among the top ICT countries in the world;
- to increase broadband penetration and usage;
- to promote an understanding of the Internet as an opportunity for all people;
- to coordinate ICT policy and to promote the inclusion and implementation of research results.

NRI measures a country's readiness for ICTs

In order to pursue these objectives at the operational level and to measure progress for Austria, the World Economic Forum's Networked Readiness Index (NRI) was defined as a benchmark for these activities. This index measures the readiness of countries to exploit the opportunities offered by ICTs. The first objective listed above was quantified in such a way that a certain rank in the index is to be attained within a specified period of time. Austria is currently in 20th place worldwide in the NRI ranking. The other objectives are also covered by the index, meaning that it can serve as a useful benchmark for the attainment of those objectives. The KIG's Board of Directors is aware that Austria's efforts in this area must go far beyond the scope of the NRI, as international frameworks such as the European Commission's Digital Agenda also have to be taken into account.

On the basis of previously launched ICT initiatives such as the ICT Master Plan, the ICT Task Force and the Austrian Internet Initiative, a large number of measures have been developed



which experts considered sensible at the respective time. Together with the plans in individual areas, these measures now form the basis for those projects which were ultimately prioritised for implementation. As the KIG itself currently does not have a budget dedicated to those projects at its disposal, the group can only perform its coordinating function in agreement with the stakeholders who provide financing.

In the second half of the year 2010, RTR cooperated with the KIG's Board of Directors in developing the first catalogue of priorities, which comprises 14 measures. In late 2010, the General Assembly held its founding session and dealt with this catalogue of measures. The KIG plans to present the catalogue to the Austrian Council of Ministers in early 2011. In this context, the KIG is focusing on the implementation of these measures, taking on the role of an enabler and bringing the relevant stakeholders to the table. The foundation for these activities was laid in 2010, and 2011 will be characterised by implementation work.

First catalogue of priorities already developed

11.3 The Review

Implementation of the EU telecoms package

The EU telecoms package was published in the Official Journal of the European Union on December 18, 2009 and includes the following pieces of legislation:

Review implementation in progress

1. Directive 2009/140/EC of 25 November 2009¹¹ (known as the Better Regulation Directive) amending the Framework, Access and Authorisation Directives;
2. Directive 2009/136/EC of 25 November 2009¹² (known as the Citizens' Rights Directive), which contains amendments to the Universal Service Directive and the Directive on Privacy and Electronic Communications;
3. Regulation (EC) No. 1211/2009 of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office.¹³

The Better Regulation and Citizens' Rights Directives are to be implemented in national legislation by May 25, 2011. In Austria, the directives are being implemented under the auspices of the Federal Ministry of Transport, Innovation and Technology (BMVIT).

RTR has examined the new regulatory provisions in the EU telecoms package in detail and is providing support for the BMVIT in the implementation process, which will come in the form of an amendment to the TKG 2003.

¹¹ OJ L 337 of 18 December 2009, p. 37.

¹² OJ L 337 of 18 December 2009, p. 11.

¹³ OJ L 337 of 18 December 2009, p. 1.

BEREC

BEREC already active

The Body of European Regulators for Electronic Communications (BEREC) was officially established as of January 7, 2010 and held its first meeting in late January with John Doherty as its Chair. BEREC was set up to replace the previously existing European Regulators Group (ERG).

The BEREC Office is currently being set up in Riga, Latvia, but has not yet commenced operations. Ando Rehemaa, former head of the Estonian regulatory authority, has been appointed Administrative Manager of the BEREC Office. Further positions will continue to be filled into the year 2011.

However, BEREC is already active, is fulfilling its assigned duties, and has already published several statements and conducted public consultations.¹⁴

BEREC's work programme includes the following specific topics:

- Improvement of harmonisation among EU member states (e.g. through the consistent application of remedies, preparation of best practices and reports, implementation of European Commission recommendations such as those on NGA and fixed/mobile termination);
- Setup of BEREC;
- Implementation of the revised legal framework;
- Handling of emerging challenges such as the development of broadband, network neutrality and developments in spectrum management.

In particular, BEREC has played a key role in the implementation of the EU legal framework from 2009, where it is necessary to ensure consistent implementation of directives and European Commission recommendations throughout the European Union. In this way, it will be possible to ensure that consumers enjoy the same level of protection in all EU countries and that companies can provide their services and compete on a uniform basis.

At the last BEREC plenary session in December 2010, Georg Serentschy was elected BEREC Chair for the year 2012 (and thus Vice-Chair for the years 2011 and 2013).

¹⁴ For further information, please refer to BEREC's official web site at <http://berec.europa.eu>

11.4 Digital dividend

Utilisation for mobile communications promises greatest overall benefit


Thanks to the digitisation of broadcasting transmission platforms, it has been possible to make better use of the available frequency spectrum and network capacity. The term "digital dividend" refers to the additional frequency spectrum which becomes available in a completely digital environment once the frequency needs of previously existing broadcasting services have been covered. In the autumn of 2009, the Austrian Federal Chancellery and the Ministry of Transport, Innovation and Technology requested that RTR have an evaluation prepared on various potential uses of the digital dividend in Austria.

At the end of April 2010, the study commissioned by RTR on the use of the digital dividend in Austria was completed and delivered by the working group consisting of AB Consulting (Arne Börnsen) and Infront Consulting & Management GmbH (Hamburg). In preparing the study, the authors (Arne Börnsen, Tim Braulke, Prof. Jörn Kruse and Prof. Michael Latzer) bore in mind the overarching goal of optimising the attainment of public-sector objectives in the convergent communications sector, that is, the goal of achieving as many public-sector objectives in the communications sector as possible. For this purpose, the study examines four usage scenarios for the digital dividend: use of the upper band of the digital dividend for broadcasting; use of the upper band for mobile broadband; shared use for broadcasting and mobile broadband; and a postponement of the decision ("wait and see" approach).

*AB Consulting and
Infront Consulting &
Management GmbH
commissioned to
conduct a study*

In their 160-page analysis, the authors show that the incremental benefit of the upper band of the digital dividend to the population and businesses in Austria would be considered especially high if it were used completely for mobile broadband, especially for comprehensive coverage of rural areas. According to the study, the frequencies in the digital dividend in the 800 MHz range are extraordinarily well suited for this purpose thanks to their especially favourable propagation characteristics and due to the possibility of sharing 900 MHz GSM network sites. However, if the digital dividend is designated for mobile broadband use, it would be necessary to initiate a number of accompanying measures in order to minimise potential adverse effects on cable television networks, PMSE applications and terrestrial broadcasting and to ensure timely coverage in rural areas. The study can be retrieved from <http://www.rtr.at/de/komp/DigitaleDividende> (in German).

The Austrian federal government acted on the results of the study and defined the future procedure with regard to the allocation of the upper band of the digital dividend by way of a resolution adopted by the Austrian Council of Ministers in July 2010. Based on the objective of using the upper band of the digital dividend for mobile broadband in Austria, it was then necessary to develop specific terms of use for the frequencies according to factors such as the utilisation of frequencies (especially the analogue/digital changeover in television broadcasting) in neighbouring countries, the spectrum needs for auxiliary broadcasting services (especially wireless microphones for various types of cultural events), compatibility with terminal devices on cable television networks and technical decisions made at the European level with regard to the use of the digital dividend.



Another mandatory legal prerequisite for the TKK's allocation of the frequencies suited for mobile broadband services to telecommunications service providers was an amendment to the Frequency Utilisation Ordinance by the Federal Ministry of Transport, Innovation and Technology. The amendment was adopted at the end of February 2011 (Federal Law Gazette II No. 68/2011). RTR then carried out a public consultation on the use of the digital dividend in Austria. The allocation procedure can be expected in 2012.

11.5 Public relations and service

The material work of KommAustria, the TKK, the PCK and RTR as well as the organisation's activities as a competence centre are a topic of great interest to the public. In order to ensure transparency and to meet the public's information requirements, the regulatory authority undertook numerous public relations activities in the reporting period.

Web presence

*<http://www.rtr.at>
comprised over
9,000 pages as of
December 31, 2010*

One of the key media used in the regulatory authority's public relations work is its web site (<http://www.rtr.at>), which comprises over 9,000 pages and on which RTR provides a comprehensive description of the regulatory authorities' activities as well as the development of markets in the fields of media, telecommunications, electronic signatures, grant funds and postal services. Decisions and information on regulatory activities which require publication are regularly published on RTR's web site. Moreover, the site offers a wide range of services, such as telephone number queries, a transmitter map, the directory of communications service providers pursuant to Art. 15 TKG 2003 and an online complaint submission form for value-added services. In 2010, RTR also launched a new information service for consumers in which the regulatory authority publishes brief videos on topics relevant to consumer protection.

Publications

RTR's numerous publications are another major focus area of the authority's public relations work.

The annual Communications Report includes activity reports for RTR, the Austrian Digitisation Fund, the Austrian Television Fund, the Private Broadcasting Fund as well as the Non-Commercial Broadcasting Fund in accordance with their legal reporting obligations. The Communications Report also documents the authority's regulatory work and provides an overview of the development of the telecommunications, postal services and media markets.

The conciliation body's activity report provides an overview of key challenges and developments in conciliation for retail consumers and includes typical and atypical examples of conciliation cases.

*RTR publication
series: Four studies
published*

In addition, four new volumes dealing with media-related topics were added to RTR's publication series in the year under review; these publications were studies composed by external experts.

Table 36: Titles in RTR's publication series in 2010

Volume	Title
1/2010	Public value and private broadcasting in Austria
2/2010	TV brands in Austria: A survey of economic and psychological brand value
3/2010	Television programming analysis – General-interest channels in Austria in 2009
4/2010	Multilingual and local: Non-commercial broadcasting and public value in Austria

Source: RTR

RTR's regular media and telecommunications newsletter (*RTR Aktuell*) provides timely information on regulatory decisions and international topics of interest from both divisions at RTR.

RTR's Telecom Monitor, a quarterly market overview based on data collected by RTR, has attracted an especially high level of interest. The Telecom Monitor includes market data on fixed-link networks, leased lines, mobile communications and broadband as well as business indicators.

Events

The regulatory authority also conveys relevant topics to market participants and a broader audience at both the national and international level through the presentation activities of RTR's managing directors and selected employees, and by organising numerous specialist conferences, discussion forums and workshops which serve to enhance the participants' expert knowledge and to promote active discussions of future developments.

With regard to the Media Division, it is especially worth mentioning the Sixth Austrian Broadcasting Forum organised by the REM on the "Independence of the Media" as well as two information events held by the Private Broadcasting Fund and the Non-Commercial Broadcasting Fund in the year under review.

In May 2010, RTR invited experts to a specialist event entitled "Margin Squeeze – Questions from Practice and New Challenges" with a view to examining possible ways of exchanging ideas and launching a discussion process on this topic.

For the 11th time, the Salzburg Telecommunications Forum was organised by the Telecommunications and Postal Services Division on the topic of rolling out high-speed infrastructure.

In addition, it is worth noting the Eastern Partnership (EaP) Meeting, which was attended by high-ranking representatives of telecommunications regulators from all over Europe. The event was organised jointly by the European Commission and RTR in order to promote the exchange of ideas and experiences between EU regulators and their counterparts in the countries belonging to the EU's Eastern Partnership.

In November 2010, RTR held a workshop entitled "Investment and risk in the NGA rollout" with renowned speakers from the European Commission, the Dutch regulatory authority OPTA and the ISK in Vienna.

RTR participates in public fair for the first time

For the first time, the regulatory authority set up an information stand at the *Senior aktuell* exhibition in Vienna for people in the 50+ age group. At the stand, RTR employees provided more than 300 visitors with competent advice and information, mainly regarding consumer protection topics.

Management of inquiries

Volume of inquiries rises slightly once again

Every day, RTR receives a large number of inquiries in writing and by telephone, most of which are answered individually. In the year under review, more than 3,400 written inquiries were sent to the e-mail address rtr@rtr.at. RTR makes every effort to handle these requests quickly and efficiently.

Table 37: Number of inquiries sent to rtr@rtr.at, 2008 to 2010

Year	2008	2009	2010
Number of inquiries	3,872	3,277	3,406

Source: RTR

In terms of content, the inquiries cover the entire scope of the regulatory authorities' activities, although the bulk of inquiries involve retail consumer concerns. In addition to answering written inquiries, RTR's experts frequently provided advice by telephone.

In addition, RTR's call centre provides information via the 0810 511 811 hotline. The call centre mainly handles initial consultations for retail consumers, for example on the topic of objections to telephone bills, conciliation procedures, etc. In 2010, the RTR call centre received over 5,800 calls, which represents a slight increase compared to the number of telephone inquiries received in 2009.

Table 38: Number of call centre inquiries, 2008 to 2010

Year	2008	2009	2010
Number of calls	6,953	5,634	5,818

Source: RTR

*Call centre inquiries
up 3.3%*

In addition, the regulatory authority responded to some 25 questionnaires in the year 2010. These questionnaires generally referred to highly extensive surveys conducted by institutions such as the OECD, the International Telecommunication Union (ITU) and the European Commission.

Media relations

In order to provide the public with timely and accurate information on the authorities' activities as well as their regulatory and legal decisions, RTR prepared 54 press releases and organised nine press conferences in 2010, in addition to answering numerous press inquiries and holding individual interviews with media representatives.

*54 press releases
and nine press
conferences*



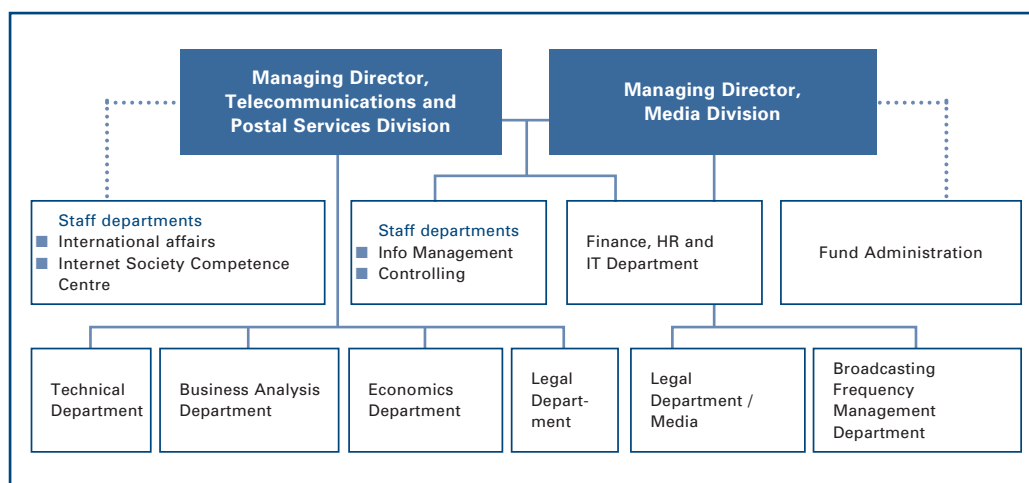
12. The company

The Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR-GmbH) was established under Austrian law as the successor to Telekom-Control GmbH in 2001. The purpose of the authority is to regulate the Austrian broadcasting and telecommunications markets (and now also the market for postal services) and to ensure competition on those markets. The duties of the regulatory authority are set forth in the KommAustria Act, the Telecommunications Act as well as the Postal Services Act and Postal Market Act. On the one hand, the authority is responsible for performing its own official duties, and on the other hand the organisation is responsible for providing operational support for the relevant authorities, namely KommAustria, the Telekom-Control-Kommission (TKK) and the Post-Control-Kommission (PCK). RTR is also responsible for awarding grants from the Austrian Digitisation Fund and the Austrian Television Fund, and – since the fall of 2009 – from the Non-Commercial Broadcasting Fund and the Private Broadcasting Fund. In October 2010, RTR was also placed in charge of administering press and journalism subsidies.


As a private limited company wholly owned by the Austrian federal government, RTR is headed by two managing directors and is subdivided into two specialist divisions. During the reporting period, Alfred Grinschgl served as managing director of the Media Division, while Georg Serentschy was in charge of the Telecommunications and Postal Services Division. With regard to the specialist matters handled by these divisions, the managing directors run their respective units separately; in all other matters, decisions are made jointly by both directors.

RTR's organisational structure is depicted in the chart below.

Figure 51: RTR organisation chart



Source: RTR



The regulatory authority is funded from various sources according to the relevant areas of activity. Market participants are required by law to contribute part of the financing for the regulatory authority's activities. In addition, the regulatory authority also receives funds from the Austrian federal budget, in particular to finance activities which predominantly serve public interests.

12.1 Staff development

On average, the company had a total of 95.044 full-time equivalents (FTEs) based on a contract of employment with RTR in 2010, meaning that the company's average head count in 2010 increased by 1.959 FTEs compared to the previous year. As of December 31, 2010, RTR's staff comprised 98.000 full-time equivalents (FTEs), 2.046 FTEs less than one year earlier.

In the field of telecoms regulation, RTR reduced its average head count by 3.357 FTEs compared to the previous year's average. This development can primarily be attributed to the lower number of complaint-based procedures and duties under Art. 8 TKG 2003 (Rights of joint use) as well as the postponement of cooperation in the European Board of Regulators (BEREC) to the year 2011.

In the field of postal services regulation, it was necessary to continue expanding the regulatory authority in preparation for the full liberalisation of the postal services market in 2011. In this area of activity, RTR's head count grew by 2.724 FTEs compared to the 2009 average. In some cases, it was possible to shift employees from telecommunications to postal services regulation.

In total, the overall head count in the Telecommunications and Postal Services Division was reduced by 0.632 FTEs compared to the previous year.

The amendment to the KommAustria Act (KOG) which went into effect on October 1, 2010 had an effect on staff numbers in the Media Division, especially in the fourth quarter of 2010. The Media Division was able to handle the additional duties assigned to RTR under the amendment mentioned above with an average year-on-year increase of 0.989 FTEs.

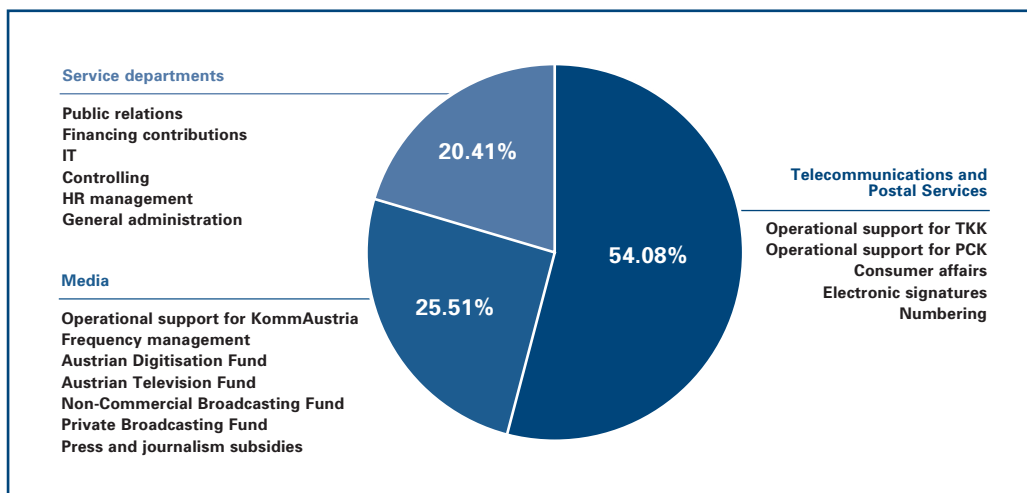
In addition, the number of staff dedicated to the Non-Commercial and Private Broadcasting Funds was adapted to the new requirements. As these funds will carry larger endowments in the coming years, additional staffing measures are also planned. As a number of key projects were completed, it was possible to make slight reductions in staff in the Digitisation Fund.

Across the entire Media Division, the average increase in head count came to 2.023 FTEs in the year 2010.

In RTR's Service Division, the average number of FTEs was increased by 0.568 FTEs compared to the previous year.

Figure 52 shows the percentage distribution of RTR's personnel across the Service, Media and Telecommunications and Postal Services Divisions.

Figure 52: Staff structure and size as of December 31, 2010



Source: RTR

Despite a large number of different cost categories, the company's tailored timesheet system and project-based work tracking system ensure a clear assignment of individual work activities to the relevant areas in cost accounting. In cases where an employee works for different cost centres in different divisions of the organisation, services can be exchanged between the divisions on the basis of the current hourly rates. These measures ensure that RTR's personnel resources are used efficiently across the entire company.

12.2 RTR's financial statements for 2010

The annual accounts presented below, which were prepared according to the specifications of the Austrian Commercial Code (UGB) in its current version, have been given an unqualified audit certificate by the auditing firm LeitnerLeitner for the 2010 business year (January 1 to December 31, 2010).

The company's revenues consist of financing contributions from ORF, from broadcasters and media service providers established in Austria (Art. 35 Par. 2 KOG) and from the operators/providers of public communications networks and services (Art. 34 Par. 2 KOG), allocations from Austria's federal budget (Art. 22 Par. 9, Art. 26 Par. 3, Art. 31 Par. 5, Art. 34 Par. 1, Art. 34a Par. 1 and Art. 35 Par. 1 KOG), from fees collected (Art. 13 Par. 4 SigG) as well as payments from the federal government for activities related to postal market regulation (2005 Amendment to the Postal Services Act) and, until September 30, 2010, for RTR's activities as the supervisory authority for collecting societies (Art. 28 VerwGesG). The latter revenues were raised by means of financing contributions which the supervisory authority received from collecting societies (Art. 7 Par. 5 VerwGesG).

Table 39: Income statement for the 2010 business year (January 1, 2010 to December 31, 2010)

	2010		2009	
		EUR		EUR (thousands)
1. Net revenues		10,825,700.13		10,674
2. Other operating income				
a) Income from disposal of fixed assets	291.59		8	
b) Income from reversal of provisions	14,311.51		25	
c) Other	242,029.00	256,632.10	60	93
3. Personnel expenses				
a) Salaries	-5,750,814.88		-5,651	
b) Severance payment expenses	-94,327.20		-141	
c) Pension insurance expenses	-179,157.54		-178	
d) Cost of statutory social insurance contributions as well as remuneration-dependent charges and mandatory contributions	-1,429,123.99		-1,390	
e) Voluntary benefit expenses	-100,872.12	-7,554,295.73	-93	-7,452
4. Depreciation: Intangible fixed assets and property, plant and equipment		-232,397.10		-243
5. Other operating expenses				
a) Other	-3,372,697.18	-3,372,697.18	-3,265	-3,265
6. Operating result (lines 1 to 5)		-77,057.78		-193
7. Income from other securities held as financial assets		79,751.00		105
8. Miscellaneous interest and similar income		19,879.72		43
9. Expenses from financial assets				
a) Depreciation of financial assets	-10,694.44	-10,694.44	-25	-25
10. Financial result (lines 7 to 9)		88,936.28		123
11. Result from ordinary activities (= net annual profit/loss)		11,878.50		-70
12. Reversal of capital reserves				
a) Reversal of appropriated capital reserves		30,815.16		12
13. Profit for current year		42,693.66		-58
14. Loss carried forward		-2,375.84		56
15. Accumulated profit		40,317.82		-2

Source: RTR

The company closed the 2010 business year with a surplus of approximately EUR 40,317.82 resulting from duties assigned under the Austrian Postal Services Act 1997 (2005 Amendment to the Postal Services Act). The surplus will be deducted from the federal budget allocation in the 2011 business year.

Compared to the previous years, the development of RTR's expenditures is balanced.

Industry-specific expenses in RTR's specialist divisions

RTR's financial statements do not contain a breakdown of resource allocations by division. For this reason, Table 40 below provides a breakdown of the main items in RTR's income statement for the Telecommunications and Postal Services Division as well as the Media Division. In the business year 2010, income and expenses were distributed as follows:

Table 40: RTR income and expenses by division

Figures in EUR (thousands)	Telecommunications and Postal Services	Media	Total
Net revenues	7,015	3,811	10,826
Other operating revenues	236	20	256
Personnel expenses	-5,292	-2,262	-7,554
Depreciation	-160	-72	-232
Other operating expenses	-1,846	-1,527	-3,373
Operating result	-47	-30	-77
Financial result	59	30	89
Result from ordinary activities	12	0	12
Reversal of capital reserves	31	0	31
Loss carried forward	-2	0	-2
Accumulated profit/loss	41	0	41

Source: RTR. Differences in sums are due to rounding.

The table below breaks the company's income and expenses down into individual areas of activity within the Telecommunications and Postal Services Division (i.e. telecommunications regulation, electronic signatures and postal services regulation) and the Media Division (i.e. media regulation, Austrian Digitisation Fund, Austrian Television Fund, Private and Non-Commercial Broadcasting Funds, and supervisory activities for collecting societies).

Table 41: Income statement broken down by specific area of activity in 2010

Figures in EUR	RTR total	Telecom regulation	Electronic signatures
1. Net revenues	10,825,700.13	6,308,028.21	104,457.07
2. Other operating income	256,632.10	203,593.19	31,143.14
3. Personnel expenses	-7,554,295.73	-4,791,961.42	-99,038.16
4. Depreciation of intangible fixed assets and property, plant and equipment	-232,397.10	-135,274.13	-11,183.76
5. Other operating expenses	-3,372,697.18	-1,638,369.97	-57,355.79
6. Subtotal of items 1 to 5	-77,057.78	-53,984.12	-31,977.50
7. Income from other securities held as financial assets	79,751.00	48,522.84	916.10
8. Miscellaneous interest and similar income	19,879.72	11,614.25	366.00
9. Expenses from financial assets	-10,694.44	-6,152.97	-119.76
10. Sub-total of items 7 to 9	88,936.28	53,984.12	1,162.34
11. Result from ordinary activities (= net annual profit/loss)	11,878.50	0.00	-30,815.16
12. Reversal of capital reserves	30,815.16	0.00	30,815.16
13. Profit for current year	42,693.66	0.00	0.00
14. Loss carried forward from previous year	-2,375.84	0.00	0.00
15. Accumulated profit	40,317.82	0.00	0.00

Figures in EUR	Postal regulation	Media regulation	Austrian Digitalisation Fund
1. Net revenues	602,103.73	2,739,384.69	234,907.97
2. Other operating income	1,759.24	14,936.92	877.72
3. Personnel expenses	-401,499.09	-1,471,541.63	-177,051.59
4. Depreciation of intangible fixed assets and property, plant and equipment	-13,541.92	-54,547.56	-4,979.53
5. Other operating expenses	-150,319.34	-1,248,917.43	-55,613.76
6. Subtotal of items 1 to 5	38,502.62	-20,685.01	-1,859.19
7. Income from other securities held as financial assets	3,740.47	18,699.67	1,665.06
8. Miscellaneous interest and similar income	1,023.74	4,816.94	391.96
9. Expenses from financial assets	-573.17	-2,831.60	-197.83
10. Sub-total of items 7 to 9	4,191.04	20,685.01	1,859.19
11. Result from ordinary activities (= net annual profit)	42,693.66	0.00	0.00
12. Reversal of capital reserves	0.00	0.00	0.00
13. Profit for current year	42,693.66	0.00	0.00
14. Loss carried forward from previous year	-2,375.84	0.00	0.00
15. Accumulated profit	40,317.82	0.00	0.00

Figures in EUR	Austrian Television Fund	Non-Commercial and Private Broadcasting Funds	Supervision of collecting societies ¹⁵
1. Net revenues	570,320.13	191,781.48	74,716.85
2. Other operating income	2,292.44	744.65	1,284.80
3. Personnel expenses	-425,407.97	-157,542.05	-30,253.82
4. Depreciation of intangible fixed assets and property, plant and equipment	-7,032.67	-2,434.63	-3,402.90
5. Other operating expenses	-145,312.63	-34,306.89	-42,501.37
6. Subtotal of items 1 to 5	-5,140.70	-1,757.44	-156.44
7. Income from other securities held as financial assets	4,630.49	1,576.37	0.00
8. Miscellaneous interest and similar income	1,107.97	402.42	156.44
9. Expenses from financial assets	-597.76	-221.35	0.00
10. Sub-total of items 7 to 9	5,140.70	1,757.44	156.44
11. Result from ordinary activities (= net annual profit/loss)	0.00	0.00	0.00
12. Reversal of capital reserves	0.00	0.00	0.00
13. Profit for current year	0.00	0.00	0.00
14. Loss carried forward from previous year	0.00	0.00	0.00
15. Accumulated profit	0.00	0.00	0.00

Source: RTR

¹⁵ RTR settled the accounts of the supervisory authority for collecting societies as of September 30, 2010. Under the amended KommAustria Act, this authority was transferred to the Austrian Ministry of Justice from the fourth quarter of 2010 onward.

Table 42a: Balance sheet as of December 31, 2010 – Assets

	December 31, 2010		December 31, 2009	
	EUR		EUR (thousands)	
A. Fixed assets				
I. Intangible assets				
1. Rights	72,972.53		130	
2. Prepayments on intangible assets	0.00	72,972.53	13	143
II. Property, plant and equipment				
1. Buildings on third-party land	52,447.70		49	
2. Other fixed assets, furniture, fixtures and fittings	259,568.93	312,016.63	249	298
III. Financial assets				
1. Securities held as financial assets		3,321,167.30		3,327
		3,706,156.46		3,767
B. Current assets				
I. Receivables and miscellaneous assets				
1. Trade accounts receivable	755,321.15		274	
2. Other receivables and assets	136,468.83	891,789.98	18	292
II. Cash on hand and at banks, checks		2,928,978.91		3,150
		3,820,768.89		3,442
C. Prepaid expenses and deferred charges				
1. Other prepaid expenses and deferred charges		87,132.50		88
D. Trustee accounts – funds		19,978,843.14		21,001
		27,592,900.99		28,298

Source: RTR

Table 42b: Balance sheet as of December 31, 2010 – Liabilities

	December 31, 2010		December 31, 2009	
	EUR		EUR (thousands)	
A. Equity				
I. Capital stock	3,633,641.71		3,634	
II. Capital reserves				
1. Appropriated	63,908.18		95	
III. Accumulated profit	40,317.82	3,737,867.71	-2	3,726
B. Provisions				
1. Provisions for severance payments	170,600.00		148	
2. Other provisions	1,236,725.00	1,407,325.00	1,254	1,402
C. Liabilities				
1. Trade accounts payable	436,799.52		205	
2. Other accounts payable	1,988,190.50	2,424,990.02	1,872	2,077
(taxes payable: EUR 385,881.16; 2009: EUR 332,000; social security obligations: EUR 166,247.11; 2009: EUR 130,000)				
D. Trustee obligations – funds		20,022,718.26		21,093
		27,592,900.99		28,298

Source: RTR

12.3 Notes on the structure of RTR financing

For both specialist divisions, the financing of the regulatory authority is governed by the KommAustria Act (KOG).

The Media Division is allocated funds from the federal budget in the amount of EUR 1.21 million per year (adjusted from 2012 onward), and parties subject to the financing contribution requirement under the KommAustria Act contribute a maximum of EUR 2.89 million per year (adjusted from 2012 onward).

For telecommunications regulation, the authority is allocated federal funds in the amount of EUR 2 million per year (adjusted from 2007 onward), while parties subject to the financing contribution requirement under the KommAustria Act contribute a maximum of EUR 6 million per year (adjusted from 2007 onward).

For its activities in postal regulation, the authority receives federal funds in the amount of EUR 0.20 million per year (adjusted from 2012 onward), and parties subject to the financing contribution requirement under the KommAustria Act contribute a maximum of EUR 0.55 million per year (adjusted from 2012 onward).

In an amendment to the KommAustria Act, the Austrian Digitisation Fund and the Austrian Television Fund were established at RTR at the beginning of 2004; both are to be administered by the managing director of RTR's Media Division. The Digitisation Fund is endowed with an annual budget of EUR 500,000.00, while the Television Fund receives an annual endowment of EUR 13.5 million. The funds are allocated from the federal budget, specifically from fees collected under Art. 3 Par. 1 of the Broadcasting Fees Act (RGG).

The legal bases for the funds can be found in Articles 21 to 25 KOG (Digitisation Fund) and Articles 26 to 28 KOG (Television Fund). These provisions describe the purposes of grants and contain specific stipulations as to how the funds are raised and allocated as well as the definition of guidelines for grant awards.

In another amendment to the KommAustria Act, the Non-Commercial Broadcasting Fund and the Private Broadcasting Fund were established at RTR in 2009; these funds are also administered by the managing director of RTR's Media Division. In 2010, the two funds received annual endowments of EUR 1 million and EUR 5 million, respectively. These amounts will be increased gradually to EUR 3 million and EUR 15 million in the year 2013. The funds are to be used in accordance with the relevant provisions of Austrian law (Articles 29 to 32 KOG).

The expenses incurred in the administration of these funds are separated in RTR's cost accounting systems and covered by each respective fund. RTR is required to prepare annual accounts and a written report on the use of these funds and to submit them to the Federal Chancellor by June 30th each year.

When the 2006 Amendment to the Collecting Societies Act (VerwGesG 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 VerwGesG, RTR's Media Division was responsible for providing the necessary office space, including infrastructure,

in exchange for reimbursement. In order to compensate the authority for performing these duties, the federal government made 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 provided a budget in the amount of EUR 20,000.00 plus value-added tax. However, in the amendment to the KommAustria Act, the Austrian legislature decided to assign the supervision of collecting societies to the Austrian Ministry of Justice from the fourth quarter of 2010 onward.

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 of EUR 90,000.00 from the federal budget.

In the period from January 1 to December 31, 2010, RTR-GmbH incurred costs in the total amount of EUR 167,697.47 in performing the tasks assigned under the SigG. On the other hand, revenues amounted to EUR 136,882.31 (including the grant from the federal budget). The excess expenses were covered by reversing capital reserves in the amount of EUR 30,815.16.

For RTR's activities pursuant to the Postal Services Act 1997 (2005 Amendment to the Postal Services Act), the federal government allocated EUR 602,375.84 for the year 2010 and to cover losses from the year 2009. In total, RTR's costs in this area amounted to EUR 565,933.52 in the reporting period, while additional revenues came to EUR 6,523.45. The resulting profit of EUR 42,693.66 was partly offset by losses carried forward from the previous year (EUR 2,375.84). This leaves a profit of EUR 40,317.82, which will be deducted from the federal budget allocation in 2011.

The company's equity as of December 31, 2010 was as follows:

Table 43: Equity as of December 31, 2010

	EUR	EUR
Capital stock as of December 31, 2010		3,633,641.71
Capital reserves as of December 31, 2010		63,908.18
Profit from performance of duties under the Postal Services Act (January 1 to December 31, 2010)	42,693.66	
Loss from performance of duties under the Signatures Act (January 1 to December 31, 2010)	-30,815.16	
Result from ordinary activities (= net annual profit)	11,878.50	
Reversal of capital reserves	30,815.16	
Loss carried forward	-2,375.84	
Accumulated profit		40,317.82
Equity as of December 31, 2010		3,737,867.71

Source: RTR

12.4 RTR Supervisory Board

As of December 2010, the RTR Supervisory Board consisted of the following members:

Josef Halbmayr (ÖBB Holding AG),
Chairperson of the Supervisory Board;

August Reschreiter (BMVIT),
Deputy Chairperson of the Supervisory Board;

Alfred Ruzicka (BMVIT);
Matthias Traimer (Austrian Federal Chancellery);
Erhard Fürst (TKK);
Michael Ogris (KommAustria);
Brigitte Hohenecker (Member of the RTR Works Council);
Angelika Belfin (Member of the RTR Works Council);
Martin Ulbing (Member of the RTR Works Council).

With the amendment to the KommAustria Act, the RTR Works Council was enlarged by three members (Michael Ogris, Erhard Fürst, Angelika Belfin) in October 2010.











13. Appendix

13.1 Tables and figures

Tables

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13.2 Abbreviations

2G	2 nd generation (GSM)
3D	Three-dimensional
3G	3 rd generation (UMTS)

A

ABGB	General Civil Code (<i>Allgemeines Bürgerliches Gesetzbuch</i>)
ADSL	Asymmetric Digital Subscriber Line
AIM	Austrian Internet Monitor
AMD-G	Audiovisual Media Services Act (<i>Audiovisuelle Mediendienste-gesetz</i>)
ANO	Alternative network operator
ARNS	Aeronautical radio navigation service
AVG	General Administrative Procedures Act 1991 (<i>Allgemeines Verwaltungsverfahrensgesetz 1991</i>)



B

BEREC	Body of European Regulators for Electronic Communications
BGBI.	Federal Law Gazette (<i>Bundesgesetzblatt</i>)
BKA	Federal Chancellery (<i>Bundeskanzleramt</i>)
BKS	Federal Communications Senate (<i>Bundeskommunikationssenat</i>)
BMF	Federal Ministry of Finance
BMUKK	Federal Ministry for Education, Arts and Culture
BMVIT	Federal Ministry of Transport, Innovation and Technology
BMWF	Federal Ministry of Science and Research
BMWFJ	Federal Ministry of Economy, Family and Youth
B-VG	Federal Constitutional Act (<i>Bundes-Verfassungsgesetz</i>)

C

CbC	Call-by-call
CEPT	European Conference of Postal and Telecommunications Administrations (<i>Conférence Européenne des Administrations des Postes et des Télécommunications</i>)
CMS	Cryptographic Message Syntax
Coax	Coaxial cable
CoCom	Communications Committee
ComReg	Commission for Communications Regulation
CoS	Class of service
CPS	Carrier pre-selection
CSP	Certification service provider
CuP	Copper-wire pair

D

DAB	Digital Audio 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-S	Digital Video Broadcasting – Satellite
DVB-T	Digital Video Broadcasting – Terrestrial

E

EaP	Eastern Partnership
EC	European Community
ECC	Electronic Communications Committee
ECG	E-Commerce Act (<i>E-Commerce-Gesetz</i>)
EEN-V	Itemised Billing Ordinance (<i>Einzelentgeltnachweis-Verordnung</i>)
E-GovG	E-Government Act (<i>E-Government-Gesetz</i>)
EMS	Express Mail Service
ENUM	Electronic Number Mapping
ERG	European Regulators Group
EU	European Union



F

FBZV	Frequency Range Allocation Ordinance <i>(Frequenzbereichszuweisungsverordnung)</i>
FDD	Frequency Division Duplex
FERG	Exclusive Television Rights Act <i>(Fernseh-Exklusivrechtgesetz)</i>
FESA	Forum of European Supervisory Authorities for Electronic Signatures
FM PT	Frequency Management Project Team
FOL	Fibre optic line
FNV	Frequency Utilisation Ordinance <i>(Frequenznutzungsverordnung)</i>
FTE	Full-time equivalent
FTTB	Fibre to the building
FTTC	Fibre to the curb
FTTH	Fibre to the home
FWV	Frequency Allocation Ordinance <i>(Frequenzwidmungsverordnung)</i>

G

GE06	Geneva Agreement 2006
GHz	Gigahertz
GSM	Global System for Mobile Communication

H

HbbTV	Hybrid broadcast broadband TV
HD	High definition
HDTV	High-definition television
HSPA	High Speed Packet Access

I

ICT	Information and communications technology
IFA	IFA trade show for consumer electronics and home appliances <i>(Internationale Funkausstellung)</i>
IFES	Institute for Empirical Social Research <i>(Institut für empirische Sozialforschung)</i>
IO	Austrian Bankruptcy Code <i>(Insolvenzordnung)</i>
IP	Internet Protocol
IRÄG 2010	Bankruptcy Law Amendment Act <i>(Insolvenzrechtsänderungsgesetz)</i>
IRG	Independent Regulators Group
ISCN	International Shared Cost Numbers
ISDN	Integrated Services Digital Network
ISK Vienna	Institute for Strategic Capital Market Research <i>(Institut für strategische Kapitalmarktforschung)</i>
ITU	International Telecommunication Union



K

KartG 2005	Cartels Act 2005 (<i>Kartellgesetz 2005</i>)
kbit/s	Kilobits per second
KEM-V	Communications Parameters, Fees and Value-Added Services Ordinance (<i>Kommunikationsparameter-, Entgelt- und Mehrwertdiensteverordnung</i>)
KEM-V 2009	Communications Parameters, Fees and Value-Added Services Ordinance 2009 (<i>Kommunikationsparameter-, Entgelt- und Mehrwertdiensteverordnung 2009</i>)
KEV	Communications Survey Ordinance (<i>Kommunikations-Erhebungs-Verordnung</i>)
KIG	Internet Society Competence Centre (<i>Kompetenzzentrum Internetgesellschaft</i>)
KOG	KommAustria Act (<i>KommAustria-Gesetz</i>)
KommAustria	Austrian Communications Authority (<i>Kommunikationsbehörde Austria</i>)
KSchG	Consumer Protection Act (<i>Konsumentenschutzgesetz</i>)

L

LTE	Long Term Evolution
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M

MB	Megabyte
Mbit/s	Megabits per second
MDF	Main distribution frame
MHP	Multimedia Home Platform
MHz	Megahertz
MMS	Multimedia Messaging Service
MNC	Mobile network code
MNO	Mobile network operator
MT	Mobile terminated
MTR	Mobile termination rates
MUX	Multiplexer
MUX-AG-V 2007	Multiplex Operator Selection Principles Ordinance 2007 (<i>MUX-Auswahlgrundsätzeverordnung 2007</i>)
MVNO	Mobile virtual network operator

N

NGA	Next generation access
NGN	Next generation network
NRI	Networked Readiness Index
NÜV	Number Porting Ordinance (<i>Nummernübertragungsverordnung</i>)

O

OECD	Organisation for Economic Cooperation and Development
OJ	Official Journal
OLT	Optical line terminal
OPTA	Independent Post and Telecommunications Authority (Netherlands)
ORF-G	ORF Act (<i>ORF-Gesetz</i>)



P

Par.	Paragraph
PCK	Post-Control-Kommission
PDF-AS	Portable Document Format – Official Signatures (<i>Amtssignatur</i>)
PLC	Power line communication
PMG	Postal Market Act (<i>Postmarktgesetz</i>)
PMSE	Programme making and special events
PostG 1997	Postal Services Act 1997 (<i>Postgesetz 1997</i>)
POTS	Plain old telephone service
PresseFG 2004	Press Subsidies Act 2004 (<i>Presseförderungsgesetz 2004</i>)
PrR-G	Private Radio Act (<i>Privatradiogesetz</i>)
PrTV-G	Private Television Act (<i>Privatfernsehgesetz</i>)
PSD	Power spectral density
PT	Project team
PubFG	Journalism Subsidies Act 1984 (<i>Publizistikförderungsgesetz 1984</i>)

R

RAS	Radio astronomy service
RFMVO 2009	Broadcasting Market Definition Ordinance 2009 (<i>Rundfunkmarktdefinitionsverordnung 2009</i>)
RGG	Broadcasting Fees Act (<i>Rundfunkgebührengesetz</i>)
RRV 2009	Broadcasting Reference Rate Ordinance 2009 (<i>Rundfunk-Richtsatzverordnung 2009</i>)
RSPG	Radio Spectrum Policy Group

S

SAI	Serving area interface
SAT	Satellite
SD	Standard definition
SigG	Signatures Act (<i>Signaturgesetz</i>)
SigV	Signatures Ordinance (<i>Signaturverordnung</i>)
SigV 2008	Signatures Ordinance 2008 (<i>Signaturverordnung 2008</i>)
SIM	Subscriber Identity Module
SKP-V	Special Communications Parameters Ordinance (<i>Spezielle Kommunikationsparameter Verordnung</i>)
SLA	Service level agreement
SMS	Short Messaging Service
SVO-RF 2006	Broadcasting Threshold Value Ordinance 2006 (<i>Schwellenwert-Verordnung Rundfunk 2006</i>)

T

TAIEX	Technical Assistance and Information Exchange Instrument
T-DAB	Terrestrial Digital Audio Broadcasting
TDD	Time Division Duplex
TKG (1997)	Telecommunications Act 1997 (<i>Telekommunikationsgesetz 1997</i>)
TKG 2003	Telecommunications Act 2003 (<i>Telekommunikationsgesetz 2003</i>)
TKK	Telekom-Control-Kommission



TKMV 2008	Telecommunications Markets Ordinance 2008 <i>(Telekommunikationsmärkteverordnung 2008)</i>
TRV 2009	Telecommunications Reference Rate Ordinance 2009 <i>(Telekom-Richtsatzverordnung 2009)</i>

U

UDV	Universal Service Ordinance <i>(Universaldienstverordnung)</i>
UGB	Austrian Commercial Code <i>(Unternehmensgesetzbuch)</i>
ULL	Unbundled local loop
UMTS	Universal Mobile Telecommunications System
USB	Universal Serial Bus
ÜVO	Monitoring Ordinance <i>(Überwachungsverordnung)</i>
UVS	Independent Administrative Board <i>(Unabhängiger Verwaltungssenat)</i>

V

VAT	Value-added tax
VBKG	Cooperation of Consumer Protection Authorities Act <i>(Verbraucherbehörden-Kooperationsgesetz)</i>
VDSL	Very High Speed Digital Subscriber Line
VerwGesG 2006	Collecting Societies Act 2006 <i>(Verwertungsgesellschaftengesetz 2006)</i>
VfGH	Constitutional Court <i>(Verfassungsgerichtshof)</i>
VHF	Very high frequency
VoB	Voice over broadband
VoI	Voice over Internet
VoIP	Voice over Internet Protocol
VStG	Administrative Penalties Act <i>(Verwaltungsstrafgesetz)</i>
VwGH	Administrative Court <i>(Verwaltungsgerichtshof)</i>

W

WettbG	Competition Act <i>(Wettbewerbsgesetz)</i>
WiFi	Wireless fidelity
WiMAX	Worldwide Interoperability for Microwave Access
W-LAN	Wireless local area network
WLR	Wholesale line rental

X

XML	Extensible Markup Language
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Z

ZaDiG	Payment Services Act <i>(Zahlungsdienstegesetz)</i>
ZuKG	Access Control Act <i>(Zugangskontrollgesetz)</i>



13.3 Selection of relevant legal sources

13.3.1 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 and Directive 2009/140/EC, OJ L 337 of 18 December 2009, p. 37)
Audiovisual Media Services Directive (formerly: Television Directive)	Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (OJ L 95 of 15 April 2010, p. 1, in the corrected version of OJ L 263 of 6 October 2010, p. 15)
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 and Directive 2009/140/EC, OJ L 337 of 18 December 2009, p. 37)
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)
E-Privacy Directive	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 of 31 July 2002, p. 37, as last amended by Directive 2006/24/EC, OJ L 105 of 13 April 2006, p. 54, and Directive 2009/136/EC, OJ L 337 of 18 December 2009, p. 11)
EU Roaming Regulation	Regulation (EC) No 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, amended by Regulation (EC) 544/2009, OJ L 167 of 29 June 2009, p. 12)
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, as amended by the EU Roaming Regulation and Directive 2009/140/EC, OJ L 337 of 18 December 2009, p. 37)



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, as last amended by Directive 2009/136/EC, OJ L 337 of 18 November 2009, p. 11)
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, and Regulation (EC) 1137/2008, OJ L 311 of 21 November 2008, p. 1)
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 and Directive 2009/136/EC, OJ L 337 of 18 December 2009, p. 11)

13.3.2 Austrian legislation

13.3.2.1 Laws

Access Control Act (ZuKG)	<i>(Zugangskontrollgesetz)</i> Federal Act on the Protection of Services Subject to Access Control, Federal Law Gazette I No. 60/2000 as last amended by Federal Law Gazette I No. 32/2001
Administrative Penalties Act (VStG)	<i>(Verwaltungsstrafgesetz)</i> Administrative Penalties Act, Federal Law Gazette No. 52/1991 as amended by Federal Law Gazette I No. 111/2010.
Audiovisual Media Services Act (AMD-G) (formerly Private Television Act – PrTV-G)	<i>(Audiovisuelle Mediendienste-gesetz)</i> Federal Act on audiovisual media services, Federal Law Gazette I No. 84/2010 as last amended by Federal Law Gazette I No. 50/2010
Broadcasting Fees Act (RGG)	<i>(Rundfunkgebührengesetz)</i> 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. 9/2010
Cartels Act 2005 (KartG 2005)	<i>(Kartellgesetz)</i> Federal Act on Cartels and Other Restrictions on Competition, Federal Law Gazette I No. 61/2005 as last amended by Federal Law Gazette I No. 2/2008



Collecting Societies Act 2006 (VerwGesG 2006)	<i>(Verwertungsgesellschaftengesetz 2006)</i> Federal Act on Collecting Societies, Federal Law Gazette I No. 9/2006 as last amended by Federal Law Gazette I No. 50/2010
Competition Act (WettbG)	<i>(Wettbewerbsgesetz)</i> Federal Act on the Establishment of a Federal Competition Authority, Federal Law Gazette I No. 62/2002 as last amended by Federal Law Gazette I No. 111/2010
Consumer Protection Act (KSchG)	<i>(Konsumentenschutzgesetz)</i> Federal Act Enacting Provisions for the Protection of Consumers, Federal Law Gazette 140/1979 as last amended by Federal Law Gazette I No. 107/2010
Cooperation of Consumer Protection Authorities Act (VBKG)	<i>(Verbraucherbehörden-Kooperationsgesetz)</i> Federal Act on the Cooperation of Authorities in Consumer Protection, Federal Law Gazette I No. 148/2006
E-Commerce Act (ECG)	<i>(E-Commerce-Gesetz)</i> 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)	<i>(E-Government-Gesetz)</i> 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. 111/2010
Exclusive Television Rights Act (FERG)	<i>(Fernseh-Exklusivrechtgesetz)</i> Federal Act on the Exercise of Exclusive Television Rights, Federal Law Gazette I No. 85/2001 as last amended by Federal Law Gazette I No. 50/2010
Federal Constitutional Act (B-VG)	<i>(Bundes-Verfassungsgesetz)</i> Federal Constitutional Act, Federal Law Gazette No. 1/1930 as last amended by Federal Law Gazette I No. 98/2010
Federal Constitutional Broadcasting Act	<i>(BVG-Rundfunk)</i> Federal Act Ensuring the Independence of Broadcasting, Federal Law Gazette No. 396/1974
General Administrative Procedures Act (AVG) 1991	<i>(Allgemeines Verwaltungsverfahrensgesetz)</i> General Administrative Procedures Act, Federal Law Gazette No. 51/1991 as last amended by Federal Law Gazette I No. 111/2009
Journalism Subsidies Act 1984 (PubFG)	<i>(Publizistikförderungsgesetz 1984)</i> 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. 111/2010



KommAustria Act (KOG)	<i>(KommAustria-Gesetz)</i> 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. 111/2010
ORF Act (ORF-G)	<i>(ORF-Gesetz)</i> Federal Act on the Austrian Broadcasting Corporation, Federal Law Gazette No. 379/1984 as last amended by Federal Law Gazette I No. 50/2010
Postal Market Act (PMG)	<i>(Postmarktgesetz)</i> Federal Law Gazette I No. 123/2009 as last amended by Federal Law Gazette I No. 111/2010
Postal Services Act 1997 (PostG)	<i>(Postgesetz 1997)</i> Federal Act on Postal Services, Federal Law Gazette I No. 18/1998 as last amended by Federal Law Gazette I No. 123/2009
Press Subsidies Act 2004 (PresseFG 2004)	<i>(Presseförderungsgesetz 2004)</i> Federal Act on Press Subsidies, Federal Law Gazette I No. 136/2010 as last amended by Federal Law Gazette I No. 42/2010
Private Radio Act (PrR-G)	<i>(Privatradiogesetz)</i> Federal Act Enacting Provisions on Private Radio Broadcasting, Federal Law Gazette I No. 20/2001 as last amended by Federal Law Gazette I No. 50/2010
Signatures Act (SigG)	<i>(Signaturgesetz)</i> Federal Act on Electronic Signatures, Federal Law Gazette I No. 190/1999 as last amended by Federal Law Gazette I No. 75/2010
Telecommunications Act 2003 (TKG 2003)	<i>(Telekommunikationsgesetz 2003)</i> Federal Act Enacting a 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. 50/2010

13.3.2.2 Ordinances

Broadcasting Market Definition Ordinance 2009 (RFMVO 2009)	<i>(Rundfunkmarktdefinitionsverordnung 2009)</i> 12 th 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. 133/2005)
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Broadcasting Reference Rate Ordinance 2009 (RRV 2009)	<i>(Rundfunk-Richtsatzverordnung 2009)</i> 13 th 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
Broadcasting Threshold Value Ordinance 2006 (SVO-RF 2006)	<i>(Schwellenwert-Verordnung Rundfunk 2006)</i> 9 th 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 Services Ordinance 2009 (KEM-V 2009)	<i>(Kommunikationsparameter-, Entgelt- und Mehrwert-diensteverordnung 2009)</i> RTR Ordinance defining regulations regarding communications parameters, fees and value-added services, Federal Law Gazette II No. 212/2009 as last amended by Federal Law Gazette II No. 333/2010
Communications Survey Ordinance (KEV)	<i>(Kommunikations-Erhebungs-Verordnung)</i> 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)	<i>(Frequenzwidmungsverordnung)</i> Ordinance of the Austrian Federal Minister of Science, Transport and Arts allocating frequencies and frequency bands for harmonised European radio systems, Federal Law Gazette No. 313/1996
Frequency Range Allocation Ordinance (FBZV)	<i>(Frequenzbereichszuweisungsverordnung 2005)</i> 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. 332/2009
Frequency Utilisation Ordinance (FNV)	<i>(Frequenznutzungsverordnung)</i> Ordinance of the Austrian Federal Minister of Transport, Innovation and Technology on frequency utilisation, Federal Law Gazette II No. 307/2005 as last amended by Federal Law Gazette II No. 333/2009
Interconnection Ordinance	<i>(Zusammenschaltungsverordnung)</i> Ordinance of the Austrian Federal Minister of Science and Transport specifying requirements with regard to interconnection, Federal Law Gazette II No. 14/1998



Itemised Billing Ordinance (EEN-V)	<i>(Einzelentgeltnachweis-Verordnung)</i> 4 th RTR Ordinance specifying the level of detail and the form of provision for itemised billing (http://www.rtr.at/een-v), Federal Law Gazette II No. 85/2006
Monitoring Ordinance (ÜVO)	<i>(Überwachungsverordnung)</i> 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)	<i>(MUX-Auswahlgrundsätzeverordnung 2007)</i> 11 th Ordinance of the Austrian Communications Authority (KommAustria) specifying the selection principles for the issuance of terrestrial multiplex licences in 2007
Number Porting Ordinance (NÜV)	<i>(Nummernübertragungsverordnung)</i> 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	<i>(Post-Kostenrechnungsverordnung)</i> 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
Signatures Ordinance (SigV)	<i>(Signaturverordnung)</i> 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)	<i>(Signaturverordnung)</i> Ordinance of the Austrian Federal Chancellor on electronic signatures, Federal Law Gazette II No. 3/2008 as last amended by Federal Law Gazette II No. 401/2010
Special Communications Parameters Ordinance (SKP-V)	<i>(Spezielle Kommunikationsparameter-Verordnung)</i> 2 nd RTR Ordinance defining a partial plan for communications parameters
Telecommunications Markets Ordinance 2008 (TKMV 2008)	<i>(Telekommunikationsmärkteverordnung 2008)</i> RTR Ordinance identifying the relevant national markets susceptible to sector-specific regulation in the telecommunications sector, Federal Law Gazette II No. 505/2008 as last amended by Federal Law Gazette II No. 468/2009



Telecommunications
Reference Rate Ordinance
2009 (TRV 2009)

(Telekom-Richtsatzverordnung 2009) 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, Federal Law Gazette II No. 238/2009

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



13.4 Abbreviated company, association and organisation names

Abbreviation	Full name
A1 Telekom	A1 Telekom Austria AG (formerly Telekom Austria TA AG)
AGTT	Teletest working group (<i>Arbeitsgemeinschaft TELETEST</i>)
A-Trust	A-Trust Gesellschaft für Sicherheitssysteme im elektronischen Datenverkehr GmbH
ATV	ATV Privat TV GmbH & Co KG
AUSTRIA 9	Austria 9 TV GmbH
GfK Austria	GfK Austria GmbH
GIS	GIS Gebühren Info Service GmbH
gotv	gotv Fernseh-GmbH
Hutchison	Hutchison 3G Austria GmbH
KRONEHIT	Kronehit Radio Betriebs GmbH
mobilkom	mobilkom austria AG (now A1 Telekom Austria AG)
Mundio	Mundio Mobile (Austria) Limited
Orange	Orange Austria Telecommunication GmbH
ORF	Austrian Broadcasting Corporation (<i>Österreichischer Rundfunk</i>)
ORS	Österreichische Rundfunksender GmbH & Co KG
PULS 4	PULS 4 TV GmbH & Co KG
Radio Maria	Radio Maria Österreich (Catholic radio broadcasting service)
REM	Research Institute for Electronic Mass Media Law (<i>Forschungsinstitut für das Recht der elektronischen Massenmedien</i>)
ServusTV	ServusTV Fernsehgesellschaft m.b.H
Silver Server	Silver Server GmbH
Tele2	Tele2 Telecommunication GmbH
T-Mobile	T-Mobile Austria GmbH
UPC	UPC Austria GmbH
Verizon	Verizon Austria GmbH
VFRÖ	Austrian Association of Free Radio Broadcasters (<i>Verband Freier Radios Österreichs</i>)
VÖZ	Austrian Association of Newspapers (<i>Verband Österreichischer Zeitungen</i>)

Publishing information

Owner and publisher: Austrian Regulatory Authority for Broadcasting and Telecommunications (Rundfunk und Telekom Regulierungs-GmbH), Mariahilfer Strasse 77-79, A-1060 Vienna, Austria. Tel.: +43 (0)1 58058-0, Fax: +43 (0)1 58058-9191, e-mail: rtr@rtr.at, Internet: <http://www.rtr.at>

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Conceptual design and text: Austrian Regulatory Authority for Broadcasting and Telecommunications

Graphic design and layout: Johannes Bulgarini Advertising Agency, Gföhl 8, A-3053 Laaben, Austria. e-mail: jo@bulgarini.at
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