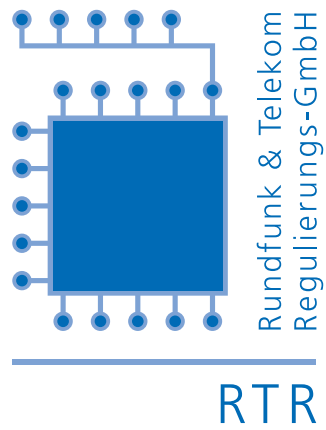







# Communications Report 2011





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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) pursue the legally defined objectives of ensuring innovative, high-quality and secure communication services at an affordable price for everyone, a diversity of opinions and media, and a stable, forward-looking legal framework for the Austrian media, postal service and telecommunications sectors. In the year under review, new amendments to the ORF Act (ORF-G), the KommAustria Act (KOG) and the Austrian Telecommunications Act 2003 (TKG 2003) expanded RTR's competence and thus gave rise to new challenges in regulatory activities.

This report documents the regulatory authorities' efforts to achieve their objectives in the year 2011 and fulfils all reporting requirements set forth under the KommAustria Act and the Austrian Telecommunications Act 2003, as well as providing insight into developments on Austria's communications markets during the reporting period. In addition, the report contains a brief description of RTR as an organisation managed according to private-sector principles and organised in such a way as to minimise total expenditure through the targeted deployment of available resources.

We sincerely hope that this publication duly fulfils the transparency requirements relevant to our official activities and provides you with interesting and informative reading.

Vienna, June 2012

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# 1. Management summary: We stand for competition and media diversity

The Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) sees itself as an organisation committed to enhancing competition and media diversity. To this end, RTR makes efforts to promote and strengthen the following:

- Competition in broadcasting, telecommunications and postal services;
- The efficient use of scarce resources;
- Electronic communications infrastructure and services;
- The production of media content;
- The interests of the consumer.

In accordance with Art. 19 Par. 2 and 3 KommAustria Act (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 regard, the Communications Report focuses on RTR's reporting obligations pursuant to Art. 34 Par. 2 Telecommunications Act 2003 (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 works 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 2011.

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**

The Austrian Communications Authority (KommAustria) was established under the KommAustria Act (KOG) for the purpose of performing administrative and regulatory duties in the field of electronic audio media and electronic audiovisual media. The key activities of the authority include the regulation of market access for media services, general and specific monitoring of compliance with Austrian law, infrastructure regulation, substitute decisions on agreements regarding transmission platforms, broadcasting facilities and reporting coverage rights, and frequency coordination. In carrying out its duties, KommAustria is responsible for private organisations (broadcasters, media service providers, communications network operators) as well as the Austrian Broadcasting Corporation (ORF) and its subsidiaries.



In addition, the KOG requires KommAustria to administer media grants in accordance with Austrian federal law (see Section 6).

The objectives to be pursued in the regulatory activities of KommAustria and RTR's Media Division are defined as follows in Art. 2 Par. 2 KOG (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 Media Division's regulatory duties also include promoting competition in the field of electronic communications as stipulated in Art. 1 Par. 2 of the Austrian Telecommunications Act 2003 (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 (including the administration of press and journalism subsidies) and of RTR's Media Division in the year 2011 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, promoting non-commercial and private broadcasting, and operating a competence centre for media industry affairs.

With regard to market access, 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) were once again a major part of the authority's efforts to establish a dual broadcasting market in 2011, and the number of procedures and parties involved was largely comparable to previous years.

At the beginning of 2011, the focus of activities in the field of radio broadcasting lay on completing numerous terrestrial radio licensing procedures which had been initiated *ex officio*. These procedures were carried out because the previous licences were set to expire in the summer of 2011. The procedures included six coverage areas in Vienna as well as a number of nationwide licences. Later in the year, the number of procedures and invitations to tender handled by the authority in the field of terrestrial radio broadcasting rose markedly due to the expansion of the nationwide radio broadcaster KRONEHIT's technical range as well as a large number of applications from local and regional broadcasters.

In the field of digital television, the expansion of national, regional and local coverage with digital terrestrial television continued. On the nationwide multiplex platform MUX B, the authority approved the addition of a fifth channel, and ORF III won the invitation to tender for this broadcasting space. Additional local and regional private multiplex platforms were also approved or were able to launch operations in the reporting period, while two licences were revoked. In the summer of 2011, two nationwide multiplex platforms for digital terrestrial broadcasting based on the DVB-T2 standard (MUX D and MUX E) were put out to tender, but the licences had not yet been allocated at the end of the year.



In early 2011, KommAustria continued to lay the groundwork for future developments in the field of broadcasting digitisation by updating the Austrian Digitisation Plan. Drawing up this document in accordance with Art. 21 AMD-G involved extensive preparatory work. In February 2011, the Digital Platform Austria working group convened in order to discuss this update (see Section 5).

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 Austria's 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 avoiding technical disruptions and interference, the purpose of these meetings is to optimise the use of the frequency spectrum: Broadcasting frequencies are a scarce commodity in any country, especially in a small one such as Austria.

In 2011, the classic activities of allocating broadcasting frequencies and issuing licences for broadcasting and multiplex platform operations were expanded to include reviews of new content services to be launched by the ORF and its subsidiaries.

These activities gave rise to an important focus area in 2011, as two preliminary review procedures for new ORF media services were carried out in the year under review. In the process, one information and culture channel (ORF III) and its online presence were approved, as was the online information service *Ö1 macht Schule*.


Due to a transitional provision, other ORF media services only had to be reported to KommAustria; these 16 new services included ORF SPORT + and numerous online services. Only the site *debatte.ORF.at* (a subsection of *news.ORF.at*) was prohibited.

Finally, the authority's activities with regard to private services subject to notification requirements were expanded substantially due to numerous notifications from audiovisual media service providers, especially on the Internet.

The need to ensure a diversity of opinions plays an especially important role in the awarding of licences. In addition, KommAustria and RTR as its operative arm are also responsible for the legal supervision of multiplex operators, private broadcasters, and now also audiovisual media services on the Internet. These activities serve to encourage pluralism in the Austrian media landscape as well as the creation of fair conditions for competition. In addition to issuing licences, activities in this area 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 ORF Act (ORF-G), the Private Radio Act (PrR-G), the Audiovisual Media Services Act (AMD-G) and the Act on Exclusive Television Rights (FERG) are largely pursued *ex officio* and in response to complaints submitted to the authority.

These activities also formed a significant part of KommAustria's regulatory work in the year 2011: On the one hand, the authority conducted legal supervisory procedures concerning multiplex operators and their obligations to launch operations, and a number of complaints were submitted by competing radio broadcasters due to various legal violations. In addition, the authority received a number of complaints regarding the ORF.

The ORF Act also calls for further official measures related to content monitoring, which were handled by KommAustria to a greater extent in 2011. These measures mainly related to the ORF's business purpose as a corporation, its legal mandate and the supervision of its business activities (see Section 4.2.2). In early 2011, KommAustria took one important first step by establishing a review commission pursuant to Art. 40 ORF-G after carrying out an EU-wide contract notice procedure.



It is also particularly 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 process, the regulatory authority monitors the broadcasters' adherence to advertising regulations.

In addition to their co-regulatory tasks (especially their responsibility for 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 (TKG 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 2011, KommAustria continued its ongoing market analysis procedures with regard to the three markets specific to broadcasting.

### **Digitisation Fund**

In 2011, the Austrian Digitisation Fund received an endowment of EUR 0.5 million. The purpose of the fund is to promote digital transmission technologies and digital applications on the basis of European standards in connection with broadcasting. The funds are derived from those broadcasting fees which are collected jointly with ORF programming fees but are generally allocated to the federal budget.

Once again, the focal areas of the Digitisation Fund's activities in 2011 included the digital terrestrial broadcasting of regional and local channels via regional and local DVB-T multiplex platforms and transmission facilities (known as "MUX C") on the basis of special grant guidelines, DVB-T2 broadcasting transmission trials conducted by Austrian Broadcasting Services (ORS), the development of an HbbTV-based additional service by the ORF and, for the last time, subsidies enabling socially disadvantaged consumers to purchase digital receivers.

### **FERNSEHFONDS AUSTRIA (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 Austrian 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).

These funds are designated for the purpose of strengthening the Austrian film industry and Austria's position as a media location. The objective of strengthening the country's 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 with 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 allocated under the Press Subsidies Act 2004 (PresseFG 2004) and 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, these subsidies are used to support 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 supporting 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 educational purposes. Research projects are supported with advance grants, while all other grants are awarded *ex post* for activities carried out in the year prior to 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 2011, the competence centre's activities comprised RTR studies on topics relevant to the media as well as other specialist publications and events. In particular, 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)**

The Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) is committed to enhancing competition and media diversity. To this end, RTR makes efforts to promote and strengthen competition in broadcasting, telecommunications and postal services, as well as promoting the efficient use of scarce resources, electronic communications infrastructure and services, the production of media content, and the interests of consumers and users. In this context, the regulatory authority focuses on the objectives of ensuring the availability of innovative, high-quality and secure communications at reasonable prices for all consumers, and maintaining the diversity of opinions and media as well as a forward-looking general framework for these activities in Austria.

In line with RTR's mission of enhancing competition and media diversity, the regulatory authorities pursue the objectives defined in the Telecommunications Act 2003 (TKG 2003), which form a framework for the activities of the Telekom-Control-Kommission (TKK), Post-Control-Kommission (PCK) and RTR itself.



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 several 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**

Under the relevant provisions of Austrian telecommunications law, the authority's approach to competition regulation is essentially based on the market analysis procedures to be carried out at regular intervals. In this two-stage process, the first step involves identifying those markets which are susceptible to sector-specific regulation.

### **Market analysis procedures**

After the amendment of the TKG 2003 in November 2011, the regulatory authority was able to discontinue Procedure M 8/09 (Wholesale market for high-bandwidth terminating segments). Toward the end of the reporting period, the TTK decided to discontinue this procedure due to the extensive revision of the procedural rules governing the performance of market analysis procedures under Art. 36 et seq. TKG 2003, which had transferred responsibility for market definition from RTR to the TTK, and due to the simultaneous decision to initiate a new market analysis procedure.


### **Review of specific obligations arising from market analysis procedures**

Procedure S 21/10 – VoB-only reference offer: The TTK's market analysis decisions on the retail markets for access to the public telephone network at a fixed location for residential and non-residential customers (M 1/09-86 and M 2/09-86 of September 20, 2010), in addition to other obligations imposed on A1 Telekom Austria AG (A1 Telekom) due to its identified position of significant market power on those markets, required A1 Telekom to offer a wholesale VoB access product which alternative operators can use without simultaneously purchasing one of A1 Telekom's broadband Internet products, regardless of whether A1 Telekom itself offers a retail VoB product.

In line with the official decision, A1 Telekom published the reference offer in 2011. After lengthy discussions of this offer with market participants and further adaptations by A1 Telekom, the doubts raised by the TTK were ultimately eliminated and the review procedure discontinued.

Procedures S 18/10 and S 24/10 (Reference offers for unbundling and virtual unbundling) concerned reference offers which A1 Telekom was obliged to publish in accordance with the market analysis decision M 3/09. Both of the reference offers published by A1 Telekom in response to this decision were subjected to a review by the TTK, and in the end A1 Telekom was again able to eliminate the concerns voiced regarding those offers.





With regard to NGN migration, A1 Telekom had submitted an NGN migration plan in line with its obligations from Decisions M 4/09 and M 5/09; this plan was added as an annex to the existing reference interconnection offer, thus fulfilling A1 Telekom's obligations under those market analysis decisions.

### **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.

In two rulings issued on June 30, 2011, the Austrian Administrative Court overturned the TKK's decisions on Procedures Z 1/08 and Z 2/08 due to legal violations in their content. The procedures were resumed as a result. Specifically, the TKK had issued two decisions on November 24 and December 9, 2008 – one on mutual charges for SMS termination (Z 2/08) and one on mobile origination services (Z 1/08) between Hutchison 3G Austria GmbH (Hutchison) and mobilkom (now A1 Telekom Austria AG).

In the market analysis decision M 3/09, the TKK redefined its general framework for the rollout of broadband access networks. In this context, A1 Telekom was subjected to an obligation (among others) to offer a new wholesale product known as "virtual unbundling." As negotiations on a (reference) offer published by A1 Telekom were unsuccessful, two key potential customers for virtual unbundling requested that the TKK define the specific conditions for this new wholesale product. Procedures Z 1/11 and Z 3/11 were still pending when the 2011 Communications Report went to press.

### **Shared use of communication lines and site sharing**

With regard to the shared use of communication lines and site sharing, the TKK conducted four procedures in 2011. Procedure D 2/10 dealt with site sharing at the Salzburg-Gaisberg transmission facilities. In Procedures D 3/10, D 1/11 and D 2/11, the TKK had to decide on Silver Server GmbH's requests for the shared use of fibre optic lines belonging to Wien Energie GmbH.

In addition, the 2011 amendment to the Telecommunications Act expanded the TKK's scope of responsibilities to include decisions on procedures regarding the granting of wayleave rights on private property (in addition to site sharing rights under Art. 8 et seq. TKG 2003). Before that amendment went into effect, the telecommunications authorities were responsible for making such decisions. Further procedures are also likely to arise in this area in the future.

### **Supervisory procedures**

In this area, the only noteworthy development was Procedure R 1/11 (Non-implementation of Decision D 3/10-35), which dealt with the enforcement of a decision on the shared use of a Wien Energie fibre optics line by Silver Server. For details, please refer to Section 7.4.

### **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.



## Frequencies

On April 4, 2011, the TKK published a new position paper on the topic of infrastructure sharing in mobile networks in order to clarify the regulatory authority's general perspective on infrastructure sharing within the framework of cooperation arrangements between mobile network operators. Given the special status of mobile communications in the telecommunications sector as a whole, the assessment of how cooperation arrangements affect competition is an especially significant task.

In addition, the authority's work in the year 2011 was also characterised by preparations for the allocation of key frequency bands; this allocation procedure will be carried out in 2012.

Frequencies will be allocated in the 800, 900 and 1800 MHz bands. The 800 MHz band is also referred to as the "digital dividend," i.e. 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. Due to their favourable propagation characteristics, these frequencies are well suited for the coverage of rural areas and are now available for use.

## Electronic signatures

At the European level, RTR continued its work in the Forum of European Supervisory Authorities for Electronic Signatures (FESA), a body in which the authorities responsible for supervision and accreditation cooperate.

In 2011, five procedures under the Austrian Signatures Act (SigG) were initiated before the TKK, and all of those procedures (plus one case from 2010 that was still pending at the beginning of 2011) were completed in the year under review. One additional procedure which was still pending at the beginning of 2011 could not be completed during the reporting period.


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

Once again, conciliation procedures for retail customers were among RTR's core activities in the year under review. In 2011, the number of new requests reached an all-time high of 5,470, which represents an increase of 24.2% (+1,067 procedures in absolute terms) in the reporting period. In terms of content, the trend observed in recent years has unfortunately continued: The fees charged for the data volumes used on mobile Internet connections have become an even more contentious topic. Another area which gained in importance during the year under review was that of disputes regarding contracts. This type of complaint also saw a drastic increase in the number of procedures, which rose by a full 850 to a total of 1,014 cases.

## International roaming in the European Union

In its current version, the Roaming Regulation will remain in effect until June 30, 2012. For more information on the services regulated (including yearly adjustments) and obligatory transparency and protection measures, please refer to the 2007 and 2009 Communications Reports.

The European Commission was 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 was to review how the wholesale and retail charges as well as the availability and quality of roaming services have developed. Another key review criterion in this context was the intensity of competition. At present, the proposal is being discussed in the Council of the European Union as well as the European Parliament. This procedure should be completed by the end of June 2012 so that no "gap" arises after the expiry of the current Roaming Regulation on June 30, 2012.



New developments for mobile network operators in 2011 included a further reduction of regulated wholesale and retail charges for voice roaming services as well as a reduction of wholesale charges for data roaming services.

#### **Numbering: Allocation of short public number for missing children hotline**

With regard to the administration of the numbering range, one noteworthy highlight in the year 2011 was the allocation of the number 116 000 (missing children hotline) to the Austrian Broadcasting Corporation (ORF) on December 19, 2011.

The number of telephone numbers allocated in Austria remained nearly the same compared to the previous year.

#### **Focus area: Next generation networks**

As in previous years, the migration to next generation access (NGA) and next generation networks (NGNs) continued in 2011. This area is of crucial importance to the regulatory authority as well as market participants, especially as this development will be accompanied by a fundamental change in the economic, technical and regulatory landscape in the telecommunications industry. One focus of the regulatory authority's work in this area is the question of access to these new networks. In this context, it is worth mentioning the new wholesale product known as "virtual unbundling."

#### **Amendment to the TKG 2003**

In November 2011, the EU telecoms reform package was transposed into Austrian law by the most comprehensive amendment to the TKG 2003 to date. At the same time, the amendment also brought about new provisions which go beyond the requirements of the EU legal framework, especially with regard to user protection. The TKG amendment created approximately 30 new or expanded areas of responsibility for the regulatory authorities in charge of electronic communications.

#### **International activities**

The continued development of the European legal framework for electronic communications is a central and significant component of regulation. Especially in recent years, the significance of EU-level regulation has increased substantially. In this context, RTR contributes to various international bodies and working groups focusing on different subject areas.

As RTR took over the Chair of BEREC for 2012, which automatically involved assuming the position of Vice-Chair in 2011 under the "troika" system, RTR focused more heavily on BEREC in the year 2011. One of the most important tasks in this context was the development and coordination of BEREC's work programme for 2012, a process which was heavily influenced by RTR and thus also accounts for the needs of market participants and consumers in Austria.

#### **Competence centre**

Under the provisions of Art. 9 KommAustria Act (KOG), RTR is also responsible for operating a competence centre for media 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 competence centre's activities focused on the Internet Society Competence Centre (*Kompetenzzentrum Internetgesellschaft*, or KIG) established in 2012. In this context, the Digital Agenda, the government's declaration, and the requirements of the business world and public sector will shape the measures taken by the KIG in order to earn Austria a place among the world's top ICT nations.

### 1.3 Postal services: Contribution to the achievement of objectives under the Austrian Postal Market Act (PMG)

The Austrian Postal Market Act (PMG) went into effect on January 1, 2011. According to the explanatory remarks accompanying the bill presented to the federal government, the purpose of this legislation is to completely liberalise the Austrian postal market “on the basis of EU requirements.” In essence, the changes are designed to abolish the “postal letter monopoly” position held by the Austrian postal service (Österreichische Post AG) and to allow other companies to provide postal services.

Several provisions of the Postal Market Act already went into effect on December 5, 2009, but those provisions were not primarily designed to liberalise the postal market, but rather intended to define the legal requirements for the closure of post offices operated by Österreichische Post AG.

In dismantling the monopoly on postal services – on the basis of numerous initiatives and the three postal directives adopted by the EU – the plan pursued was meant to harmonise the gradual and controlled liberalisation of the postal market with the continued availability of universal service.

In the postal sector, the path toward market liberalisation in the EU has turned out to be a major political challenge and has taken nearly 20 years. It is important to note that in many parts of the EU, the EU’s postal market reform has brought about improvements in service quality and ensured the provision of universal service for all customers. However, compared to other networked industries (such as telecommunications), it has become clear that the effort to completely liberalise postal markets has not been pursued as consistently. In particular, it is striking that EU secondary law has been rather cautious with regard to forcing access to the postal networks of former monopolists.

The PMG is intended to ensure that Austria’s consumers and businesses have access to diverse and high-quality postal services at reasonable prices. The Postal Market Act (PMG) aims to ensure sufficient basic postal services at reasonable prices for the population in the entire federal territory of Austria (universal service) and to enable fair competition in the provision of postal services (Art. 1 PMG). However, a closer analysis reveals that the provisions of the Postal Market Act clearly focus on ensuring the availability of universal service. As a result, the act contains (sometimes highly detailed) rules on post offices as well as their hours of operation, delivery, handling times and post boxes. These provisions are complemented by powers of intervention for the regulatory authority with regard to the charges and general terms and conditions of the universal service provider, special means of submitting complaints, and a Post Office Advisory Board established specifically to advise the regulatory authority in matters related to nationwide coverage with post offices.

Therefore, the activities of the Post-Control-Kommission (PCK) and RTR predominantly focused on various matters related to universal service in the year 2011.

The Postal Market Act contains only a few specific provisions regarding competition, including market entry requirements (notification requirement and licensing system), enforceable access to private post box installations in buildings and rural post box clusters belonging to Österreichische Post AG (but de facto not until January 1, 2013), and the use of postal codes free of charge. Therefore, the Postal Market Act applies a different system compared to the Austrian Telecommunications Act 2003 (TKG 2003). While Austrian telecommunications law can be considered regulatory law in the narrower sense (with sometimes conflicting regulatory objectives which the regulatory authorities have to weigh against each other, and with measures imposed in advance according to the extent of market failure [*ex ante* regulation]), this is not true of Austrian postal law. With regard to creating or ensuring competition, therefore, the work of the regulatory authorities is necessarily limited to individual cases.





## 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 (KOG), 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 and the postal services market are defined in the relevant laws, specifically in the Austrian Telecommunications Act 2003 (TKG 2003), the KommAustria Act (KOG) and the Postal Market Act (PMG).

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 KommAustria Act 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 media providers, to ensure a diversity of opinions and promote quality in broadcasting content, 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 [Postal Control Commission], or PCK, since the announcement of the Postal Market Act on December 4, 2009), with RTR serving as its operative arm. The duties of the PCK and RTR in this context are laid down in the Postal Market Act (PMG).

#### 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 2011, 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 specific technical matters handled by these divisions, the managing directors run their respective units separately; in all other matters, decisions are made jointly by both directors.

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

1. Operational support for 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 (TKK) 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.

Alternate members:

- Eckhard Hermann;
- Mathias Grandosek;
- Otto Petrovic.

A comprehensive list of the TKK's duties can be found in Articles 115a and 117 TKG 2003.

### **2.1.3 Post-Control-Kommission (PCK)**

The PCK was set up as a panel authority with the powers of a court and makes major decisions in connection with the regulation of postal services. This commission is not bound by instructions from any 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.

Alternate members:

- Eckhard Hermann;
- Mathias Grandosek;
- Alfred Taudes.

A comprehensive list of the PCK's duties can be found in 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.





In 2011, the authority comprised the following members:

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

In addition to duties related to broadcasting regulation under the KommAustria Act (KOG), the Audiovisual Media Services Act (AMD-G), the Private Radio Act (PrR-G), the Competition Act (WettbG) and the Telecommunications Act 2003 (TKG 2003) as well as the administration of press and journalism subsidies, KommAustria is also responsible for the legal supervision of the ORF and its subsidiaries, for duties under the 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 (Chairperson);
- Dorit Primus (Deputy Chairperson);
- Edwin Gitschthaler;
- Barbara Leitl-Staudinger;
- Georg Karasek.

Alternate members:

- Rainer Geissler;
- Barbara Helige;
- Ilse Huber;
- Magdalena Pöschl;
- Robert Streller.

## **2.2 Lines of command and levels of appeal**

In the performance of their official duties, the members of the Austrian Communications Authority (KommAustria) are independent and not bound by instructions from any other authority. The Austrian 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 the authority.

Appeals against KommAustria decisions can be submitted to the Federal Communications Senate (BKS) in the second instance. Further appeals against BKS decisions can be submitted to Austria's high courts.

In carrying out its activities for KommAustria, the Austrian Regulatory Authority for Broadcasting and Telecommunications (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.

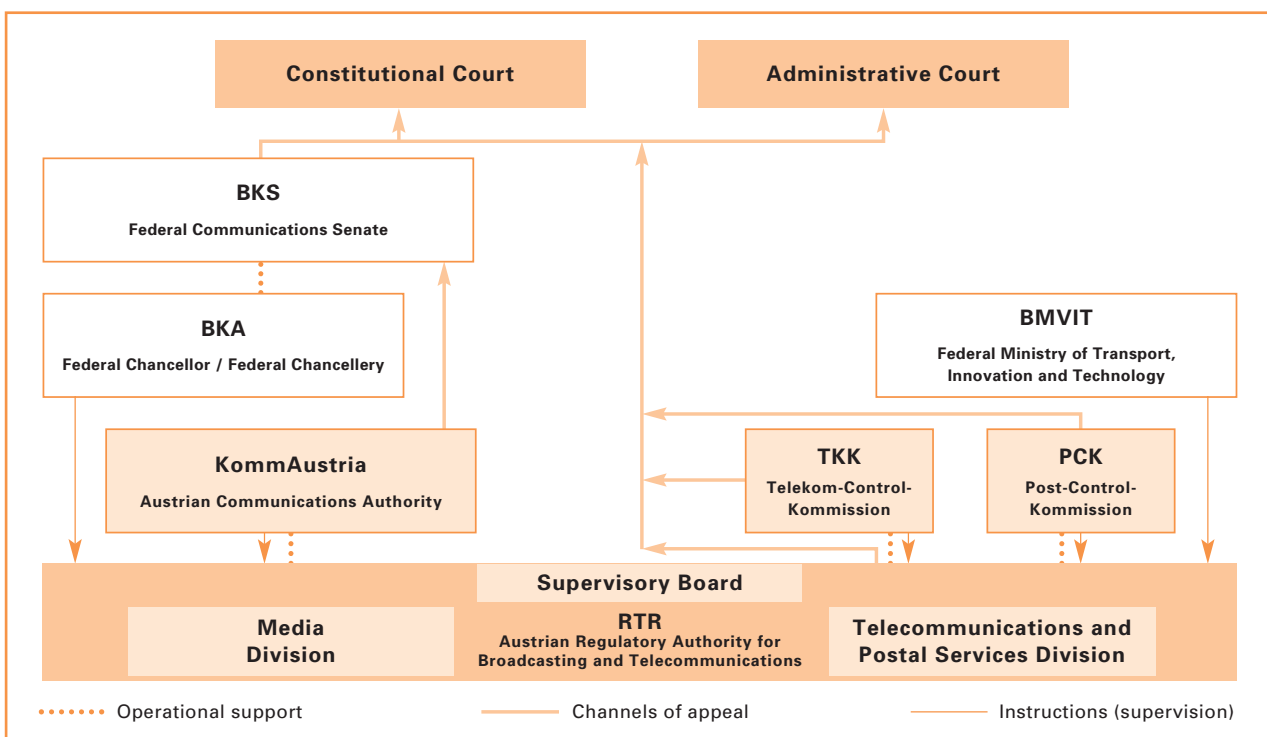
In the fields of telecommunications and postal services, the Austrian Federal Minister of Transport, Innovation and Technology has the power to issue instructions to the managing director of RTR's Telecommunications and Postal Services Division in matters where the division does not act on behalf of the Telekom-Control-Kommission (TKK) or Post-Control-Kommission (PCK); such instructions must likewise be issued in writing and justified accordingly.

In addition, the chairpersons of the TKK (or the member designated in the TKK's rules of procedure), the PCK and KommAustria also have the power to issue instructions to RTR's staff in specialist matters, except in the preparation of expert opinions.

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). Appeals against RTR's official decisions (in matters pertaining to the Telecommunications and Postal Services Division) can be submitted to the Austrian Administrative Court and/or the Austrian Constitutional Court.

**Figure 1: Lines of command and levels of appeal (as of December 31, 2011)**



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 institutions, many of which are described in brief below.

### **Federal Chancellery (BKA)**

The BKA is responsible for defining the general framework for broadcasting and media markets at the federal government level. The BKA also provides operational support for all activities of the Federal Chancellor in connection with the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) and the Austrian Communications Authority (KommAustria; see Section 2.2 above). In addition, the BKA provides administrative support for the Federal Communications Senate (BKS).

### **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 RTR's Telecommunications and Postal Services Division is bound by the instructions of the Federal Minister of Transport, Innovation and Technology.

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

### **Telecommunications authorities**

The duties of the telecommunications authorities – which include the Federal Ministry of Transport, Innovation and Technology (as the highest authority), the Telecommunications Offices, as well as the Office for Radio Systems and Telecommunications Terminal Equipment – are governed by Articles 112 to 114 TKG 2003. For 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. 37 Postal Market Act (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 Post-Control-Kommission (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 or 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.



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

Until March 28, 2011:

- 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 is 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).

Since March 28, 2011:

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

Alternate members:


- Albert Kreiner (Liaison Office of the Federal Provinces);
- Nikolaus Drimmel (Austrian Association of Municipalities);
- 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 important part of the broadcasting digitisation process – namely the digitisation of terrestrial television – was completed in mid-2011. However, a number of further developments in digital broadcasting are in the pipeline, and the Digital Platform Austria will continue to provide support for these developments in the future. For more information, please refer to Section 5.

### **Public Value Advisory Board**

This advisory 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 the 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 Articles 4b to 4f) and with any service plans submitted by the ORF (Articles 5a and 6b Par. 2 ORF-G).



The advisory board comprises five members, each of whom is appointed by the Austrian federal government for a term of five years. Members of the board must have earned a *venia legendi/docendi* at a university in Austria or abroad, or have another form of outstanding specialist qualifications. On the basis of their prior academic and scientific work, board members must possess specific knowledge in the field of media law, media sciences or business administration and economics.

The Public Value Advisory Board currently includes the following members:

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

### **Press Subsidies Commission**

This commission was set up as an advisory body for the allocation of press subsidies pursuant to Art. 4 Press Subsidies Act 2004 (PresseFG 2004). Before subsidies are allocated to recipients, KommAustria is required to obtain an opinion from this commission on the fulfilment of subsidy requirements.

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. Commission members serve a two-year term and can be reappointed.


As no agreement could be reached after the resignation of the commission's long-standing chairperson Otto Oberhammer in December 2010, Gerhard Benn-Ibler was appointed by the Austrian Bar Association at the beginning of July 2011. This manner of appointment is provided for in Art. 4 Par. 3 No. 2 PresseFG 2004.

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

- Gerhard Benn-Ibler (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).

### **Journalism Subsidies Advisory Board**

The Journalism Subsidies Advisory Board was set up as an advisory body in matters pertaining to subsidies for periodicals pursuant to Section II of the Journalism Subsidies Act (PubFG) 1984, and 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. Therefore, 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 and various Austrian federal ministries; one representative each from the associations of Austrian newspaper publishers, Austrian periodical publishers and freelance journalists; and one certified accountant.

In the year 2011, Annemarie Kramser served as Chairperson of the board, while Matthias Karmasin served as Deputy Chairperson.

The board comprises the following members:

- Annemarie Kramser (Presseclub Concordia; Chairperson);
- Matthias Karmasin (media and communication sciences; 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 (Austrian Federal Ministry of Economy, Family and Youth);
- Martha Brinek (Austrian Federal Ministry of Science and Research);
- Christine Bouska-Lamm (Austrian Federal Ministry for Education, Arts and Culture);
- Wolfgang Pichler (ÖZV);
- Rainer Eder (VÖZ);
- Leopold Wundsam (certified accountant).

Alternate members:

- Raphael Sternfeld (Austrian Social Democratic Party);
- Andreas Kratschmar (Austrian People's Party);
- Gerfried Nachtmann (Austrian Freedom Party);
- Lukas Bruckner (Alliance for the Future of Austria);
- Marco Schreuder (Austrian Green Party);
- Franz Fischill (Austrian Federation of Trade Unions);
- Arno Miller (Union for the Printing, Journalism and Paper Industries);
- Martina Thiele (media and communication sciences);
- Heinz Mayer (Universities Austria);
- Gerald Leitner (continuing education);
- Paul Wuthe (churches and religious communities);
- Andreas Ulrich (Austrian Federal Chancellery);
- Wolfgang Schneider (Austrian Federal Ministry of Economy, Family and Youth);
- Gerhard Pfeisinger (Austrian Federal Ministry of Science and Research);
- Wolfgang Fingernagel (Austrian Federal Ministry for Education, Arts and Culture);
- Gabriele Ambros (ÖZV);
- Matthias Hranayai (VÖZ);
- Wolfgang Mayr (Presseclub Concordia);
- Helmut Puffer (certified accountant).

### **Broadcasting Fund Review Board**

The review board pursuant to Art. 32 Par. 3 KommAustria Act (KOG) comprised the following members in 2011:

- Michael Holoubek (Chairperson);
- Angela Fritz (Deputy Chairperson);
- Cornelia Breuß;
- Philipp Graf;
- Daniela Sabetzer.

After the resignation of Angela Fritz, the Austrian federal government appointed Claudia Fuchs as a member of the board on July 26, 2011.

As of October 18, 2011, Ms. Fuchs also assumed the position of Deputy Chairperson.

### **Austrian Television Fund Review Board**

The Austrian Television Fund Review Board consisted of the following members in 2011:

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

### **Federal Competition Authority**

Due to the complementary nature of 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 closely with the Federal Competition Authority in matters related to general competition law on the basis of legally defined rights to submit comments and petitions. Austrian law and Community law provide for differing forms of cooperation between the general competition authority and sector-specific competition authorities.

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**

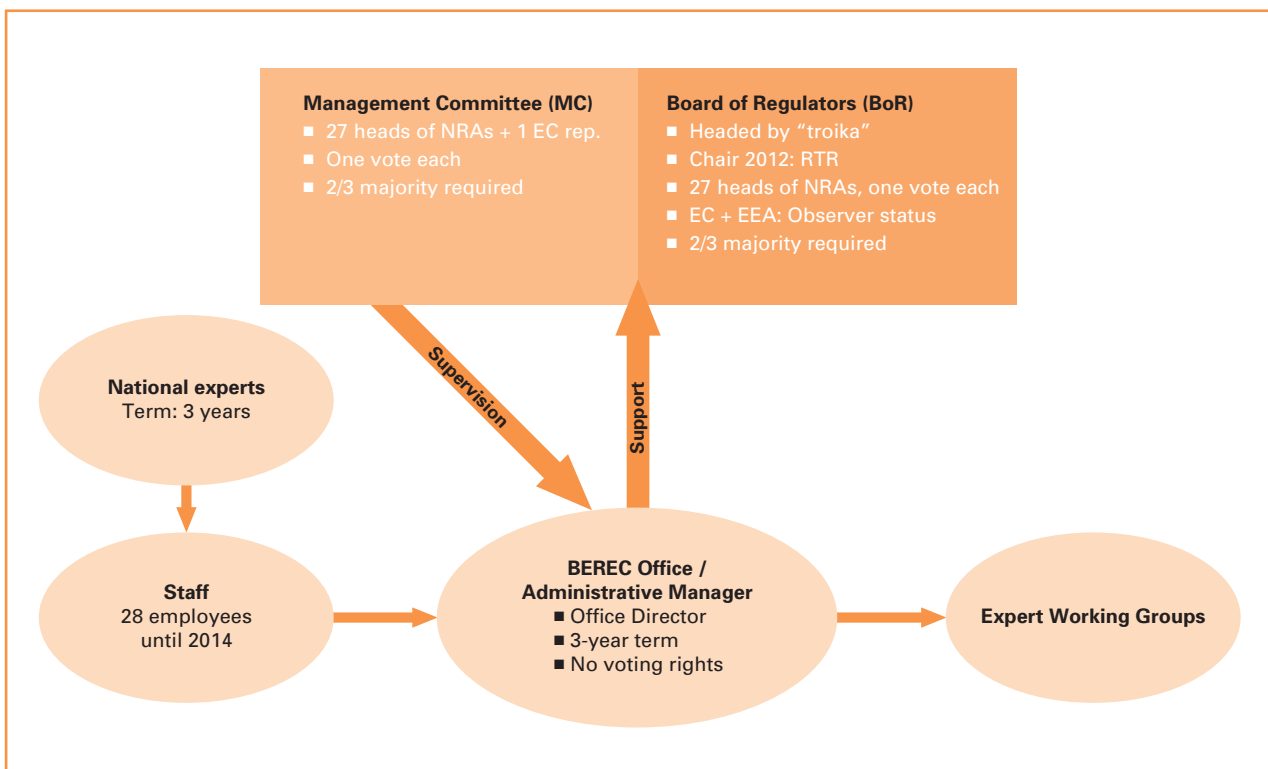
The continued development of the European legal framework for electronic communications is a central and significant component of regulation. In 2011, the process of implementing the revised legal framework was completed. In Austria, this new framework was transposed by the amendment to the Telecommunications Act (see Section 8.7). To account for the importance of the European Union in this area, the Body of European Regulators for Electronic Communications (BEREC) was established in the course of the reform of the European legal framework for electronic communications (Regulation [EC] 1211/2009), and the new organisation commenced operations in early 2010.

BEREC was set up in order to ensure standardisation and consistency on the European telecommunications market. Therefore, this body replaced the European Regulators Group (ERG).

BEREC's mission is to support the European Commission and national regulatory authorities wherever possible in the implementation of the European regulatory framework in the field of telecommunications.

The organisation is made up of a board comprising the heads of the 27 national regulatory authorities. BEREC receives organisational support from the BEREC Office, a Community body led by a Management Committee in which all EU member states and the European Commission are represented. The BEREC Office was fully operational by the end of 2011. On the basis of a Council decision, the Office was set up in Riga, Latvia.

**Figure 2: BEREC structure**




Source: RTR

BEREC's main duties (overview):

- Participating in consultations on procedures under Article 7/7a of the Framework Directive;
- Developing positions on cross-border disputes;
- Identifying best practices, supporting national regulatory authorities, advising the European Parliament and the Council, and supporting these institutions and regulatory authorities in communications with third parties;
- Developing positions on recommendations and directives.





As Georg Serentschy (Managing Director of the Telecommunications and Postal Services Division) served as Deputy Chair under the “troika” system in 2011, RTR was already heavily involved in the activities and steering of BEREC during the year under review. In 2012, RTR will assume the position of BEREC Chair. This is a great honour for Austria and for RTR, as a candidate must receive a two-thirds majority of all votes in order to be chosen for this position. For more information on these activities, please refer to Section 8.8.

Besides the European Commission, the European Parliament and Council, and BEREC, the Independent Regulators Group (IRG) is one of the most important institutions in RTR’s international environment. The IRG is an association which was established under Belgian law in 2008 in order to provide regulatory authorities with an international platform for coordination, discussion and international comparison of applied methods. In this organisation, the focus of activities can be broader than in the case of BEREC. In 2011, the activities of the IRG included workshops on special topics and issues in the field of regulation. For more information, please also refer to the discussion of international activities in Section 8.8.



# 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 Federal Communications Senate (BKS). The BKS issues decisions on the cases themselves and can amend official first-instance decisions in any way. As an exception, this competence is assigned to the Independent Administrative Board (*Unabhängiger Verwaltungssenat*) in Vienna for administrative penal cases.

In the reporting period, the BKS issued numerous decisions in response to appeals, with two decisions pertaining to complaints from the Austrian Broadcasting Corporation (ORF) regarding violations of advertising regulations on the part of private broadcasters. One KommAustria decision was confirmed in its entirety, while in the other case the private broadcaster's appeal against a KommAustria decision identifying legal violations was partly sustained. Other decisions essentially confirmed the first-instance rulings on legal violations due to fundamental programming changes introduced by radio broadcasters without prior approval (seven cases). In four other cases, the first-instance official decisions were amended in part. In another case, KommAustria's official decision – in which the authority did not identify a violation of the law – was amended, and a legal violation was indeed identified by the BKS. In addition, the BKS was required to decide on five requests for the approval of programming changes which KommAustria had rejected due to non-fulfilment of the requirements regarding the duration of radio broadcasting operations; the BKS rejected the appeals as unfounded.

The BKS was also obliged to rule on complaints regarding the Austrian Broadcasting Corporation (ORF). In two cases, the BKS did not identify any violations of regulations or principles regarding the content of the ORF's broadcasts and online presence, thus confirming KommAustria's legal interpretation. In addition, the BKS – like KommAustria – refuted two alleged violations of the ORF's public mandate. In another case, the BKS ruled that a cooperation arrangement between the ORF and a third party for the further exploitation of previously produced content was indeed part of the ORF's business purpose, again confirming the decision previously issued by KommAustria. A legal violation identified *ex officio* by KommAustria due to one part of an online service which was considered to contravene the ORF Act (ORF-G) was also confirmed by the BKS.

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.

In the field of radio broadcasting, one decision on the allocation of an additional frequency to expand a coverage area as well as four licence decisions were confirmed in their entirety. In addition, the BKS (*ex officio*) instructed KommAustria to resume a radio broadcasting licensing procedure which had already been completed by an appeal. The essential reasoning cited by the BKS was that relevant facts had not been disclosed in the course of the licensing procedure, which constituted grounds for re-opening the case.

In five procedures relating to notification requirements in the case of changes in ownership, the BKS confirmed KommAustria's decision identifying violations due to a failure to notify changes in the ownership structure of radio broadcasters.

In the field of television regulation, the BKS partly confirmed one official decision in which KommAustria had identified violations of requirements imposed in licence decisions for the operation of regional terrestrial multiplex platforms (MUX C platforms). The licence decision required the multiplex operator to put the platform into operation by a specified date.

In another case, the BKS decided on a complaint submitted by a multiplex operator regarding a television broadcaster due to the alleged excessive use of third-party content; this complaint had already been rejected in the first instance, and the BKS confirmed that decision.

In addition, the BKS confirmed one official KommAustria decision in which the authority had identified a violation of the Audiovisual Media Services Act (AMD-G) due to an unlawful change in programming times.

Finally, the BKS overturned several KommAustria decisions in which the authority had ordered parties to pay financing contributions for the expenses of RTR and KommAustria, as the Austrian Administrative Court (VwGH) had previously overturned the corresponding BKS decisions due to unlawful content; this was justified with the argument that funding grants had been included in the calculation of revenues. Those grants are considered "true subsidies" and therefore did not qualify as revenues according to the definition used in business administration and law (as defined in the Austrian Value-Added Tax Act 1994 and elsewhere).

Three appeals to the BKS were rejected due to the failure to fulfil a previously issued instruction to remedy defects, while another appeal was rejected due to delayed submission.

In addition, until the amendment to Austrian broadcasting law went into effect, the BKS remained 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. In the broadcasting law amendment, 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. In the reporting period, the BKS issued one official decision stating that an ORF subsidiary had not violated the ORF Act in the broadcast in question.

In 2011, the Independent Administrative Board (UVS) in Vienna made one decision on an appeal; in this case, the UVS confirmed a penal decision issued by KommAustria on the violation of advertising provisions in the Private Radio Act (PrR-G).

### **3.1.2 Proceedings before the Constitutional Court (VfGH)**

Complaints regarding BKS decisions on appeals can be filed with the Austrian Constitutional Court (VfGH). In the reporting period, the Constitutional Court issued only four resolutions in which it refused to hear the cases submitted by private broadcasters/operators regarding BKS decisions, citing that the desired decision could not be expected to shed light on issues related to constitutional law.

During the year under review, the Constitutional Court issued one noteworthy ruling in which it deemed the provisions of the ORF Act (ORF-G) governing elections to the ORF Viewers' and Listeners' Council unconstitutional.

### **3.1.3 Proceedings before the Administrative Court (VwGH)**

BKS decisions are also subject to review by the Austrian Administrative Court (VwGH). 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 five official decisions issued by the BKS with regard to the issuance of radio licences and on one official BKS decision regarding the expansion of an existing licence. In another decision, the Administrative Court ruled on a complaint submitted by the ORF regarding a private broadcaster, and in yet another case the court ruled on a complaint submitted by one private broadcaster regarding another private broadcaster. Three Administrative Court decisions were related to legal violation proceedings against private broadcasters based on official advertising monitoring activities, while another concerned an *ex officio* radio licence revocation procedure initiated due to a fundamental change in programming. In all of the cases listed above, the Administrative Court confirmed the official decision issued by the BKS.

In five cases, the Administrative Court concurred with complaints regarding official BKS decisions on the payment of financing contributions to cover the expenses of RTR and KommAustria, and thus overturned the decisions due to unlawful content. The main point of criticism was the use of an inaccurate definition of the contributors' "revenues" in determining the amount of the financing contribution.

## **3.2 Telecommunications and Postal Services Division**

### **3.2.1 Proceedings before the Constitutional Court (VfGH) regarding telecommunications**

In the year under review, only one complaint regarding an official decision issued by the Telekom-Control-Kommission (TKK) was submitted to the Austrian Constitutional Court (VfGH). The complaint related to a procedure in which a company was identified as possessing significant market power and subjected to obligations pursuant to Articles 38 to 47 Telecommunications Act 2003 (TKG 2003).

In the reporting period, the Constitutional Court issued one ruling and refused to hear one complaint regarding a procedure in which site sharing was ordered pursuant to Art. 8 TKG 2003. As of December 31, 2011, two cases were still pending.

### **3.2.2 Proceedings before the Administrative Court (VwGH) regarding telecommunications**

During the period under review, a total of four complaints regarding TKK decisions were filed with the Austrian Administrative Court (VwGH). The complaints related to three official decisions on site sharing under Art. 8 TKG 2003 and one supervisory procedure under Art. 91 TKG 2003.

The Administrative Court issued a total of five rulings in the reporting period. The court overturned the official decisions due to unlawful content in two cases and due to procedural violations in one case. The TKK's official decisions were confirmed in two cases. As of December 31, 2011, 54 complaints were still pending before the Administrative Court.



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

In the reporting period, four complaints regarding RTR's official decisions were submitted to the Austrian Constitutional Court (VfGH). The complaints related to supervisory procedures pursuant to Art. 51 Postal Market Act (PMG) and were still pending before the Constitutional Court as of December 31, 2011.

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

In the year under review, one complaint about a Post-Control-Kommission (PCK) decision to prohibit the closure of post offices was submitted to the Austrian Administrative Court (VwGH). Another complaint submitted to the Administrative Court was related to the PCK's official decision on the definition of universal service. Finally, three complaints were submitted with regard to RTR's official decisions in a supervisory procedure under Art. 51 PMG.

During the reporting period, the Administrative Court issued one ruling in which the complaint was deemed invalid and the procedure discontinued. As of December 31, 2011, a total of seven cases were still pending.







## 4. Regulatory activities of KommAustria

The Austrian Communications Authority (KommAustria) was established under the KommAustria Act (KOG) for the purpose of performing administrative and regulatory duties in the field of electronic audio media and electronic audiovisual media. The key activities of the authority include the regulation of market access for media services, general and specific monitoring of compliance with Austrian law, infrastructure regulation, substitute decisions on agreements regarding transmission platforms, broadcasting facilities and reporting coverage rights, and frequency coordination. In carrying out its duties, KommAustria is responsible for private organisations (broadcasters, media service providers, communications network operators) as well as the Austrian Broadcasting Corporation (ORF) and its subsidiaries.

In addition, the KOG requires KommAustria to administer media grants in accordance with Austrian federal law (see Section 6).

### 4.1 Access to media markets

Access to the media markets is regulated by means of the approval or registration of content services. This area of activity includes the conventional tasks of allocating broadcasting frequencies, issuing broadcasting licences, accepting and reviewing notifications from cable broadcasters and other providers of audiovisual media services (especially on the Internet), as well as reviewing the launch of new content services by the Austrian Broadcasting Corporation (ORF) and its subsidiaries.

#### 4.1.1 Private radio broadcasting licences


In early 2011, regulatory activities in the field of private radio broadcasting were dominated by the completion of numerous terrestrial radio licensing procedures which had been initiated *ex officio*. These procedures were carried out because the previous licences were set to expire in the summer of 2011. The procedures included six coverage areas in Vienna as well as a number of licences covering entire federal provinces of Austria.

Later in the year, the number of procedures and invitations to tender handled by the authority in the field of terrestrial radio broadcasting rose markedly due to the expansion of the nationwide radio broadcaster KRONEHIT's technical range as well as a large number of applications from local and regional broadcasters.

In this context, it is worth mentioning that the broadcasting law amendment passed in 2010 for the first time created the possibility of issuing regular multiplex licences for digital radio; as a result, the first applications for licences for pilot tests in digital radio broadcasting were received in 2011. Due to ongoing international coordination activities, no licences could be approved during the period under review.

##### 4.1.1.1 Nationwide radio broadcasting

Since December 2004, Kronehit Radio Betriebs GmbH has held a nationwide licence for private terrestrial radio broadcasting in Austria. In vast parts of the country (coverage: more than 90% of the overall population), the station broadcasts its adult contemporary radio content under the name "KRONEHIT."



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 2006, ten in 2007, eight in 2008, six in 2009 and nine in 2010 to expand its coverage area. Due to rulings handed down by the Austrian Administrative Court (VwGH), the frequencies "SALZBURG (Gaisberg) 94.0 MHz" and "SPITTAL DRAU 5 (Hühnersberg) 99.3 MHz" are no longer allocated to the nationwide licensee.

In 2011, the licensee was allocated a total of 41 frequencies throughout Austria to expand its coverage, and its licence was amended accordingly. As a result, Kronehit Radio Betriebs GmbH was again able to increase its coverage level substantially in 2011.

In addition, five changes to broadcasting facilities were approved at the broadcaster's request. Another 11 applications for the allocation of frequencies were still pending at the end of the year 2011.

The broadcaster was also issued a permit to conduct pilot operations for a single-frequency network in Vienna.

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 Private Radio Act (PrR-G). However, no applications were received.

#### **4.1.1.2 Regional and local radio broadcasting**

In this area of activity, a total of 35 procedures were carried out in the year 2011. Of those procedures, 12 were still pending at the end of the reporting period.

Procedures regarding terrestrial radio broadcasting licences are either carried out at the request of a potential local or regional radio broadcaster or, in certain cases, on the basis of an official invitation to tender. Applicants can either request a licence for a new, separate coverage area or for the expansion or technical improvement of existing coverage areas (allocation of additional frequencies).

##### **Licensing procedure**

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 and that the radio station would be financially viable 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.

In addition, the Austrian Communications Authority (KommAustria) may, by way of ordinance, reserve frequencies for the purpose of planning new coverage areas.

Otherwise, new frequencies to be used for the creation of a new coverage area, the expansion of an existing coverage area, or the expansion of coverage by a nationwide licensee must be put out to public tender (*Wiener Zeitung*, daily newspapers, RTR web site). 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 multiple 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 a sequence defined by law in the interest of a dual broadcasting market.

- The allocation of frequencies to the ORF takes top priority, but only if such frequencies are actually required to meet coverage obligations pursuant to the ORF Act (ORF-G).
- The next priority is the allocation of frequencies to improve coverage provided by previously licensed radio broadcasters. However, expanding their geographical coverage areas is not accorded priority in this context.
- If the frequencies are not allocated according to the priorities above, they can be allocated upon request for the purpose of expanding a nationwide radio broadcasting licence.

### **Selection of best applicant**

In cases where Austrian law accords equal priority to the remaining applications, 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.

Where more than one licence applicant competes for the same resources, a selection procedure (“beauty contest”) is carried out in the interest of ensuring a greater diversity of opinions, independent programming with regard to the interests of the coverage area, and a larger share of self-produced content. Special-interest channels must make a special contribution to the diversity of opinions.

### **Licensing procedures**

In 2011, eight licensing procedures were carried out on the basis of applications received by the authority in the field of local/regional terrestrial radio broadcasting. KommAustria was required to resume one other procedure in the first instance due to a decision handed down by the Federal Communications Senate (BKS). Two licences were issued for the new coverage areas “St. Pölten” and “Innsbruck 91.1 MHz.” The six procedures still pending at the end of the year related to coverage areas in the provinces of Salzburg, Lower Austria, Vienna, Vorarlberg and Styria. Two licence applications were withdrawn in 2011.

On the basis of official invitations to tender, 24 additional licensing procedures were carried out; these procedures concerned 18 licences which were set to expire in 2011 and therefore had to be re-awarded. The procedures included six coverage areas in Vienna as well as a number of licences covering entire federal provinces of Austria. The six procedures still pending at the end of the year related to coverage areas in the provinces of Salzburg, Tyrol and Styria.

### **Expansion of existing coverage areas**

In 2011, KommAustria carried out nine procedures pertaining to the expansion of existing coverage areas. In these procedures, one private radio broadcaster was assigned a frequency so that its coverage area now includes Linz and Steyr. Eight additional procedures were still pending at the end of 2011, while one application for expansion was withdrawn by the applicant.

### **Improvement of coverage**

Three frequency allocation procedures for the improvement of coverage in an existing coverage area were not completed and were thus still pending at the end of 2011.

### **Frequency allocations to ORF**

KommAustria approved one application from the ORF for the allocation of an additional frequency in the province of Carinthia in order to ensure coverage by the “Radio Kärnten” station.

#### 4.1.1.3 Event and educational radio licences

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.

In 2011, licences were granted for a total of ten event radio broadcasts. The following events were thus accompanied by radio broadcasts:

- 100-year anniversary of FC Austria Wien from March 7, 2011 to March 27, 2011 in Vienna (tailored radio programme for football fans);
- *Wiener Eistraum* from February 12, 2011 to March 6, 2011 in Vienna (Lounge FM);
- *Fest der Jugend* youth festival from June 10, 2011 to June 13, 2011 in Salzburg (Radio Maria);
- Sand in the City 2011 from April 25, 2011 to July 25, 2011 in Vienna (Lounge FM);
- Winter Youth Olympic Games 2012 from January 2, 2012 to January 29, 2012 in Innsbruck and Seefeld (Radio Olympia);
- *Sommer im Museumsquartier – 10 Jahre Museumsquartier* (10<sup>th</sup> anniversary of Vienna's Museum Quarter) from July 26, 2011 to October 26, 2011 in Vienna (Lounge FM);
- *Das Festival für Musik der Gegenwart 2011* (contemporary music festival) from October 28, 2011 to November 25, 2011 in Vienna (Lounge FM);
- Hahnenkamm Races 2012 from January 18, 2012, 12:00 noon, to January 22, 2012, 10:00 pm, in Kitzbühel (tailored radio broadcasts with audio descriptions for fans with visual impairments);
- *Winter im MQ 2011* (Winter in the Museum Quarter) from December 3, 2011 to December 30, 2011 in Vienna (Lounge FM);
- *Wiener Silvesterpfad 2011/2012* (New Year's Eve broadcasts) from December 31, 2011 to January 8, 2012 in Vienna (Lounge FM).

Ten applications for event radio broadcasting licences were rejected due to unlawful multiple coverage in the same media association, four applications were withdrawn, and two procedures were still pending at the end of the reporting period.

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.

A total of seven educational radio licences were granted in 2011:

- NJOY 97.5 in Vienna;
- Radio B 138 in Kirchdorf an der Krems;
- RADIUS 106.6 in Freistadt;
- Campus Radio in St. Pölten;
- Radio Gymnasium in Oberpullendorf;
- NJOY 88.2 in Deutschlandsberg;
- Radio SOL in Bad Vöslau.

#### 4.1.1.4 Satellite radio broadcasting

Under Art. 3 PrR-G, KommAustria is also responsible for issuing satellite radio broadcasting licences.

In the year 2011, KommAustria granted one licence for satellite radio broadcasting, specifically for Radio Mileva, an unencrypted 24-hour radio broadcast with music and verbal content specifically intended for Vlach listeners. Certain programming parts are also broadcast in Serbo-Croatian.

#### **4.1.1.5 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.

In 2011, KommAustria approved eight changes in broadcasting facilities (five of which were requested by the nationwide radio broadcaster KRONEHIT) and five applications for broadcasting facilities for pilot transmissions by private radio broadcasters; one application under telecommunications law was submitted and later withdrawn in 2011. At the end of the year, another five applications were pending. In addition, KommAustria issued approvals for the launch of radio system operations in broadcasting frequency bands (e.g. to cover football stadiums, drive-in movie theatres, etc.) in three cases; in one case, the application to the Telecommunications Office was withdrawn before KommAustria could make an approval decision.

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

In 2011, the ORF submitted one application for approval of the construction of a new broadcasting facility, which was approved along with the allocation of an additional frequency in Carinthia in order to ensure coverage by the "Radio Kärnten" station.

#### **4.1.2 Approvals and notifications in television broadcasting and on-demand services**

##### **4.1.2.1 Nationwide television**

During the period under review, the multiplex platform MUX A did not see any further expansions. Therefore, MUX A still provided coverage for approximately 96% of Austria's population at the end of the year.

On the MUX B platform, the regulatory authority approved the addition of a fifth channel, and ORF III won the invitation to tender for this broadcasting space. Since 2011, a radio channel has also been broadcast on this multiplex in the greater Vienna area. At the end of the year, MUX B provided coverage for approximately 88% of Austria's population.

In the summer of 2011, two nationwide multiplex platforms for digital terrestrial broadcasting based on the DVB-T2 standard (MUX D and MUX E) were put out to tender; these procedures were still pending at the end of the year.

#### 4.1.2.2 Regional and local television broadcasting

During the year under review, the MUX C operators' licences for the Vienna Basin and for the province of Carinthia were revoked due to failure to launch operations. As a result, a total of 16 licences for the operation of local multi-plex platforms are currently in force.

In addition, two licences were issued for the dissemination of digital terrestrial channels on regional platforms in the reporting period.

#### 4.1.2.3 Event television licences

During the period under review, the authority approved an event television channel for the first time since the relevant provisions in the Audiovisual Media Services Act (AMD-G) were adopted; these broadcasts accompanied the World Bodypainting Festival.

#### 4.1.2.4 Satellite television broadcasting

In 2011, KommAustria approved three new licences for the television channels ATV2, Eurotic TV (German) and VISIT-X.tv. At the end of the year 2011, seven additional licence applications were still pending.

#### 4.1.2.5 Media services subject to notification requirements

By the end of 2011, a total of 130 cable television channels, 13 (linear) television channels broadcast via the Internet, and 51 on-demand services had been registered with KommAustria. A directory of notified media services can be found at <http://www.rtr.at/en/m/Abrufdienste>.


### 4.1.3 Approvals and notifications of new ORF services

#### 4.1.3.1 Public value tests

The *ex ante* public value test was introduced in the course of implementing EU state aid rules, which call for such a test prior to the introduction of a major new media service by public broadcasters using state aid. In this context, it is necessary to review whether a new service contributes to the fulfilment of social, democratic and cultural needs (Amsterdam Protocol) and whether any expected negative impacts on the competitive situation and on the diversity of media content are disproportionate compared to the public value added.

In the course of this *ex ante* review procedure, the Public Value Advisory Board is given the opportunity to assess the expected impacts of new ORF service plans on content diversity from a media standpoint and to submit comments on those service plans. The Federal Competition Authority, on the other hand, is given the opportunity to submit comments with regard to the expected effects of a service plan on the competitive situation of other media providers operating in Austria.

The first two *ex ante* review procedures were carried out in the year 2011. In the first procedure, approval was granted (subject to specific conditions) for the ORF's launch of a special-interest information and culture channel (ORF III) under Art. 4c ORF Act (ORF-G) as well as the provision of an online service accompanying the information and culture channel in accordance with Articles 4e and 4f ORF-G. The *ORF III Kultur und Information* television channel mainly broadcasts information, discussion and documentary programmes as well as television magazine shows and coverage of cultural events. The conditions imposed on the special-interest television channel call for restrictions on sales (i.e. discounts) in relation to commercial communication as well as restrictions on cross-promotion in order to mitigate the channel's adverse effects on competition.



In another procedure, approval was granted for the ORF's provision of the *Ö1 macht Schule* online service under Art. 4f ORF-G. In this service, the ORF provides teaching and learning content in cooperation with the University of Teacher Education in Vienna and the Austrian Federal Ministry for Education, Arts and Culture (BMUKK) in order to prepare and provide on-demand teaching materials for the 9<sup>th</sup> to 13<sup>th</sup> school grades on the basis of shows broadcast by the Ö1 radio station.

#### **4.1.3.2 Review procedure for service plans submitted by ORF**

Under Art. 5a ORF Act (ORF-G), service plans serve to specify the channels and services offered within the framework of the ORF's public mandate.


In this context, the transitional provisions in Art. 50 ORF-G stipulate specific provisions for the special-interest sports channel pursuant to Art. 4b and for those online services pursuant to Articles 4e and 4f which were already provided, created or changed as of January 31, 2008 or between that date and the entry into force of Federal Law Gazette I No. 50/2010 on October 1, 2010. These provisions can essentially be summarised as follows: The relevant ORF services are generally not subject to the public value test requirement, and those services were to be submitted to KommAustria for review at the latest within six months after Federal Law Gazette I No. 50/2010 entered into force. During that period, the ORF was allowed to continue offering those services. In addition, the law called for the discontinuation of futurezone.ORF.at and oe3.orf.at/instyle services upon the entry into force of Federal Law Gazette I No. 50/2010 on October 1, 2010.

On March 31, 2011, service plans were submitted to KommAustria for the following services, some of which include a large number of additional sub-services:

- ORF SPORT +
- Tvthek
- TV.ORF.at
- kundendienst.ORF.at
- news.ORF.at
- oe3.ORF.at
- oe1.ORF.at
- fm4.ORF.at
- oesterreich.ORF.at
- radio.ORF.at
- religion.ORF.at
- science.ORF.at
- sport.ORF.at
- magazine.ORF.at/alpha
- help.ORF.at
- insider.ORF.at

With regard to some of the service plans submitted on March 31, 2011, the ORF was asked to provide supplementary information, and in certain cases the ORF was also informed that specific parts of services are not likely to be in line with the provisions of the ORF Act (ORF-G).

Subsequently, KommAustria considered the broadcasting of ORF SPORT + and the bundling of existing online services related to that channel on a newly created site to be in line with the legal requirements defined in the ORF Act, and as a result the authority did not prohibit the services. In the same vein, the online services TV.ORF.at, kundendienst.ORF.at, oe3.ORF.at, oe1.ORF.at, fm4.ORF.at, radio.ORF.at, oesterreich.ORF.at, sport.ORF.at, magazine.ORF.at/alpha, help.ORF.at, insider.ORF.at, science.ORF.at and religion.ORF.at were also considered to be in line with the legal requirements of the ORF Act and therefore not prohibited by the regulatory authority.



With the exception of the *debatte.ORF.at* service, the online service *news.ORF.at* was also considered to meet the relevant legal requirements. KommAustria prohibited the provision of the *debatte.ORF.at* service, citing that the service is a forum, chat room or other service for the publication of user-generated content which is prohibited under Art. 4f Par. 2 No. 23 ORF Act (ORF-G).

At first, the *TVthek* online service was also considered to meet legal requirements. However, as the service plan was changed to include the use of additional proprietary dissemination channels for this service, KommAustria initiated a legal violation procedure during the reporting period.

## **4.2 Legal supervision**

### **4.2.1 Supervision of private broadcasters, ORF and its subsidiaries**

In addition to monitoring compliance with regulations on commercial communication, the Austrian Communications Authority (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 the ORF and its subsidiaries.

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 the 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 the ORF), the authority may ultimately even revoke a broadcaster's or media service provider's licence or prohibit further radio broadcasting or media service activities. In the case of persistent violations of Austrian law by one of the ORF's decision-making bodies, KommAustria can overturn the relevant decision of that body, in which case the 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.

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

In the course of issuing a private broadcasting licence, the programming plan submitted is also approved by 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.

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.

In addition, KommAustria has specific powers for the legal supervision of the 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 4.2.2).



#### **4.2.1.1 Commercial communication**

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.

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 attain 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.)

Among the ORF's channels, monitoring activities were carried out for the regional radio stations in Vienna, Upper Austria, Carinthia, Styria, Burgenland and Lower Austria (twice) as well as the nationwide radio stations Ö1 and Ö3 (twice) and the television channels ORF 1 (eight times), ORF 2 (four times) and ORF SPORT + as well as ORF online. Legal violations were identified on the ORF 1 television channel in two cases.

The following private radio broadcasters' programmes were analysed (or requested): Vienna: Kronehit Radio Betriebs GmbH, Kirchliche Stiftung Stephansdom and Radio Orange; Lower Austria: Radio Maria Österreich; Upper Austria: Privatrado Arabella GmbH; Styria: Antenne Steiermark Regionalradio GmbH & Co KG and the association "Freies Radio Steiermark"; Tyrol: Antenne "Österreich" und Medieninnovationen GmbH and Radio Oberland GmbH; Burgenland: Privatrado Burgenland GmbH. In these monitoring activities, KommAustria did not identify any violations of advertising regulations. One procedure has not yet been completed.

Among the private television broadcasters, broadcasts by ATV Privat TV GmbH & Co KG, ServusTV Fernsehgesellschaft m.b.H., K-TV Fernseh GmbH & Co KEG, Linz Land Fernsehen Medien GmbH, KT1 Privatfernsehen GmbH, Milchberger Harald (V.I.P. Film & Video-Produktion), Community TV-GmbH, BKF Das Burgenland Fernsehen GmbH and LAA TV were selected for monitoring. In three of those cases, KommAustria identified a violation of advertising regulations. Two procedures have not yet been completed.

Additional information can be found on the RTR web site at <http://www.rtr.at/en/m/EntscheidungenGesamtRF> (in German).

##### **Decisions of the Federal Communications Board (BKS) and the Austrian Administrative Court (VwGH) on violations of commercial communication regulations**

During the year under review, the BKS completed numerous procedures regarding the ORF and private broadcasters who had submitted appeals against the identification of advertising violations by KommAustria. Once again, the BKS concurred with KommAustria's legal views regarding advertising violations in a majority of cases.

In terms of content, it is especially worth highlighting the decisions of the BKS and the Austrian Administrative Court on hidden advertising (BKS: January 26, 2011, No. 611.009/0021-BKS/2010; Administrative Court: June 30, 2011, No. 2011/03/0140).

#### 4.2.1.2 Programming principles

Television and broadcasting channels are required to uphold the principles of objectivity and the diversity of opinions.

Under the Private Radio Act (PrR-G), broadcasters are also required to present public, cultural and economic activities in their coverage areas in an appropriate manner and to allow major social groups to contribute their comments and opinions. Moreover, broadcasts must not contain any pornographic content or content which glorifies violence. The broadcast content and its design are to respect human dignity and the fundamental rights of others, and content must not incite hatred on the basis of race, gender, disability, religion or nationality. Broadcasters are also required to comply with the generally recognised principles of journalism. Before being aired, news broadcasts are to be reviewed for their accuracy and origin with the degree of care dictated by the circumstances.

Similar principles are stipulated in the ORF Act (ORF-G), and the ORF is required to make efforts to ensure quality, innovation, integration, equal rights and mutual understanding in its services as a whole. The information must be comprehensive, independent, impartial and objective, and make a contribution to the free and public formation of opinions, thus also contributing to democratic discourse.

On the basis of its public mandate, the ORF is also obliged to reflect the diversity of opinions held in public life and to respect human dignity, personal rights and individual privacy. Commentary, analyses and moderation must be objective and based on verifiable facts.

During the reporting period, six complaints were submitted with regard to alleged violations of programming principles by the ORF. In particular, these complaints referred to violations of the principles of objectivity and impartiality in reporting. Another complaint referred to an alleged violation of independence and commitment to accuracy in journalism. In two of those procedures, no legal violations could be identified, and the decisions have taken legal effect. Two other decisions have not yet taken legal effect because appeals were submitted to the BKS. The two remaining procedures had not been completed at the end of the year.

Additional information can be found on the RTR web site at <http://www.rtr.at/en/m/EntscheidungenGesamtRF> (in German).


#### 4.2.1.3 Other legal supervisory activities

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.

In the reporting period, four complaints regarding private broadcasters were submitted, mainly due to violations of programming requirements. In one procedure, the complaint was rejected due to a failure to fulfil an instruction to remedy defects. In two other cases, the complaints were rejected. Finally, in one procedure, KommAustria concurred with the complainant and identified a legal violation due to unlicensed broadcasting.

In the year under review, official monitoring activities largely focused on reviewing compliance with advertising regulations (see Section 4.2.1.1) as well as the accompanying procedures regarding legal violations.

In addition, KommAustria ruled in one case that the conditions of an official decision regarding licences to operate terrestrial multiplex platforms had been violated because a coverage level of 80% had not been reached after two years. KommAustria also initiated a legal violation procedure regarding one multiplex operator who had broadcast a television channel without previously notifying KommAustria of the change in the channel lineup. In one case, KommAustria determined that another multiplex operator had failed to launch the terrestrial multiplex platform assigned to that operator by the deadline specified in the relevant KommAustria decision. The official decision identifying this violation has taken legal effect.



Finally, in two cases KommAustria revoked licences to operate a multiplex platform due to failure to launch operations (MUX C: Vienna Basin; MUX C: Province of Carinthia).

In numerous procedures, KommAustria identified legal violations due to the failure to submit recordings of television and radio broadcasts. In another procedure, the authority pursued a legal violation procedure due to unlicensed radio broadcasting. In six other cases, KommAustria established with legal effect that broadcasters had violated their obligations to publish specific items from official decisions. In addition, the delayed notification of changes in ownership structure was identified in a large number of cases. Finally, KommAustria initiated one procedure regarding a fundamental change in programming without approval and two assessment procedures due to delayed notifications under Art. 6 Audiovisual Media Services Act (AMD-G) during the reporting period. These procedures have been completed.

In the year under review, KommAustria conducted 14 penal procedures, four of which were concluded with a legally effective penal order. In five procedures, KommAustria merely issued a warning pursuant to Art. 21 of the Administrative Penalties Act (VStG). In one case, KommAustria decided not to impose a penalty and discontinued the procedure. An appeal against one penal decision was submitted to the Independent Administrative Board, and the amount of the fine indicated in the official decision was amended as a result. Three of these penal procedures have not yet been completed.

#### **4.2.1.4 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 in principle assigned to KommAustria under Art. 122 Telecommunications Act 2003 (TKG 2003), has been 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 communicates its opinion on the case in question.

In the reporting period, RTR's conciliation body received 30 complaints regarding matters assigned to the Media Division. Compared to the number of conciliation cases handled in the Telecommunications Division (see Section 8.1.1), this figure accounts for a mere 0.5% of all conciliation cases submitted in the year 2011. 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 services (disputed film orders).


### **4.2.2 Specific supervision of ORF and its subsidiaries**

#### **4.2.2.1 Purpose of business, public mandate and bodies**

Eight complaints regarding the ORF were submitted during the reporting period. KommAustria issued decisions on five cases in 2011, while the remaining three procedures were not completed during the reporting period (for further information, see Section 4.2.1.3).

In the year under review, official monitoring activities largely focused on reviewing compliance with advertising regulations (see Section 4.2.1.1) as well as the accompanying procedures regarding legal violations. In addition, KommAustria initiated two assessment procedures regarding the ORF's activities on Facebook as well as the broadcaster's dissemination of the TVthek service on A1 TV; one procedure was still pending at the end of 2011.

In line with Art. 31 Par. 19 ORF Act (ORF-G), the ORF notified schedules of fees for commercial communication and ongoing supplements to those schedules in multiple cases. The schedules can be found on the web site <http://www.enterprise.orf.at> (in German).



In addition, a procedure pursuant to Art. 38a ORF Act (ORF-G) was initiated in the year under review due to a transgression of the ORF's public mandate in broadcasts by the special-interest sports channel ORF SPORT +.

#### **4.2.2.2 Supervision of ORF's business activities**

With the four quarterly reports on regional advertising submitted in 2011, the ORF fulfilled its reporting obligations pursuant to Art. 14 Par. 5b ORF-G and also disclosed its agreements on broadcasts of regional advertising.

In KommAustria Decision KOA 10.400/11-005, the use of net annual profits from 2010 to establish a voluntary equity reserve under Art. 39b Par. 4 No. 3 ORF-G was approved in accordance with Art. 39b Par. 5 in conjunction with Art. 39b Par. 1, 2, 3 and Par. 4 No. 3 in conjunction with Art. 35 ORF-G.

In accordance with Art. 31 Par. 15 in conjunction with Art. 31 Par. 11 and 14 ORF-G, KommAustria determined that the ORF had fulfilled the conditions for reimbursement of licence fees not collected pursuant to Art. 31 Par. 10 ORF-G in 2010.

In the period from July to October 2011, the audit commission carried out its audit of the ORF's activities in the year 2010; however, the relevant procedure was not completed during the reporting period.

On the basis of an agreement between KommAustria and the audit commission, the ORF group's consolidated financial statements as of December 31, 2010 were also audited during the reporting period; the corresponding KommAustria procedure had not been completed by the end of 2011.

Moreover, at the end of 2011, KommAustria received a petition from the ORF's Managing Director regarding the determination of licence fees pursuant to Art. 31 Par. 9 ORF Act (ORF-G); this procedure was not completed during the year under review.

#### **4.2.2.3 Excursus: Appointment of the audit commission under Art. 40 Par. 2 ORF Act (ORF-G)**

Under Art. 40 Par. 1 and 2 in conjunction with Art. 35 Par. 3 ORF Act (ORF-G), Art. 2 Par. 1 No. 9 and Art. 13 Par. 3 No. 13 lit. e KommAustria Act (KOG), KommAustria is required to appoint an audit commission consisting of at least two members, who have to be external auditors or external auditing companies.

Under Art. 40 ORF Act, this commission is responsible for auditing the ORF's annual accounts and annual report as well as its consolidated accounts and consolidated annual report. The audit thus also includes the activities of numerous ORF subsidiaries. In addition, the audit commission is responsible for reviewing the activities of the ORF Group, which involves reviewing the ORF's various business areas and activities to determine whether funds were used in an appropriate and economical manner. All audit reports are conveyed to KommAustria, which may also issue specific audit instructions for the audit commission, and to the responsible bodies at the ORF.

Based on a decision issued on February 25, 2011 (KOA 10.500/11-002), KommAustria appointed the following external auditing companies to this commission as of March 8, 2011:

- BDO Austria GmbH Wirtschaftsprüfungs- und Steuerberatungsgesellschaft;
- Grant Thornton Unitreu GmbH Wirtschaftsprüfungs- und Steuerberatungsgesellschaft.

These members were appointed for a period of five ORF business years, that is, for the business years 2010 to 2014.

Their appointment was preceded by a comprehensive, four-month selection procedure on the basis of an invitation to tender throughout Europe in accordance with the Austrian Federal Procurement Act 2006. In the course of the procedure, the bidding consortium consisting of the companies listed above proved to be the best bidder compared to the competition.

## 4.2.3 Specific supervision of private providers

### 4.2.3.1 Changes in ownership

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 designed to ensure that providers continue to fulfil the legal requirements for broadcasting or the provision of a media service, such as professional, financial and organisational qualifications, the absence of reasons for disqualification and the safeguarding of a diversity of opinions (avoidance of excessively high media concentration), after a licence is issued or a service is notified. Violations of or lapses in the fulfilment of these (licensing) requirements constitute grounds for the revocation of broadcasting licences or for orders prohibiting broadcasts.

In order to enable the regulatory authority to monitor compliance with these legal provisions, the Private Radio Act (PrR-G) stipulates that any and all (direct or indirect) changes in ownership or partnership structures must be reported to the regulatory authority. Moreover, in those cases where new partners acquire more than 50% of the shares in a radio broadcaster, an official assessment must be obtained from KommAustria before the change in ownership is effected in order to determine whether the relevant legal requirements applicable to radio broadcasting will still be fulfilled.

In the reporting period, numerous radio broadcasters notified the regulatory authority of ownership changes below the 50% threshold, and the authority did not have to raise objections to any of these notifications. On the basis of the Private Radio Act (PrR-G), two approvals of ownership changes were issued in the form of official decisions; in each case, the changes exceeded the 50% threshold.

The Audiovisual Media Services Act (AMD-G) likewise requires media service providers to notify the regulatory authority of any and all changes in their ownership or partnership structures. Like the Private Radio Act (PrR-G), this act also requires providers 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) in cases where more than 50% of the shares in a television broadcaster are to be transferred to third parties. This assessment must likewise be obtained prior to the transfer of shares.


During the reporting period, KommAustria received several notifications of ownership changes below the 50% threshold (i.e. subject to the notification requirement only) and issued one official decision approving an ownership change exceeding that threshold under the AMD-G.

Finally, both the PrR-G and the AMD-G require holders of multiplex licences to notify the regulatory authority of ownership transfers subject to the assessment requirement (i.e. over the 50% threshold). Within a period of no more than eight weeks, the regulatory authority is to determine whether the changed structure will still comply with the applicable provisions of Austrian federal 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.

In the reporting period, no such notifications were received from multiplex operators.

### 4.2.3.2 Programming changes

Under the Private Radio Act (PrR-G), radio broadcasters may also request an official assessment decision from KommAustria as to 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. 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.



However, if KommAustria determines that a planned change does constitute a fundamental change in programming, the broadcaster is to obtain official approval for the change. 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 competitive 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 the reporting period, four radio broadcasters in the province of Styria requested approval for fundamental programming changes. KommAustria refused to approve the changes in each case because the applicants were unable to provide evidence that they had carried out broadcasting operations in accordance with the licence decision for two years prior to the KommAustria decision.

Under the AMD-G, holders of broadcasting licences for satellite and digital terrestrial television channels are also allowed to request approval for changes in programming. As these licences are not issued by way of a competitive selection procedure, these broadcasters enjoy greater freedom in their ability to introduce such changes. Satellite and digital terrestrial television licensees are required to notify the regulatory authority in advance of material changes in the programming category, the duration of broadcasts as well as the number and duration of broadcasts offering tailored local content.

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 existing agreements with a satellite or multiplex operator with regard to the planned use of that platform.

Notified changes are to be approved by the regulatory authority as long as they comply with the provisions of Sections 3, 7 and 9 AMD-G 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.

In the reporting period, the authority received multiple notifications from satellite television licensees in which those parties reported changes in the duration of broadcasts or changes in tailored local content. The authority issued approvals in all of those cases. Finally, one procedure regarding a change in transmission platform was carried out during the reporting period; in this case, the authority approved the dissemination of a television channel via a different satellite.

### **4.3 Procedures under the Act on Exclusive Television Rights (FERG)**

During the reporting period, two procedures under the Act on Exclusive Television Rights (FERG) were initiated before the Austrian Communications Authority (KommAustria).

In the first case, KommAustria rejected the request for an official decision enforcing brief reporting rights for the world championships in women's football because a contractual agreement governing the essential arrangements for these reporting rights existed between the television broadcasters involved.

Additional information can be found on the RTR web site at <http://www.rtr.at/en/m/EntscheidungenGesamtRF> (in German).

The second case could not be completed by an official decision during the reporting period because the television broadcasters were still conducting negotiations on a possible contractual agreement.

#### 4.4 Broadcasting market analysis

Under the Austrian Telecommunications Act 2003 (TKG 2003), the Austrian Communications Authority (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").

The current version of the Broadcasting Market Definition Ordinance 2009 (RFMVO 2009) issued by KommAustria on April 30, 2009 defines the following markets as relevant to sector-specific *ex-ante* regulation:

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

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

On the basis of the RFMVO 2009, KommAustria initiated a procedure in early 2009 pursuant to Art. 37 TKG 2003 for each of the markets listed above in order to determine whether effective competition can be considered to prevail on those markets from an economic standpoint and whether self-sustaining competition exists on those markets in the absence of sector-specific regulation.

The expert opinions commissioned for this purpose were completed around the end of the third quarter of 2010.

Due to rulings issued by the European Court of Justice (ECJ) and the Austrian Administrative Court (VwGH), it was necessary to comply with new procedural requirements in these ongoing market analysis procedures from the beginning of 2011 onward: Since those rulings were issued, market analysis procedures under the TKG 2003 have no longer been conducted as single-party procedures or as procedures involving only the companies identified as possessing significant market power, but must involve all parties affected by the procedure. This requires KommAustria to identify the parties affected in each case.

An amendment to the KommAustria Act (KOG) which went into effect on October 1, 2010 now facilitates such procedures with the help of electronic communication channels in cases where one can expect more than 100 affected parties. In all three market analysis procedures mentioned above, a review of which companies might be affected by the procedures showed that more than 100 parties could be expected in each case.

Therefore, all potentially affected parties were informed of these market analysis procedures in an official bulletin published on the regulatory authority's web site on February 16, 2011 and given the opportunity to provide credible written evidence of their status as an affected party within six weeks of the publication of the bulletin.

In the ongoing procedures, parties made frequent use of the option to use electronic communication channels; for example, the entire record inspection process was carried out electronically on RTR's e-government portal.

After an evaluation of the comments received from the parties to the procedure, a supplementary instruction to investigate unresolved material questions was issued in October 2011 in the procedures regarding the market for analogue terrestrial transmission of FM radio broadcasting signals to end-users and regarding the market for access to transmission facilities and the digital terrestrial transmission of television signals to the end-user. This procedure was still pending at the end of the year.

## 4.5 Public communications networks and services

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, the Austrian Communications Authority (KommAustria) issues a confirmation (general approval) pursuant to Art. 15 Par. 3 in conjunction with Art. 120 of the Austrian Telecommunications Act 2003 (TKG 2003).

In practice, this notification requirement 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. 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 4.4.

Additional information can be found on the RTR web site at <http://www.rtr.at/en/m/RFAGGVerzeichnis>.

## 4.6 Administration and coordination of broadcasting frequencies

During the reporting period, the authority carried out numerous international frequency coordination activities in the field of television as well as radio broadcasting. Analogue terrestrial television broadcasting now no longer plays a role in coordination activities; the existing analogue transmitters used in several of Austria's neighbouring countries are gradually being shut down.

### 4.6.1 Frequency coordination procedures and frequency usage

In the reporting period, official coordination procedures under the GE06 Agreement were initiated for 329 DVB-T transmitters. Most of those transmitters had already been coordinated bilaterally with the relevant frequency administrations in neighbouring countries or were covered by existing allotment entries in the GE06 plan.

Numerous requests for the coordination of digital radio transmitters (T-DAB+) were received from Germany. These coordination activities were necessary because Germany's launch of nationwide digital radio stations on a multiplex platform in mid-2011 called for extensive adaptations to the GE06 plan.

As shown in the table below, the authority also carried out numerous activities in the field of analogue radio broadcasting (FM) during the year under review. Most radio transmitters coordinated under the GE84 Agreement have a power output of ten to several hundred watts, as it is basically no longer practicable to accommodate higher-power transmitters in the 87.6 to 107.9 MHz band. Due to the declining costs of radio transmission equipment, smaller radio broadcasters can now also afford to operate multiple transmitters, for which it is necessary to coordinate new frequencies in each case.

The number of frequency coordination procedures handled in the field of broadcasting in 2011 is shown in the table below.



**Table 1: Number of coordination procedures in 2011**

Country	Analogue radio	Digital radio	Digital television
Austria	69	5	329
Germany	36	126	7
Croatia	66	0	0
Poland	10	17	3
Switzerland	58	25	18
Slovakia	12	0	43
Slovenia	13	7	0
Czech Republic	53	5	10
Hungary	17	0	0
<b>TOTAL</b>	<b>334</b>	<b>185</b>	<b>410</b>

Source: RTR

At the moment, the current GE06 plan is being optimised further on the basis of practical experience in the rollout of digital television transmitter networks over the last five years. This also applies to the realisation of small coverage areas with newly coordinated frequencies. In addition, it has also become clear that GE06 planning has to be adapted to the actual realisation of networks. As a result, geographical expansions or shifts of existing channel entries in the GE06 plan are necessary in many cases.

In digital terrestrial television broadcasting, the new DVB-T2 standard has created additional possibilities for more efficient frequency usage. In addition to increasing the data transmission rate by 30 to 50% compared to DVB-T and thus enabling additional channels for high-definition television (HDTV), DVB-T2 now also allows the construction of larger single-frequency networks. This possibility can be used in order to expand existing GE06 plan entries.


Therefore, Austria's frequency administrators are cooperating with neighbouring countries in bilateral and multilateral working groups to coordinate these expansions in advance in order to increase the flexibility of the GE06 plan and to ensure that countries have equal access to broadcasting spectrum. The elimination of "digital dividend" frequencies (TV channels above 790 MHz) has created an imbalance in the GE06 plan which now needs to be offset.

At present, these potential planning changes are mainly being addressed by Germany, the Czech Republic, Switzerland and Austria.

#### **4.6.2 Participation in licensing and allocation procedures**

In the year under review, numerous technical opinions on frequency management were prepared for the Austrian Communications Authority (KommAustria) in the course of the allocation procedures for radio and television broadcasting frequencies.

One focus area of activity was the approval procedures for the expansion of MUX A and MUX B. During the reporting period, the ORF's last analogue television transmitter was shut down in the process of putting additional DVB-T transmitters into operation.



In addition, it was necessary to prepare opinions on frequency management issues with regard to MUX C in response to requests under telecommunications law. This required an assessment of changes in transmitter locations, broadcasting parameter changes, and issues related to the ongoing expansion of approved transmission facilities. Given the related requests for changes, numerous technical opinions on the attainable DVB-T coverage levels were prepared for KommAustria.

The radio station KRONEHIT also continued to expand its nationwide coverage. In the opinions prepared for this purpose, it was necessary to consider feasibility in terms of frequency engineering as well as the efficient use of spectrum. Double and multiple coverage had to be limited to technically inevitable cases of over-spill.

In addition to the opinions prepared for KommAustria's frequency allocation procedures, it was also necessary to assess the temporary use of broadcasting frequencies for event radio stations as well as temporary telecommunications services.

#### **4.6.3 Measurement activities**

In the reporting period, numerous measurement projects were carried out and the results analysed in the process of preparing expert opinions and in international coordination activities. These activities largely served the purpose of preparing opinions for KommAustria. Most cases involved comparing the results of theoretical calculations generated using computer models and simulation software with the measurement values obtained in practice.

One especially large measurement project with simultaneous test transmissions was carried out for frequencies in the area surrounding the town of Bregenz in cooperation with Germany's Federal Network Agency (BNetzA) and Switzerland's Federal Office of Communications (BAKOM).

In the Eastern Tyrol region, joint measurement activities were carried out in cooperation with the authorities in Italy (South Tyrol / Alto Adige). On the Italian side of the border to Austria, frequencies were shifted to a newly constructed transmitter location. These activities involved measuring these new frequencies in order to avoid mutual interference between Austrian and Italian transmitters.

The existing licences for regional and local television broadcasting (MUX C) include legal requirements pertaining to the rollout of transmitter networks. In this context, it is necessary to verify reports on the activation of transmitters as well as coverage forecasts. For the MUX C licences in the provinces of Upper Austria, Styria and Carinthia, the authority took measurements to verify the fulfilment of these requirements as well as the coverage capabilities of the DVB-T transmitters.

In addition, measurements were carried out to examine the excessive operating and interference ranges of geographically exposed DVB-T transmitters in Bavaria in order to determine their effect on transmitters in the province of Upper Austria. The results will serve as the basis for further optimisation of the GE06 plan with regard to future uses of DVB-T2 for terrestrial television transmissions.

#### 4.6.4 Frequency register

At present, the frequency register and transmitter map include approximately 1,250 radio transmitters in the FM band, with power output ranging from less than 1 watt to 100 kilowatts. Approximately 850 of those transmitters can be attributed to the ORF, while the remaining 400 are used by private broadcasters.

In addition, the frequency register also shows that there are 52 high-power radio transmitters with an output of approximately 10 kW in Austria. The ORF uses 39 of those transmitters, and the remaining 13 are used by private radio broadcasters.

With regard to television broadcasting frequencies, the approved DVB-T transmitters in the frequency register were distributed among the individual MUX platforms as follows at the end of the year 2011:

**Table 2: Number of approved DVB-T transmitters (as of December 31, 2011)**

DVB-T Multiplex A (ORS multiplex)	323 transmitters
DVB-T Multiplex B (ORS multiplex)	27 transmitters
DVB-T Multiplex C (local multiplex platforms)	40 transmitters

Source: RTR

As of December 31, 2011, permits had been issued for a total of nearly 400 DVB-T transmitters.

Data on approved broadcasting transmitters are available to the public on the web site of the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) in the form of tables as well as a graphic transmitter map which was completely revamped in 2011 (see <http://www.rtr.at>).

#### 4.6.5 Participation in international working groups

The staff of RTR's Frequency Management Department took part in several CEPT and ITU working groups in the year under review.


##### **ITU-R Study Group 6 (SG 6)**

This working group is dedicated to the preparation and development of key technical recommendations for broadcasting. These recommendations form an essential part of frequency planning for both radio and television broadcasting with specific regard to the planning and interference-free operation of transmitter networks. At present, the working group is developing recommendations for broadcasting services on the basis of current technical standards such as DVB-T2, T-DAB+ and DRM.

For the practical use of the digital dividend in the 800 MHz band, the group is also working on the guard bands between broadcasting networks and mobile networks within the framework of Recommendation ITU-R BT.1368. Another task of this working group is the preparation of manuals, for example on broadcasting digitisation. At present, 15 recommendations and manuals on current technical topics in broadcasting are in progress.

##### **Spectrum Engineering Project Team 43 (SE PT43)**

This working group is devoted to the topic of cognitive radio systems for operation in television white spaces in the 470–790 MHz band. The objective is to be able to plan mobile radio systems in the white spaces within the spectrum for television broadcasting (as in the case of wireless microphones) without causing interference.



In the year 2011, this working group convened four times. Two additional meetings are scheduled for 2012 in order to conclude the group's ongoing work on this topic. In addition to the existing ECC Report 159, two additional reports are currently in progress.

The first additional report deals with important parameters which have not yet been defined for transmission operations in cognitive radio systems. The second report is dedicated to the topic of how the geolocation approach should be designed for transmission operations.

If such radio applications (which are new in this band) are put on the market in Europe, then existing systems – especially DVB-T reception – must be protected from interference from cognitive radio systems.

In 2011, test operations were carried out in the US, Brazil, Africa, Japan and Europe. In the US, the market launch is scheduled for 2012, but the only European authority considering a launch of cognitive radio systems at the moment is the UK's Office of Communications (Ofcom).

#### **Frequency Management Project Team 45 (FM PT45)**

In 2011, this working group held two meetings: one on the digitisation of Band II (FM broadcasting band) and one on the future of radio broadcasting in Europe in general.

One important topic addressed by this working group in 2011 was the assessment of options for introducing digital radio, in particular based on a comparison of the systems available on the market. In this context, the group focused heavily on the technical parameters of the systems and the resulting regulatory issues.

Another result was the preparation and completion of an ECC report on the future of radio broadcasting.

With these two reports, FM PT45 fulfilled its mandate completely in the reporting period.

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

The cross-border EU project SEE Digi.TV was launched in January 2011 and will last until April 2013. 85% of the costs incurred in the project will be covered by the SEE Transnational Cooperation Programme co-funded by the EU. The project has been subdivided into five reporting and accounting stages.

One key objective of this cooperation arrangement is to create a transnational communication platform for the harmonised and coordinated development of digital terrestrial television networks in the participating countries. In addition, the project is designed to support the shutdown of analogue terrestrial television transmitters in southern and south-eastern Europe, thus facilitating the rapid dissemination of more efficient digital transmission technologies in television broadcasting. In the project, RTR's Media Division is contributing the experience it gained in the successful shutdown of analogue television broadcasting in Austria. In addition to technical issues related to system engineering and network structure, the exchange of information in the project's working groups also refers to legal measures as well as experience with accompanying grant/subsidy activities as key success factors in the digitisation of television broadcasting. One area in which RTR's Broadcasting Frequency Management Department is contributing heavily to the project is country-specific broadcasting frequency planning for the DVB-T2 system.

Current information can be found on the project web site (<http://www.see-digi.tv>). General information on the EU's South East Europe Transnational Cooperation Programme is available at <http://www.southeast-europe.net>.





## 5. Digitisation progress report

In reviewing the year 2011, it is important to mention one especially memorable date: Tuesday, June 7, 2011 might be described as a historical day or as a milestone in the development of broadcasting in Austria, as that date marked the end of the 56-year era of analogue terrestrial television in Austria.

On that day, the broadcasting network operator Austrian Broadcasting Services (ORS) switched the last 24 analogue terrestrial television transmitters over to digital video broadcasting (DVB-T) technology in the region around Mariazell and the Mürz Valley. Thus the transition from analogue to terrestrial television in Austria and the “analogue turn-off” in terrestrial television were completed in less than five years. Thanks to the rapid and smooth transition to DVB-T, Austria’s terrestrial television digitisation process was among the most successful switchovers in Europe.

At the end of December 2011, 69% of Austria’s 3.526 million television households<sup>1</sup> used a digital transmission platform to watch television on their only (or main) television set. This figure represents an increase of five percentage points compared to December 2010 (64%).

Although this development may not seem remarkable at first glance, it can be considered highly encouraging because nearly the entire increase can be attributed to the one-time “laggard” in digitisation, namely cable television. Compared to December 2011, the share of digital cable households rose from 11% to 16% of all television households, thus increasing their weight in the distribution of reception platforms to an unprecedented degree.

At the end of December 2011, the degree of digitisation on the satellite platform (97%) remained unchanged in comparison to one year earlier. Terrestrial television had already reached a digitisation level of nearly 100% by the end of 2010.

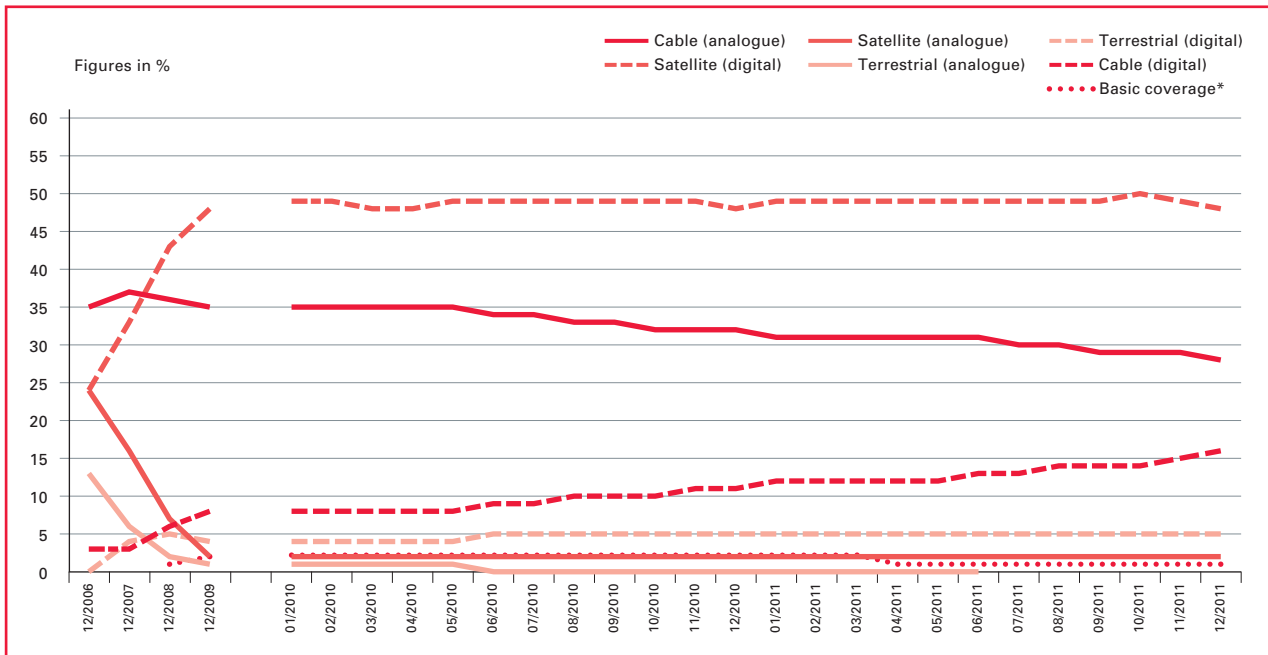
The overall distribution of television households across the three broadcasting transmission platforms satellite, cable and terrestrial largely remained the same compared to the previous years. Some 50% of television households continue to receive satellite television, approximately 44% have a cable connection, and about 5% watch terrestrial television. Therefore, the level of digitisation on the cable platform can hardly have risen due to growth in the platform as a whole, but almost solely due to migration within that platform.

The market researchers at the TELETTEST Working Group (AGTT) / GfK Austria GmbH assign the remaining one per cent of television households – referred to as “cable households with basic coverage” – to the terrestrial platform. These households have a cable connection, but due to special agreements with their property management companies their reception is limited to approximately seven television channels, which is roughly equivalent to the range of channels offered on the DVB-T platform. In 2010, these households still accounted for nearly 2% of all television households in Austria. However, nearly half of the households with basic cable coverage decided to change over to digital cable television during the year under review.

<sup>1</sup> Unless otherwise specified, all data are derived from the TELETTEST Working Group (AGTT) / GfK Austria GmbH (2011).

A total of 7.14 million television viewers over the age of 12 live in Austria's television households, and some 73% of the viewers in that age group (5.152 million) live in digital television households.

**Figure 3: Development of reception modes in Austrian television households**



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

Source: AGTT / GfK Austria


The remarkable growth in the number of digital cable households thus warrants the conclusion that the digitisation process is gaining momentum in cable households. In this context, however, it is also important to note that nearly two thirds of this growth in the year 2011 can be attributed to new IPTV connections (specifically A1 Telekom Austria AG's A1 TV package, formerly known as aonTV). IPTV households are assigned to the (digital) cable reception platform. It is also necessary to note that the 28% share of cable households which still rely on analogue reception continue to represent a considerable drag on broadcasting digitisation in Austria.

With the shutdown of the last analogue terrestrial transmitters in June 2011, analogue terrestrial television became a thing of the past, but that development only concerned a handful of television households. As a result, it did not affect the percentage of digital terrestrial households in the overall distribution of reception platforms. This percentage has remained stable at 5% of all television households since the year 2008.

In October 2011, when the ORF's new special-interest channel for culture and information (*ORF III Kultur und Information*) went on the air and the ORF SPORT + channel was expanded to 24-hour programming (after initially being broadcast during certain hours of the day on DVB-T), the range of DVB-T channels which could be received via DVB-T throughout Austria was expanded to eight channels.

At the end of 2011, full digitisation of Austrian satellite households was only a matter of weeks away, as only about 1.5% of all television households (3% of satellite households) still relied on analogue satellite reception in Austria.





In order to receive Austrian television channels, analogue satellite households have generally relied on DVB-T reception, at the same time using analogue satellite receivers to watch German television channels. Therefore, once the analogue satellite transmission of German television channels is discontinued on April 30, 2012, analogue satellite reception in Austria will also come to an end.

In terms of the digitisation of television households, Austria continues to enjoy an outstanding ranking compared to the average among the 27 EU member states. According to the SES ASTRA Satellite Monitor, some 65% of television households in the EU had switched to digital television by the end of 2010.

The countries leading the EU in this respect include Finland (100%), Spain (98%), the UK (90%) and Italy (89%). The countries where television digitisation has reached a similar level as in Austria include Sweden (69%), Denmark (67%), the Netherlands (66%) and Germany (62%). The countries at the bottom of the list are Romania (36%), Lithuania (30%) and Greece (12%).

However, it is also necessary to mention that these figures are significantly affected by the different survey methods and weights used in different countries. This is true of the SES ASTRA Satellite Monitor, which uses a weighting scheme tailored specifically to the satellite operator's needs, as well as the data published each year by the European Audiovisual Observatory.

The data in RTR's Communications Reports include only those digital television households where the only (or main) receiver in the household is digital. In contrast, the digitisation figures for e.g. Germany include all households which are equipped with a digital receiver (e.g. DVB-T), even in cases where the most important reception platform in the household is analogue (cable or satellite). Those households accounted for approximately 10% of all television households in Germany in 2010.

## **5.1 2011 Digitisation Plan**


The rollout of digital terrestrial television and preparations for the introduction of digital radio broadcasting in Austria are the core topics of the third Digitisation Plan published by the Austrian Communications Authority (KommAustria).

The 2011 Digitisation Plan went into effect on May 1, 2011. With this publication, KommAustria fulfilled its legal obligation to publish a new digitisation plan every two years as a means of supporting the launch, rollout and advancement of digital broadcasting in Austria.

### **5.1.1 Enhancement and rollout of digital terrestrial television using the DVB-T2 standard**

With the invitations to tender published on July 28, 2011 for two nationwide multiplex platforms for digital terrestrial television broadcasting based on the new DVB-T2 transmission standard, KommAustria began implementation of one of the core objectives in the 2011 Digitisation Plan.

Compared to DVB-T, DVB-T2 makes it possible to broadcast significantly more television channels using the bandwidth of a single broadcasting channel. Therefore, with DVB-T2 it would be technically feasible to use the television frequency spectrum in Austria for terrestrial broadcasts of foreign television channels as well, especially those of German broadcasters. HDTV broadcasts can also be realised more cost-effectively using DVB-T2. In this way, DVB-T2 could contribute to enhancing the range of available channels and the diversity of opinions, as well as enabling higher image resolution in terrestrial broadcasts.



The 2011 Digitisation Plan calls for invitations to tender for a total of three nationwide multiplex platforms (referred to as MUX D, E and F) for digital terrestrial television using the DVB-T2 standard. MUX D and E were the first to be put out to tender, while MUX F will not be assigned until a later point in time (depending on demand). Those DVB-T2 platforms would make it possible to broadcast a total of about 30 nationwide television channels in standard quality (SD) or about 14 nationwide channels in HD quality.

The tender submission period for MUX D and E ended on November 15, 2011, with one tender submitted by Austrian Broadcasting Services (ORS), which has operated the DVB-T multiplexes A and B as well as several local multiplex platforms since October 2006.

### **5.1.2 Preparations for digital radio broadcasting**

While the discussion of television digitisation in the new Austrian Digitisation Plan already focuses heavily on expansion and advancement, digital radio has not yet gone on the air in Austria. However, another key focus area in the 2011 Digitisation Plan is Austria's preparations for the potential launch of digital radio broadcasting using the DAB+ transmission standard.

In addition to supporting high-quality audio, DAB+ allows the transmission of approximately 15 radio stations on one broadcasting channel, which makes this broadcasting standard highly economical in terms of frequency usage and costs. In this regard, one core element of the 2011 Digitisation Plan is the definition of DAB+ as the transmission standard to be used for digital broadcasting in Austria. In this way, the new Digitisation Plan specifies a key point in the amended Austrian Private Radio Act (PrR-G, amended in October 2010), which created the general conditions for the introduction of digital radio broadcasting in Austria.

For DAB+ operations, the Digitisation Plan provides for a total of five multiplex platforms for various coverage layers (i.e. nationwide, regional and local) throughout Austria. However, KommAustria will not put these multiplex platforms out to tender until the market exhibits sufficient demand and one can expect the complete utilisation of frequencies on at least one DAB+ multiplex platform.

As the market has not shown such a level of interest to date, KommAustria plans to launch an initial survey on this topic on June 1, 2012.

### **5.1.3 Origin and publication**

In line with the regulatory authority's mandate,<sup>2</sup> KommAustria and RTR prepared the Austrian Digitisation Plan in cooperation with the Austrian Federal Chancellor and with the support of the Digital Platform Austria, an organisation comprising more than 300 experts from the Austrian media industry.

The draft was presented at a plenary meeting of the Digital Platform Austria on February 15, 2011 and then submitted to the organisation's members for comments and opinions. The comments received were then evaluated, after which the new Digitisation Plan was published on May 1, 2011. The 2011 Digitisation Plan, which was published in the form of an RTR ordinance, as well as the accompanying explanatory remarks can be found on the RTR web site.<sup>3</sup>

<sup>2</sup> Art. 21 Par. 5 and 6 Audiovisual Media Services Act (AMD-G).

<sup>3</sup> <http://www.rtr.at/de/m/Digikonzept2011> (in German)

## 5.2 Digitisation of television broadcasting

### 5.2.1 Terrestrial television broadcasting (DVB-T)

At the end of 2011, some 170,000 television households in Austria used DVB-T as their primary means of receiving television signals. DVB-T is thus used by 5% of all television households in Austria. A total of 345,000 viewers in the 12+ age group live in these DVB-T-only households. In this respect, the DVB-T reception platform has remained practically unchanged since June 2010.

However, it is striking that DVB-T receivers still account for nearly 10% of all digital receivers purchased at the retail level. In the period from January through September 2011, for example, approximately 27,000 of these receivers were sold. During the same period in 2010, consumers purchased a total of 41,000 DVB-T receivers. Given the fact that practically every new flat-screen television set sold already has a built-in DVB-T tuner, these sales figures can be viewed as especially positive and point to the continued attractiveness of DVB-T for use on additional televisions in the household.

Since the launch of the ORF III culture and information channel on MUX B as of October 26, 2011, it has been possible to receive a total of eight channels nationwide via DVB-T. On the same date, ORF SPORT + made the transition to 24-hour programming; the channel was previously broadcast only at certain times of day.

The technical range of MUX A with the channels ORF 1, ORF 2 and ATV was expanded even further in the course of the year 2011 and has now reached 97.7% of Austria's population, up from 96% at the end of 2010.

Similarly, MUX B also covers more of the population than it did at the end of 2010. In addition to the 19 existing transmitter locations as of December 2010, eight new locations were put into operation in the year 2011. Therefore, MUX B – on which the channels PULS 4, ServusTV, 3sat, ORF SPORT + and ORF III are broadcast – now covers 90% of Austria's population (2010: 88%).

Since the year 2010, the Austrian Communications Authority (KommAustria) has issued 16 licences for the operation of regional or local multiplex platforms (MUX C coverage layers) at 40 transmitter locations. At present, twelve of those licences are being exercised actively. These twelve multiplex platforms, which make use of 23 transmitter locations in total, reach approximately 35% of Austria's population, and each transmits at least one television channel, in some cases as many as three. On November 11, 2011, KommAustria put four additional MUX C licences for Vienna, Vorarlberg, East Tyrol and North Tyrol out to public tender and also made it possible to request the use of white spaces for local DVB-T broadcasting.

When the last analogue terrestrial transmitters were shut down on June 7, 2011, a total of 320 terrestrial transmitter locations throughout Austria had been digitised since March 2007.

For 90% of Austria's population, the digitisation of terrestrial television has nearly tripled (and in some areas more than tripled) the number of channels which can be received using an indoor or outdoor antenna in Austria, thus also enhancing the diversity of opinions substantially. At the same time, DVB-T's economical use of frequencies has also made it possible to devote the 790–862 MHz band (previously used for broadcasting) to the expansion of mobile broadband services. Given the advantages of the DVB-T2 standard, the frequencies below that band have made it possible to expand terrestrial television even further and to give the terrestrial platform a fair chance in competition with other platforms, and also to account for the need for frequencies for wireless technologies such as those used in theatres and opera houses.

## 5.2.2 Satellite broadcasting (DVB-S)

By the end of 2009, nearly all of Austria's satellite television households had already switched over to digital reception. Since that time, the level of digitisation among those households has remained fairly steady around 97% (i.e. nearly 49% of all television households in Austria).

The remaining analogue satellite households at the end of 2011 have persistently clung to analogue reception since 2009. For those households, the markedly broader range of channels and the possibility of receiving HDTV broadcasts have apparently not provided a sufficient incentive to switch over to digital satellite reception. Presumably, those households will wait until the very last day of analogue satellite transmissions, or the investment in a digital satellite receiver and the costs of an ORF digital card<sup>4</sup> represent obstacles to switching over.

On April 30, 2012, Germany's television broadcasters will discontinue their analogue satellite transmissions. Regardless of the reception mode to which the remaining analogue satellite households switch, satellite television reception will be fully digitised by May 1, 2012.

A total of 3.912 million persons aged 12 and up – or 55% of the total number of viewers in that age group – live in Austria's 1.766 million satellite households. 1.708 million of those households (53% of all viewers aged 12 and older in Austria) have switched to digital satellite reception.

## 5.2.3 Cable and IPTV broadcasting

In terms of digitisation, cable television was the only broadcasting platform which saw significant changes in the year 2011, and this platform also warrants closer examination in various other respects.


The level of digitisation among cable households in Austria rose markedly within one year; at the end of the year 2011, 36% of all cable households had switched to digital television. Just one year earlier, the share of digital households came to 25% of all cable customers.

The increase in the number of digital cable households (from 11% of all television households in Austria at the end of December 2010 to 16% in December 2011) as well as the slight increase in the figures for the cable platform in general (from 43% to 44% of all television households) also represents a marked increase in absolute terms.

According to the TELETTEST Working Group (AGTT) / GfK Austria GmbH, the number of cable households in Austria (both analogue and digital) remained relatively steady at just above 1.50 million throughout the year 2010 but then rose slightly each month in 2011, ultimately reaching nearly 1.55 million households in December that year. In reality, however, a majority of the "new" cable households had already received a form of cable television in the past. Those television households are located in rather large residential complexes and were previously supplied with a special analogue cable television package limited to seven television channels on the basis of special agreements. Due to the small number of channels (which is comparable to DVB-T), AGTT assigns those households to the terrestrial platform or reports them separately as television households with "basic cable coverage." In 2011, the share of these households dropped for the first time in years, falling from 2% to just under 1% of all television households in Austria. This migration accounts for part of the growth in the number of digital cable households.

The number of digital cable households rose from 391,000 in December 2010 to 550,000 at the end of 2011. This increase by approximately 160,000 households includes some 36,000 households which previously had basic cable coverage and about 125,000 cable households that switched from analogue to digital cable reception.

<sup>4</sup> Austria's satellite television channels are only available via digital satellite, and a vast majority of them are scrambled.



In the same period, the number of analogue cable households fell from 1.115 million to 999,000.

Therefore, approximately 1.05 million viewers aged 12 and up (15% of all viewers in that age group) now live in digital cable households. At the end of 2010, this figure came to 739,000, or 10% of all viewers in the 12+ age group.

However, in discussing this extraordinary development among digital cable households, it is important to account for IPTV households, which are also assigned to the cable category. Between December 2010 and December 2011, the number of IPTV households rose by 33%, thus contributing over 30% to the increase in the number of digital cable households in the year 2011. The provider A1 Telekom Austria AG (A1 Telekom) reports that some 200,000 customers had subscribed to its IPTV product “A1 TV” by the end of 2011. This figure represents approximately 5.5% of the total number of television households in Austria. In total, IPTV now accounts for a 36% share of digital cable households.

The reasons for the increasing pace of digitisation among cable households are primarily the growing interest in HDTV content, consistently high sales of flat-screen television sets in the retail sector and, to a lesser extent, an increasing awareness of the limited range of channels available on analogue cable connections compared to digital cable.

In most cases, analogue cable households purchase a new flat-screen television and then switch to a digital cable subscription, as the lower picture quality makes viewers more aware of the limits of analogue television broadcasting. This effect is amplified by the trend toward larger and larger screens, on which even digital channels at standard levels of resolution are visibly inferior to the picture quality of HDTV channels.

However, at least the largest “classic” cable network operators offer between six and nine HDTV channels in their basic digital packages (channels which can be received freely via satellite).

Nearly all of Austria’s IPTV households subscribe to the A1 TV service. For those customers, A1 TV is available as an additional service (HDTV channels for an extra charge).

### **5.3 Digitisation of radio broadcasting**

From today’s perspective, the launch of digital radio broadcasting on a separate terrestrial platform is still not planned in the short term in Austria, although the Private Radio Act (PrR-G) created the basis for such a launch and the Austrian Communications Authority (KommAustria) and RTR specified a concrete framework for digital radio broadcasting in the 2011 Digitisation Plan.

The Digital Radio Interest Group, an expert group established by KommAustria and RTR in 2009, continued its work in 2011, gathering in-depth information on the status and development of radio broadcasting digitisation in other European countries. In this context, the group has found encouraging stimuli in the progress made in Switzerland, the launch of a nationwide DAB+ multiplex in Germany, and the insights gained from a research trip to the UK. At the same time, the group is currently awaiting qualitative reports on the acceptance of this new form of broadcasting in Germany, which is Austria’s most significant neighbouring market. The idea of carrying out DAB+ pilot operations in Vienna in 2012 has been set aside for the moment.

The most compelling arguments against the introduction of digital radio broadcasting are the reservations which prevail among Austrian radio broadcasters with regard to the financial viability of broadcasting digital content in addition to FM radio and with regard to increasing competition from new broadcasters.



## 6. Administration of grants

### 6.1 Austrian Digitisation Fund

#### 6.1.1 Digitisation Fund activity report

In 2011, the Austrian Digitisation Fund received an endowment of EUR 500,000.00. The purpose of the fund is to promote digital transmission technologies and digital applications on the basis of European standards in connection with broadcasting. The funds are derived from those broadcasting fees which are collected jointly with ORF programming fees but are generally allocated to the federal budget.

On April 30, 2009, RTR published 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; the maximum amount available per channel fed into the multiplex and per platform is limited to EUR 20,000.00 and must not exceed 50% of the broadcaster's total costs during the grant period.

Under the guidelines mentioned above, RTR signed grant agreements with three broadcasters in 2010 and with four broadcasters in 2011; three additional applications are still being processed. Up to this point, grants in the amount of approximately EUR 108,000.00 have been approved.

With the transition of Austria's last analogue transmitters to DVB-T in June 2011, RTR discontinued the grants designated to help socially disadvantaged consumers purchase digital receivers.

In May 2010, RTR concluded a grant agreement with Austrian Broadcasting Services (ORS) for pilot broadcasts based on the DVB-T2 standard. The purpose of the project was to operate multiplex platforms and to conduct pilot transmissions of Austrian Broadcasting Corporation (ORF) television and radio stations using the DVB-T2 standard on channel 65 in Vienna and (from April 2011 onward) channel 60 in Vienna. In addition, the pilot operations included tests of additional broadcasts and services. The grant amount awarded came to EUR 463,982.40, and the grant period ended in November 2011.

RTR also signed a grant agreement with the ORF on the development of an HbbTV-based additional service which combines multiple digital data sources into a single overview of content offerings on the television screen. In contrast to the projects realised in other markets prior to the conclusion of the grant agreement, this project developed a new technical approach. The new additional service relies on broadcasting technology as a means of access for all television viewers in the coverage area, after which additional content can be retrieved individually via an Internet connection. The project was supported with a grant of EUR 204,410.40 for the period from March 15, 2011 to November 15, 2011.

For the other applications submitted in 2011, grant decisions had not yet been made at the end of the reporting period.

### 6.1.2 Notes on the 2011 annual accounts

In 2011, the Digitisation Fund received an endowment of EUR 500,000.00.

The funds allocated by the Federal Ministry of Finance (BMF) as of January 30, 2011 and the existing amount in the Digitisation Fund (trustee account balance as of December 31, 2010: EUR 7,528,299.67) generated interest revenues in the amount of EUR 86,589.00 during the reporting period (including interest on the repayment of unused grants in the amount of EUR 600.90). Including the repayment of unused grants in the amount of EUR 67,944.68 and the repayment of administrative expenses from 2010 (EUR 26,276.73), total credits to the fund came to EUR 680,810.41 in the year 2011.

Of the total amount available in the Digitisation Fund, the amounts paid out in 2011 came to EUR 709,630.06 in grants and EUR 1,399,999.65 in press/distribution subsidies (Art. 33 Par. 3a KOG), while administrative expenses and RTR's participation in projects amounted to EUR 269,800.00. Therefore, the fund paid out a total of EUR 2,379,429.71 in the year under review.

The remaining amount of EUR 5,936,932.41 (including the EUR 107,252.04 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 2012.

**Table 3: Digitisation Fund: Excerpt from 2011 financial statements**

Statement of revenue and expenditure	EUR	EUR
Balance in trustee account as of December 31, 2010		7,528,299.67
<b>Credits</b>		
Increase from credits in 2011	500,000.00	
Repayment of administrative expenses from 2010	26,276.73	
Repayment of grants	67,944.68	
Interest	86,589.00	680,810.41
<b>Debits</b>		
Administrative expenses and RTR's participation in projects in 2011	-269,800.00	
Grant payments in 2011	-709,630.06	
Payment of press/distribution subsidies in 2011	-1,399,999.65	-2,379,429.71
Balance of initial funds, debits and credits in 2011 <b>= Balance in trustee account as of December 31, 2011</b>		<b>5,829,680.37</b>
Administrative expenses and RTR's participation in projects in 2011 to be repaid to the fund in 2012	107,252.04	107,252.04
<b>Balance of trustee obligations as of December 31, 2011</b>		<b>5,936,932.41</b>
Grants approved but not yet paid out	-310,859.74	
Amount allocated to press/distribution subsidies by law	-4,600,000.00	-4,910,859.74
Funds available in 2012		1,026,072.67

Source: RTR



## 6.2 Austrian Television Fund

As the relevant legislation was amended at the end of 2010, Articles 26 and 28 in conjunction with Articles 23 to 25 KommAustria Act (KOG) now form the legal basis for the activities of the Austrian Television Fund (FERNSEHFONDS AUSTRIA). The legal provisions governing the fund refer to the purpose of grants, eligible costs as well as personal qualifications and material requirements.

The fund's annual endowment amounts to EUR 13.5 million. Decisions on grants from the fund are made by the managing director of RTR's Media Division, Alfred Grinschgl, with due attention to the opinions of the Review Board.

### 6.2.1 Grant guidelines

The guidelines for grants from the Austrian Television Fund were approved by the European Commission for the period ending on June 30, 2013. Due to the increase in available funds and the amendment to the KommAustria Act (KOG), the guidelines were revised in 2010 and 2011 in order to broaden the fund's activities, to implement legal requirements under the KOG, 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-language 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 wherever possible.

In the future, television projects which are distinguished by innovative ideas or which involve an exceptionally significant employment effect by using creative and technical crew members from Austria will be supported even more effectively. The new guidelines will also enable even more television projects to be produced and exploited in Austria.

The most important changes in the fund's grant guidelines are as follows:

- Under certain circumstances, up to 30% of the overall production costs of a television project may be funded.
- Exploitation grants were introduced.
- The investment made by television broadcasters must amount to at least 30% of overall production costs.
- Put and call options on additional forms of exploitation beyond those defined in Section 3.10 (1) of the new guidelines are not permitted.
- The licence period must begin no more than 12 months after the final acceptance of the production.
- The maximum amounts for production grants were increased.

The new guidelines went into effect on January 1, 2012 and will remain in force until December 31, 2015.

The current guidelines for grants from the fund can be retrieved from <http://www.fernsehfonds.at>.

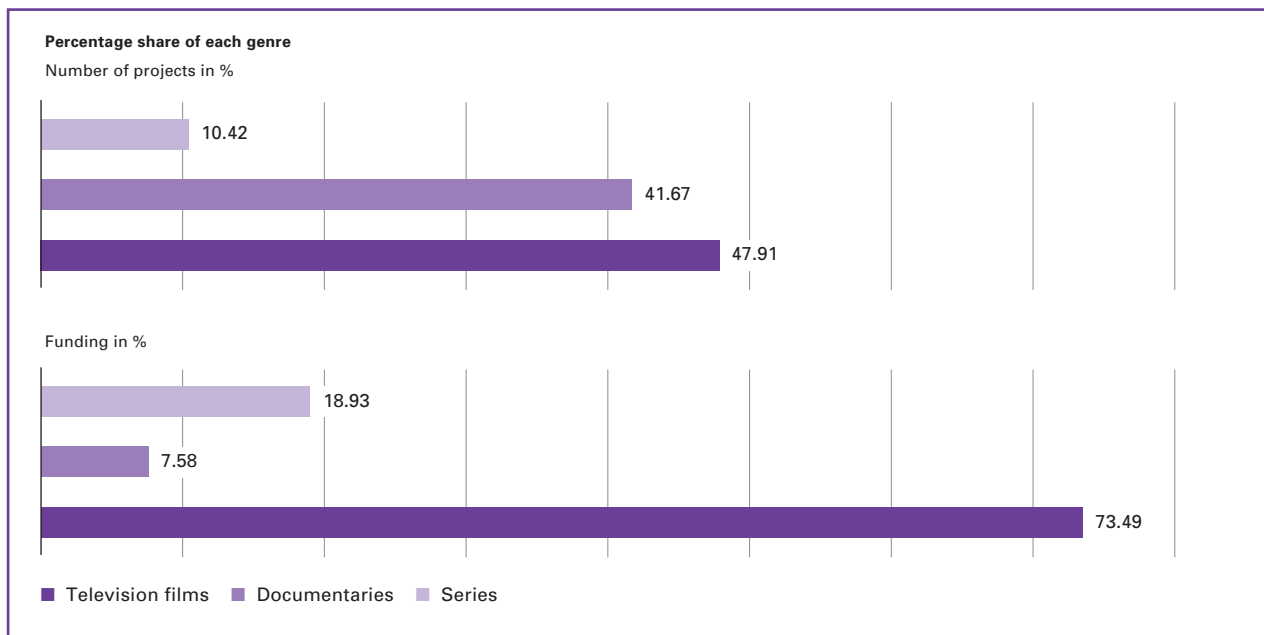
### 6.2.2 Projects supported

In the year 2011, the Austrian Television Fund supported 48 projects with grants totalling EUR 12,233,384.00. The projects included 23 television films, five series and 20 documentaries.

A total of 80 projects were submitted as of the four application dates in the year under review. Of those projects, 17 were rejected and 11 were withdrawn before a decision was made. One producer decided not to accept the grant after its approval. One project was rejected without review. Therefore, the fund issued a total of 50 grant approvals in the year 2011. Two approvals involved increases in funding for projects approved earlier this year. Therefore, the fund had issued 48 valid grant approvals as of December 31, 2011.

The projected overall production costs of those projects amounted to some EUR 73 million, and the expenditure in Austria is expected to total approximately EUR 35.3 million. Expenditures will thus come to 2.9 times the sum of grants approved by the fund.

**Figure 4: Austrian Television Fund: Projects supported in 2011**



Source: RTR

**Table 4: Alphabetical listing of projects by category (television films, series and documentaries)**

23 television films		EUR
Adriatische Liebe – Briefe aus Rovinj (AT: Meer der Liebe)	Graf Filmproduktion GmbH	220,000.00
Alles außer Liebe	MONA Film Produktion GmbH	376,880.00
Auf der Spur des Löwen	MONA Film Produktion GmbH	300,000.00
Bei Einbruch der Dunkelheit	FILM27 Multimedia Produktions GmbH	330,000.00
Big Spender	Dor Film-Produktionsgesellschaft m.b.H.	272,000.00
Der Eisenhans	Tellux Film GmbH	300,000.00
Der Meineidbauer	LISA Film Produktion GmbH	400,000.00
Die Holzbaronin (2 parts)	Graf Filmproduktion GmbH	650,000.00
Die Kastellanin	Aichholzer Filmproduktion GmbH	700,000.00
Die Landärztin XI – Entscheidung des Herzens	Wega-Filmproduktionsgesellschaft m.b.H.	309,731.00
Die schöne Spionin	SK-Film- und Fernsehproduktions Gesellschaft m.b.H.	600,000.00
Die Wüstenärztin	Eclipse Filmpartner Film- und Fernsehproduktion GmbH	350,000.00
Karl der Große (3 parts)	Gesellschaft für Video-Produktion m.b.H. Nfg. & Co KG	400,000.00
Lilly Schönauer XII – Liebe auf den 2. Blick	Graf Filmproduktion GmbH	235,000.00
Lilly Schönauer XIII – Liebe mit Familienanschluss	Graf Filmproduktion GmbH	275,000.00
Little Lady Fauntleroy	Lotus-Film Gesellschaft m.b.H.	700,000.00
Meine Schwester	MONA Film Produktion GmbH	385,746.00

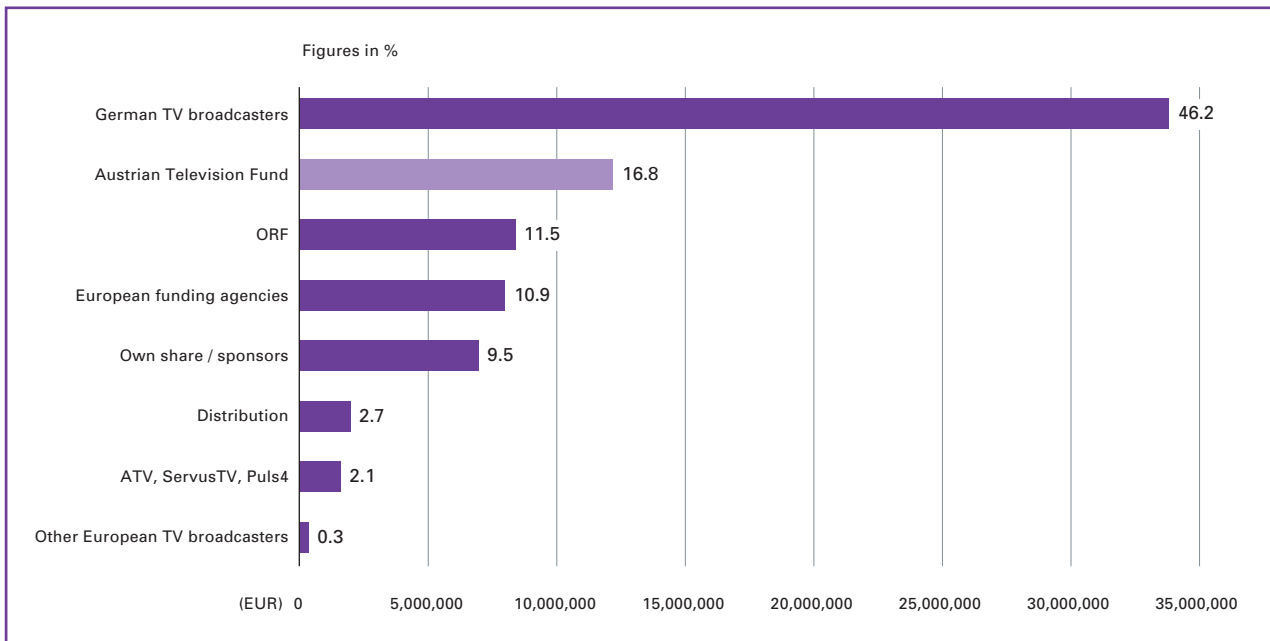
23 television films		EUR
Meine Tochter, ihr Freund und ich	MR-Film Kurt Mrkwicka Gesellschaft m.b.H.	347,311.00
Plötzlich fett	Dor Film-Produktionsgesellschaft m.b.H.	350,000.00
Racheengel – Spuren des Bösen II	Aichholzer Filmproduktion GmbH	363,596.00
Schloss Hubertus	MR-Film Kurt Mrkwicka Gesellschaft m.b.H.	359,991.00
Trau niemals deiner Frau (AT: Glänzende Lügen)	MONA Film Produktion GmbH	360,000.00
Zurück ins Leben (AT: Einmal noch die Heimat sehen)	MONA Film Produktion GmbH	399,124.00
<b>Total</b>		<b>8,984,379.00</b>
5 series		EUR
Die Fahnder II (6 episodes)	MABON Film GmbH	40,000.00
Eingeschenkt – Weinland Österreich (10 episodes)	Interspot Film-Gesellschaft m.b.H.	120,000.00
Hexe Lilli / Season 3 (26 episodes)	Dor Film-Produktionsgesellschaft m.b.H.	800,000.00
Reiseckers Reisen / Season 2 (5 episodes)	Nikolaus Geyrhalter Filmproduktion GmbH	31,690.00
Soko Donau / Season 7 (14 episodes)	Satel Film GmbH	1,330,000.00
<b>Total</b>		<b>2,321,690.00</b>
20 documentaries		EUR
24 Stunden – Die Einsätze der Polizei (6 episodes)	HANN Filmproduktionsgesellschaft m.b.H.	30,000.00
90 Jahre Burgenland – Von Deutsch West-Ungarn zum Burgenland	OTTO PAMMER FILMPRODUKTION	15,140.00
Balkan Express Kroatien – Die Paten einer Nation	Nikolaus Geyrhalter Filmproduktion GmbH	27,000.00
Das Donauspital	Nikolaus Geyrhalter Filmproduktion GmbH	66,000.00
Der Zölibat	Metafilm GmbH	43,750.00
Die Lipizzaner – Könige und Krieger	Satel Film GmbH	115,000.00
Die Lust der Männer	Nikolaus Geyrhalter Filmproduktion GmbH	23,980.00
Die Notaufnahme III (7 episodes)	ON-MEDIA TV- und Filmproduktion GmbH	45,000.00
Die schwule Familie	Nikolaus Geyrhalter Filmproduktion GmbH	21,420.00
Die Suche der Sherpas / The Sherpas' Quest	Gesellschaft für Video - Produktion m.b.H. Nfg & CoKG	100,000.00
Die Wiener Tschechen	artkicks. DI Helmut Potutschnig	13,400.00
Grenzfälle	Langbein & Partner Media GmbH & Co KG	21,500.00
Helmut Qualtinger	Dor Film-Produktionsgesellschaft m.b.H.	50,000.00
Hubertussee – Erlebnis Österreich	Power of Earth Productions TV & Film Produktions Ges.m.b.H.	11,775.00
Joschi und der Film	FISCHER FILM GmbH	48,150.00
Pfusch am Bau II (9 episodes)	ON-MEDIA TV- und Filmproduktion GmbH	60,000.00
Pfusch am Bau III (6 episodes)	ON-MEDIA TV- und Filmproduktion GmbH	40,000.00
Schladminger Bergwelten – Universum (2 parts)	Interspot Film-Gesellschaft m.b.H.	120,200.00
Um den reinen Kern – Der Bildhauer Josef Schagerl	Lhotsky Film Gesellschaft m.b.H. & Co KG	10,000.00
Wer war Mona Lisa?	EPO-Filmproduktionsgesellschaft m.b.H.	65,000.00
<b>Total</b>		<b>927,315.00</b>

Source: RTR

Contributions to the financing of television projects supported by the fund in 2011:

The largest share of the overall production costs, which totalled EUR 73 million, was borne by German television broadcasters (46.2%). The ORF contributed 11.5% to financing the projects supported. At the same time, a decline in co-productions with other European partners was observed during the year under review. The share of financing contributed to television productions by distribution companies rose from 1.7% to 2.7%, and the share contributed by the Austrian private broadcasters ATV, ServusTV and PULS 4 increased from 0.8% to 2.1%.

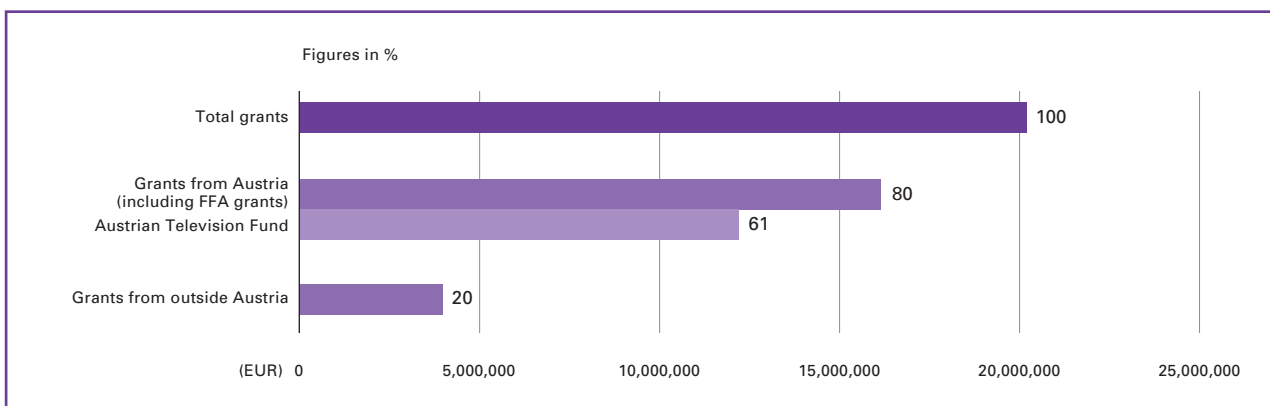
**Figure 5: Austrian Television Fund: Contributions to financing of projects supported in 2011**



Source: RTR

The total amount of grants awarded at the national and international level came to EUR 20.2 million for production costs. The Austrian Television Fund contributed 61% of the overall amount.

**Figure 6: Austrian Television Fund: Grants in 2011**



Source: RTR

### 6.2.3 Notes on the 2011 annual accounts

Art. 23 Par. 4 of the KommAustria Act (KOG) 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 appropriated 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 2011 is presented below in order to ensure transparency with regard to the funds required and available.

**Table 5: Austrian Television Fund: Excerpt from 2011 financial statements**

Statement of revenue and expenditure	EUR	EUR
Balance in trustee account as of December 31, 2010		7,534,597.12
<b>Credits</b>		
Increase from credits in 2011	13,500,000.00	
Surplus from administrative expenses from 2010	9,429.87	
Interest	149,996.75	13,659,426.62
<b>Debits</b>		
Administrative expenses in 2011	-617,000.00	
Payment of grants	-10,362,855.77	-10,979,855.77
Balance of initial funds, debits and credits in 2011 = <b>Balance in trustee account as of December 31, 2011</b>		<b>10,214,167.97</b>
Administrative expenses from 2011 to be repaid to the fund in 2012	28,968.04	28,968.04
<b>Balance of trustee obligations as of December 31, 2011</b>		<b>10,243,136.01</b>
Grants approved but not yet paid out		
Appropriated amounts from 2009	-37,642.34	
Appropriated amounts from 2010	-770,407.01	
Appropriated amounts from 2011	-6,652,753.17	-7,460,802.52
Funds available in 2012		2,782,333.49

Source: RTR

With the funds available as of December 31, 2010 in the amount of EUR 7,534,597.12 and the endowment of EUR 13,500,000.00 allocated by the Federal Ministry of Finance (BMF), plus the credit from administrative expenses from the year 2010 in the amount of EUR 9,429.87 and interest revenues of EUR 149,996.75 in 2011, the fund had a total of EUR 21,194,023.74 at its disposal in 2011.

Of that amount, EUR 617,000 was paid out for administrative expenses and EUR 10,362,855.77 was paid out in grants. Total payments from the fund thus came to EUR 10,979,855.77.

The balance in the trustee account as of December 31, 2011 came to EUR 10,214,167.97. With the repayment of administrative expenses (EUR 28,968.04) for the year 2011, the balance of trustee obligations amounted to EUR 10,243,136.01 as of December 31, 2011.

On the basis of grant agreements concluded by the fund, the amount of grants approved but not yet paid out came to EUR 7,460,802.52 at the end of the year 2011. Therefore, as a result of the economical and expedient use of resources, additional funds in the amount of EUR 2,782,333.49 will be available for the year 2012.

## 6.3 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. The two funds were originally endowed with a total of EUR 6 million; this endowment is to be increased continuously to EUR 18 million until the year 2013.

The funds serve the purpose of promoting the dual broadcasting system in Austria and helping broadcasters deliver diverse and high-quality programming.

Broadcasters whose activities require a licence or notification pursuant to the Audiovisual Media Services Act (AMD-G) or Private Radio Act (PrR-G) are eligible to apply for grants. Decisions on grants from the fund are made by the managing director of RTR's Media Division with due attention to the opinions of the Review Board.

Grants are available for projects in three categories, namely grants for content creation and projects, grants for education and training, and grants for reach surveys and quality studies.

### 6.3.1 Private Broadcasting Fund

#### 6.3.1.1 Revision of guidelines

During the reporting period, two changes were made to the grant guidelines for the Private Broadcasting Fund.

In the amendment which went into effect on April 1, 2011, the guidelines were adapted to current bankruptcy legislation in Austria, and the deadline for the submission of final cost reports was shortened from six to four months in order to accelerate the administrative process and thus ensure that grants are paid out to recipients more quickly.

In a second change, which went into effect on September 15, 2011, the 60:40 distribution between television and radio broadcasting, which was previously applied only to content and project grants, was extended to cover grants for reach surveys and quality studies as well. In addition, the guidelines were adapted to state clearly that funding must be secured for each project upon submission (including the grant requested, other grants and financial contributions) and that advance payments may be made contingent upon the provision of adequate security in especially justified cases.

#### 6.3.1.2 Application dates in 2011

##### First application date (2011)

In the year 2011, a total of approximately EUR 10 million was available in the Private Broadcasting Fund.

As of the first application date (January 12, 2011), a total of 101 applications for grants in the field of television and 255 applications in radio broadcasting had been submitted.

Approximately EUR 7.5 million was awarded to 30 private television broadcasters and 32 private radio broadcasters. Of those funds, EUR 4.341 million went to television broadcasters, EUR 2.98 million went to radio broadcasters, and EUR 181,757.00 went to the *Privatsenderpraxis* association, a joint training initiative established by multiple broadcasters.

As for the distribution of grants across the categories specified in the guidelines, 83.93% of the overall amount awarded in the first round of applications (EUR 7.5 million) went to content and project grants, 9.39% went to education and training, and 6.68% went to reach surveys and quality studies.

## Second application date (2011)

In the second round of applications, for which the submission deadline was May 13, 2011, a total of 230 applications were received. Of those applications, 84 related to television broadcasting and 146 related to radio broadcasting. In the second round, some EUR 2.69 million was allocated to 25 private television broadcasters and 27 private radio broadcasters, as well as the *Privatsenderpraxis* association.

A total of EUR 1.679 million in grants were awarded to television broadcasters, EUR 991,000.00 was awarded to radio broadcasters, and EUR 20,440.00 went to the *Privatsenderpraxis* association. As for the distribution of grants across the categories specified in the guidelines, 91.7% of the overall amount awarded in the second round (EUR 2.69 million) went to content and project grants, 6.15% went to education and training, and 2.15% went to reach surveys and quality studies.

In the allocation of grants in 2011, greater attention was paid to broadening the geographical distribution of grant recipients in order to include local and regional content/projects and thus to enhance diversity. Smaller radio broadcasters with technical ranges of less than 100,000 as well as broadcasters with a reach level of 100,000 to 300,000 received grants equalling nearly 100% of the funds requested.

Among television broadcasters, the ratio of grants requested to grants awarded was markedly different: On average, smaller, regional television broadcasters, who usually offer an updated information programme once a week, generally received lower grant amounts than requested.

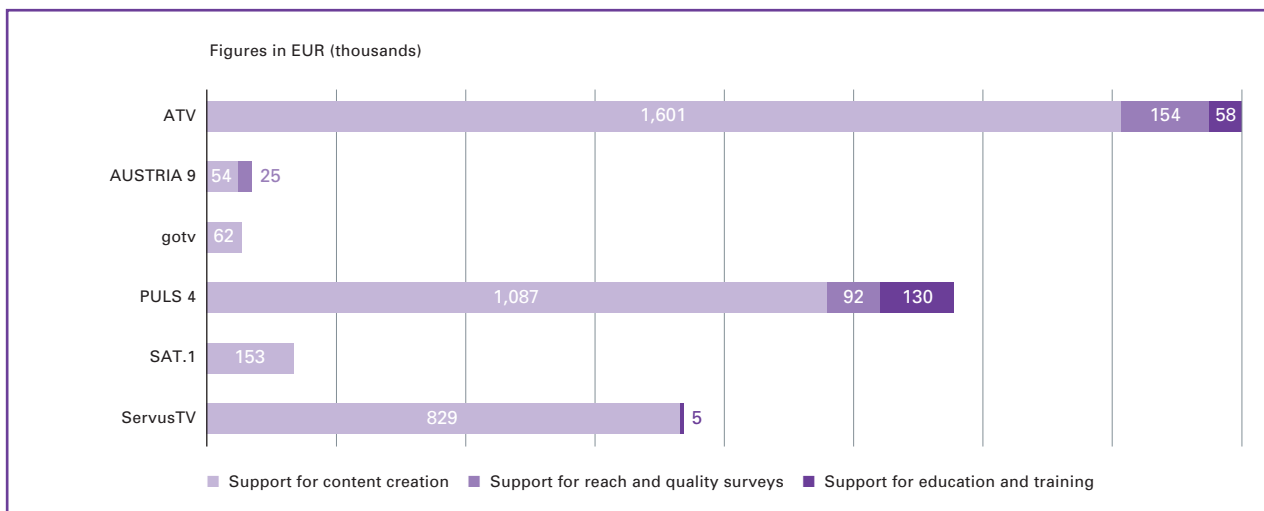
Nationwide television broadcasters, on the other hand, incur substantially higher costs and usually broadcast regular information shows, in many cases multiple times per day. The nationwide television broadcasters therefore received substantially higher grants.

In accordance with the guidelines published by the European Commission, grants for information broadcasts, cultural broadcasts and regional broadcasts were also awarded in the reporting period. The share of funds awarded for education and training rose markedly compared to the previous year. In light of the principal objectives of the fund, this development is regarded as highly positive and will support the sustained improvement of quality in accordance with the guidelines.

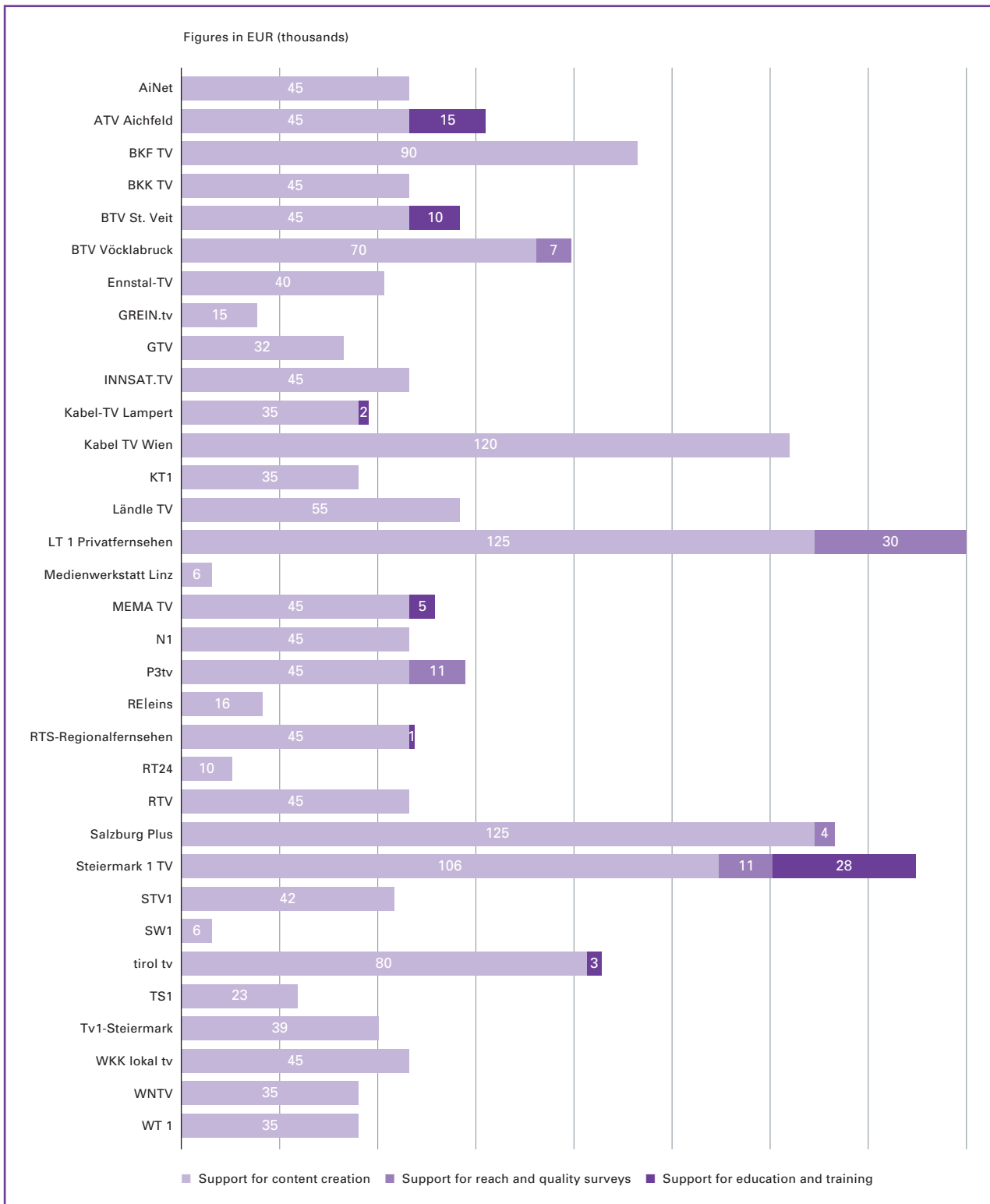
Additional information on the grant awards and decisions of the Private Broadcasting Fund can be found on the RTR web site at [http://www.rtr.at/de/foe/PRRF\\_Fonds](http://www.rtr.at/de/foe/PRRF_Fonds) (in German).

## Overview of grants by applicant

**Figure 7: Private Broadcasting Fund: Total grants for 2011 application dates (nationwide TV broadcasters)**



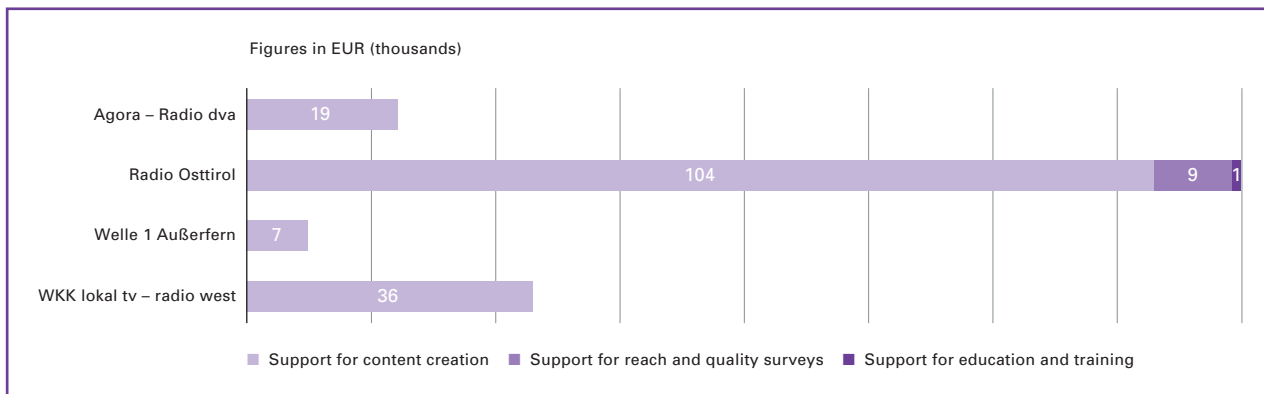
**Figure 8: Private Broadcasting Fund: Total grants for 2011 application dates (regional TV broadcasters)**



Source: RTR

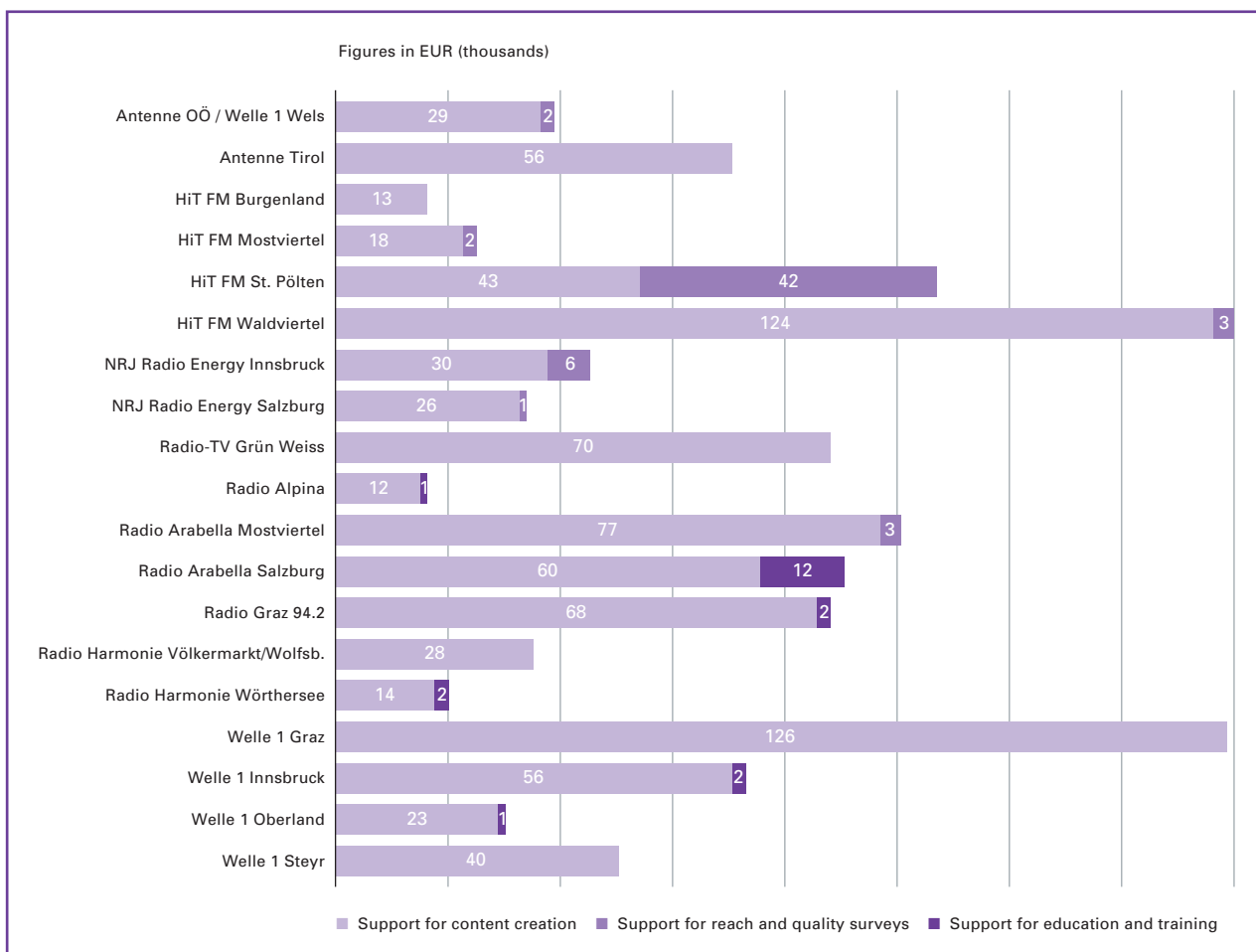


**Figure 9: Private Broadcasting Fund: Total grants for 2011 application dates (radio broadcasters, technical range < 100,000)**



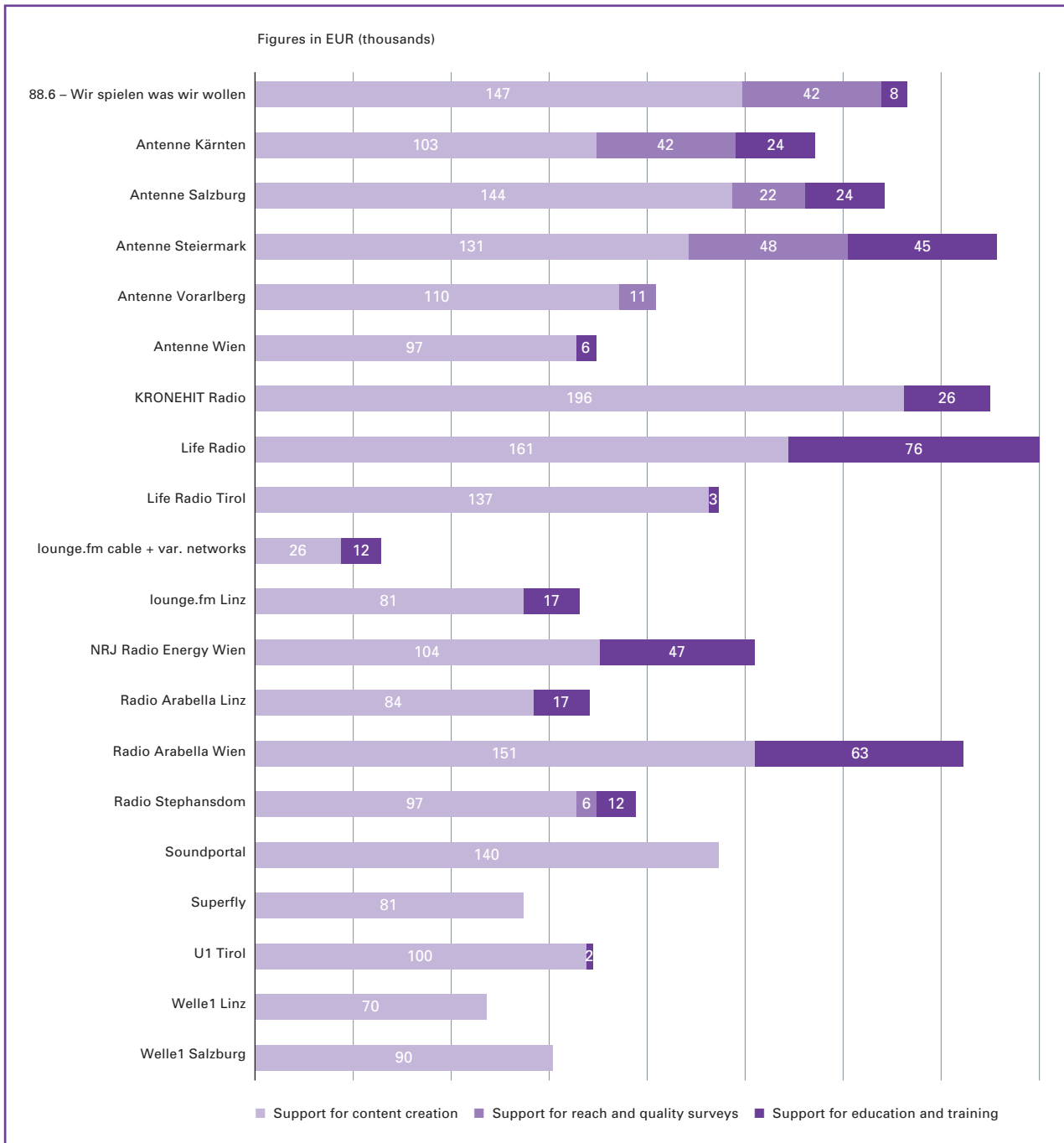
Source: RTR

**Figure 10: Private Broadcasting Fund: Total grants for 2011 application dates (radio broadcasters, technical range < 300,000)**



Source: RTR

**Figure 11: Private Broadcasting Fund: Total grants for 2011 application dates (radio broadcasters, technical range > 300,000)**



Source: RTR

### 6.3.1.3 Notes on the 2011 annual accounts

The Private Broadcasting Fund received an endowment of EUR 10 million in 2011.

The EUR 10 million allocated by the Federal Ministry of Finance (BMF) and the existing amount in the Private Broadcasting Fund (trustee account balance as of December 31, 2010: EUR 4,466,653.46) generated interest revenues in the amount of EUR 39,745.84 during the reporting period (including interest on the repayment of unused grants in the amount of EUR 440.52). With the repayment of unused grants in the amount of EUR 117,900.34, the repayment of the loan to the Non-Commercial Broadcasting Fund (EUR 626,446.78) and the repayment of administrative expenses from the year 2010 (EUR 6,807.10), total credits to the fund amounted to EUR 10,790,900.06 in the year 2011.

Of the total amount available in the Private Broadcasting Fund in 2011, EUR 9,512,122.59 was paid out in grants and EUR 242,000.00 was paid out for administrative expenses. Total payments from the fund thus came to EUR 9,754,122.59.

The balance in the trustee account as of December 31, 2011 came to EUR 5,503,430.93. After the payment of outstanding administrative expenses for 2011 in the amount of EUR 80,675.00, the trustee obligations amounted to EUR 5,422,755.93 as of December 31, 2011.

On the basis of grant agreements concluded by the fund, the amount of grants approved but not yet paid out came to EUR 4,920,638.15 at the end of the year 2011. Therefore, as a result of the economical and expedient use of resources, additional funds in the amount of EUR 502,117.78 will be available for the year 2012.

**Table 6: Private Broadcasting Fund: Excerpt from 2011 financial statements**

Statement of revenue and expenditure	EUR	EUR
Balance in trustee account as of December 31, 2010		4,466,653.46
<b>Credits</b>		
Increase from credits in 2011	10,000,000.00	
Repayment of loan	626,446.78	
Repayment of grants	117,900.34	
Surplus from administrative expenses from 2010	6,807.10	
Interest	39,745.84	10,790,900.06
<b>Debits</b>		
Administrative expenses in 2011	-242,000.00	
Grant payments in 2011	-9,512,122.59	-9,754,122.59
Balance of initial funds, debits and credits in 2011 = <b>Balance in trustee account as of December 31, 2011</b>		<b>5,503,430.93</b>
Administrative expenses from 2011 to be paid out in 2012	-80,675.00	-80,675.00
<b>Balance of trustee obligations as of December 31, 2011</b>		<b>5,422,755.93</b>
Grants approved but not yet paid out		-4,920,638.15
Funds available in 2012		502,117.78

Source: RTR

## 6.3.2 Non-Commercial Broadcasting Fund

### 6.3.2.1 Revision of guidelines

In 2011, two changes were also made to the grant guidelines for the Non-Commercial Broadcasting Fund.

The amendment which went into effect on April 1, 2011 provided for a second application date as well as a special fund. These measures are intended to enable non-commercial broadcasters to apply for funding in the course of the year as well and to create greater flexibility for broadcasters in adjusting their budgets. In addition, the guidelines were also adapted in order to account for currently applicable bankruptcy legislation in Austria, and the submission period for final cost reports was shortened from six to four months.

In the changes which went into effect on September 20, 2011, the guidelines were revised to clearly state that the four-month submission period for the completion of final reports also applies to education and training as well as quality studies.

### 6.3.2.2 Application dates in 2011

#### First application date (2011)

In the year 2011, a total of EUR 2 million was available in the Non-Commercial Broadcasting Fund. In the first round of applications (submission deadline: September 10, 2010), the fund awarded grants to a total of 14 non-commercial radio stations, three community television broadcasters, and two education and training initiatives in radio broadcasting.

In this round, grants in the amount of EUR 1.773 million were awarded for content creation, EUR 163,000.00 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 awarded to the community television broadcaster OKTO, while EUR 197,060.00 was allocated to DORF TV, an Upper Austrian broadcaster established in 2010. Community TV Salzburg, which had originally planned to launch broadcasts in mid-2011, was awarded EUR 128,500.00.

Grants totalling EUR 1.455 million were awarded to radio broadcasters; those with large/urban coverage areas were each allocated approximately EUR 100,000.00. The remaining grant amounts ranged from EUR 70,000.00 to EUR 95,000.00. The education and training initiatives of the COMMIT association were supported with EUR 60,000.00 in grants, and those of the *Verband Freier Radios Österreichs* (Austrian association of independent radio broadcasters, or VFRÖ) were allocated EUR 6,832.00.

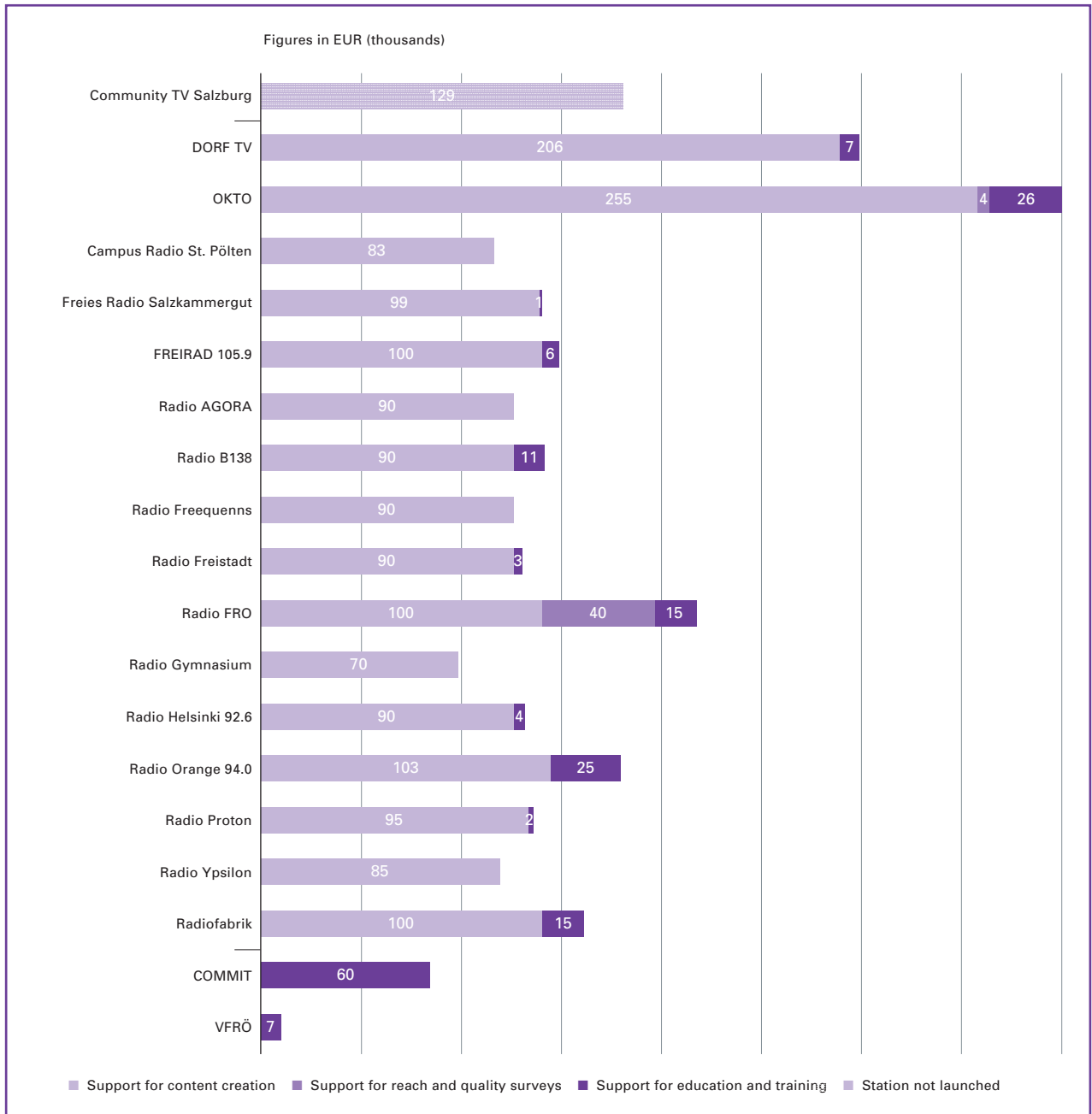
#### Second application date (2011)

As the newly established broadcaster Community TV Salzburg was unable to launch broadcasting operations during the reporting period, the funds that became available as a result were allocated in a second (extraordinary) round of applications. In the second round, EUR 101,000.00 was awarded to television broadcasters and EUR 19,000.00 was allocated to radio broadcasters.

As these funds were originally intended for the field of community TV and because of the generally higher production costs in television broadcasting, the focus in the second round was laid on grants for content creation in the field of television. In the field of radio broadcasting, grants were mainly awarded for additional training and education measures. The community television stations OKTO and DORF TV were awarded grants in the amount of EUR 85,000.00 and EUR 16,000.00, respectively. Five independent radio broadcasters received amounts ranging from EUR 960.00 to EUR 8,200.00 for educational measures.

## Overview of grants by applicant

**Figure 12: Non-Commercial Broadcasting Fund: Total grants for 2011 application dates**



Source: RTR

Additional information on the grant awards and decisions of the Non-Commercial Broadcasting Fund can be found on the RTR web site at [http://www.rtr.at/de/foe/NKRF\\_Fonds](http://www.rtr.at/de/foe/NKRF_Fonds) (in German).

### 6.3.2.3 Notes on the 2011 annual accounts

The Non-Commercial Broadcasting Fund received an endowment of EUR 2 million in 2011.

The EUR 2 million allocated by the Federal Ministry of Finance (BMF) and the existing amount in the Non-Commercial Broadcasting Fund (trustee account balance as of December 31, 2010: EUR 146,397.14) generated interest revenues in the amount of EUR 4,012.47 during the reporting period (including interest on the repayment of unused grants in the amount of EUR 485.03). Including the repayment of unused grants in the amount of EUR 74,739.21 and the repayment of administrative expenses from 2010 (EUR 1,361.42), total credits to the fund came to EUR 2,080,113.10 in the year 2011.

Of the total amount available in the Non-Commercial Broadcasting Fund in 2011, EUR 1,079,759.81 was paid out in grants. Administrative costs came to EUR 48,400.00 in 2011, and the sum of EUR 626,446.78 was used to repay the loan from the Private Broadcasting Fund. Total payments from the fund thus came to EUR 1,754,606.59.

The balance in the trustee account as of December 31, 2011 came to EUR 471,903.65. After the payment of outstanding administrative expenses for 2011 in the amount of EUR 7,592.55, the trustee obligations amounted to EUR 464,311.10 as of December 31, 2011.

On the basis of grant agreements concluded by the fund, the amount of grants approved but not yet paid out came to EUR 421,979.20 at the end of the year 2011. Therefore, as a result of the economical and expedient use of resources, additional funds in the amount of EUR 42,331.90 will be available for the year 2012.

**Table 7: Non-Commercial Broadcasting Fund: Excerpt from 2011 financial statements**

Statement of revenue and expenditure	EUR	EUR
Balance in trustee account as of December 31, 2010		146,397.14
<b>Credits</b>		
Increase from credits in 2011	2,000,000.00	
Repayment of grants	74,739.21	
Surplus from administrative expenses from 2010	1,361.42	
Interest	4,012.47	2,080,113.10
<b>Debits</b>		
Repayment of loan	-626,446.78	
Administrative expenses in 2011	-48,400.00	
Grant payments in 2011	-1,079,759.81	-1,754,606.59
Balance of initial funds, debits and credits in 2011 <b>= Balance in trustee account as of December 31, 2011</b>		<b>471,903.65</b>
Administrative expenses from 2011 to be paid out in 2012	-7,592.55	-7,592.55
<b>Balance of trustee obligations as of December 31, 2011</b>		<b>464,311.10</b>
Grants approved but not yet paid out		-421,979.20
Funds available in 2012		42,331.90

Source: RTR

## 6.4 Press and journalism subsidies

The federal press and journalism subsidies administered by RTR are direct support measures in the form of financial contributions. Decisions on the allocation of subsidies are made by the Austrian Communications Authority (KommAustria), and the administration of grants is assigned to one member of the authority. For these subsidies, the Press Subsidies Commission and the Journalism Subsidies Advisory Board have been set up as advisory bodies. One exception is the subsidies allocated to the Austrian Advertising Council as defined in Art. 33 KommAustria Act (KOG), for which no advisory body is required. The Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) provides functional and administrative support.

The legal bases for the allocation of grants are the Austrian Press Subsidies Act 2004 (PresseFG 2004), the press subsidies guidelines to be published by KommAustria each year, Section II of the Journalism Subsidies Act 1984 (PubFG) as well as Art. 33 KOG and the guidelines to be published by KommAustria for the promotion of self-regulation in commercial communication.

### 6.4.1 Press subsidies

The groups eligible for subsidies under the PresseFG 2004 are as follows:

- Publishers of daily and weekly newspapers;
- Institutions for journalist education;
- Research projects on the press;
- Press clubs;
- A self-regulation body for matters related to the press.

In the year 2011, KommAustria received 125 applications for subsidies under the Press Subsidies Act 2004. The authority granted subsidies in 121 cases, while four applications had to be rejected because they did not fulfil the relevant legal requirements.

**Table 8: Press subsidies: Development of grant amounts, applications and approval rates since 2007**

Year	Grant amount (EUR)	Number of applications	Number of approvals	Approval rate in %
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
2011	12,375,999.30	125	121	96.8

Source: RTR

The Press Subsidies Act 2004 also governs subsidies for the Austrian Press Council; the funds available for this purpose are derived from the Fund for Self-Regulation Bodies in the Press Industry. For the short business year 2010, a grant of EUR 50,000.00 was allocated, and in the year 2011 the Press Council received a grant of EUR 120,000.00.

The entire amount made available each year in the Fund for the Promotion of Self-Regulation in Commercial Communication (EUR 50,000.00) was awarded to the Austrian Advertising Council in 2010 and 2011.

#### 6.4.1.1 Distribution subsidies for daily newspapers in 2011

In the year 2011, 14 applications for subsidies were received from daily newspapers in accordance with Section II of the Press Subsidies Act 2004 (distribution subsidies). The group of recipients remained unchanged compared to the previous years. All requests for subsidies were granted.

A total of EUR 2,355,479.30 was paid out in distribution subsidies for daily newspapers.

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

**Table 9: Distribution subsidies allocated to daily newspapers in 2011**

Name of daily newspaper	Amount of subsidy in 2011 (EUR)
Kleine Zeitung (Styria and Carinthia)	181,190.70
Kurier	144,952.60
Neue Kärntner Tageszeitung	181,190.70
Neue Kronenzeitung	181,190.70
Neue Vorarlberger Tageszeitung	144,952.60
Neues Volksblatt	181,190.70
OÖ Nachrichten	181,190.70
Die Presse	144,952.60
Salzburger Nachrichten	181,190.70
Der Standard	181,190.70
SVZ – Salzburger Volkszeitung	181,190.70
Tiroler Tageszeitung	181,190.70
Vorarlberger Nachrichten	181,190.70
WirtschaftsBlatt	108,714.50
<b>Total</b>	<b>2,355,479.30</b>

Source: RTR

#### 6.4.1.2 Special subsidies to maintain regional diversity in daily newspapers in 2011

In the year 2011, the regulatory authority received nine applications for subsidies pursuant to Section III of the Press Subsidies Act 2004; two of those applications came from weekly newspapers. The group of recipients remained unchanged compared to the previous years. As these subsidies are intended for daily newspapers only, the requests from weekly newspapers could not be fulfilled.

A total of EUR 6,406,000.00 in special subsidies was paid out in the year under review.



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

**Table 10: Special subsidies allocated to daily newspapers in 2011**

Name of daily newspaper	Amount of subsidy in 2011 (EUR)
Neue Kärntner Tageszeitung	974,661.00
Neue Vorarlberger Tageszeitung	786,052.30
Neues Volksblatt	839,710.90
Die Presse	1,210,512.50
Der Standard	1,109,587.50
SVZ – Salzburger Volkszeitung	859,339.60
WirtschaftsBlatt	626,136.20
<b>Total</b>	<b>6,406,000.00</b>

Source: RTR

The requests for subsidies received from the weekly newspapers *Format* and *Profil* were rejected due to non-fulfilment of the eligibility requirements pursuant to Art. 8 in conjunction with Art. 2 Par. 1 No. 2 of the Press Subsidies Act 2004.

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

After its establishment at the end of March 2010 as well as the appointment of a managing director and the launch of operational activities in November 2010, the Austrian Press Council marked the end of its startup stage with an opening event on January 26, 2011.

The Press Council sees itself as a modern self-regulation body for the press industry which is based on voluntary participation, supports quality assurance in journalism and helps to preserve the freedom of the press. One of the key tasks of the Press Council is to point out grievances in the press industry and to make efforts to combat those problems. The Press Council has drawn up a journalism code of honour which is based on the Austrian Media Act and not only represents an ethical benchmark for creators of media content but also serves as a basis for decision-making in this field.

For the Austrian Press Council's first full year of operations (2011), KommAustria awarded this body a subsidy in the amount of EUR 120,000.00.

The Austrian Press Council dealt with a total of 80 cases in 2011; 27 of those cases were based on complaints, 49 were based on notifications, and four were independent procedures. The council was able to close 61 cases by the end of the year. For the purpose of decision-making, the Press Council set up two committees, each consisting of seven members and four alternate members. Committee members are appointed for a term of three years by the general assembly of the Association for Self-Regulation in the Austrian Press – Austrian Press Council (*Verein zur Selbstkontrolle der Österreichischen Presse – Österreichischer Presserat*).



Individual parties affected by violations can submit complaints to the Austrian Press Council, while any parties who detect a violation of the Code of Honour for the Austrian Press in a publication or in the behaviour of journalism professionals may submit notifications to the council. The relevant committee then decides whether to initiate a case on the basis of the notification. Moreover, each committee is also empowered to initiate (independent) cases on its own, provided that a unanimous decision is taken.

The new procedural regulations for the complaint committees adopted on October 6, 2011 also made it possible to publish committee decisions in independently initiated cases directed at specific publications which are not members of the Press Council. In order to be published, however, these cases must be of fundamental significance.

#### **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 goals of these subsidies are defined as follows in Art. 33 KOG: 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 and 2010, 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.

#### **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 as stipulated in Section II of the 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.

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.

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.

The Federal Finance Act 2011 designated the amount of EUR 348,000.00 for these subsidies. In 2011, 95 requests for subsidies were received, after which the Journalism Subsidies Advisory Board (established under Art. 9 PubFG) reviewed the applications and submitted its recommendations on whether applicants can be considered worthy of funding.

In 83 cases, the Advisory Board recommended that KommAustria approve the subsidies, while in 12 cases the board recommended a rejection because the relevant legal requirements for subsidies were not fulfilled. In its decisions, KommAustria followed the Advisory Board's recommendations in their entirety.

The subsidy amounts ranged from EUR 1,392.00 to EUR 10,022.00. The largest subsidy was allocated to SAAT, an Evangelical church newspaper in Austria, followed by the periodicals GLOBAL PLAYER (published by *Die Bunten*, an association dedicated to dignity, justice and democracy), KIRCHE IN (an international Christian-ecumenical magazine) and REFORMIERTES KIRCHENBLATT, a periodical published by the Executive Committee of the Evangelical Church in Austria.

Overall, the periodicals supported represent a broad range of 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 11: Journalism subsidies: Development of grant amounts, applications and approval rates since 2007**

Year	Subsidy awarded (EUR)	Number of applications	Number of approvals	Approval rate in %
2007	361,000.00	116	100	86.2
2008	361,000.00	98	93	94.9
2009	361,000.00	107	94	87.9
2010	361,000.00	96	91	94.8
2011	348,000.00	95	83	87.4

Source: RTR

Details on grant awards can be found on the RTR web site (<http://www.rtr.at>).



# 7. Activities of the TKK

## 7.1 Market definition and analysis

In accordance with the relevant provisions of Austrian telecommunications law, the authority's approach to competition regulation is essentially based on the market analysis procedures to be carried out at regular intervals. In the course of these procedures, the regulatory authority is first required to define the markets subject to sector-specific regulation. In the second step, it is necessary to analyse those markets in order to determine whether effective competition prevails on each market or whether one or more companies possess significant market power. In cases where a company is identified as a significant market power (SMP) operator, one or more specific obligations are to be imposed on that company. The regulatory authority periodically reviews compliance with these obligations.

### 7.1.1 Market analysis procedures


#### **Wholesale market for high-bandwidth terminating segments (M 8/09)**

With regard to the wholesale market for high-bandwidth terminating segments (over 2.048 Mbit/s up to and including 155.52 Mbit/s), after representatives of the European Commission had voiced reservations about the draft measure of February 8, 2010 (which subsequently would have led to a veto by the European Commission), the Telekom-Control-Kommission (TKK) decided on March 15, 2010 not to use the draft measure as the basis for a decision. In later sessions on May 17 and October 18, 2010, the TKK decided to wait and monitor developments in other EU member states and to notify the draft measure again if another member state submitted a notification with similar content. As the amendment to the Austrian Telecommunications Act 2003 (TKG 2003) was slated for an earlier entry into force at that time, the TKK planned in its session on February 21, 2011 to initiate a new market definition procedure in early 2011 and at the same time decided not to continue the authority's work on the ongoing market analysis procedure, but to wait until the results of the new market definition procedure were available and to initiate a new market analysis on the basis of the amended TKG 2003 once it went into effect. Due to various delays, however, the process of amending the TKG 2003 could not be completed until November 2011. Toward the end of the reporting period, the TKK decided to discontinue this procedure due to the extensive revision of procedural rules governing the performance of market analysis procedures under Art. 36 et seq. TKG 2003, which had transferred the responsibility for market definition from RTR to the TKK, and due to the simultaneous decision to initiate a new market analysis procedure.

### 7.1.2 Review of specific obligations arising from market analysis procedures

#### **S 21/10 – VoB-only reference offer**

In addition to other obligations imposed on A1 Telekom Austria AG (A1 Telekom) due to its identified position of significant market power on the markets in question, the TKK's market analysis decisions on the retail markets for access to the public telephone network at a fixed location for residential and non-residential customers (M 1/09-86 and M 2/09-86 of September 20, 2010) required A1 Telekom to offer a wholesale VoB access product which alternative operators can use without simultaneously purchasing one of A1 Telekom's broadband Internet products, regardless of whether A1 Telekom itself offers a retail VoB product. A1 Telekom is also required to allow the purchase of such a VoB access product in cases where the retail customer does not subscribe to one of A1 Telekom's POTS or ISDN services. In addition, A1 Telekom was subjected to an obligation to design this VoB access product in such a way that alternative operators themselves are able to offer access to and use of VoB-based voice telephony services on a non-



discriminatory basis. Another requirement imposed in the above-mentioned market analysis decisions was to offer the VoB access product with a bandwidth of at least 192/192 Kbit/s, including a data volume of at least 2.4 GB (total upload and download volume). In cases where this limit is exceeded (based on the total volume used by all subscribers of a specific alternative operator, i.e. the product of the data volume mentioned above and the number of subscribers), amounts are to be charged according to the data volume used and in 1 GB increments. Moreover, in response to reasoned requests, A1 Telekom is required to allow the joint use of a VoB access product and a bitstream-based wholesale product on the same local loop. Finally, the official decisions mentioned above also required A1 Telekom to publish the corresponding reference offer for a VoB access product on the company's web site within two months and to update the reference offer on a regular basis. Upon publication, this reference offer was to replace the offer for resale of a voice telephony access service based on real-time signal transmission; this offer was required under the previous market analysis decisions, but the service itself did not prove to be viable on the market. The new reference offer was to include the following minimum content (to be specified further by A1 Telekom):

- Procedure with regard to ordering, provision and cancellation of the overall agreement governing the VoB access product as well as individual services;
- Provisions with regard to the subject matter of the agreement, the charges and the technical prerequisites to be fulfilled by the contract partner;
- Provisions with regard to technology-neutral number porting;
- Provisions with regard to the joint purchase of a bitstream-based wholesale product and a VoB access product.


On November 16, 2010 (prior to the deadline), A1 Telekom published the reference offer required by the official decisions as part (Annex 5) of its reference offer for broadband Internet access. In its session on November 29, 2010, the TKK decided to instruct RTR to review the reference offer submitted by A1 Telekom in order to ensure compliance with the obligations stipulated in the market analysis decisions. Between November 30, 2010 and January 14, 2011, RTR carried out a public consultation with regard to this reference offer. In this context, the various points of criticism voiced by market participants proved valuable in the assessment of the reference offer. In the initial version of the reference offer published by A1 Telekom, the following points in particular were considered problematic:

- The need to offer at least one modem at no additional charge with a single-user configuration and the possibility of remote maintenance access;
- The explicit omission of a minimum transmission capacity;
- The provision prohibiting further distribution;
- The feasibility of realising two voice channels with a net transmission speed of 192/192 Kbit/s;
- The offer of VoB-only as a residential service type only;
- The high setup fees charged (once again);
- The obligation of the wholesale partner to maintain and submit lists of unrealised orders in areas not yet covered.

On behalf of the TKK, RTR subsequently held talks with A1 Telekom regarding a revision of the reference offer, and A1 Telekom expressed its willingness to adopt the desired revisions as requested. Once the reservations expressed by the regulatory authority had been eliminated, the TKK decided on February 7, 2011 not to make changes to the above-mentioned reference offer submitted by A1 Telekom and to discontinue the review procedure.

### **S 18/10 and S 24/10 – Reference offers for unbundling and virtual unbundling**

In the market analysis decision M 3/09 of September 6, 2010, which refers to the wholesale market for physical network infrastructure, the regulatory authority determined that A1 Telekom possesses significant market power on this market. At the same time, the decision required A1 Telekom to publish various reference offers (for physical unbundling, access to empty ducts and dark fibre as annex services, and virtual unbundling). On December 20, 2010, the TKK instructed RTR to conduct a comprehensive review of the reference offers. The two reference offers were also subjected to a public consultation among market participants between January 26 and March 12, 2011. In parallel to the consultation procedure and after receiving the extensive comments and opinions submitted, RTR held



innumerable meetings with A1 Telekom in which the individual elements of each reference offer were painstakingly reviewed on the basis of the input received from the other market participants. In the course of the review process, A1 Telekom submitted several adapted versions of the offers. Key discussion points with regard to virtual unbundling included the following topics:

- Protection of customers who subscribe to services with symmetrical bandwidths;
- Service and service class parameters;
- Interim profiles for reductions of “up to” bandwidths;
- Retail customer reporting / view of DSLAM configuration;
- Charges, especially for the initial setup of individual services in virtual unbundling;
- Planning rounds;
- Post-hoc number porting;
- Penalties, especially a reduction of fault elimination penalties by half;
- Repair time for penalties, especially standard fault elimination conditions.

In the reference offer for unbundling, the following key areas were discussed:

- Planning rounds;
- Extension of the period for advance information on structural changes in the subscriber network;
- Switching guidelines for transmission standards on the local loop as an integral part of the agreement;
- General deployment of the VDSL2/Annex M transmission standard as a network-compatible system;
- Repair time in the standard fault elimination conditions;
- Penalties;
- Migration to a suitable wholesale product;
- Submission of guidelines for laying mini-ducts;
- Cancellation period for ducts/dark fibre.

As it was not possible to reach agreement on all of the contentious points discussed, A1 Telekom was instructed in a letter on July 13, 2011 to make changes to several points disputed by the TTK in the two reference offers. A1 Telekom fulfilled this instruction by submitting appropriately revised reference offers on July 20, 2011, after which the TTK decided on July 24, 2011 to discontinue the procedure.

#### **M 4/09 and M 5/09 – Wholesale fixed-link reference offer**

On July 26, 2010, the TTK issued official decisions with regard to A1 Telekom in Procedures M 4/09 (Fixed-link origination) and M 5/09 (Fixed-link termination). A1 Telekom was identified as an operator with significant market power on both markets and was therefore subjected to specific obligations, in particular the obligation to publish a reference offer for its fixed-link origination and fixed-link termination services. Due to the transition to next-generation networks (NGNs) in its own network, A1 Telekom was also required to prepare a migration plan in cooperation with the alternative operators by May 30, 2011.

A1 Telekom submitted the plan for NGN migration in due time, and the company included the provisions regarding the migration plan as Annex 13a in its reference interconnection offer. Like the other provisions governing the reference interconnection offer, the provisions on the NGN migration plan fulfil the requirements stipulated in the market analysis decisions M 4 and M 5/09; therefore, no further steps were necessary in this procedure.

## 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 of the Telecommunications Act 2003 (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 Telekom-Control-Kommission (TKK), which will then issue an official decision in lieu of such an agreement (Articles 50 and 121 TKG 2003).

### **Continuation of Procedures Z 1/08 and Z 2/08 on the definition of reasonable interconnection fees**

In two rulings issued on June 30, 2011, the Austrian Administrative Court overturned the TKK's decisions on Procedures Z 1/08 and Z 2/08 due to legal violations in their content. The procedures were resumed as a result.

Specifically, the TKK had issued the two decisions on November 24 and December 9, 2008 – one on mutual charges for SMS termination (Z 2/08) and one on mobile origination services (Z 1/08) between Hutchison 3G Austria GmbH (Hutchison) and mobilkom (now A1 Telekom Austria AG). Neither the service of SMS termination nor that of mobile origination is assigned to a market which is subject to sector-specific *ex ante* regulation. Against this backdrop, it was necessary to set the fees at a "reasonable level" in order to resolve the dispute.

In order to assess what can be considered "reasonable" fees, the regulatory authority surveyed the actual operator-specific costs of the service in question as well as the fees currently prevailing on the market. In addition, the SMS termination fees charged by mobile operators in other countries in the European Union were examined.

On this basis, the TKK ordered fees for past time periods in the amount which had been agreed upon in a private-law agreement and charged by Hutchison and (then) mobilkom in the past: For SMS termination, the fee was set at 4.2 euro cents on both sides, while the charge for mobile origination was set at 19.62 euro cents for Hutchison and 10.28 euro cents for mobilkom.

For the period starting on December 1, 2008, the TKK decided to fulfil the request for a reduction of the reciprocal SMS termination fees, this time to a level of 3.88 euro cents. Mobile origination charges were lowered to 9.5 euro cents (also reciprocal) from January 1, 2009 onward.


In its rulings, the Administrative Court did not acknowledge a number of complaints, but essentially overturned the official decisions because they did not sufficiently address the objectives of regulation under Art. 1 TKG 2003.

As the parties initiated private-law negotiations, neither of the procedures had been completed at the end of the year under review.

### **Z 1/11 and Z 3/11 – Virtual unbundling**

In the market analysis decision issued on September 6, 2010 (M 3/09), the TKK redefined the general conditions for the rollout of broadband access networks. In this context, A1 Telekom was subject to an obligation (among others) to offer a new wholesale product known as "virtual unbundling," which is meant to ensure that alternative operators can offer their retail customers higher-quality services, in particular the bandwidths that can be provided on FTTC/B





access networks. Although it is a service and does not involve direct sharing of physical infrastructure, the virtual unbundling product 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. As negotiations on a (reference) offer published by A1 Telekom were unsuccessful, two key potential customers for virtual unbundling requested that the TTK issue a regulatory order defining the specific conditions for this new wholesale product. Procedures Z 1/11 and Z 3/11 were still pending when the 2011 Communications Report went to press.

### **7.3 Shared use of communication lines and site sharing**

#### **D 2/10 – Site sharing at Gaisberg transmission facility**


In its session on February 7, 2011, the Telekom-Control-Kommission (TKK) ordered provisions in lieu of a private-law agreement on site sharing for the Salzburg-Gaisberg transmission facility. The procedure was initiated on the basis of a petition submitted by Multikom Austria Telekom GmbH (Multikom). This petition was only the second request for an order specifying site sharing provisions to be submitted under the Austrian Telecommunications Act 2003 (TKG 2003). The Gaisberg station is a large transmission facility belonging to Austrian Broadcasting Services (ORS). On the lower sections of the antenna mast, which is approximately 100 meters high, there are four platforms to which antenna systems are attached (as they are to the mast itself). A1 Telekom Austria AG (A1 Telekom) is entitled to use and rent out one of those platforms and was therefore also the opposing party in this procedure. The procedure not only concerned governing the legal relationship between the parties in the future, but also – on the basis of a counter-petition submitted by A1 Telekom – to a period going (far) into the past, as Multikom had already installed transmission equipment and put it into operation on A1 Telekom's platform in the year 2002 despite the fact that no agreement had been concluded by the parties. On February 7, 2011, the TTK issued an official decision in lieu of a private-law agreement, thus providing Multikom with the legal basis for future site sharing at a fee based on the verified costs to A1 Telekom. In addition, A1 Telekom was also granted compensation for Multikom's past use of the site.

#### **D 3/10 – Silver Server vs. Wien Energie (access to optical fibre lines)**

In its session on March 22, 2011, the TTK issued an order in response to a petition submitted by Silver Server GmbH (Silver Server) defining provisions in lieu of a private-law agreement on the shared use of dark fibre belonging to Wien Energie GmbH (Wien Energie) after the parties' previous negotiations on shared use had been unsuccessful.

Silver Server requested access to two optical fibre lines, in each case specifying one customer-side and one network-side access point to the opposing party's optical fibre network. The opposing party did have optical fibre infrastructure at both customer-side access points, but only at one of the network-side access points mentioned above. In its decision, the TTK pointed out that "all parties involved shall strive to enable and facilitate joint use" under the TKG 2003. As the party requesting shared use generally cannot know specifically where the access points to the opposing party's infrastructure are located, it is considered sufficient if the requesting party names possible access points in the request. The owner of the infrastructure is required to review and disclose whether (and if yes, where) it has at least one access point in the area in question. However, the purpose of the law does not include general requests for information on existing infrastructure as a basis for a company's own rollout plans.

Appropriate compensation is to be paid for the use of other organisations' infrastructure. In this context, it is necessary to account for the costs of the infrastructure and, where available, the levels of compensation customary on the market. In the procedure in question, the opposing party had primarily based its arguments that the requested fee was reasonable on the fact that the amount was customary on the market. However, this could not be confirmed in the procedure. Despite an explicit instruction to do so, the opposing party did not provide detailed verification of the underlying costs. However, as the legislation requires costs to be taken into account in any case, the TTK relied on a value which had been calculated as the average costs of optical fibre lines (to a different party) in a previous



procedure. This fee represented “the only plausible value in the procedure which approximates the costs indicated in Art. 8 Par. 4 TKG 2003; therefore, relying on this value to order a compensation amount enables the best possible compliance with Art. 8 Par. 4 TKG 2003.” However, the TKK also noted that the order of compensation in that amount in Procedure D 3/10 was based solely on the authority’s inability to establish actual costs or customary costs in this procedure, and that this value does not constitute a benchmark for the price of optical fibre lines in Vienna or for other procedures.

#### **D 1/11 and D 2/11 – Silver Server vs. Wien Energie (access to optical fibre lines)**

In Procedures D 1/11 and D 2/11, Silver Server submitted petitions for the shared use of optical fibre lines belonging to Wien Energie. In contrast to Procedure D 3/10, however, Wien Energie did provide the cost data requested by the TKK, meaning that cost-based fees as stipulated in Art. 8 TKG 2003 could be calculated and ordered by the regulatory authority. In calculating the costs, RTR’s official experts prepared opinions on various factors relevant to the decision, such as (once again) the charges customary on the market, the distribution of costs, levels of utilisation, the amount of excavation costs and overhead costs, the applicable depreciation periods and operating reserves. The TKK took these factors into account in its decision.

#### **D 3/11 – Granting of wayleave rights**


The 2011 amendment to the TKG 2003 expanded the TKK’s scope of responsibilities to include decisions on procedures regarding the granting of wayleave rights on private property (in addition to site sharing rights under Art. 8 et seq. TKG 2003). Before that amendment went into effect, the telecommunications authorities were responsible for making such decisions. In a letter dated November 22, 2011, one telecommunications office conveyed a petition for the granting of wayleave rights to the TKK due to the authority’s newly assigned responsibility for these matters. According to a transitional provision in the TKG 2003, however, any administrative procedures pending when the 2011 amendment to the TKG entered into force were to be completed in accordance with Section 2 of the previous legislation. As the petition in question had already been received by the telecommunications office on November 21, 2011, but the 2011 amendment to the TKG did not go into effect until November 22, 2011, the TKK returned the petition to the telecommunications office, citing the latter’s competence for the procedure in question.

## **7.4 Supervisory procedures**

In cases where the regulatory authority finds reason to believe that a company has violated the provisions of the Austrian Telecommunications Act 2003 (TKG 2003), the provisions of an ordinance issued on the basis of the TKG 2003, or an official decision issued on the basis of the TKG 2003, the regulatory authority may initiate a supervisory procedure against the company in question. In the course of the supervisory procedure, the regulatory authority is to notify the company of the potential violations and at the same time provide the company with an opportunity to comment on the allegations or to remedy any shortcomings within a reasonable period of time. If the regulatory authority establishes that the violations due to which the supervisory procedure was initiated have not been remedied once that period has passed, it issues an official decision ordering reasonable measures to ensure compliance with the provisions in question. At the same time, the authority defines a reasonable time period during which the order must be fulfilled.

#### **R 1/11 – Non-fulfilment of Decision D 3/10-35**

In an official decision issued by the Telekom-Control-Kommission (TKK) on September 12, 2011 (R 1/11-10), Wien Energie was instructed to fulfil the TKK’s official decision of March 22, 2011 (D 3/10-35; cf. Section 7.3) on the shared use of an optical fibre line as requested by Silver Server. After the delivery of the official decisions in Procedure D 3/10, the parties had initiated negotiations on the fulfilment of the shared use order. However, Wien Energie subsequently claimed that Silver Server had failed to exercise its rights in due time as defined in the official decisions



in the procedure and therefore could no longer assert any claims to shared use. In the supervisory procedure initiated by the TTK, it was determined that Wien Energie's legal interpretation was, in fact, accurate for one of the two lines concerned in Procedure D 3/10, but not for the other line. Wien Energie was therefore instructed to provide Silver Server with access to the line and to report to the TTK on the fulfilment of this order. Wien Energie then fulfilled both obligations in due time.

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

For information on the current regulation of competition, please refer to the Communications Report 2010.

The Telekom-Control-Kommission (TKK) issued an official decision (G 24/11-8) on May 2, 2011 in which it approved the "telephone line" service descriptions submitted by A1 Telekom Austria AG (A1 Telekom). In those service descriptions, A1 Telekom now provides for the realisation of telephone lines on the basis of GSM and NGV technologies in addition to POTS.

## **7.6 General terms and conditions / rates and charges under Art. 25 TKG 2003**

For further information on the notification requirement pursuant to Art. 25 Par. 1 and 2 Austrian Telecommunications Act 2003 (TKG 2003) as well as the Telekom-Control-Kommission's right to raise objections pursuant to Art. 25 Par. 6 TKG 2003, please refer to the relevant section of the 2010 Communications Report.

In 2011, the regulatory authority received a total of 147 notifications of general terms and conditions or service descriptions in accordance with Art. 25 TKG 2003 as well as 187 notifications of rates and charges.

The notified terms and conditions were published by the regulatory authority and can be retrieved from the RTR web site.


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 doubts before an objection decision pursuant to Art. 25 Par. 6 TKG 2003 is issued.

## **7.7 Universal service**

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

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;<sup>5</sup>
3. Creation of a comprehensive subscriber directory across all operators as well as access to this directory;
4. Nationwide coverage with public pay telephones.

<sup>5</sup> 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.



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 Austria AG (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 2011); this meant that it was not necessary to establish a Universal Service Fund to cover the costs.

The quality criteria for universal service are defined in the Universal Service Ordinance (UDV). Under Art. 27 Par. 3 TKG 2003, A1 Telekom 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 2010 report did not give rise to any objections to key parameters. An overview of the quality levels attained by A1 Telekom in 2010 can be found at [http://cdn2.a1.net/final/de/media/pdf/UDV\\_Qualitaetskriterien.pdf](http://cdn2.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/en/tk/UDVerordnung>.

The amendment to the TKG 2003 provided for a number of potentially inconspicuous yet substantial changes in the field of universal service. Whereas universal service was previously limited to telephone services at a fixed location, this is now no longer the case. Universal service now includes "access to a publicly available communications network and to a publicly available telephone service via which facsimile equipment can also be operated and functional Internet access is enabled." The main change in this provision is the fact that the expression "at a fixed location" has been eliminated, which means that mobile operators are now also considered to provide universal services – as long as the other requirements are fulfilled and the Universal Service Ordinance, which defines the relevant quality parameters, is also adapted. De facto, this means that the provisions of the law now account for the reality of a very high mobile penetration rate and usage in Austria. For the provision of universal service, it means that more companies are now considered eligible to be universal service providers and that the intensity of competition is likely to increase substantially in certain universal services. Accordingly, the transitional provisions in the amendment to the TKG 2003 (Art. 133 [9]) also require the Austrian Federal Minister of Transport, Innovation and Technology to review whether universal services are provided in a competitive environment at the latest one year after the amendment went into effect.

The year 2011 was also marked by renewed discussions of universal service at the international level. In early 2010, the European Commission (EC) carried out a consultation on the future of universal service, and participation was very high (approximately 150 written submissions). The results of the consultation were then published in 2011. This publication was accompanied by a Commission Staff Working Paper summarising the results, a Communication of the EC to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions (Com[2011] 795 final), and a draft recommendation on universal service. In terms of content, the focal point of the documents published by the EC on the basis of the consultation is not the binding expansion of universal service to include broadband services (to be defined specifically); instead, the EC publications focus on criteria and aspects to be observed by countries considering defining a certain (i.e. concrete) bandwidth of Internet access as part of universal service. In addition to proliferation thresholds for inclusion as a universal service, this includes a precise review of the effects on competition and the definition of maximum limits on the contributions of individual companies. The final recommendation is expected in 2012.

At the beginning of December 2011, the OECD also published a report on universal service in connection with national broadband rollout plans; interested parties were allowed to submit comments and opinions on the report until mid-January 2012.

## 7.8 Frequencies

### **Telekom-Control-Kommission position paper on infrastructure sharing in mobile networks**

As early as 2002, the Telekom-Control-Kommission (TKK) published a position paper on the topic of infrastructure sharing in third-generation mobile networks (UMTS/IMT-2000). Due to advances in technology as well as changes in the legal framework and competitive circumstances, however, it was necessary to revise and further develop the TKK's position from that time. On April 4, 2011, the TKK therefore published a new position paper on the topic of infrastructure sharing in mobile networks in order to clarify the regulatory authority's perspective on infrastructure sharing within the framework of cooperation arrangements between mobile network operators.

Companies are subject to increasingly high competitive pressure on the retail mobile communications market and have to respond to that pressure with large investments in transmission technologies and innovative products. At the same time, it is becoming more and more difficult for mobile communications companies to establish new sites for transmission infrastructure.

Given the special status of mobile communications in the telecommunications sector as a whole, the assessment of how cooperation arrangements affect competition is an especially significant task. These activities also have to be viewed in light of the fact that competition in the telecommunications sector is becoming increasingly intermodal in nature, with competition spilling over from mobile services into the fixed-link segment. In this assessment, it is necessary to account for the economic characteristics of the mobile communications sector. First of all, it is necessary to consider the fact that frequencies are a scarce resource, which means that high entry barriers exist for new competitors on the market, not least because of the long validity period of frequency assignments. Second, the mobile communications market is a tight oligopoly, and the market participants' desire to curb competition has been articulated repeatedly. Over a longer period of time, there is a risk that competition may actually decrease; above all, this is to be regarded against the backdrop of the largely irreversible nature of infrastructure cooperation arrangements.

Despite all the competition problems which arise, the TKK also sees advantages in cooperation arrangements: The shared use of infrastructure allows cooperation partners to attain greater reach among the population at lower cost. In a competitive environment, these advantages ultimately benefit the customers as well. Cooperation arrangements also make it possible to reduce the expense involved in rolling out mobile broadband services in less densely populated areas. This is attractive to mobile network operators in cases where there is demand for the best network coverage possible, as in the case of mobile voice telephony.

The TKK regards the following points as essential in the assessment of cooperation arrangements:

- They must not lead to a deterioration of structural conditions for competition;
- They must not lead to the crowding out or obstruction of non-participating mobile operators in competition;
- They must not lead to a deterioration of access for service providers;
- The participating companies must maintain their independence in the design of products and services with regard to quality, availability and pricing;
- The gains in productivity or efficiency must be demonstrable;
- Assessment will depend on the geographical extent of the cooperation arrangement as well as the agreed scope of information exchanges.

All cooperation arrangements are to be reviewed and assessed from the TKK's perspective on the basis of the criteria listed above.

## Preparation of frequency assignment procedures in 2012

The year 2011 was characterised by preparations for the assignment of key frequency bands, and the assignment procedure itself is scheduled for 2012.

Frequencies will be assigned in the 800, 900 and 1800 MHz bands. The 800 MHz band is also referred to as the "digital dividend," i.e. 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. Due to their favourable propagation characteristics, these frequencies are well suited for the coverage of rural areas with mobile communication services and are now available for use.

At present, the frequencies in the 900 and 1800 MHz bands are still assigned to various companies; the oldest assignments expire at the end of 2015, the most recent ones at the end of 2019.

After carrying out a consultation procedure in early 2011, the TTK decided in September 2011 to put the above-mentioned frequencies out to tender jointly, as there are close interdependencies between these areas. However, substantial parts of the spectrum to be put out to tender are currently still assigned to operators and therefore cannot be used until 2016 at the earliest. Nevertheless, the TTK considers it expedient to assign the frequencies in 2012, as an early assignment procedure will make it substantially easier for the companies in question to plan with regard to the future use of spectrum.


As for the auction design, the TTK decided that the combinatory clock auction format will be used in the assignment procedure. This procedure was already used for the assignment of frequencies in the 2.6 GHz band in 2010. On the basis of the regulatory authority's positive experience in the past, this format was chosen once again for the upcoming procedures. The regulatory authority also defined a preliminary schedule for the assignment procedure; the invitation to tender is scheduled for publication at the beginning of Q2 2012, and the auction is scheduled to begin in early September.

## 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 generally 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 Telekom-Control-Kommission (TKK) as Austria's supervisory authority for electronic signatures. The TTK'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.

In 2011, five procedures under the Signatures Act were initiated before the TTK, and all of those procedures (plus one case from 2010 that was still pending at the beginning of 2011) were completed in the year under review. One additional procedure which was still pending at the beginning of 2011 could not be completed during the reporting period.



In the year under review, the CSP *A-Trust Gesellschaft für Sicherheitssysteme im elektronischen Datenverkehr GmbH* remained the only provider based in Austria which issues qualified certificates. Three of the procedures initiated in 2011 and one pending procedure from the previous year related to this CSP.

Once again, the Austrian Federal Office of Metrology and Surveying was Austria's only provider of qualified time-stamp services in the year 2011. One procedure initiated in 2011 related to this CSP.

In the years 2010 and 2011, A-Trust migrated to a new software application for certification services. The procedure regarding this change was still pending at the end of 2010 and could not be completed in 2011 because the migration spans a longer time period, among other reasons.

Under the provisions of the Austrian Signatures Ordinance (SigV), CSPs are to be audited at two-year intervals. Such an audit had to be carried out for both A-Trust and the Federal Office of Metrology in 2011, and no deficiencies were identified in this process. Both procedures were therefore completed without orders for supervisory measures.

Since 2011, A-Trust has supported a new generation of smart card technology which is also used in ATM cards. These cards are secure signature creation devices whose compliance with the requirements of signature legislation has been confirmed by a German certification authority. In particular, the TTK reviewed whether the CSP meets the required usage conditions resulting from this certification. As an opinion prepared by the Austrian confirmation body A-SIT (*Zentrum für sichere Informationstechnologie – Austria*) on behalf of the TTK did not indicate any security-relevant deficiencies, the review was completed without imposing supervisory measures.

In connection with mobile phone-based signatures, A-Trust also introduced a new procedure for the online registration of certificate applicants. In this process, the user's identity is ascertained on the basis of an identity check previously carried out at a credit institution, for example in the course of opening a bank account or announcing a name change. The user's identity is confirmed in the course of a funds transfer using the Austrian e-payment standard EPS2. The new registration procedure made it necessary to adapt the organisation's certification practice statement (CPS), and the resulting changes were reviewed by the TTK. The procedure was also completed without imposing supervisory measures.

In accordance with its legal mandate, the TTK again assumed responsibility for ensuring that electronic directories of CSPs and the certificates issued for CSPs were maintained in 2011. Such certificates can also be issued by the TTK as the supervisory authority. As is required of CSPs, the TTK drew up its own certification practice statement for this purpose. In the course of an upgrade in the infrastructure for the issuance of certificates, it was also necessary to adapt the authority's certification practice statement. The relevant procedure had already been initiated before the TTK in 2010, and it was completed on December 12, 2011 with the approval of Version 2.0 of the regulatory authority's certification practice statement. Through these changes, the trusted list of supervised and accredited CSPs required under Commission Decision 2009/767/EC was integrated into the directories. Since that time, both the trusted list and the directories have been provided as a trust-service status list (TSL) as defined in ETSI TS 102 231 V3.1.2 (2009 12). In contrast to previous practice, the supervisory authority now only issues certificates for CSPs if the CSP itself does not have any certificates for its certification or time-stamp services. Like the trusted list, the list can also include certificates which were not issued by the supervisory authority.

One additional procedure concerned the correspondence between the Austrian Federal Chancellery (BKA) and RTR on the funding of supervisory activities.







## 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

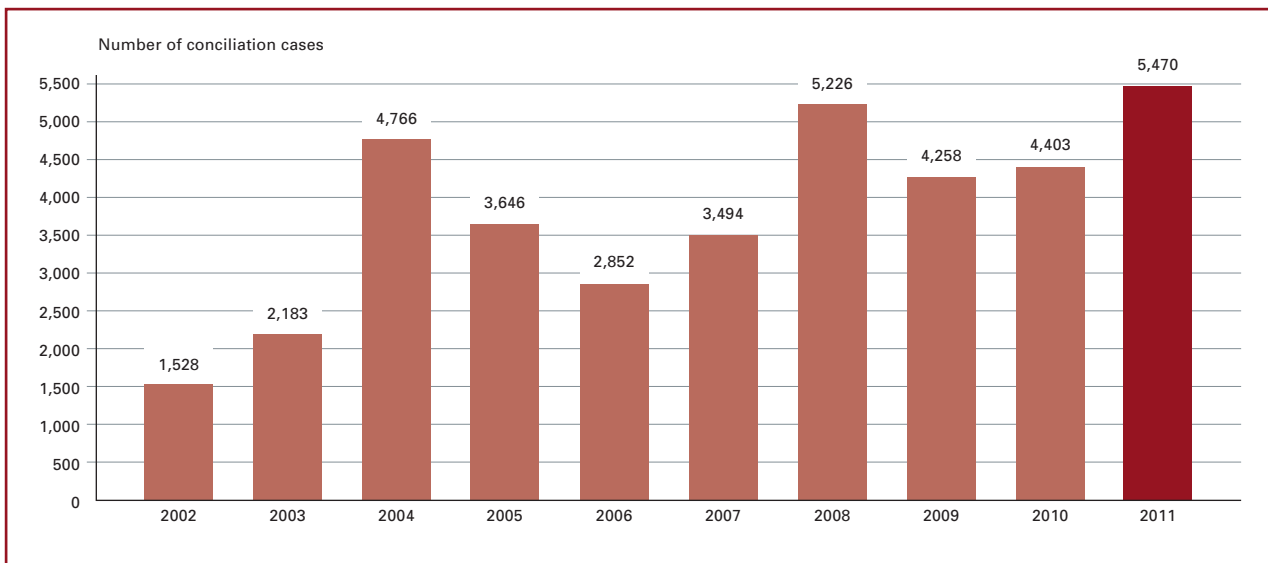
Once again, conciliation procedures for retail consumers were among RTR's core activities in the year under review. This procedure allows any customer of a communications service operator to obtain legal support free of charge. In such procedures, RTR's conciliation body reviews all types of complaints related to the provision of communication services. The requirements for this type of procedure are relatively simple: Before submitting a case, the subscribers first have to attempt to find a solution with the operator themselves. This is generally done by submitting a written objection to a bill. If this attempt is not successful, the subscriber may submit a request for conciliation using the request form and the accompanying instructions. Another special characteristic of Austrian telecommunications law can be found in the deferral of the payment due date: In cases where a subscriber notifies the conciliation body using the form mentioned above, the disputed bill amount need not be paid until the completion of the conciliation procedure (if initiated). The details are specified in separate conciliation guidelines issued by the conciliation body. All information can be submitted to the conciliation body electronically via the RTR web site (<http://www.rtr.at/schlichtungsstelle>).

In the procedure itself, the conciliation body attempts to find a mutually acceptable solution. Therefore, the party submitting the complaint and the operator are asked to submit proposals to remedy the situation and to review the proposal submitted by the opposing party. Many procedures are already completed with an agreement at this stage.

However, if this step in the procedure is not successful, the circumstances are reviewed extensively by the conciliation body. In the case of a disputed bill, this involves reviewing the technical documents requested from the operator and cross-checking the various logs in which the disputed connections are recorded. Likewise, the legal situation and terms of the relevant contract are reviewed if necessary. Depending on the result, the subscriber will then receive a written rejection of the request, or the conciliation body will propose a solution in favour of the subscriber. However, this proposal must be accepted by both sides in order to take effect.

The constantly rising number of new cases clearly demonstrates that the conciliation procedure under the Austrian Telecommunications Act 2003 (TKG 2003) satisfies an important need on the part of users of communications services. In 2011, the number of new requests reached an all-time high of 5,470, which represents an increase of 24.2% (+1,067 procedures in absolute terms) in the reporting period. The figure below shows the figures for 2011 in comparison to the previous years.

**Figure 13: Conciliation cases per year (2002 to 2011)**



Source: RTR


In terms of content, the trend observed in recent years has unfortunately continued: The fees charged for the data volumes used on mobile Internet connections have become an even more contentious topic, with over 2,300 cases submitted in this regard. In this area alone, the number of cases rose by nearly 1,000. At the same time, it is especially worth mentioning the fact that the operators have actually taken measures to address this problem. Many operators now offer rate plans in which no additional charges can accrue for data transfer volumes. In these plans, either the available bandwidth is decreased once a certain volume is reached or the overall data transfer volume is limited from the very outset.

Similarly, in January 2011 Austria's major mobile operators committed to a number of cost control measures. The Austrian Mobile Operators' Industry Code on Cost Control for Mobile Data Services mainly contains commitments with regard to the possibility of querying the current data volume used as well as push information in cases where certain limits are exceeded. The code itself can be found on the Austrian Federal Economic Chamber's web site at [http://portal.wko.at/wk/format\\_detail.wk?angid=1&stid=604179&dstid=5000](http://portal.wko.at/wk/format_detail.wk?angid=1&stid=604179&dstid=5000) (in German).

Unfortunately, neither the code nor the measures taken in terms of product design have achieved the desired effects. As the development in the number of cases shows, the upward trend has even accelerated. The average sums involved in these disputes also show an upward (albeit less drastic) trend. This value rose from EUR 620.00 in 2010 to just over EUR 633.00 in 2011.

This development clearly indicates that additional efforts must be undertaken in order to ensure that subscribers can use mobile Internet access with a maximum of security in terms of costs.

Another area which gained in importance during the year under review was that of disputes regarding contracts. This type of complaint also saw a drastic increase in the number of procedures, which rose by some 850 to a total of 1,014 cases. In particular, the introduction of additional annual charges (Internet service charges) represented a considerable source of conflicts. The resulting disputes referred to the general legality of such unilateral changes in contract terms by the operators as well as a lack of clarity in the procedures chosen by some operators in introducing these charges vis-à-vis the customers. The relevant information obligations stipulated in Art. 25 TKG 2003 were not observed in every case, meaning that many customers were not aware of the increase in charges until it appeared on their bills. For further information on this topic, please refer to Section 5.5 of the Activity Report of the Conciliation Body 2010, which provides a precise description of the operators' ability to change terms and conditions unilaterally.



Service contracts also harbour numerous other potential sources of conflict. For example, contracts or changes in contracts concluded over the telephone always involve a high risk of misunderstandings and ambiguities. In many cases, the conciliation body also noted that the operators do not fulfil their information obligations under the rules governing distance sales in the Austrian Consumer Protection Act (KSchG) to a sufficient degree. In particular, the confirmation letters required under Art. 5d KSchG, the purpose of which is to eliminate any lack of clarity as to the content of contractual agreements, were not sent (or not handled properly) in many cases. In this area, greater diligence in customer service could eliminate a large number of potential conflicts.

From the conciliation body's perspective, the field of value-added services is not particularly noteworthy in terms of absolute figures, but in this area the number of complaints also rose considerably with regard to value-added text messages as well as value-added voice services. A total of 375 requests were received in this regard. After the very positive developments observed in recent years, one can only hope that this does not point to a trend reversal. In this context, it is also necessary to mention the other "content services" which unexpectedly appear on customer bills again and again, thus prompting bill disputes. These services, in which the subscriber is charged for a certain "added value" but which are not classic value-added services as defined in the Communications Parameters, Fees and Value-Added Services Ordinance (KEM-V), are becoming increasingly prevalent. In many cases, subscribers can use these services just by having possession of a handheld device. Additional PINs or other access controls are not required. Especially children and young people with mobile telephones appear to have used these services frequently. In the future, it will become clear whether these services are sufficiently problematic to warrant the inclusion of explicit provisions in the KEM-V 2009.

Finally, it is important to mention the amendment to the TKG 2003 introduced at the end of the year 2011; this amendment also brought about changes in RTR's conciliation procedures. In particular, the amendment defines a three-month objection period for bill disputes. As the periods previously defined in the operators' general terms and conditions (and thus governed only by contracts) were generally only one month, this represents a major improvement. Similarly, the provisions regarding deferral of the payment due date in the case of bill disputes have also been improved. Customers were previously only entitled to omit payment of a certain billed amount under certain circumstances, and it was not possible to reclaim previously paid bill amounts. Under Art. 71 Par. 2a TKG 2003, subscribers now have the right to reclaim amounts for the entire duration of the conciliation procedure.

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

Notwithstanding the competence of the ordinary courts, users, providers/operators of communications services and networks, and interest groups may call upon RTR as a conciliation body under Art. 122 Par. 1 TKG 2003.

The conciliation body is available in cases where complaints regarding quality of service and bill disputes cannot be settled between a customer and an operator in a satisfactory manner (No. 1) or in the case of alleged violations of the TKG 2003 (No. 2).

Art. 122 TKG 2003 requires operators to cooperate in these procedures. Operators are thus obliged to provide the necessary documents and information for this purpose.

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.

In the reporting period, no complaints were submitted regarding alleged violations of the TKG 2003.

## **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 Austrian Telecommunications Act 2003 (TKG 2003) requires the regulatory authority to provide information on unfair practices and the corresponding measures taken in its annual report pursuant to Art. 34 Par. 2 TKG 2003. In this context, the Communications Parameters, Fees and Value-Added Services Ordinance (KEM-V 2009), which went into effect on July 7, 2009, represents a highly significant development. This ordinance is a new version of the KEM-V originally adopted in 2004. For further information on the ordinance, please refer to the relevant sections of the Communications Report from previous years.

After a steady decline in the number of complaints in 2008 and 2009, this figure remained fairly stable in 2010 and 2011. 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, 9% in 2010, and 7% in 2011. In many cases, the problem of "MT-billed" text message services (where charges are incurred not for messages sent, but for messages received) was the reason why customers contacted the conciliation body. In such cases, however, the conciliation body was generally able to provide those users with effective support.


In order to capture information in a timely manner, the regulatory authority developed a web-based form for complaints regarding value-added services, which has been in live operation since April 2008. Whereas a total of approximately 650 complaints were recorded in 2010, this figure dropped by more than 30% to some 440 complaints in 2011. The complaints were analysed, and in the case of conspicuously high frequencies the network operators were informed in order to develop timely solutions in the interest of the consumer. For further information on value-added service monitoring in general, please refer to the relevant sections of the Communications Report from previous years.

In the year 2011, 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. 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. In addition, the amendment to the TKG 2003 made it possible to issue "stop payment" orders in cases where there is reason to suspect a violation of the KEM-V 2009; it is also possible to have value-added service numbers blocked, meaning that the regulatory authority has new and effective measures at its disposal to combat the abuse of value-added services.

## **8.3 International roaming in the European Union**

The EU Roaming Regulation<sup>6</sup> has been in effect since June 2007 and regulates not only wholesale and retail charges for roaming services within the European Union, but requires mobile operators to comply with various transparency and protection measures vis-à-vis their roaming customers.

<sup>6</sup> 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 and amending Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services, as last amended in Regulation (EC) 544/2009.



The Roaming Regulation originally introduced regulations for voice roaming only and was at first limited to a three-year period. After the first review, the regulation was expanded to include SMS roaming and data roaming services; at the same time, additional protection measures were introduced, especially in order to protect users from unexpectedly high costs due to the use of data roaming services. For data roaming services, a wholesale price cap was introduced in July 2009, while price regulations for data roaming services are currently not stipulated at the retail level. In its current version, the Roaming Regulation will remain in effect until June 30, 2012. For more information on the services regulated (including yearly adjustments) and obligatory transparency and protection measures, please refer to the 2007 and 2009 Communications Reports.

The submission of the European Commission's report on the functioning of the Regulation to the Council and the European Parliament in mid-2011 marked the launch of a comprehensive review process in which full analyses of the effectiveness of the measures taken to date and future regulatory measures are being discussed. Section 8.3.2 provides a brief initial overview of this process.

### **8.3.1 New obligations for mobile operators in 2011**

New developments for mobile network operators in 2011 included a further reduction of regulated wholesale and retail charges for voice roaming services as well as a reduction of wholesale charges for data roaming services.

Since July 1, 2011, the maximum average wholesale charge for voice roaming services has been 18 euro cents per minute.<sup>7</sup> Similarly, the "Eurotariff" was also adjusted at the retail level: Since July 1, 2011, the Eurotariff for active (outgoing) roaming calls has been capped at 35 euro cents per minute and 11 euro cents per minute for passive (incoming) roaming calls. The maximum average charge for data roaming services at the wholesale level has been 50 euro cents per MB since July 1, 2011. (The prices cited above do not include value-added tax.)

Austria's mobile operators notified the regulatory authority of their Eurotariffs reflecting the reductions from July 1, 2011 onward. All of the tariffs notified were based on the maximum amount permitted for the regulated Eurotariff.


### **8.3.2 Review of the Roaming Regulation**

As in the first Roaming Regulation in the year 2007, which at first only imposed regulations on voice roaming, the provisions newly introduced in the expanded Roaming Regulation (primarily the regulation of SMS roaming, regulation of charges for data roaming at the wholesale level, and the introduction of a cost control function in order to protect users from unexpectedly high costs arising from data roaming services) have been subjected to a review. The European Commission was 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 was to review how the wholesale and retail charges as well as the availability and quality of roaming services have developed. Another key review criterion in this context was the intensity of competition.

The European Commission published its proposal at [http://ec.europa.eu/information\\_society/activities//roaming/index\\_en.htm](http://ec.europa.eu/information_society/activities//roaming/index_en.htm).

In addition to broader price regulation, the European Commission would also like to introduce structural measures to promote competition. The cornerstones of the European Commission's proposal for a future roaming regulation are summarised briefly below.

<sup>7</sup> "Wholesale charge" refers to the amount which mobile operators charge each other when their customers use services in other operator's networks.

- 
- Access to wholesale roaming services at regulated prices;
  - Option for users to use the roaming services of an alternative operator;
  - Further price reductions for voice and SMS roaming services at the wholesale and retail level;
  - Further price reductions for data roaming services at the wholesale level;
  - Introduction of regulated prices for data roaming services (euro data tariff) at the retail level;
  - General limitation of the regulation until 2022, but with the possibility of lifting price regulations if the desired degree of competition is reached prior to that date.

At the time when the 2011 Communications Report was prepared, the European legislative procedure had not yet been completed, meaning that it is not yet possible to report on concrete regulatory measures. However, it is considered likely that the EC will adopt a regulation on roaming services going beyond June 30, 2012 which may also include structural measures such as access to roaming services at the wholesale level.

At present, the proposal is being discussed in the Council of the European Union as well as the European Parliament. This procedure should be completed by the end of June 2012 so that no “gap” arises after the expiry of the current Roaming Regulation on June 30, 2012.

#### **8.4 Services subject to notification requirements**

Under Art. 15 Austrian Telecommunications Act 2003 (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. For further information on notification procedures, please refer to the 2010 Communications Report.

As of December 31, 2011, a total of 713 operators had notified 1,418 active services; 134 of those businesses were operators of call shops and/or Internet cafés.

Under the amended TKG 2003, these operators are now exempt from a large number of obligations which generally arise from the TKG 2003 for businesses subject to notification requirements pursuant to Art. 15 TKG 2003 (including the notification of general terms and conditions).

#### **8.5 Communications parameters**

##### **8.5.1 116 000 hotline for missing children**

In this area, one noteworthy highlight in the year 2011 was the allocation of the number 116 000 (missing children hotline) to the Austrian Broadcasting Corporation (ORF) on December 19, 2011.

The 116 xxx number range, which contains “Short public numbers for harmonised services of social value” was introduced throughout Europe by the European Commission (EC) in 2007 (see Table 12).

**Table 12: Short public numbers for harmonised services of social value (including allocation holders)**

Number	Purpose of use	Allocation holder
116 000	Hotline for missing children	ORF
116 006	Helpline for victims of crimes	<i>Weißer Ring</i> (non-profit association devoted to supporting crime victims and combating criminal acts)
116 111	Helpline for children	–
116 117	Non-emergency medical on-call service	–
116 123	Emotional support hotline	ORF

Source: RTR

However, the EC decision only obliges member states to make the short public numbers available for allocation in this range. Due to the lack of an explicit obligation to operate these numbers and the high setup costs, only three of the five short public numbers have been allocated in Austria, and only one of those numbers is actually in operation. The short public number 116 123 has been operated as an emotional helpline by the radio station Ö3 together with the Austrian Red Cross since the beginning of 2009.

In accordance with EU requirements, calls to the 116 xxx number range for harmonised services of social value are free of charge.

### 8.5.2 Statistical analyses in telephone number administration

In the year under review, the number of allocation decisions remained nearly unchanged compared to the previous year, while the number of decisions on geographical telephone numbers increased by approximately 27% in 2011. In contrast, the number of allocation decisions for non-geographical telephone numbers has generally shown a steady, declining trend over the years. Table 13 provides a quantitative overview of the telephone number allocation decisions issued over the last five years.

**Table 13: Number of decisions on telephone number requests, 2007 to 2011**

	2007	2008	2009	2010	2011
<b>Number of affirmative decisions</b>	<b>1,036</b>	<b>991</b>	<b>786</b>	<b>710</b>	<b>707</b>
for geographical numbers	247	314	239	187	237
for non-geographical numbers	789	677	547	523	470
<b>Number of negative decisions</b>	<b>48</b>	<b>75</b>	<b>43</b>	<b>35</b>	<b>43</b>
<b>Total</b>	<b>1,084</b>	<b>1,066</b>	<b>829</b>	<b>745</b>	<b>750</b>

Source: RTR

In its administration of special communications parameters, RTR issued a total of 15 decisions (five of which were negative) in the year 2011.

Under the Austrian Telecommunications Act 2003 (TKG 2003), the regulatory authority is required to decide on telephone number requests within three weeks of receiving the complete application. As shown in Table 14, 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 two preceding years. In 2011, over 50% of decisions were issued within just one day. This development can also be attributed to the continued increase in the use of the e-government portal for electronic requests and deliveries. 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 14: Processing time for telephone number requests (days), 2007 to 2011**

	2007	2008	2009	2010	2011
<b>Average processing time</b>	2.5	2.2	2.2	2.2	2.0
50% of all requests	1.4	1.2	1.2	1.2	0.96
90% of all requests	4.8	4.0	4.2	3.6	3.8

Source: RTR

Table 15 provides an overview of all telephone number ranges administered by RTR as of December 31, 2011, including allocated numbers and numbers in use. As in the previous year, increases were observed in the usage figures for area codes for private networks (+23%) and subscriber numbers for location-independent telephone numbers (+24%). In addition, the range for value-added service numbers subject to event-based charges (+13%) also saw yet another increase in the year under review. In the remaining non-geographical number ranges, no (noteworthy) changes in usage figures were observed. After an increase in the previous year, the range dedicated to geographical subscriber numbers once again showed a slight trend reversal in 2011. The number of geographical subscriber numbers in use (on the overall market) dropped by 2% in 2011. At A1 Telekom Austria AG (A1 Telekom), the number of geographical numbers in use – which had increased slightly in the previous year – fell by 4% in 2011. The 8% increase in geographical numbers in use among alternative operators was unable to generate overall growth in usage.

The use of telephone numbers for dial-up Internet access ([0]718 and [0]804 number ranges) and that of numbers in the (0)939 range (dial-up access by dialler programmes) have continued to decline.



**Table 15: Numbers allocated and in use in Austria as of December 31, 2011**

	Range(s)	Allocated	Numbers	
			In actual use	Change from previous year
<b>Geographical subscriber numbers A1 Telekom</b>	(0)1, (0)2xx, (0)3xx, (0)4xx, (0)5xx, (0)6xx, (0)7xx	25,830,000*	2,375,178	-4%
<b>Geographical subscriber numbers Alternative network operators</b>	(0)1, (0)2xx, (0)3xx, (0)4xx, (0)5xx, (0)6xx, (0)7xx	2,891,500*	642,082	+8%
<b>Area codes for private networks</b>	(0)5	614	552	+23%
<b>Area codes for mobile networks**</b>	(0)6xx	11	9***	0%
<b>Dial-up Internet access</b>	(0)718	7,100	27	-39%
<b>Location-independent fixed network numbers</b>	(0)720	268,100	62,404	+24%
<b>Convergent services</b>	(0)780	1,911	1,911	-18%
<b>Toll-free services</b>	(0)800	83,190	15,311	-10%
<b>Toll-free dial-up Internet access</b>	(0)804 00	230	22	-8%
<b>Services with regulated fee limits</b>	(0)810, (0)820, (0)821	95,437	19,228	-7%
<b>SMS services in the range for services subject to regulated maximum prices</b>	(0)828 2	2,145	27	0%
<b>Value-added services</b>	(0)900, (0)930	122,045	28,688	+1%
<b>Services subject to event-based charges</b>	(0)901, (0)931	41,291	3,001	+13%
<b>Diallers (value-added services)</b>	(0)939	6,600	49	-2%
<b>Carrier selection prefix (public carrier networks)</b>	10	37	28	0%
<b>Telephone troubleshooting hotlines</b>	111	67	60	-3%
<b>Telephone directory assistance services</b>	118	49	34	-19%
<b>Routing numbers for number portability</b>	86	50	41	0%
<b>Routing numbers for number portability</b>	87	14	12	0%
<b>Routing numbers for services</b>	89	31	23	-8%

\* Figures indicated in terms of unabbreviated numbers, i.e. a telephone number shortened by one or two digits corresponds to 10 or 100 unabbreviated numbers, respectively.

\*\* As of the cut-off date, the following eleven area codes had been allocated: (0)650, (0)660, (0)661, (0)664, (0)676, (0)677, (0)678, (0)680, (0)681, (0)688, (0)699. In some cases, only sub-ranges within a mobile area code are allocated.

\*\*\* Based on number of area codes used.

Source: RTR

## 8.6 Focus area: Next generation networks

As in previous years, the migration to next generation access (NGA) and next generation networks (NGNs) continued in 2011. This area is of crucial importance to the regulatory authority as well as market participants, especially as this development will be accompanied by a fundamental change in the economic, technical and regulatory landscape in the telecommunications industry.

In the field of NGA, which generally refers to modern, optical fibre-based access networks, the focus of activities in the reporting period was still on the rollout of these networks as well as the implementation of regulatory measures based on the TTK's market analysis decision M 3/09 on the wholesale market for access to physical infrastructure. In this context, it is worth mentioning virtual unbundling as a new wholesale product intended to provide alternative operators in NGA rollout areas with an alternative to classic unbundling in cases where the latter has become less attractive for technical or business reasons. As this topic surfaced in procedures before the TTK in the year under review, the regulatory authority decided not to discuss the issue in the industry working group organised and moderated by RTR in order to define the concrete characteristics of this essential wholesale product. However, RTR does plan to introduce this topic in the industry working group at the end of the year 2012 in order to encourage further dialogue between market participants and the regulatory authority with regard to relevant topics in connection with the expansion of broadband networks. At the end of 2011, the regulatory authority was aware of migration projects in nearly 70 access areas throughout Austria; these projects mainly focused on realising fast Internet access using FTTC and FTTB infrastructure, that is, hybrid networks consisting of optical fibre lines and VDSL2 on the shortened local loop.


Another key area of NGA-related activity in 2011 was site sharing procedures, which (among other things) allow network operators to request access to unused ducts or optical fibre for the expansion of their own networks.

With regard to the topic of NGN migration, that is, the transition from classic public switched telephone networks (PSTNs) to modern, packet-switched next-generation networks, A1 Telekom Austria AG (A1 Telekom) presented a migration plan which outlines the gradual transition to NGNs until the end of the year 2013. By that time, interconnection between A1 Telekom and its interconnection partners is to be reduced to the geographical locations of today's transit exchange level, and interconnection at lower network levels is to be eliminated.

## 8.7 Amendment to the TKG 2003

In November 2011, the most extensive amendment to the Austrian Telecommunications Act 2003 (TKG 2003) to date went into effect (Federal Law Gazette I No. 102/2011; some provisions were not scheduled to go into force until February 21 or May 21, 2012). The purpose of the amendment was to implement the results of the review of the EU telecommunications package (Directives 2009/136/EC and 2009/140/EC) in Austrian law and to make a number of "administrative adaptations" (cf. explanatory remarks on the legislative bill). However, in this context it is necessary to note that the TKG amendment also brought about a number of provisions which go beyond the requirements of EU law, especially with regard to consumer protection.

The TKG amendment created approximately 30 new or expanded areas of responsibility for the regulatory authorities in charge of electronic communications. In addition to reinforcing the rights of users as mentioned above, the content of the amendment focuses on promoting efficient investments and innovation with regard to new and improved infrastructure by duly accounting for the risk borne by companies that make such investments and by allowing cooperation arrangements in order to diversify investment risk. In addition, a regulatory concept for electronic communications to be prepared by the Telekom-Control-Kommission (TKK) is intended to enhance the predictability of regulation. In the future, the regulatory authority will also be responsible for certain aspects of network security and network integrity.



From a procedural standpoint, the TKG amendment merged the market definition and analysis procedures carried out by the TKK. This change will accelerate this crucial process in competition regulation.

RTR presented the amendment (sometimes only in part) to the interested expert public at an early stage, for example at the 12<sup>th</sup> Telecom Forum in Salzburg (August 2011), at the 64<sup>th</sup> Dialogue on Mobile Regulation (September 2011), at the annual regulatory workshop (October 2011) and at a special one-day operators' event devoted to the amendment itself (January 2012).

The Austrian Federal Ministry of Transport, Innovation and Technology (BMVIT) invited RTR to contribute in specific areas during the preparation of the amendment, thus enabling the regulatory authority to contribute its expertise from practice and the knowledge gained in the review of the EU telecoms package in this process.

## **8.8 International activities**

As mentioned in Section 2.4 with regard to the international regulatory environment, the continued development of the European legal framework for electronic communications is a central and significant component of regulation. Especially in recent years, the significance of EU-level regulation has increased substantially. In this context, RTR contributes to various international bodies and working groups focusing on different subject areas.

As RTR took over the Chair of BEREC for the year 2012, which (under the "troika" system) automatically involved assuming the position of Vice-Chair in 2011, the regulatory authority naturally focused more heavily on BEREC in the year under review. This focus will become even stronger in 2012. One of the most important tasks in this context was the development and coordination of BEREC's work programme for 2012, a process which was heavily influenced by RTR and thus also accounts for the needs of market participants and consumers in Austria.

2011 was also an important year for BEREC, as the BEREC Office (its administrative support unit) was expanded continuously and ultimately attained the status of an independent Community body in the autumn of 2011. The significance of BEREC is also underscored by its cooperation with European institutions such as the European Commission, the Parliament and the Council. In the year under review, this cooperation was intensified even further. An overview of the results and reports published by BEREC can be found on its official web site (<http://berec.europa.eu>), where the organisation's current work programme is also available.

As mentioned above, RTR's international activities also include cooperating with other bodies, such as the OECD, CEPT/ECC, the ERGP (BEREC's counterpart in postal regulation), etc. For example, the regulatory authority's involvement includes workshops where RTR employees give expert talks. This cooperation also takes place within the framework of the EU's Technical Assistance and Information Exchange instrument (TAIEX). In this context, RTR uses its experience to support regulatory authorities from various countries in Southern and Eastern Europe as well as EU candidate countries. These activities contribute to the creation of a stable framework in those countries, which may subsequently enable Austrian companies to offer services or establish subsidiaries in those countries.

After the kick-off of 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, RTR continued its activities in this area with a workshop in Vienna in October 2010. RTR's cooperation was and is a key factor ensuring the success and further development of this group.

## 8.9 Electronic signatures

In analogy to its duties under the Austrian Telecommunications Act 2003 (TKG 2003), RTR also provides operational support for the Telekom-Control-Kommission (TKK) under the Austrian Signatures Act (SigG). 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 certification service providers (CSPs) and certificates issued to CSPs in the year 2011. As this infrastructure had been in operation since 2002 and several components had reached the end of their life cycle, the regulatory authority prepared for an upgrade in 2011 in order to enable migration to the new system in early 2012.

In connection with the directories it maintains, the signature verification service operated by RTR on behalf of the Austrian Federal Chancellery (BKA) 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 2011, this service was again expanded to include additional functions. Wherever interoperability was ensured, certification services from other European countries, specifically Belgium, Estonia, Finland, Germany, Liechtenstein, Slovenia and Spain, were integrated into the signature verification service.

At the European level, RTR continued its work in the Forum of European Supervisory Authorities for Electronic Signatures (FESA), a body in which the authorities responsible for supervision and accreditation cooperate. In the year under review, FESA focused on the European Commission's plans to replace the Signature Directive with a comprehensive legal framework for electronic identification, authentication and signatures. In this context, FESA adopted a document which outlines the expectations of the regulatory authorities with regard to the new legal framework.





# 9. Postal service regulation

## 9.1 Liberalisation of the postal market

As of January 1, 2011, when Österreichische Post AG's reserved postal service (letters up to 50 g) was opened up to other providers, the complete liberalisation of the postal market also became a reality in Austria.

The legal basis for this transition is the Austrian Postal Market Act (PMG); this piece of legislation was announced as early as December 4, 2009, but large parts of the act did not go into effect until the postal market was liberalised on January 1, 2011.

The PMG assigns the following duties to the Post-Control-Kommission (PCK):


- Measures with regard to the universal service provider pursuant to Art. 12 Par. 1 and 2;
- Measures with regard to Österreichische Post AG's post offices pursuant to Art. 7 Par. 6;
- Definition of financing contributions to the compensation fund pursuant to Art. 14;
- Measures with regard to the universal service provider's general terms and conditions pursuant to Art. 20 Par. 3 and 4;
- Measures related to price regulation pursuant to Art. 21 Par. 4 to 6;
- Issuance, transfer, amendment and revocation of licences pursuant to Articles 27, 28 and 29;
- Exercise of revocation rights pursuant to Art. 30 Par. 3 and 4;
- Measures with regard to general terms and conditions pursuant to Art. 31 Par. 2;
- Definition of reimbursement amounts pursuant to Art. 34 Par. 9 and 10 as well as Art. 35 Par. 1;
- Measures pursuant to Art. 35 Par. 4;
- Supervisory measures pursuant to Art. 50.

The tasks assigned to RTR include the acceptance of service notifications pursuant to Art. 25 PMG and the changeover plan pursuant to Art. 34 Par. 8 PMG as well as the measurement of transit times under Art. 33 PMG. Since January 1, 2011, RTR has also been responsible for handling conciliation procedures pursuant to Art. 53 PMG.

## 9.2 Closure of post offices

One highly important area of activity in the field of postal service regulation in 2011 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 Post-Control-Kommission (PCK) alone has been responsible for reviewing whether the prerequisites for the closure of Österreichische Post AG's post offices are fulfilled.

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.



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.

For further details on the review process, please refer to the relevant section of the 2010 Communications Report.

In 2011, Österreichische Post AG notified the regulatory authority of the planned closure of 110 post offices. In a number of cases, procedures were initiated regarding the closures, and decisions on those procedures will not be made until 2012. During the reporting period, the PCK issued decisions on the closure of 128 post offices, a number of which had been notified in 2010. “Only” one rejection was issued, mainly because Österreichische Post AG repeatedly withdrew post offices from the respective procedures. The provider generally did so where the review procedure indicated that the PCK would not approve the closure. In addition, the PCK issued a total of 24 “contingent” rejections, in which the closure was prohibited until the postal partner named as a replacement commenced operations.

In addition, it is also worth noting that only Österreichische Post AG has the status of a party in procedures regarding the closure of post offices; however, on the basis of the transparency provisions that went into effect on January 1, 2011, all decisions in this regard are published on the RTR web site.

Another important area of activity involved the supervisory procedures initiated due to the elimination of post offices operated by postal service partners (e.g. due to bankruptcy on the part of postal service partners or the cancellation of contracts). 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). Under certain circumstances, this may also be handled by means of alternative coverage solutions, such as rural delivery personnel. In the course of these supervisory procedures, it was necessary to review coverage levels in the municipalities affected by the closures. In total, 63 closures of post offices run by postal service partners were the subject of PCK supervisory measures.

In addition, the relocation of Österreichische Post AG's post offices, especially in Vienna, sparked discussions (also in the media) on multiple occasions. During the reporting period, post offices were frequently relocated to existing branches of the BAWAG PSK bank. In this context, it is necessary to note that these shifts are still considered closures subject to the review procedure under Art. 7 Par. 6 PMG unless the post office is moved to a location less than 2,000 meters away.

Overall, the number of post offices in Austria rose from 1,831 (as of January 1, 2011) to 1,851 (as of December 31, 2011) in the year 2011. In this context, a clear shift in the number of post offices from Österreichische Post AG's locations to post offices operated by service partners could be observed.

## **9.3 Additional RTR and PCK procedures**

### **9.3.1 Procedures before the PCK**

#### **General terms and conditions and tariffs**

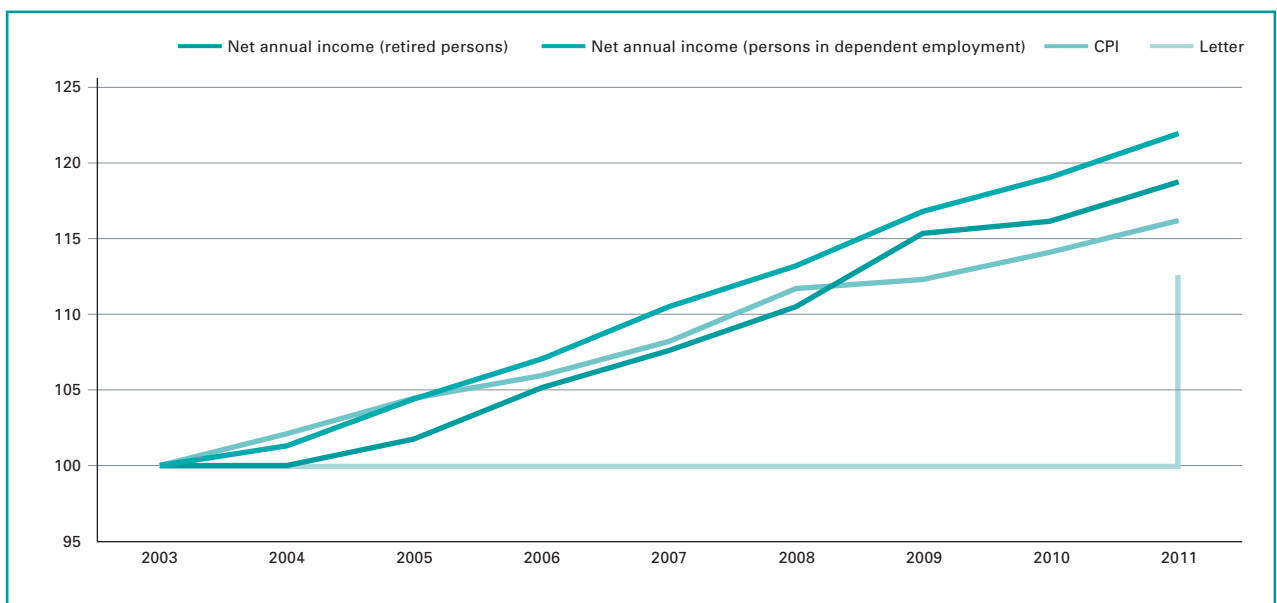
As of May 1, 2011, Österreichische Post AG changed its prices for letter services (up to 2 kg) and changed its fee calculation system from a purely weight-based system to a combined system (weight and format). In the process, the number of weight categories was reduced from seven to four. In some cases, the new system brought about price increases, but in other areas the prices were actually reduced.



The Post-Control-Kommission (PCK) carried out a review procedure pursuant to the Postal Market Act (PMG) with regard to Österreichische Post AG's new charges for the service areas affected. The PCK's decision was preceded by the preparation of an expert opinion. The relevant charges for universal service (both national and international) were reviewed with regard to general affordability, cost-based calculation, transparency and non-discrimination.

For example, the chart below shows the development of tariffs surveyed in the course of the affordability test for letter services up to 2 kg (including additional services) in the years 2003 to 2011 compared to the development of the Austrian Consumer Price Index (CPI) as well as that of net annual income for persons in dependent employment and retired persons. The chart shows that the increase in charges for letter services (national as well as international), which averaged approximately 11%, is substantially lower than the rate of inflation and development of incomes since the last tariff hike in this area.

**Figure 14: Development of tariffs for letter services up to 2 kg including additional services (2003 = 100)**




Source: RTR

In the course of the procedure, the following adaptations were made to the respective general terms and conditions:

- General adaptations of various clauses in the case of ambiguous or incomprehensible wording;
- Greater transparency for the consumer, for example with regard to the clear separation of warranty claims and damage claims;
- Adaptation of time periods in the consumers' favour (e.g. with regard to claims arising from delays in delivery);
- Adaptation of a clause pertaining to legal data protection requirements.

Under Art. 20 Par. 4 PMG, the regulatory authority may raise an objection to notified terms and conditions within a period of two months if those terms and conditions contain violations of the PMG, Articles 864a and 879 of the Austrian General Civil Code (ABGB) or Articles 6 and 9 of the Austrian Consumer Protection Act (KSchG). The PCK did not raise any objections to the general terms and conditions or the charges notified by Österreichische Post AG because the criteria listed above were fulfilled. The decision in this regard was published at <http://www.rtr.at/de/post/Entscheidungen> (PG 12/10; in German).



Furthermore, five additional procedures regarding changes in Österreichische Post AG's general terms and conditions were completed by the PCK in the year 2011.

### **Classification and labelling of universal services**

In the course of PCK review procedures regarding the changes in general terms and conditions notified by Österreichische Post AG, discrepancies in the classification of universal services or products were discovered in multiple product categories. Certain services which the PCK considers to be "universal" were not classified as such by Österreichische Post AG.

Therefore, in the course of a supervisory procedure, Österreichische Post AG was instructed by way of an official decision to clearly label certain products and services, including their components (and component charges), as universal services in the respective terms and conditions and to notify the regulatory authority of the resulting changes in its general terms and conditions, including product and price lists. The terms and conditions in question were notified by Österreichische Post AG and reviewed by the PCK in the course of an official procedure. The PCK's review showed that the terms and conditions (last revision submitted on December 7, 2011) now comply with the relevant provisions of the PMG, KSchG and ABGB. On the basis of an expert opinion, the PCK also determined that the tariffs stipulated in the general terms and conditions are in line with Art. 21 PMG. Therefore, it was not necessary to raise an objection.

However, Österreichische Post AG submitted a complaint regarding the above-mentioned official decision to the Austrian Administrative Court (VwGH), which had not yet ruled on the case when this year's Communications Report was prepared.

### **Imposition of financing contributions under Art. 34a KOG**

Since January 1, 2011, the KommAustria Act (KOG) has stipulated that RTR's expenses should be covered in part by funds from the federal budget and in part by financing contributions from postal service providers. Art. 34a Par. 3 in conjunction with Art. 34 Par. 9 and 13 KOG stipulate that in cases where postal service providers fail to meet their obligation to pay financing contributions, the PCK is to define those contributions by means of an official decision.

In an official decision dated December 12, 2011, the PCK subjected a company to the obligation to pay financing contributions for the first time. At the end of the reporting period, the period for the submission of a complaint to the Austrian Constitutional Court (VfGH) or the VwGH had not yet expired.

## **9.3.2 RTR procedures**

### **Review of Österreichische Post AG's cost accounting system**

Under Art. 1 Par. 3 of the Postal Service Cost Accounting Ordinance, the regulatory authority is required to periodically review the cost accounting system used by the universal service provider Österreichische Post AG. Under Art. 23 Par. 1 PMG, the universal service provider is required to maintain separate accounts in its internal cost accounting systems for services classified as universal services and for those not classified as universal services. The internal cost accounting systems must be based on uniformly applied and objectively justifiable principles of cost accounting.

During the reporting period, the years 2008 to 2010 were reviewed; at the end of the year, however, no results were available and no decisions had been issued in this regard.



### **Supervisory procedures under Art. 51 PMG**

During the reporting period, RTR carried out five supervisory procedures against companies which had failed to submit a notification pursuant to Art. 25 PMG even after multiple requests to do so. Finally, the regulatory authority issued official decisions on August 9, 2011 ordering the companies in question to submit the outstanding service notifications.

All five companies submitted complaints to the VfGH and/or VwGH regarding these decisions. At the time of publication, the courts had not yet issued a ruling on these cases. However, two of the companies in question had notified the regulatory authority of their services pursuant to Art. 25 PMG by the end of the reporting period.



# 10. The Austrian communications markets in 2011

## 10.1 The Austrian communications and advertising markets

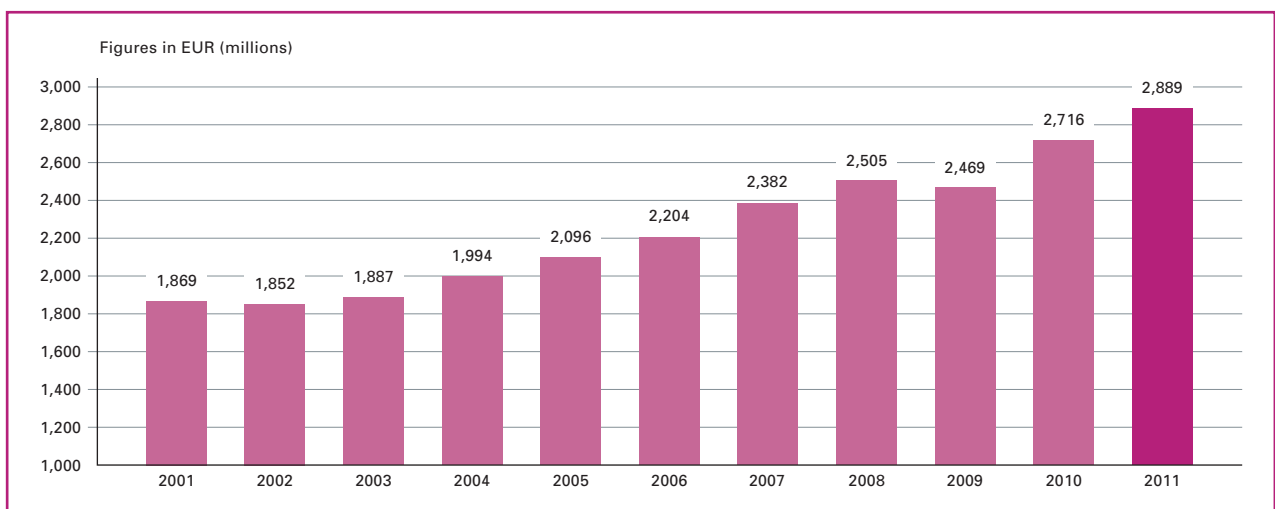
### 10.1.1 Development of the Austrian advertising market

According to Nielsen Media Research, Europe was the only one of the five major regions in the world which showed a decrease (-0.4%) in advertising expenditure in the year 2011, especially due to the euro crisis. However, the Austrian advertising market saw growth once again in the reporting period. Compared to the previous year, the gross advertising revenues of Austrian media (classic advertising) rose by some 6.4% in the year 2011; this increase was close to the worldwide average of +7.3%. In contrast, gross advertising revenues in Germany rose by only 2.3% compared to 2010.

Practically all media categories profited from these positive developments on the Austrian advertising market. Only radio advertising showed a slight loss and thus clearly stagnated. The largest gain in the year under review was recorded in private television, where gross advertising revenues rose by approximately 19% (EUR 78 million).

In absolute terms, overall advertising revenues in Austria climbed by EUR 173 million to EUR 2.889 billion in 2011, which was the third-largest increase since the year 2003 (2010: +EUR 247 million/+10%; 2007: +EUR 178 million/+8%). Due to especially sharp increases in the last five years (except in 2009), gross revenues from classic advertising can be expected to surpass the EUR 3 billion mark in 2012, unless extraordinary factors lead to a disproportionate economic slowdown.

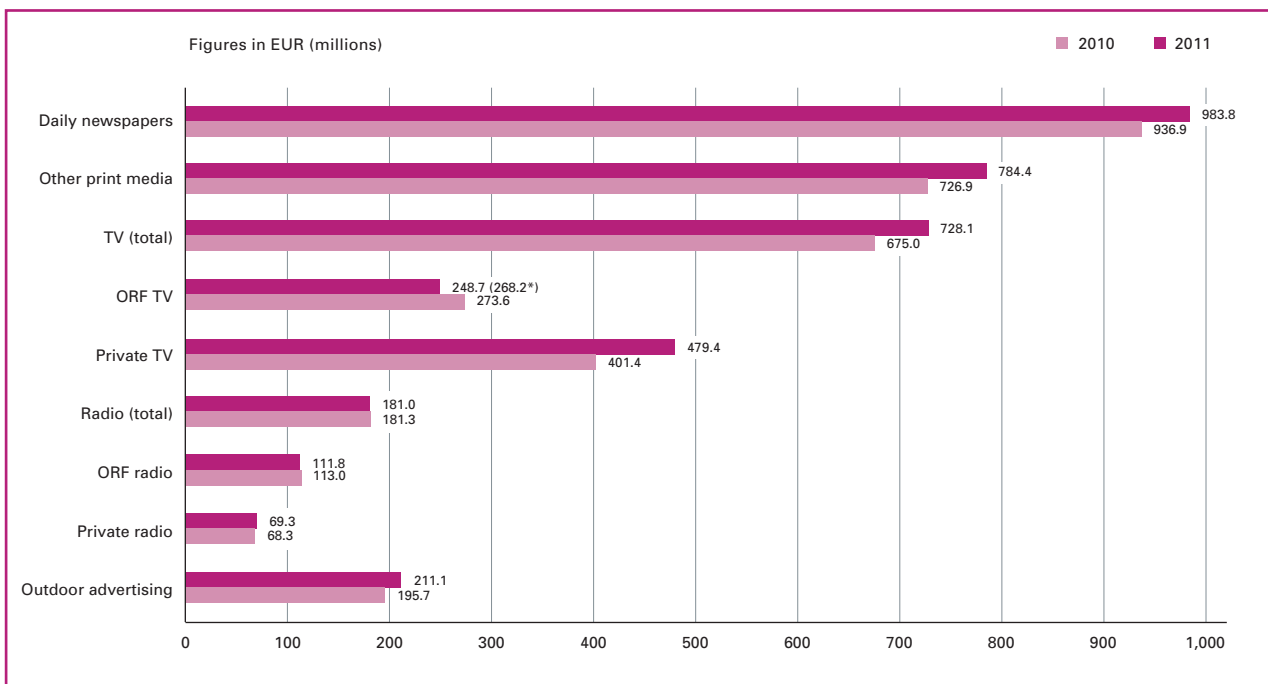
**Figure 15: Development of overall advertising expenditure in Austria, 2001 to 2011**



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

At the same time, it is again necessary to note that gross advertising revenues, which reflect companies' revenues according to official price lists, are only one indicator of the trends on the advertising market. According to industry experts, competition is becoming increasingly fierce within and between the various media categories. This has continued to bring about increasing discounts in the form of price reductions, free advertising minutes and similar offers. Therefore, a high level of advertising capacity utilisation is achieved in the media without actually generating the corresponding improvements in net revenues.


**Figure 16: Advertising expenditure in Austria by category, 2010 vs. 2011**



\* Based on the old pricing model.

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

The largest share of gross advertising revenues once again went to print media; this percentage remained unchanged compared to the previous year. 61.2% of gross advertising revenues went to daily newspapers, magazines and other print publications. In total, print publications improved their result by approximately 6% to EUR 1,768.2 million. However, the growth patterns within this category have changed. While miscellaneous print publications were able to increase their revenues by some 8% (+EUR 57.5 million) compared to the previous year, daily newspapers "only" gained 5% (+EUR 46.9 million) in 2011. In 2010, daily newspapers had seen an increase of 17.6% (EUR 140.5 million) in gross advertising revenues. At the aggregate level, however, it is also necessary to note the difference between reported and net revenues in this context. This difference is likely to have increased even further given the fact that the overall print category shows an increase of 6% in gross advertising revenues, but at the same time the daily reach of many key publications has continued to drop slightly or even markedly. On the whole, daily newspapers lost a total of 0.7 percentage points, and their average daily reach in 2011 came to 73%. Among Austria's top ten magazines, *NEWS* (-1 percentage point to 9.3% reach) and *tv-media* (-1.2 percentage points to 12.4% reach) in particular saw significant losses. The scandal which emerged in early 2012 regarding the manipulation of circulation figures by the *NEWS* publishing house did not have an influence on these figures. Apparently, the publisher had



systematically exaggerated the newsstand sales figures for ten of its publications in its reports to the Austrian circulation survey (ÖAK), but the reach of those publications is measured using representative consumer surveys only. These reach surveys also form the basis for the calculation of gross advertising prices, which is why the circulation figures are not relevant from a practical perspective in this context.

Among the daily newspapers, the free newspapers were the main reason why the loss of reach was not more severe. For example, the free newspaper *Heute* managed to boost its reach from 12.0% in 2010 to 13.1% in 2011, thus securing first place in Vienna with a reach of 41.5% (+3.9 percentage points), far ahead of the *Kronen Zeitung* in second place. At the national level, the latter newspaper saw its reach level edge down 0.7 percentage points to 38.2%. On the Viennese market, the *Kronen Zeitung* suffered a more substantial loss in reach (-2.1 percentage points to 33.5%) than its national average. The daily *Österreich*, which is predominantly distributed as a free newspaper, boosted its reach from 9.6% to 10.3% nationwide and from 22% to 24% on the market in Vienna. Free newspapers also gained ground at the regional level, and the *Regionalmedien Austria AG* (RMA) newspaper group saw its overall reach rise 1.5 percentage points to 55% nationwide.

The difference between gross and net figures must be considered significant given the fact that private television managed to finish the year 2011 with an increase of approximately 19% (+EUR 78 million) in gross advertising revenues, thus not only repeating its success from the year 2010 (+20.7%), but also posting the largest gain in gross terms across all media categories. However, this significant change cannot be observed in the market shares of the Austrian private television stations and the German stations with partly Austria-specific content. ATV, PULS 4, ServusTV and AUSTRIA 9 managed to boost their combined market share by 0.8 percentage points to 7.6% among viewers in the 12+ age group, while the market share of the German television stations in the RTL Group and ProSiebenSat.1 Group dropped 0.3 percentage points to 29%.

ORF television stations also suffered losses in 2011 in terms of market share as well as gross advertising revenues compared to the previous year. ORF 1 and ORF 2 garnered a combined market share of 36.4% among viewers in the 12+ age group, down from 37.8% in 2010. In this context, ORF 1 (-0.8 percentage points) and ORF 2 (-0.6 percentage points) contributed roughly equally to this development. In terms of gross advertising revenues, the ORF's television stations generated a total of EUR 248.7 million, which represents a loss of 9.1% compared to 2010. However, this result can primarily be attributed to the ORF's adjustment of gross prices, as the broadcaster decided to eliminate volume discounts for the first time in 2011 and therefore lowered its gross prices by an amount which reflected the average level of its volume discounts in recent years. According to the information provided by FOCUS Media Research, if the old pricing model were still used as the basis for calculations, the ORF's television stations would have posted a loss of only 2% in gross revenues, which would come to EUR 268.2 million.

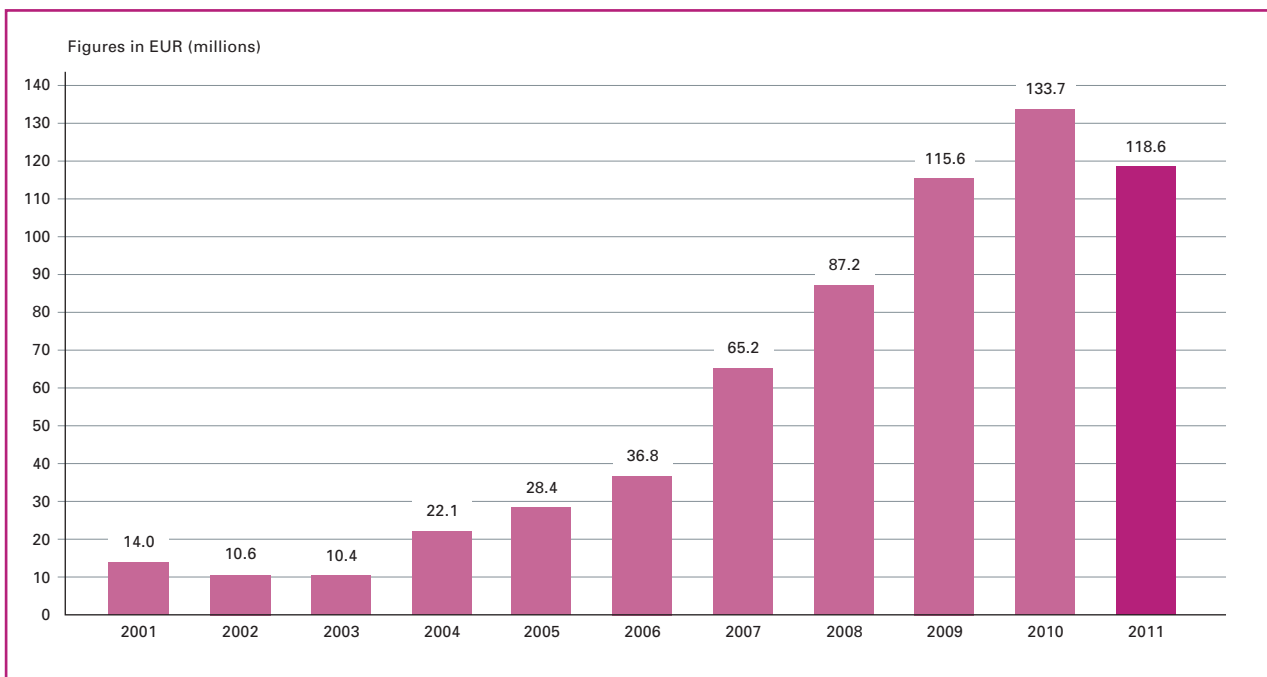
The fact that radio advertising was the only media category where gross revenues for classic advertising dropped in 2011 can be attributed to the figures reported by the ORF. On the basis of their joint marketing efforts under the "RMS TOP Kombi" organisation and the additional individual reports from KRONEHIT, Radio Energy Wien, 88.6, Antenne Wien, Antenne Salzburg and Radio Arabella Wien in 2011, Austria's private radio broadcasters were able to boost their revenues by EUR 1 million or +1.5% to EUR 69.3 million. The actual gross advertising revenues of private radio broadcasters are even higher, but this figure cannot be calculated because several large private radio broadcasters (including Life Radio OÖ, Antenne Kärnten and Antenne Steiermark) do not report their individual sales figures to FOCUS Media. Only around half of the radio advertising minutes which can be booked with private stations are marketed through RMS Top Kombi. The remaining minutes are sold by the broadcasters themselves. The gross advertising revenues of ORF radio stations dropped by EUR 1.2 million (-1.1%) compared to the year 2010, when both the private radio stations as well as the ORF were able to profit modestly from the very positive developments on the advertising market. Like ORF television, the ORF's radio stations also adapted their prices for advertising time, but the bottom-line price reduction only came to 0.07%.

As outdoor advertising was able to recover from the negative developments in the previous year (-2.6%) and generated gross advertising revenues of EUR 211.1 million (+7.8%) in 2011, even surpassing the result from 2009 by

approximately 5%, it is clear that the ORF's television and radio stations were actually the only classic advertising media that saw their gross advertising revenues decline in 2011. However, a glance at the ORF's annual reports makes it clear how important it is to view these gross advertising results in a differentiated manner. For the year 2011, the ORF reports net revenues from "broadcast advertising" (television and radio) in the amount of EUR 216.7 million, or approximately 60% of gross revenues. Compared to the result from 2010, however, this figure represents a gain of approximately EUR 500,000.00 – despite the decrease in gross advertising revenues.

Once again, the developments on the online advertising market reported by FOCUS Media Research are to be interpreted "outside of the general competitive arena." According to the reported figures, online advertising generated some EUR 15 million less (-11%) in gross advertising revenues compared to 2010. However, the constantly changing survey methods, the lack of full coverage of existing online offers and often unclear pricing models only allow an approximate description of the situation. In particular, the annual results are not comparable, as FOCUS Media Research itself also points out. As the ORF's online presence is among the most heavily visited web sites in Austria, a comparison of the ORF's annual reports could provide an indication of actual developments and thus confirm the downward trend in online advertising as identified by FOCUS. In its 2011 annual report, the ORF reports net profits of EUR 9 million from online advertising, which signifies a decline of approximately 8% compared to 2010 (EUR 9.8 million).

**Figure 17: Online advertising expenditure in Austria, 2001 to 2011**



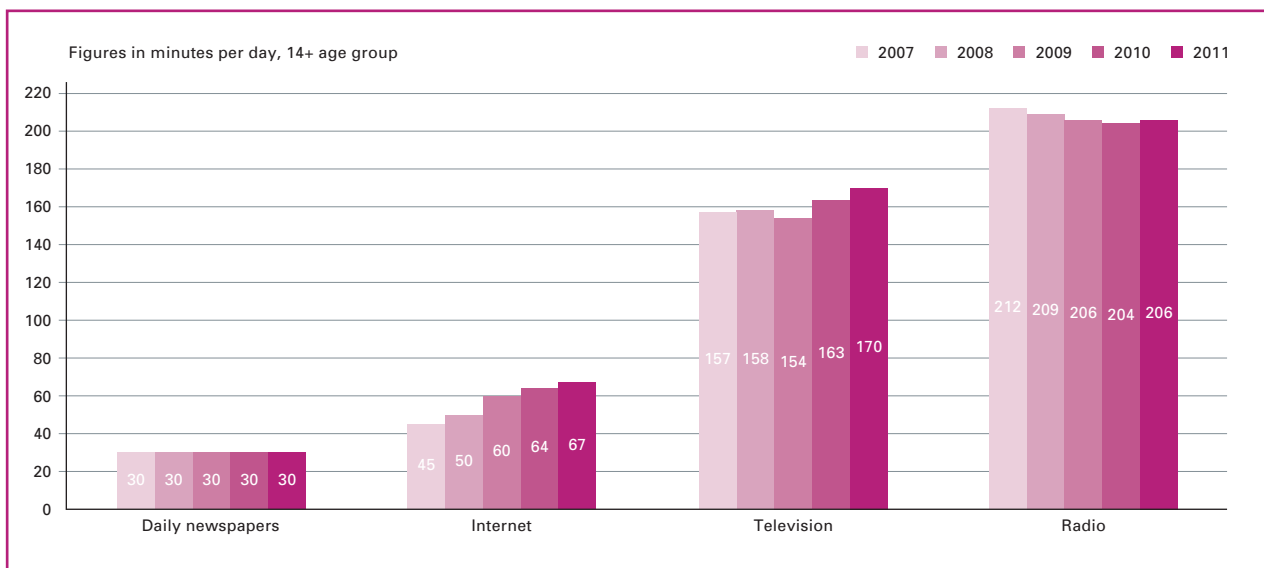
Due to frequent changes in survey methods, the figures shown above are not comparable from one year to the next.

Source: FOCUS Media Research

Overall, the chances that advertisements would actually be seen in electronic media increased in the year 2011, as an increase in daily radio, television and Internet usage was recorded. Radio broadcasters were able to reverse the downward trend observed in recent years, increasing listening time by two minutes per day. One especially remarkable development was observed in television viewing time, which continued to defy all pessimistic forecasts in 2011 and increased by seven minutes in the 14+ age group compared to 2010. This is especially impressive given the fact that viewing time already attracted high attention when it jumped from 154 minutes in 2009 to 163 minutes in 2010.



**Figure 18: Development of daily media usage time, 2007 to 2011**



Source: Radiotest, Teletest, MTUs, AIM

The Internet was also used three minutes longer per day in 2011 than in 2010, but this medium continues to show slower growth rates than television. This also means that the often-cited trend toward second-screen behaviour (simultaneous use of a television screen and laptop, tablet or smartphone) has not yet really manifested itself in the statistics. The almost surprising increase in television usage time could very well be an indication that television is increasingly becoming a complementary medium like radio. However, the substantially slower growth in Internet usage time tends to contradict the assumption that second screen usage has already become a mass phenomenon in Austrian living rooms.

Daily newspapers are still read for approximately 30 minutes per day by persons in the 14+ age group; this figure has at least remained stable for several years now.

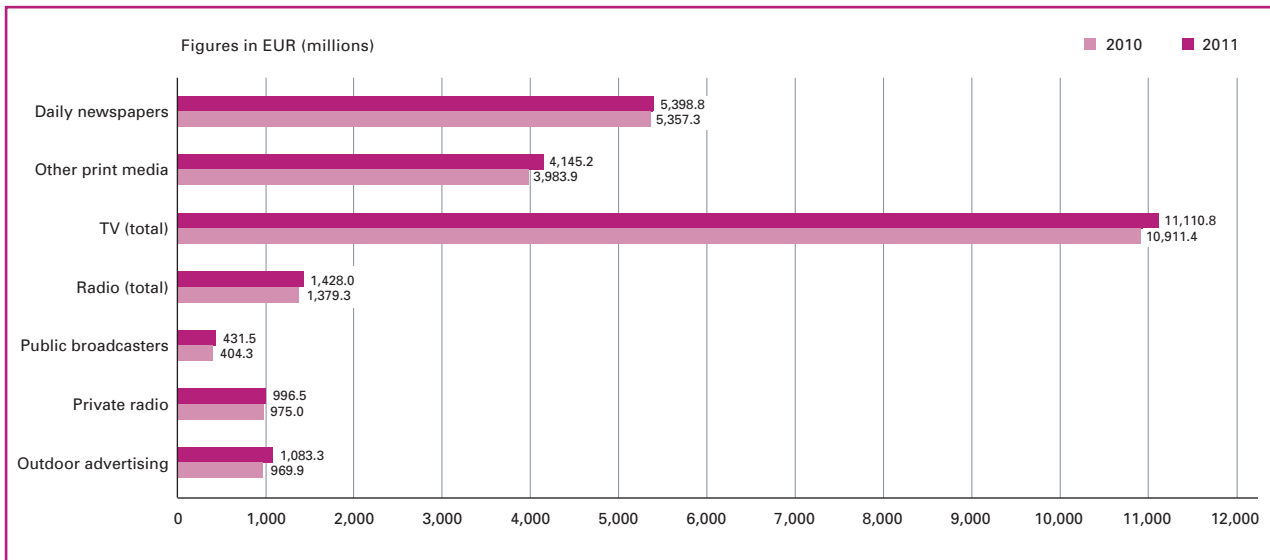
#### 10.1.1.1 Comparison to the German advertising market

On the German advertising market, gross advertising revenues amounted to EUR 23.17 billion in the classic media categories in 2011. This signifies an increase of nearly 2.5% (EUR 560 million) compared to the previous year. The effects of the euro crisis and financial crisis had an especially strong impact on the German advertising market in the fourth quarter of 2011. Between 2009 and 2010, gross advertising revenues had risen a full 9%.

The relatively slight increase in the year 2011 benefited all media categories proportionately in Germany. The only exception was outdoor advertising, which saw an increase of 11.7% in the year under review. It is interesting to note that in Germany – like in Austria – miscellaneous print publications performed better (+4%) than daily newspapers (+0.8%). Daily newspapers in Germany also saw their daily reach decline in 2011; this figure dropped 1.5 percentage points to 68.4%, yet it is still twice as high as in Austria. Apparently, the advertising industry considers magazines to have better chances in competition with the Internet than daily newspapers, which compete more directly with online content due to their up-to-date reporting mode.

Therefore, it is mainly the slow growth in the daily newspapers’ gross advertising revenues which kept the overall increase in total advertising revenues at such a low level in Germany.

**Figure 19: Advertising expenditure in Germany, 2010 vs. 2011**



Source: Nielsen Media Research

The second-lowest growth rate (+1.8%) was observed in the “heavyweight” medium of television advertising, which generated gross revenues of EUR 11.11 billion. Therefore, the share of advertising expenditure attributable to television (48%, compared to 25.2% in Austria) remained unchanged compared to 2010. The share of revenues taken in by Germany’s public broadcasters (ARD and ZDF) has not yet been published for 2011; this figure came to approximately 5.6% (EUR 610 million) in 2010.

In 2011, 41.2% of overall advertising expenditure went to daily newspapers and other print publications; this figure equals only two thirds of the share attributable to print media in Austria.

After outdoor advertising, the second-largest gain was recorded in ARD’s public radio, as this broadcaster has been highly active in the development of digital radio based on the DAB+ transmission standard in the various federal states of Germany. ARD increased its gross radio advertising revenues by 6.7%, whereas the private broadcasters only managed to boost their revenues by 2.2%. However, even in the comparison between 2009 and 2010, public radio broadcasters (+9.2%) accounted for a far larger share of the growth in gross advertising revenues than the private stations (+3.6%).

## 10.1.2 Television market

### 10.1.2.1 Television viewing

Compared to the previous year, the development of television usage in Austria in 2011 can be briefly summarised as follows: Austria now has more viewers who watch television longer than ever before and are paying more and more attention to Austria’s private television broadcasters. In particular, this additional increase in viewing time (across the entire group and among active viewers) is highly conspicuous given that experts have repeatedly forecast the impending downfall of classic television and painted pictures of a brighter future with non-linear, IP-based on-demand television content.

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. Since January 2007, the TELETEST Working Group (AGTT) has commissioned these surveys. AGTT is an association which includes the ORF, ORF-Enterprise, ATV, ServusTV, IP Österreich (the marketing organisation for the RTL Group in Austria) and SevenOne Media Austria (the marketing organisation for the ProSiebenSat.1 Group). Until the end of 2006, the ORF commissioned the Teletest survey, and AGTT took on this role as of January 1, 2007.

In 2011, the Teletest panel consisted of 1,590 households in Austria, which represent a statistical population of 3,526,000 television households. The panel comprises a total of approximately 3,580 viewers, including some 3,250 persons in the 12+ age group, who represent the 7,140,000 adults in Austria's television households, and around 330 children aged 3 to 11, who represent the 736,000 children in those households.

Given the increasing number of single-person households, the panel size used in the Teletest (i.e. the number of households linked to the measurement system) has been increased gradually since 2006 in order to keep the number of persons covered by the sample constant. In 2009, a total of 1,560 households were included in the panel, after which this figure rose to 1,570 in 2010 and was again increased to 1,590 in 2011.

In the year 2010, television broadcasters already enjoyed a considerable increase in viewing time. Viewers in the 12+ age group watched the various available television channels for an average of 162 minutes per day, or nine minutes longer than in 2009. This put an end to a declining trend which had started in 2006. The fact that this development was not just a temporary exception due to the Winter Olympics and the football World Cup is supported by the renewed increase in viewing time in 2011, this time by another five minutes to 167 minutes per day. This figure even exceeded the historical high reached in 2005 (166 minutes). However, Austrians appear to use their leisure time in far more diverse ways than the Germans, who also set a new record viewing time of 225 minutes per day in 2011. The statistics for Germany include viewers from the age of three upward, but this age group exhibits the lowest viewing times and therefore tends to push the average downward. In Austria, for example, television viewing time comes to 158 minutes per day if the 3 to 11 age group is included, which makes for an even larger difference compared to Germany.

**Figure 20: Development of viewing time, 2001 to 2011**



Source: Teletest

Viewing time among active viewers continued to climb in Austria (up 6 minutes compared to 2010) and reached a new record high of 260 minutes per day in 2011. While the calculation of overall viewing time also includes the (zero) viewing time of persons in television households who did not watch television at all in the observation period, viewing time among active viewers only includes the viewing times of those members of television households who did watch television.

The increase in viewing time by nine minutes between 2009 and 2010 was an exceptional development. Over the last 12 years, the most common changes have been smaller increases or decreases in the range of two to six minutes (exception: +10 minutes between 2001 and 2002). As a result, the increase by five minutes in 2011 can be regarded as above average, especially as no major sporting events such as the Olympic games were held during the year

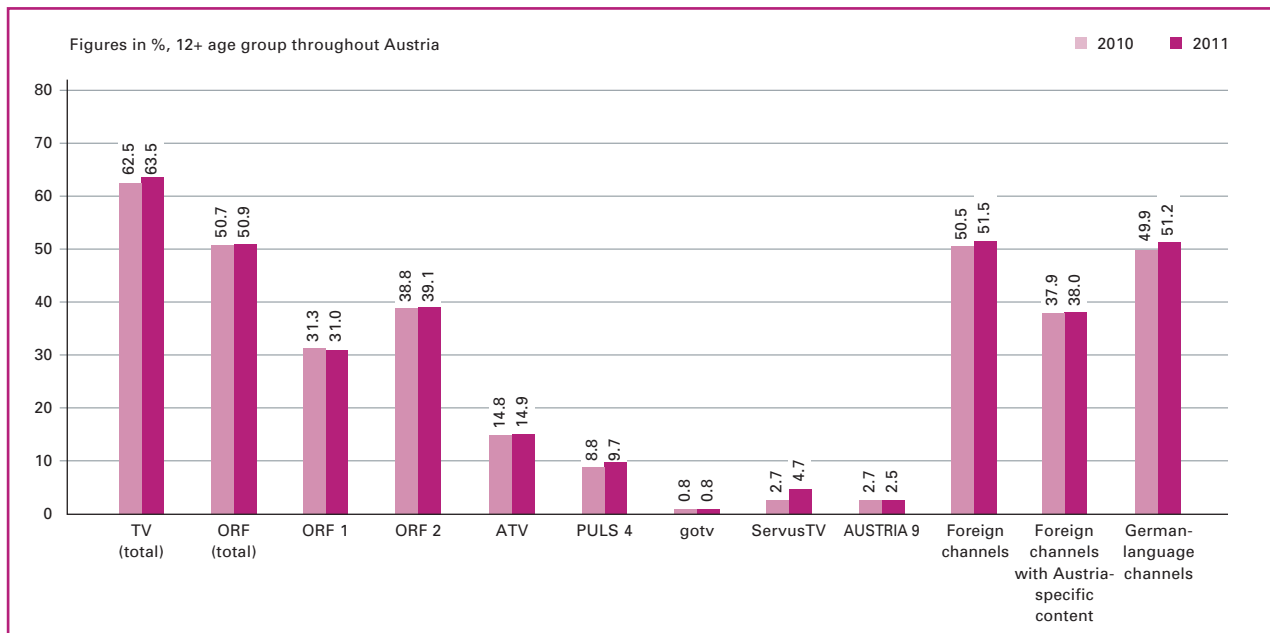
under review. In 2011, spikes in attention and television viewing were mainly observed in connection with the tsunami and nuclear disaster in Japan, the terrorist attack on youths in Norway, the end of the hunt for Osama bin Laden, the wedding of Prince William and Catherine Middleton in London as well as that of Prince Albert II and Charlene Wittstock in Monaco. Viewers followed the euro crisis and the EHEC infections in Germany within the limits of normal television viewing.

Even in a differentiated perspective, the ORF's media research indicates that television viewing time increased in 2011 in all age groups, among men and women, and across all socio-economic classes. An above-average increase was observed among the younger population (12 to 29 years: +6 minutes to 100 minutes per day), who therefore watched more television in 2011 than they had ten years earlier.

### 10.1.2.2 Television reach and market shares

The television medium was not only able to capture viewers' attention longer in 2011, it also attracted a larger number of viewers. For the second consecutive year, television reached a larger percentage of persons in the 12+ age group in Austria's television households than in the previous year. From 2005 onward, a clear downward trend had been observed in television's daily reach figures, and this development did not stop until the year 2010. In 2011, television's daily reach rose by one percentage point (to 63.5%) compared to 2010. In absolute terms, this means that 4.53 million people turned on the television at least briefly (definition: for at least one minute) each day. Therefore, television reached approximately 90,000 more people than it did in 2010 (growth in viewing population: 7.106 to 7.140 million viewers). Television's daily reach has thus clearly rebounded from the low observed in the year 2009 (61.6%). In the 1990s and even up to 2006, however, these figures were in the range of 66% to 69% of persons living in television households; in the year 2002, this figure even spiked to 70.2%.

**Figure 21: Daily reach of television, 2010 vs. 2011**



Source: Teletest

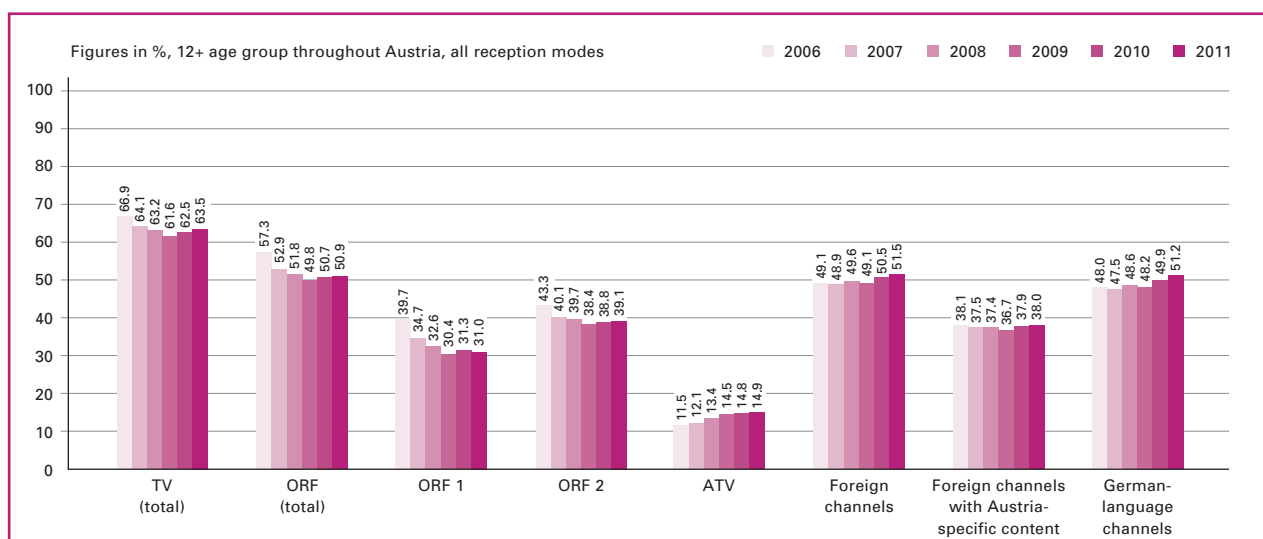
In 2011, the Austrian television channel ServusTV saw a remarkable gain in its daily reach, which rose from 2.7% to 4.7% and was therefore watched by 335,000 people for at least one minute each day. In 2010, ServusTV had reached only 192,000 viewers. PULS 4 also managed to improve its reach figures substantially once again, picking up nearly one percentage point to a daily reach level of 9.7%. The channel therefore reached an average of 693,000 viewers each day. ATV recorded a barely noticeable gain in reach (14.9%; +0.1%), gotv remained unchanged (0.8%), and AUSTRIA 9 was the only private nationwide television broadcaster in Austria whose reach declined slightly (2.5%; -0.2%).

The reach figures for the ORF's two general-interest channels showed only marginal changes compared to the previous year, with the channels' overall reach rising slightly (50.9%; +0.2%). ORF 1 saw a slight loss in reach (31%; -0.3%), while ORF 2's reach increased slightly (39.1%; +0.3%).

The German private television channels which offer partly Austria-specific content (advertising and programming "windows") had seen slowly declining reach levels for several years, but then managed to extend their reach in 2010 (37.9%; +1.2%). However, this figure stagnated in 2011 (38%). In contrast, the daily reach of foreign channels broadcast in German language rose 1.3 percentage points to 51.2%. Foreign channels attained a daily reach level of 51.5%, up one percentage point compared to 2010.

In a longer-term perspective, it appears that the decline in daily reach figures for television overall, for ORF channels and for the German channels with Austria-specific content have bottomed out (at least for the moment), but they still have not shown any signs of significant recovery. Daily reach figures have shown steady and slightly positive developments among Austrian private television channels, foreign channels and German-language channels (not including German channels with partly Austria-specific content).

**Figure 22: Long-term development of television's daily reach, 2006 to 2011**



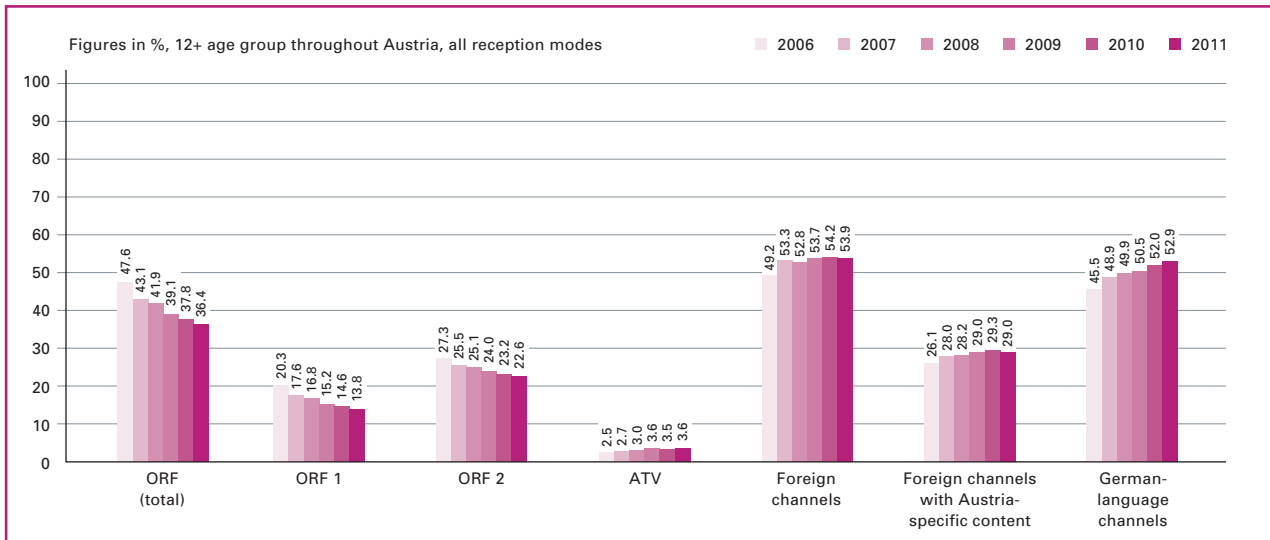
Source: Teletest

While the development of daily reach figures indicates that an increasing number of viewers have tended to watch ORF channels at least once per day, the development of market shares reveals that viewers have spent less and less time watching those channels. The market share of an individual television channel refers to its share of overall television viewing time. In this respect, the ORF channels were able to decelerate – but not to stop – the downward trend which has persisted in recent years. Those channels' market share dropped 1.4 percentage points to 36.4% in 2011. ORF 1's market share fell 0.8 percentage points to 13.8%, while ORF 2's share declined by 0.6 percentage points to 22.6%. However, ORF 1 and ORF 2 remained the most-watched television channels in Austria by a wide margin.

For the first time in years, the German private channels which offer partly Austria-specific content lost market share in the year under review. As their market share dropped 0.3 percentage points to 29%, this loss was very small, but it did disrupt the steady upward development observed in recent years. Foreign channels likewise saw a slight loss in market share (-0.3 percentage points) but still maintained their very high level (53.9%). However, the German-language channels included in this category rose by nearly one percentage point to 52.9%, thus continuing their general upward trend. As this development was not driven by the German channels which offer partly Austria-specific

content and ZDF's market share improved only slightly, while ARD even dropped slightly, the gain in market share among German-language channels indicates that due to the digitisation of television, viewers have also increasingly discovered smaller broadcasters and watch their channels from time to time.

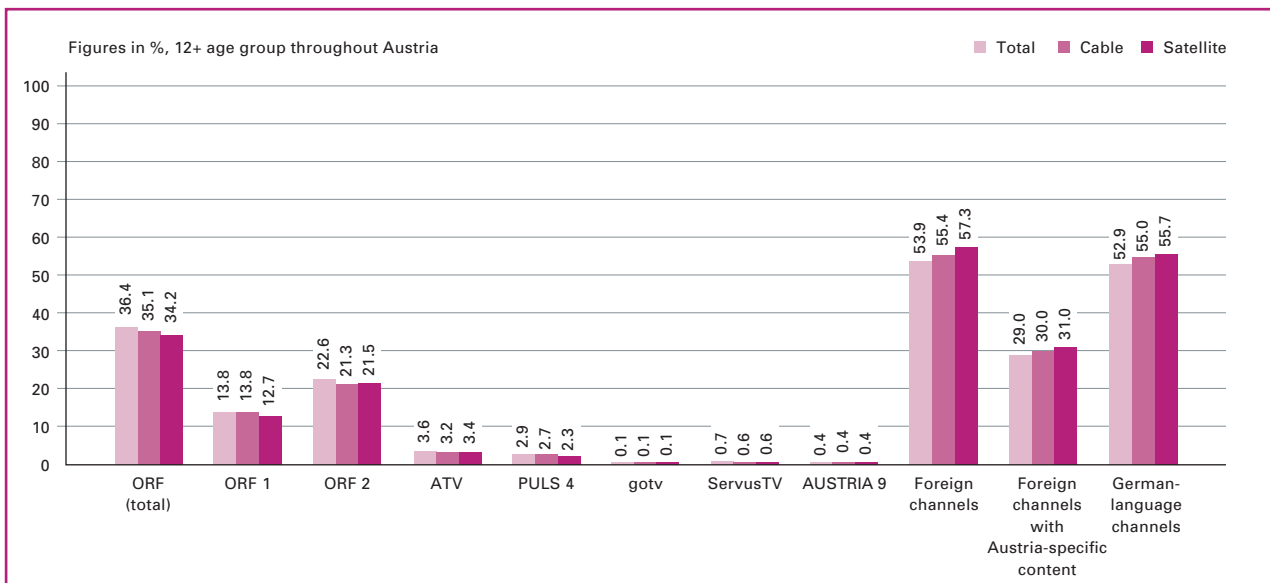
**Figure 23: Long-term development of television market shares, 2006 to 2011**



Source: Teletest

The development of market shares among Austria's private television broadcasters was largely proportionate to that of their daily reach figures. PULS 4 (+0.4 percentage points to 2.9%) and ServusTV (+0.3 percentage points to 0.7%) saw the largest increases in market share. PULS 4 has thus made remarkable progress in catching up to ATV, as the latter channel only managed to regain the market share it had lost in 2010 (+0.1 percentage point to 3.6%). The market shares held by AUSTRIA 9 and gotv remained unchanged at 0.4% and 0.1%, respectively. Austria's five private television broadcasters therefore increased their combined market share from 6.9% in 2010 to 7.7% in 2011.

**Figure 24: Television market shares in 2011**

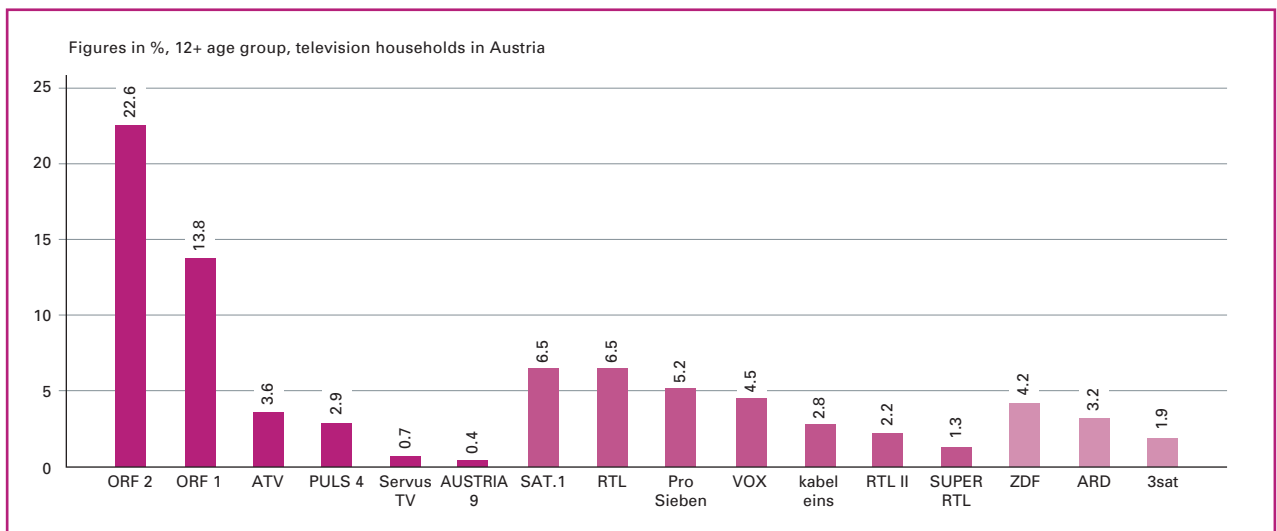


Source: Teletest

While PULS 4 has enjoyed popularity among viewers, especially for its Austrian version of the successful ProSieben show “Germany’s Next Top Model” as well as the society magazine “Pink” (called “Red” on ProSieben), ATV has stagnated despite its relatively high degree of success with tabloid-style documentaries and reports. With regard to the increasing success of ServusTV, however, it is possible to conclude that there is indeed a market for television shows with specifically Austrian content. ServusTV certainly appeals to a different audience compared to PULS 4 or ATV, which appear to enjoy success when their shows are comparable to German prototypes in terms of format and realisation. This is, of course, a result of Austria’s late liberalisation of the broadcasting market, which will continue to affect Austrian television for many years to come. In this context, German television channels have been able to set standards which the Austrian channels have to live up to, but without anywhere near a comparable amount of funds – and this ultimately also applies to the ORF.

It is therefore obvious – not only in the internal relationship between the private broadcasters and the ORF but also in the competition with German channels – that promotional funding for the media is indispensable in the long term in order to ensure a diverse range of television shows with Austrian content. However, this cannot be considered a reason to complain. The common image of the German channels as a sort of invincible alliance fails to account for how impressively Austria’s private television stations and the ORF have held their own on the market at the individual level. ORF 1 and ORF 2 are still the top two channels in terms of market share, and they are far ahead of the competition. ATV is in eighth place behind strong brands such as RTL, SAT.1, ProSieben and – with a comparably small lead – VOX and ZDF. PULS 4 surpassed kabel eins in 2011 and has thus earned a place among Austria’s top ten television channels. Austrian television is still dominated by the ORF and is also a highly fragmented market on which Austria’s private broadcasters have managed to maintain their positions impressively, especially considering their far later entry into the market. This is a long-term challenge which requires continued support.

**Figure 25: Television market shares in 2011 – German channels with Austria-specific content vs. German channels (overall)**



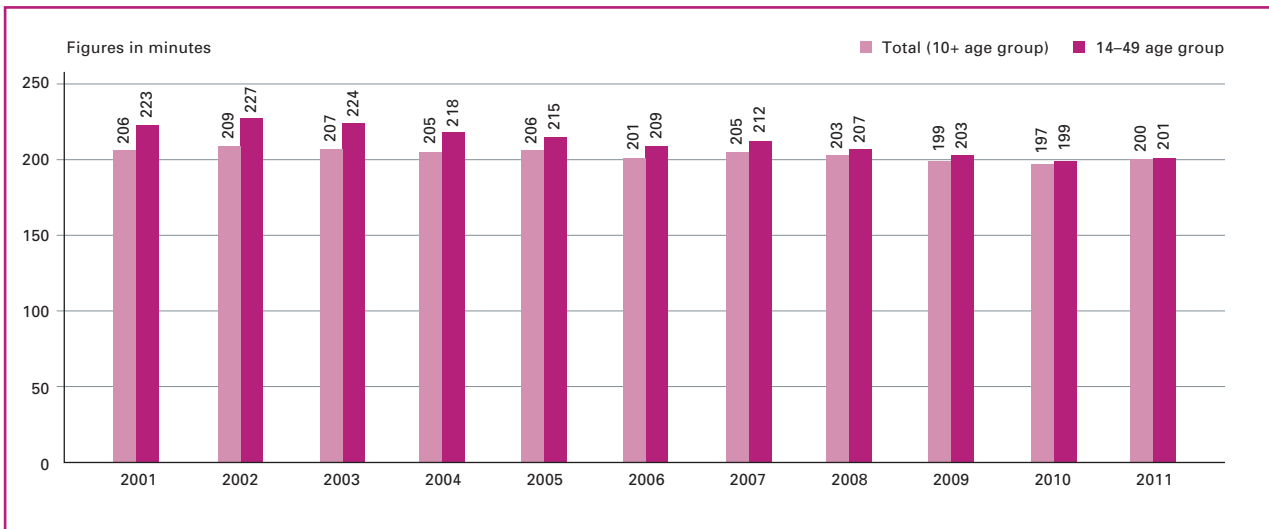
Source: AGTT/GfK Teletest/Evogenius/ORF Media Research

### 10.1.3 Radio market

#### 10.1.3.1 Radio usage

The persistent decline in listening time and daily reach levels since the year 2000 was halted at least temporarily in the year 2011. As encouraging as the slight improvement compared to 2010 may be, it would be premature to speak of a trend reversal. Short-lived increases of this kind were also observed in 2005 and 2007, but they did not affect the long-term trend in this medium. However, for the first time, listening time rebounded to just over the 200-minute mark in both age groups included in the Radiotest survey (10+ and 14 to 49 years) in the year under review. Growth in the core age group relevant to advertising (14 to 49 years) came to +2 minutes and was therefore slightly lower than in the case of listeners in the 10+ age group.

**Figure 26: Development of listening time, 2001 to 2011**

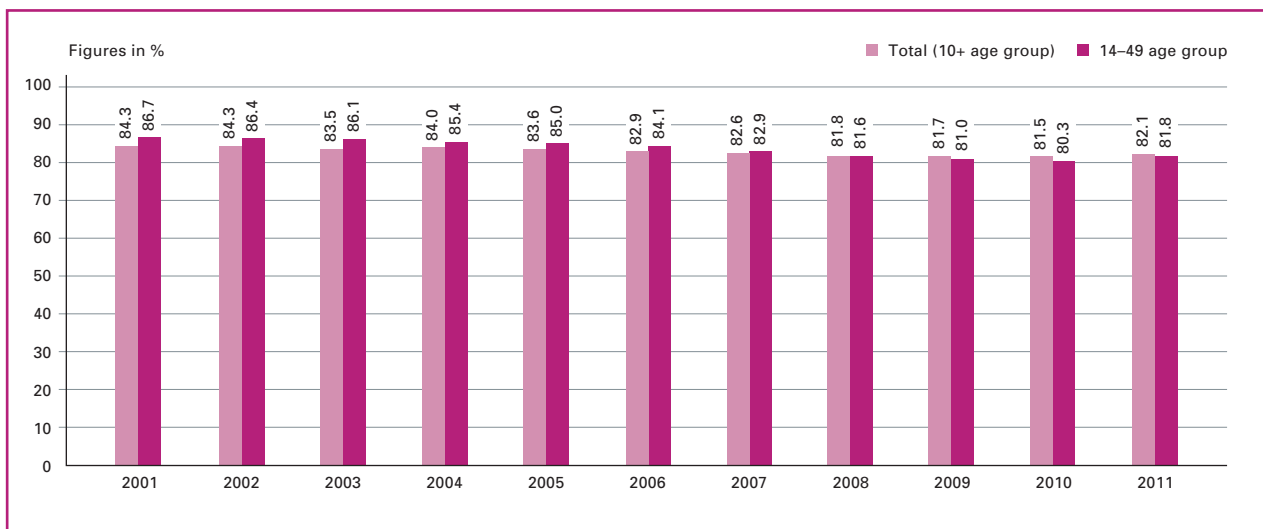


Source: Radiotest

In terms of overall daily reach, radio broadcasting also saw positive developments in 2011. In particular, this medium reached more listeners in the 14 to 49 age group. In absolute terms, the increase by 1.5 percentage points to a daily reach level of 81.8% means that some 63,000 more persons in the 14 to 49 age group listened to the radio for at least 15 minutes (based on the definition of daily reach for radio) compared to the year 2010. In total, the number of listeners in this age group averaged 3.429 million persons per day. In contrast, the daily reach of radio broadcasting among persons in the 10+ age group saw a less drastic increase of 0.6 percentage points to 82.1% (+44,500 to 6.125 million listeners).



**Figure 27: Development of radio's daily reach levels, 2001 to 2011**



Source: Radiotest

### 10.1.3.2 Daily reach levels and market shares in radio broadcasting

The gains in daily reach and listening time mainly benefited Austria's private radio stations. Nevertheless, the year 2011 was also a positive one for the ORF's radio stations, which were able to stall the downward trend observed in recent years and attained a daily reach of 65.4% (2010: 65.1%) in the advertising-relevant 14 to 49 age group. The daily reach of the Ö3 station, which specifically targets that age group, improved marginally, rising 0.2 percentage points to 47.5%, while Ö1's daily reach rose by 0.4 percentage points (5.9%) and the regional stations referred to as "Ö2" gained a total of 0.7 percentage points (21.1%). Only the youth station FM4, which had seen stable daily reach figures above the 6% mark for years, fell below that figure for the first time in 2011, dropping to a reach level of 5.8% (-0.3 percentage points). As in recent years, the daily reach of Austria's private radio stations continued to climb steadily, this time reaching a level of 34.6% (+1.5 percentage points) in 2011.

**Figure 28: Development of daily reach levels: ORF vs. private radio stations, 2006 to 2011**

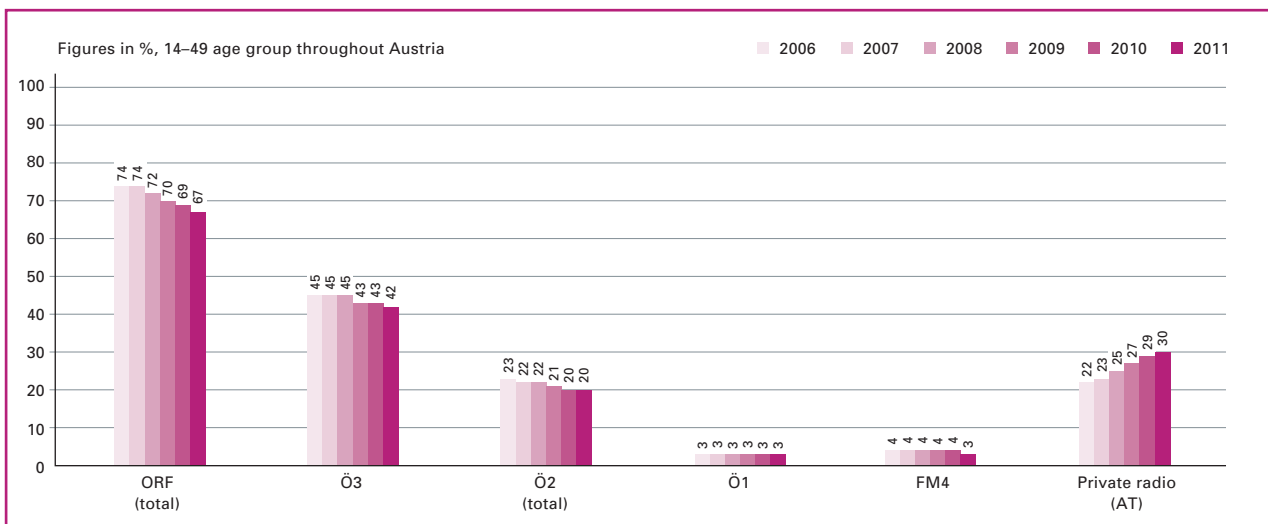


Source: Radiotest

The continued increase in the popularity of private radio stations among 14 to 49-year-old listeners was supported in particular by the KRONEHIT station, which reached approximately 30,000 more listeners each day compared to 2010 and whose daily reach therefore came to 14.6% (+2 percentage points). Outside of Austria's capital city, only Antenne Kärnten (24%; +3 percentage points) and Antenne Steiermark (24.1%; +1.5 percentage points) enjoyed comparable success (see also Table 16).

However, the ORF's radio stations were not able to translate their relative gains in daily reach into gains in market share in 2011. The market share of a radio station refers to its percentage of overall listening time. In this regard, Ö3 (42%) and FM4 (3%) captured their listeners' attention (14 to 49 age group) approximately two minutes less per day compared to 2010, each losing 1% of the market. The ORF's radio stations thus slipped to a combined share of 67%. This still means that ORF stations account for two thirds of total listening minutes, but five years ago those stations accounted for nearly three quarters of total radio listening time. In contrast, the private radio stations continued their winning streak and boosted their market share among 14 to 49-year old listeners to 30% at the national level. At the same time, the private radio stations appear to be reaching a plateau. After years of growing steadily at a rate of 2% per year, their market share rose by only 1% in the year under review.

**Figure 29: Development of radio market shares, 2006 to 2011**

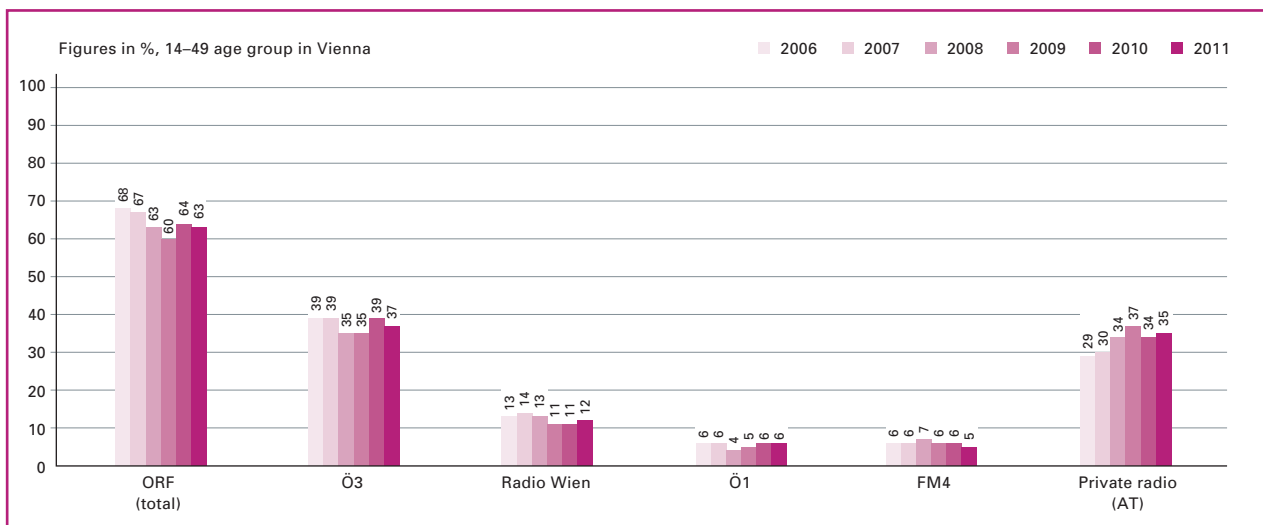


Source: Radiotest

### 10.1.3.3 Radio market in Vienna

On the Viennese radio market, where competition for listeners in the 14 to 49 age group is especially fierce, Ö3 was unable to sustain its extraordinary success from the previous year and thus lost 2 percentage points, dropping to a market share of 37%. This development only partly benefited the private radio stations, whose market share rose 1 percentage point to 35%. As a result, the private radio stations have not succeeded in recovering completely from the setback they suffered in 2010, when their combined market share shrank by three percentage points. Just one year earlier, they had surpassed Ö3, only to fall behind the market leader once again in 2010.

**Figure 30: Development of radio market shares in Vienna, 2006 to 2011**



Source: Radiotest

At the same time, the ORF station Radio Wien picked up another percentage point, thus garnering a market share of 12% in the 14 to 49 age group; this gain served to cushion the losses of the ORF’s radio stations in Vienna, which now command a market share of 63%. FM4’s market share dropped from 6% to 5%.

The Viennese private radio stations which saw gains in the year under review were KRONEHIT (10%), Antenne Wien (4%) and the newest competitor Superfly (3%), which was established in 2008. Each of those stations succeeded in boosting its market share by one percentage point. Radio Arabella and 88.6, both of which had suffered major setbacks in 2010 (-3 percentage points), were not able to rebound in terms of market share in 2011. The 88.6 station even dropped another percentage point to 6%, while Arabella was at least able to maintain its 5% share from the previous year. Up to now, Radio Energy has not seen its market share decline in Vienna, but this figure stagnated at the previous year’s level (8%).

**Table 16: Daily reach of radio stations in Austria (2011)**

	14-49 age group	Vienna	Lower Austria	Burgenland	Styria	Carinthia	Upper Austria	Salzburg	Tyrol (including Eastern Tyrol)	Vorarlberg
<b>Total daily reach</b>										
Radio total	81.6	70.8	85.5	85.9	85.2	86.9	83.6	82.3	84.7	80.3
ORF total	65.4	52.6	70.2	76.6	66.9	70.8	66.4	69.6	69.7	67.0
Austrian private broadcasters total	34.6	32.1	34.0	28.4	38.9	36.0	38.3	32.4	33.2	29.7
Other stations total	37.2	34.7	35.2	29.8	40.0	37.4	42.2	36.2	36.9	36.2
Minor stations total	4.0	3.1	2.2	2.2	2.3	2.7	6.2	5.5	5.8	10.1
Other minor stations	2.7	3.1	2.1	2.1	2.3	2.5	2.9	2.3	2.9	3.8
<b>ORF's daily reach</b>										
Ö1	5.9	8.6	5.5	4.4	5.0	4.7	4.5	7.0	5.9	3.9
Ö3	47.5	35.1	52.6	57.0	49.3	49.8	50.5	50.2	52.1	45.9
FM4	5.8	6.7	5.0	2.7	5.0	4.6	6.6	6.6	6.4	5.8
ORF regional stations total	21.1	12.6	25.3	32.3	22.0	29.1	17.7	22.7	24.0	26.4
Radio Wien	3.7	10.5	6.9	4.7	-	0.1	-	0.0	0.2	-
Radio Niederösterreich	4.0	1.4	18.2	3.2	0.3	-	1.2	-	-	-
Radio Burgenland	1.3	1.1	1.2	26.1	0.5	-	-	-	-	-
Radio Steiermark	3.2	0.0	0.2	1.7	21.2	0.4	0.0	0.1	-	-
Radio Kärnten	1.9	-	0.1	0.1	0.4	28.9	-	0.1	0.2	-
Radio Oberösterreich	2.9	0.1	0.7	-	-	-	16.0	0.6	0.0	-
Radio Salzburg	1.7	0.1	0.1	-	-	-	1.5	21.9	0.2	-
Radio Tirol	2.1	-	0.1	-	-	-	-	0.6	23.7	0.3
Radio Vorarlberg	1.2	-	-	-	-	-	-	-	0.2	26.2
<b>Daily reach of private radio stations</b>										
RMS Top	34.3	31.4	33.7	28.3	38.9	35.7	38.2	32.4	33.2	29.7
KRONEHIT	14.6	10.5	20.6	20.4	13.2	11.6	18.1	9.0	12.5	11.9
88.6	2.4	5.8	5.7	2.3	0.2	0.1	0.0	0.1	-	-
Antenne Wien	0.9	3.0	1.3	0.3	-	-	-	-	-	-
Radio Arabella (V/LA/B)	2.0	5.0	5.0	1.2	-	0.0	-	-	-	-
Radio Energy (V/LA/B)	2.9	10.8	2.7	0.8	0.1	0.0	0.2	-	-	-
98,3 Superfly	0.6	2.3	0.5	0.3	-	-	-	-	-	-
HiT FM stations total	1.0	0.2	4.0	3.3	0.6	-	0.2	-	-	-
Antenne Steiermark	3.8	-	0.4	3.9	24.1	0.7	0.3	0.3	0.0	0.1
Radio Graz/Radio Eins	0.2	-	-	-	1.2	-	-	-	-	-
Soundportal	0.7	0.1	-	0.1	4.4	0.2	-	0.1	-	-
Radio Grün-Weiß	0.3	-	-	-	1.8	-	-	-	-	-
Radio West	0.0	-	-	-	0.3	-	-	-	-	-
Antenne Kärnten	1.6	-	-	-	0.2	24.0	-	0.0	0.0	-
Radio Harmonie	0.2	-	-	-	-	3.4	-	-	-	-
Life Radio (UA)	3.0	-	0.9	-	0.3	0.1	16.3	0.5	-	-
Lounge FM (UA)	0.3	-	0.3	-	-	-	1.5	0.1	-	-
Radio Arabella (UA)	0.4	-	-	-	-	-	2.3	-	-	-
Antenne Salzburg	1.1	-	-	-	0.0	0.1	1.3	14.5	0.0	-
Radio Arabella (Sbg.)	0.1	-	-	-	-	-	-	1.1	-	-
Radio Energy (Sbg.)	0.4	-	-	-	-	-	-	5.8	-	-
Welle 1 total (Sbg./UA)	1.4	-	0.0	-	0.2	-	5.3	7.4	-	-
Life Radio (Tyrol)	0.9	-	-	-	-	0.2	-	-	9.8	-
Antenne Tirol	0.3	-	0.1	-	-	0.1	-	-	3.5	-
Radio Energy (Tyrol)	0.2	-	-	-	-	-	-	-	2.6	-
Radio Osttirol	0.2	-	-	-	-	0.9	-	-	1.5	-
Radio U1 Tirol	0.7	-	-	-	-	-	-	0.2	7.8	0.1
Welle (Tyrol)	0.2	-	-	-	-	-	-	-	2.8	-
Antenne Vorarlberg	0.9	-	-	-	-	-	-	-	-	20.6

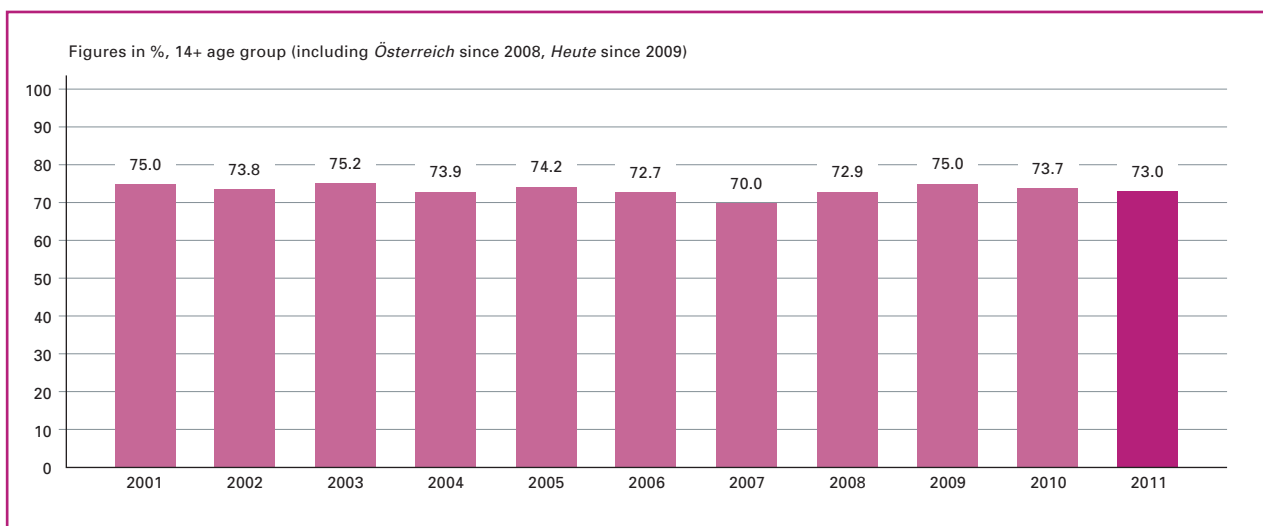
Source: Radiotest; vertical percentages; 14-49 age group, figures in %

## 10.1.4 Print media market

### 10.1.4.1 Daily newspapers

The Austrian Media Analysis on the print market in 2010 gave rise to a conjecture which now appears to have been confirmed by developments in the year 2011. The inclusion of the free newspapers *Österreich* and *Heute* in this analysis in 2008 and 2009 (respectively) had only a temporary positive effect on the development of reach levels among daily newspapers. A large number of people who read daily newspapers in Austria now not only read *Heute* and *Österreich* in addition to paid daily newspapers, but as a substitute for those publications. After a downturn in 2010, daily reach figures continued to lose ground in 2011, albeit less drastically. Overall, the reach of Austrian daily newspapers dropped slightly (-0.7 percentage points, or some 20,000 readers) to 73% in 2011. For the sake of comparison, this figure slipped by 1.3 percentage points in 2010. Therefore, Austria's daily newspapers continue to defy predictions of their imminent obsolescence, but they were unable to halt the general downward trend in 2011. This situation is further exacerbated by the fact that it was mainly the free newspapers which offset (or possibly caused) the losses seen in paid newspapers, sometimes to a significant extent.

**Figure 31: Daily reach levels of daily newspapers, 2001 to 2011**

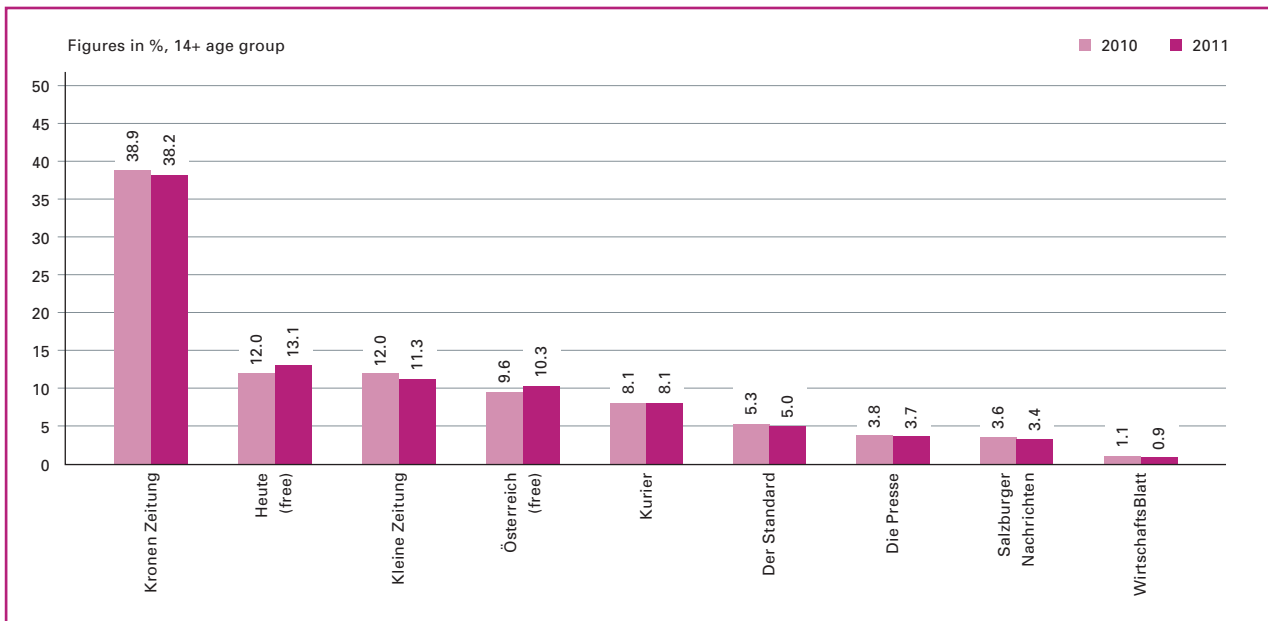


Source: Austrian Media Analysis

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 media usage behaviour in the 14+ age group in Austria. In 2011, the survey involved a total of 16,217 interviews with a sample which is considered representative of Austria's 7.138 million residents (14+) in 3.624 million households.

According to the Media Analysis, nearly one in three (32%, or 1.669 million) daily newspaper readers (5.213 million) or approximately one fourth of the 7.138 million persons in the 14+ age group in Austria read one of the two free newspapers *Heute* (0.935 million) or *Österreich* (0.734 million). *Heute* managed to expand its national reach from 12.0% in 2010 to 13.1% in 2011, while the *Kronen Zeitung* lost another 0.7 percentage points in 2011, meaning that its daily reach fell to 38.2%. *Österreich* also improved its national daily reach from 9.6% to 10.3% in 2011. In terms of reach, the *Kleine Zeitung* still came in third place after the *Kronen Zeitung* and *Heute* in 2011, just one percentage point ahead of *Österreich*. If developments continue on a linear path, however, the *Kleine Zeitung* will be overtaken by *Österreich* in 2012. In 2010, the *Kleine Zeitung* was still tied for second place with *Heute*.

**Figure 32: Daily reach of national daily newspapers, 2010 vs. 2011**



Source: Austrian Media Analysis

With the exception of the *Kurier*, all of Austria's paid national daily newspapers suffered losses in terms of daily reach in 2011. Although their losses remained fairly moderate at the individual level, they correspond to the gain recorded among free newspapers at the aggregate level. The hardest-hit newspapers were the *Kronen Zeitung* and the *Kleine Zeitung*, each of which lost 0.7 percentage points. *Der Standard*, *Presse*, *Salzburger Nachrichten* and *WirtschaftsBlatt* each lost between 0.1 and 0.3 percentage points. Only the *Kurier* was able to maintain its daily reach of 8.1% from the previous year.

The Internet was once again partly responsible for the decline in daily reach levels, as its daily reach rose to 51.4% (3.669 million, +1.9 percentage points) of the 14+ age group in Austria. 66.3% of those users (2.432 million) used the Internet in order to access the content of newspapers and periodicals and/or current news (purpose of use in the four weeks preceding the survey).

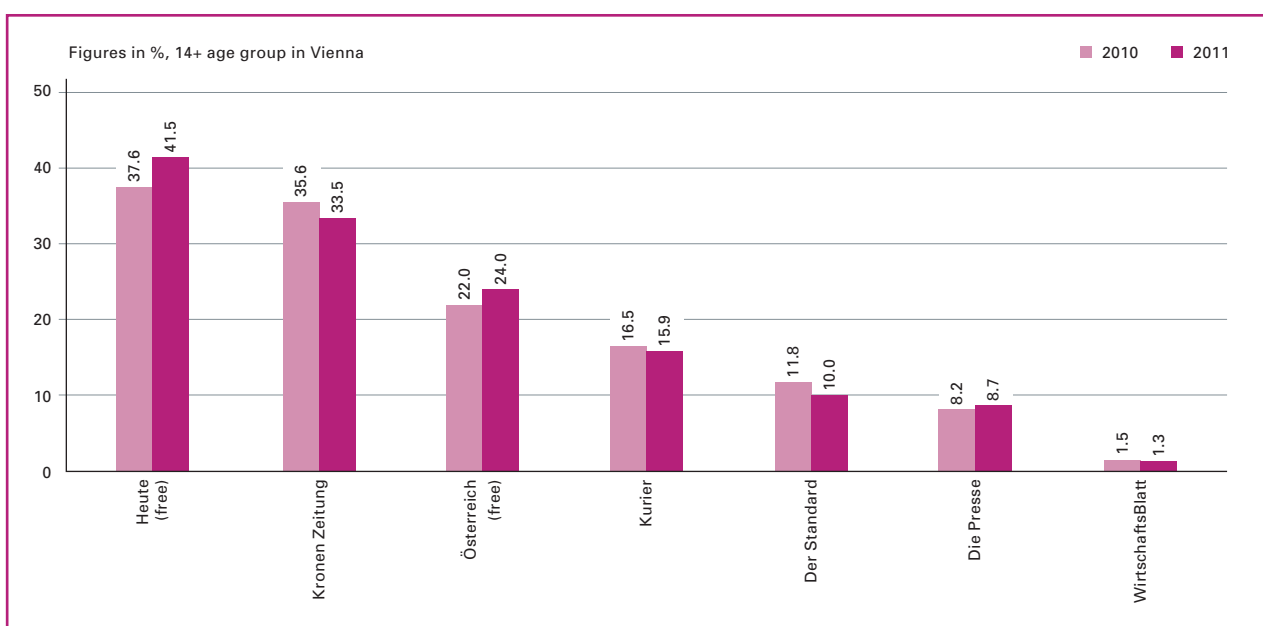
Free newspapers have also enjoyed increasing popularity in the regions outside the Austrian capital. The group of free newspapers published by Regionalmedien Austria AG (RMA), which was included in the Media Analysis for the first time in 2010 and consists of 125 regional weekly editions (*Bezirksblätter*, *Woche* in Carinthia and Styria, *Bezirkszeitung* in Vienna), gained 1.5 percentage points and now has a national daily reach of 55%. This means that 3.926 million people in the 14+ age group in Austria regularly read a newspaper published by RMA. This figure increased by a full 131,000 readers compared to the previous year.

In the context of free newspapers, one additional aspect is especially conspicuous: In line with the principle that free products are generally considered less valuable, *Heute* and *Österreich* have the lowest number of readers per copy, meaning that those publications pay higher printing costs compared to paid newspapers in order to deliver their advertising content to the reader. *Heute* has only 1.6 readers per copy; the corresponding figure for *Österreich* is 1.9. The reason for *Österreich's* better result in this respect is probably the fact that nearly one third of its circulation is sold at newsstands. In contrast, the *Kronen Zeitung* and *Der Standard* are at the top of the list with 3.8 readers per copy, while the other daily newspapers have 2.3 and 3.3 readers per copy (*WirtschaftsBlatt* and *Kurier*, respectively). These figures are also interesting from an environmental perspective.

### 10.1.4.2 Daily newspapers in Vienna

On the Viennese market, where *Heute* moved into first place ahead of the *Kronen Zeitung* for the first time in 2010, the *Kronen Zeitung* saw its reach decline more drastically (-2.1 percentage points) than its national average, dropping to a daily reach level of 33.5% in Vienna. On the other hand, *Heute* expanded its reach on the Viennese market substantially, bolstering its first-place position even further with an increase of 3.9 percentage points and a daily reach of 41.5%. When *Heute* surpassed the *Kronen Zeitung* in Vienna the previous year, the free newspaper’s daily reach of 37.6% was already two percentage points higher than that of the *Kronen Zeitung*. *Österreich* also increased its national reach from 9.6% to 10.3% and from 22% to 24% on the Viennese market.

**Figure 33: Daily reach levels of daily newspapers in Vienna, 2010 vs. 2011**




Source: Austrian Media Analysis

### 10.1.4.3 Magazines and other periodicals

In the segment consisting of magazines and other periodicals, free publications are still just slightly ahead of the paid periodicals, which have suffered losses in daily reach. The free magazine *Weekend* boosted its reach to 14.6% (+0.4%), and the *Red Bulletin*, which was included in the Austrian Media Analysis for the first time in 2011 and is likewise free (albeit not officially), immediately saw a market share of 13.1%. The Austrian automobile club’s *auto touring* magazine for club members (which is largely regarded as a free publication) remained the number one magazine with a reach level of 23.3%, up 0.7 percentage points compared to the previous year. However, *auto touring* had previously seen a loss of 4.5 percentage points in 2010.

Of the 33 paid magazines currently included in the Austrian Media Analysis, eight publications saw substantial losses. These included *tv-media* (-1.2 percentage points to 12.4% reach) and *NEWS* (-1 percentage point to 9.3%) as well as *Auto Revue* (-0.7 percentage points to 4.6%) and *Gewinn* (-0.6 percentage points to 3.5%). In contrast, women’s magazines once again saw above-average growth (*Maxima*: +0.6 percentage points to 3.9%, *Etern* and *Welt der Frau*: 0.4 percentage points to 2.8% and 3.2%, respectively). As for the other publications, the changes were rather marginal in this respect.



The top ten magazines in terms of reach include four publications belonging to the NEWS publishing group (*NEWS*, *tv-media*, *Woman* and *Gusto*), all of which saw losses in this regard in 2011 (between -0.4 and -1.2 percentage points). However, this decline is not connected with the group's correction of newsstand sales figures for its ten publications reported to the Austrian circulation survey (ÖAK). In an interview with *Der Standard* newspaper on February 10, 2012, Axel Bogocz, who became the new managing director of the publishing house in the autumn of 2011, stated that he had informed the ÖAK that sometimes substantially exaggerated circulation figures had been reported quite deliberately in recent years. The figures were corrected for the years 2010 and 2011, which showed that newsstand sales had been increased to as much as double the actual figures in some cases. For example, in the second half of 2010, 18,365 copies of *e-media* were reportedly sold at newsstands and supermarkets. In reality, however, this figure only came to 8,474 – a full 9,891 copies less than reported. In the same period, sales of *NEWS* were “upgraded” to 48,311 copies, while in reality only 29,898 copies were purchased. However, these figures do not answer the question of how many people ultimately read each copy sold, meaning that the statistics are of little significance. The decisive indicator for advertising customers is a publication's reach, which is surveyed using representative market research methods and represents the basis for the calculation of advertising prices, for advertising sales and ultimately also for gross advertising revenues. On the other hand, circulation statistics support the publication's image, but not its business performance.

## **10.1.5 Trends and technological developments on the broadcasting market**

### **10.1.5.1 Hybrid TV**

One conspicuous topic attracted a high level of attention in the television industry in 2011: the convergence of broadcasting and Internet services on the television screen. Terms such as hybrid TV, connected TV, smart TV and HbbTV have dominated the programmes at specialist conferences and congresses.

This development essentially refers to television equipment (television screens or digital receivers) which can also make use of a broadband connection in the home. This enables the on-demand retrieval of (video) content especially designed for these applications via the Internet and allows users to view that content directly on their television screens. However, hybrid TVs are not designed to present all of the various services available on the Internet in the same way that computers do.

Typical Internet services are designed for use on computers, meaning that the font sizes used are not suitable for reading from the usual “couch distance,” navigation is geared toward the use of a computer mouse, and the content is often dependent on additional computer programmes which television receivers do not (or cannot) support. Therefore, it is necessary to adapt content for viewing on television sets. In addition to using an aspect ratio of 16:9, one key requirement is the need to adapt navigation functions to the use of a remote control. In general, Internet-based services designed for television receivers can therefore be controlled using the arrow buttons, the OK buttons and the coloured buttons typically found on television remote controls.

#### **Hybrid television receivers: Functionality and services**

Hybrid television receivers typically allow access to an Internet portal which is operated by the equipment manufacturer and lists video content for on-demand retrieval from various providers. In this context, the standard services offered by nearly all manufacturers include the Internet video portal YouTube. Beyond that common element, however, the services offered vary considerably from one television (or receiver) manufacturer to the next.

One decisive characteristic of these services is that it is mainly the manufacturers of hybrid receivers who decide which video services are made available to users on demand via the Internet. For this purpose, individual contracts are concluded by equipment manufacturers and content providers.



### **HbbTV as an open, European solution for hybrid receivers**

In terms of software, the manufacturers of hybrid receivers sometimes deploy very different solutions. This means that content providers are required to adapt their content to the different technologies used by various equipment manufacturers.

One exception is HbbTV (hybrid broadcast broadband TV), which can be understood as a “Web browser” for television sets and was adopted by the European Telecommunications Standards Institute (ETSI) as an open, European standard in mid-2010. Since that time, HbbTV has received broad-based support from broadcasters, equipment manufacturers and media policymakers in Europe. An open standard such as HbbTV mainly offers one major advantage for broadcasters: If the viewer’s receiver supports HbbTV, then broadcasters can include an Internet link in their broadcast signals in order to guide the viewer directly to the broadcaster’s own Internet portal. Additional coordination with the equipment manufacturer is no longer necessary, as the content and the receiver are compatible with the same system.

At a meeting of the European Broadcasting Union (EBU) in December 2011, public broadcasters from 20 countries signed a joint declaration stating that they plan to accelerate the rollout of hybrid television content in 2012, to cooperate in development efforts and to use only open, European standards as technological solutions. The HbbTV, MHEG-5 and MHP standards are explicitly mentioned in the declaration. As MHEG-5 and MHP are nearing obsolescence, the only truly significant standard in this context is HbbTV. In addition to ARD and ZDF (Germany), France Télévisions (France), NPO (Netherlands) and RTVE (Spain), the ORF also signed the declaration.

### **Numerous HbbTV services already available, ORF strategy unclear**

All of the major television broadcasters in Germany have begun to broadcast links to their HbbTV services (in addition to on-demand videos and modern teletext content) in their satellite signals. In this way, HbbTV-compatible receivers can access the complete media libraries offered by channels such as ARD and ZDF via the Internet. The private television broadcasters in the ProSiebenSat.1 group and the RTL Group also offer HbbTV services.

With the support of the Digitisation Fund established at RTR, the ORF developed an HbbTV service and successfully completed pilot operations in December 2011. In this way, viewers were able to access the ORF TVthek media library and other services directly through their television sets. In addition, the text-based Web content on the orf.at site was also successfully “translated” for television screens. However, since that time, the ORF has not provided any indication that that it plans to put the HbbTV services tested into live operation, in stark contrast to the trend among other public broadcasters in Europe. Instead, the ORF cooperated with A1 Telekom Austria to develop a solution which only allows A1 TV (IPTV) subscribers to access the ORF’s on-demand media library on their television screens. Moreover, the ORF has also apparently cooperated with the equipment manufacturer Samsung in the development of an application with which the owners of the latest Samsung equipment will also be able to access the content offered in the ORF’s TVthek media library on their flat screen televisions. In both cases, the solutions are proprietary ones which mainly generate value for Samsung and A1 TV – despite the fact that sales of HbbTV-compatible television sets have skyrocketed since the second half of 2011 (see next section).

At the same time, SevenOne Media Austria GmbH is apparently working to develop content for all users, as the group plans to launch HbbTV services for its PULS 4, ProSieben Austria and SAT.1 Österreich channels.

### Hybrid TV sales figures climbing steadily, availability of HbbTV equipment rising rapidly

Hybrid television sets and receivers already account for a significant share of the overall sales of television sets.<sup>8</sup> As early as 2010, one in five (20%) flat screen television set sold in Austria could be connected to the Internet (175,000 of 872,000 television sets sold). In 2011, the share of these television sets rose once again to 33% of all flat screen televisions sold (298,119 of 882,183, as of December 31, 2011). By the middle of that year, some 11% of the Internet-connectable televisions sold were HbbTV-compatible. From the third quarter of 2011 onward, however, the share of HbbTV-compatible television sets increased substantially. Whereas 12,368 HbbTV-compatible flat screen television sets were sold in the first half of 2011, the corresponding figure rose to 80,035 sets for the period from July to December 2011. Therefore, due to the especially strong sales in the second half of 2011, HbbTV-compatible flat screen television sets ultimately accounted for some 29% of all Internet-connectable television sets sold in 2011. However, this massive increase in the number of HbbTV television sets on the market was surpassed by a wide margin in the first quarter of 2012. Of the Internet-compatible television sets sold between January and March 2012, nearly 50% were HbbTV-compatible (January to March 2012: 212,000 flat screen television sets sold; 100,000 Internet-connectable, of which 49,600 were HbbTV-compatible). Despite these impressive developments, neither the ORF nor the Austrian private television broadcasters offer HbbTV services for these television sets.

The reason for the rapid increase in sales of HbbTV-compatible television sets is the fact that all major manufacturers have offered HbbTV-compatible television sets for the German market since the second half of 2011, and those sets have also reached the Austrian market. At first, the HbbTV feature was predominantly offered on the higher-priced television sets with larger screens. However, the sales figures in that category are rising at a disproportionately high rate, while sales of smaller screens (42 inches/107 cm or less) are slowly declining. For those sizes as well, however, the share of HbbTV-compatible / Internet-connectable television sets is also on the rise.

#### 10.1.5.2 Trend towards larger television screens

In Austrian television households, the market for flat screens has not shown any signs of saturation to date. In 2011, retail sales of flat screen television sets even increased slightly compared to the previous year (2010: 876,505 units sold; 2011: 882,183 units sold).

In this context, the trend is clearly moving towards larger screen sizes and higher screen resolutions.

The share of television sets with screens larger than 42 inches (107 cm) – usually 46 inches (117 cm) or larger – has increased significantly. Whereas only 83,200 television sets in this category were sold in 2010, this figure rose to 138,994 units in 2011. This represents a growth rate of approximately 67% in this size category. In contrast, sales of television sets with a diagonal measurement of less than 37 inches and 37 to 42 inches declined slightly (-7% and -5%, respectively) compared to 2010.

Full HD screens, which support HDTV content up to a resolution of 1080p, already accounted for a large share (66%) of all flat screen television sets sold in 2010. In 2011, this share once again rose substantially, this time to more than 76%.

The average price of full HD television sets fell by 11.4%, that is, from EUR 809.00 in 2010 to EUR 717.00 in 2011. The average price of television screens larger than 42 inches even dropped by a full 17.6% (2010: EUR 1,421.00; 2011: EUR 1,170.00).

<sup>8</sup> Consumer electronics sales figures / features: GfK Austria GmbH on behalf of RTR.

### 10.1.5.3 Availability of HDTV channels increases – but comes at a price

The trend towards larger screens with higher resolutions has also accelerated developments with regard to HD television content.

Whereas Austrian HD content was previously limited to Sky Österreich GmbH's pay television service and the ORF 1 HD, ORF 2 HD and ServusTV HD channels (available at no additional charge), PULS 4 and nine German private channels with partly tailored content for Austria also became available in HD format via satellite in the year 2011. These channels are available (albeit in encrypted form) under the product name "HD Austria" offered through the AustriaSat marketing platform. Most of the channels belong to the RTL or ProSiebenSat.1 Group. In order to receive these ten HDTV channels directly via satellite, subscribers are required to pay a monthly fee of EUR 6.90 (referred to as a "service charge").

HD Austria is comparable to Germany's HD+ service, which has been available in that country since 2009. The HD+ service currently includes twelve HDTV channels, for which subscribers also pay a "service charge" (EUR 50.00 per year).

### 10.1.5.4 DVB-T2 – New digital terrestrial television

The regulatory authority's invitation to tender for two nationwide multiplex coverage layers for the new digital terrestrial transmission standard DVB-T2 could create an interesting alternative to cable and satellite reception for many consumers and substantially enhance the attractiveness of the terrestrial platform for existing DVB-T users.

DVB-T2 represents the latest development of the DVB-T terrestrial transmission standard introduced in Austria in September 2006; the new standard enables the optimised use of the transmission capacity of television broadcasting channels in the relevant frequency spectrum. In DVB-T2, the audio and video signals are compressed using the MPEG-4 standard. In this way, DVB-T2 makes it possible to transmit a considerably larger number of television channels on one television broadcasting channel compared to DVB-T. Moreover, the performance capacity of DVB-T2 in connection with the MPEG-4 format also makes it relatively inexpensive to broadcast television channels in HD quality, which involves larger data volumes. In this way, DVB-T2 makes it possible to broadcast more channels as well as technologically advanced (HDTV) content.

The availability of DVB-T2 receivers is not likely to represent a major obstacle. DVB-T2 has already been deployed in other European countries, including the United Kingdom. The DVB-T receivers sold up to now are unable to process DVB-T2 signals. However, DVB-T2 receivers are capable of receiving and processing DVB-T broadcasts.

### 10.1.5.5 End of analogue satellite broadcasting for German television channels

On April 30, 2012, Germany's public and private broadcasters will discontinue the analogue transmission of their broadcasts via the ASTRA satellite (orbital position 19.2° east). In Germany, this step has been supported by a large-scale information campaign which was launched as early as April 2010.

In Austria, this process will affect not only some 56,000 remaining analogue satellite television households (as of December 2011), but also many shared reception systems such as those used in large residential complexes or in hospitals.

With press releases, information events and the web site <http://www.digitaler-rundfunk.at>, RTR has cooperated with the Association of the Austrian Electrical and Electronics Industries (FEEL) to inform the population and operators of shared reception systems in Austria about the upcoming shutdown of analogue satellite transmissions.

## 10.2 Development of the Austrian telecommunications markets

The year 2011 brought a major new development with regard to regulatory activities: The revised EU legal framework, which forms the basis for the Austrian Telecommunications Act 2003 (TKG 2003), was to be implemented by EU member states by 2011. Therefore, the seventh and most comprehensive amendment to the TKG 2003 (announced in Federal Law Gazette I No. 102/2011) went into effect on November 22, 2011. One essential change introduced in this legislation was that the market definition and market analysis procedures were merged, which will accelerate this crucial process in competition regulation. Moreover, the duration of market analysis cycles was extended from two years to three.

In the run-up to the next round of market analyses, which will begin in 2012, the regulatory authority carried out a data collection process as the basis for the upcoming analyses of the telecommunications markets. On the demand side, a representative sample of telecommunications consumers were surveyed (NASE 2011), and on the supply side a full survey of the Austrian telecommunications market (BAF 2011) was carried out in which data were collected from approximately 500 operators on their respective markets. The data collected will provide a basis for the upcoming analysis of telecommunications markets in 2012.

In 2011, a certain degree of market consolidation was observed due to the takeover of Silver Server GmbH (Silver Server) by Tele2 Telecommunication GmbH (Tele2); this takeover will have effects on the fixed-link and broadband markets in Austria. As the takeover was not completed until the end of 2011, it is not yet reflected in the data for the reporting period.

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 this section 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, a survey of Austria's largest operators).

For the years 2008 to 2010, the data in this section were updated using data from the operator survey conducted in 2011. Therefore, the information provided may deviate from the data published in the 2010 Communications Report, which was based on the data supplied within the framework of the Communications Survey Ordinance (KEV).

### 10.2.1 General market development

Once again, a decline in telecommunications revenues on the retail markets was observed in the year under review. These revenues fell by 1.9% in 2010 and then by a full 5.7% in 2011. Table 17 shows retail revenues in each telecommunications market (fixed-link, mobile, broadband, leased lines). In 2011, total revenues on the retail telecommunications markets came to EUR 3.844 billion, nearly two thirds (64.5%) of which can be attributed to mobile communications (including mobile broadband). Fixed-link telecommunications services accounted for 23.0%, and fixed-link broadband contributed 11.1% to overall revenues on the retail telecommunications markets. The smallest share of revenues came from the market for leased lines, which account for 1.4% (EUR 52 million) of overall retail revenues.

**Table 17: Development of retail telecommunications revenues, 2009 to 2011**

	2009 (EUR millions)	2010 (EUR millions)	2011 (EUR millions)	Change in %, 2009–2010	Change in %, 2010–2011	Percentage of total revenues, 2009	Percentage of total revenues, 2010	Percentage of total revenues, 2011
Fixed-link network*	989	945	885	-4.4	-6.3	23.8	23.2	23.0
Mobile networks	2,652	2,642	2,481	-0.4	-6.1	63.8	64.8	64.5
Broadband**	441	430	427	-2.5	-0.7	10.6	10.5	11.1
Leased lines	73	59	52	-18.8	-12.5	1.8	1.5	1.4
<b>Total</b>	<b>4,155</b>	<b>4,076</b>	<b>3,844</b>	<b>-1.9</b>	<b>-5.7</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

\* 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 based on data from RTR's operator survey, the values shown here differ slightly from those previously indicated in the 2010 Communications Report.

Source: RTR

Table 18 shows the development of traffic volumes and the number of lines/connections in each business area. The number of call minutes on the fixed-link network continued to drop steadily and came to 4.8 billion minutes in 2011, which represents a decline of 14.88% compared to 2010. After a slight increase in 2010, the number of fixed-link lines fell once again in 2011, albeit only slightly (0.29%).

The mobile communications market continued to grow in terms of the number of activated subscriber numbers as well as call minutes, but neither value increased as drastically as it had in 2010. In total, there were 13 million activated subscriber numbers at the end of 2011, which represents a mobile penetration rate of 154% (population: 8.44 million). The total number of call minutes on the mobile networks came to 22.2 billion in 2011. The number of call minutes continued to climb steadily, but this development was not as strong as in previous years. Whereas the growth rate in 2009 came to 7.7%, it slowed to approximately 4% in 2010 and 1.04% in 2011. Therefore, while the number of call minutes has decreased markedly in fixed-link telephony, the corresponding figure has continued to climb in mobile communications.

Mobile broadband is also seeing increased use in Austria. This form of broadband access has been growing steadily, most recently by 16.82% to 1.79 million connections in 2011. The number of fixed-link broadband connections also increased, but not to the extent observed in mobile broadband. In 2011, the number of fixed-link broadband lines rose by 8.93% compared to 2010. At the end of the reporting period, the total number of fixed-link broadband connections came to 2.16 million, or 55% of the overall number of broadband connections.

Growth in the number of leased lines (in terms of 64 Kbit/s equivalents) also remained steady in the year under review. This can largely be attributed to increased demand for leased lines with higher bandwidths. However, this growth was not observed in revenues, which actually declined in the reporting period (cf. Table 17).

**Table 18: Overall development of traffic volumes and lines/subscribers, 2009 to 2011**

	Unit	2009 (millions)	2010 (millions)	2011 (millions)	Change in %, 2009–2010	Change in %, 2010–2011
<b>Fixed-link network</b>	Call minutes*	6,370.16	5,622.69	4,785.80	-11.73	-14.88
	Lines	2.75	2.78	2.77	1.13	-0.29
<b>Mobile</b>	Call minutes	21,113.01	21,955.84	22,184.80	3.99	1.04
	Subscribers (contract and prepaid)**	11.10	12.20	13.00	10.32	6.38
<b>Broadband</b>	Fixed-link connections	1.83	1.98	2.16	8.11	8.93
	Mobile connections	1.30	1.53	1.79	18.10	16.82
<b>Leased lines</b>	64 Kbit/s equivalents	4.14	5.00	5.36	20.63	7.27

\* Minutes including dial-up services and public pay telephones, not including service numbers.

\*\* Number of activated subscriber numbers

Due to subsequent corrections based on data from RTR's operator survey, the values shown here differ slightly from those previously indicated in the 2010 Communications Report.

Source: RTR

A comparison of the development of revenues in Table 17 with the traffic volumes in Table 18 reveals partly conflicting developments. On the fixed-link market, revenues and call minutes both declined to a similar extent in 2011. The mobile segment continued to exhibit growth in the number of call minutes, activated subscriber numbers and mobile broadband, while revenues continued to decline; this market has seen significant price decreases in recent years.

Prices have also declined substantially in the fixed-link broadband market: Revenues have stagnated, while the number of lines has increased markedly. These price reductions can be attributed in particular to bundled offers in which retail customers can subscribe to packages containing multiple services (e.g. fixed-link telephony and broadband). These packages also make it more difficult to break down revenues from fixed charges by individual service, which may bring about a certain degree of imprecision in the allocation of revenues to specific segments.

## 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 Austria AG (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 19, 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 (which was taken over by Tele2 at the end of 2011), while Vol is offered by Skype and Sipgate, to name just a few examples.

Table 19 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 19: Business models for voice telephony at fixed locations**

<b>Incumbent / former monopolist</b>	A1 Telekom as the only nationwide, fully vertically integrated company		
<b>(Alternative) Communications network or service providers (types)</b>	<b>Purchased services (esp. from incumbent operator)</b>	<b>Self-provided services</b>	<b>Investment requirements</b>
<b>Subscriber network operator</b>	<ul style="list-style-type: none"> <li>▪ Interconnection</li> <li>▪ Poss. leased lines</li> <li>▪ Poss. unbundling</li> </ul>	<ul style="list-style-type: none"> <li>▪ Operation of access and core network (e.g. local loops, transmission and switching facilities)</li> <li>▪ Service design</li> <li>▪ Pricing</li> <li>▪ Sales/billing</li> </ul>	High
<b>Carrier network operator</b>	<ul style="list-style-type: none"> <li>▪ Interconnection</li> <li>▪ Poss. leased lines</li> </ul>	<ul style="list-style-type: none"> <li>▪ Operation of core network (e.g. transmission and switching facilities)</li> <li>▪ Service design (limited)</li> <li>▪ Pricing</li> <li>▪ Sales/billing</li> </ul>	Medium
<b>Resellers (carrier network)</b> (provision of CPS/CbC using a separate dialling code or via the carrier network partner)	<ul style="list-style-type: none"> <li>▪ Connection minutes</li> </ul>	<ul style="list-style-type: none"> <li>▪ Pricing</li> <li>▪ Sales/billing</li> </ul>	Low
<b>Resellers (other)</b> (e.g. calling cards, telephone shops, dial-in telephone service)	<ul style="list-style-type: none"> <li>▪ Connection minutes</li> </ul>	<ul style="list-style-type: none"> <li>▪ Pricing</li> <li>▪ Sales/billing</li> </ul>	Low
<b>Combined forms</b>	Combinations of the alternative business models above		

Source: RTR

### 10.2.2.2 Retail markets for fixed-link communications

#### Market participants

The shares of call minutes attributable to the five largest service providers on the fixed-link retail market are shown in Table 20. Taken together, these providers cover more than 80% of the call minutes handled on the retail market. As the takeover of Silver Server by Tele2 was not completed until late 2011, this development is not yet reflected in the figures below.



**Table 20: Largest providers on the retail fixed-link market in 2011**

Provider	Share of call minutes
A1 Telekom	approx. 55%
Tele2	< 20%
UPC	> 5%
COLT	< 5%
FINAREA	< 5%

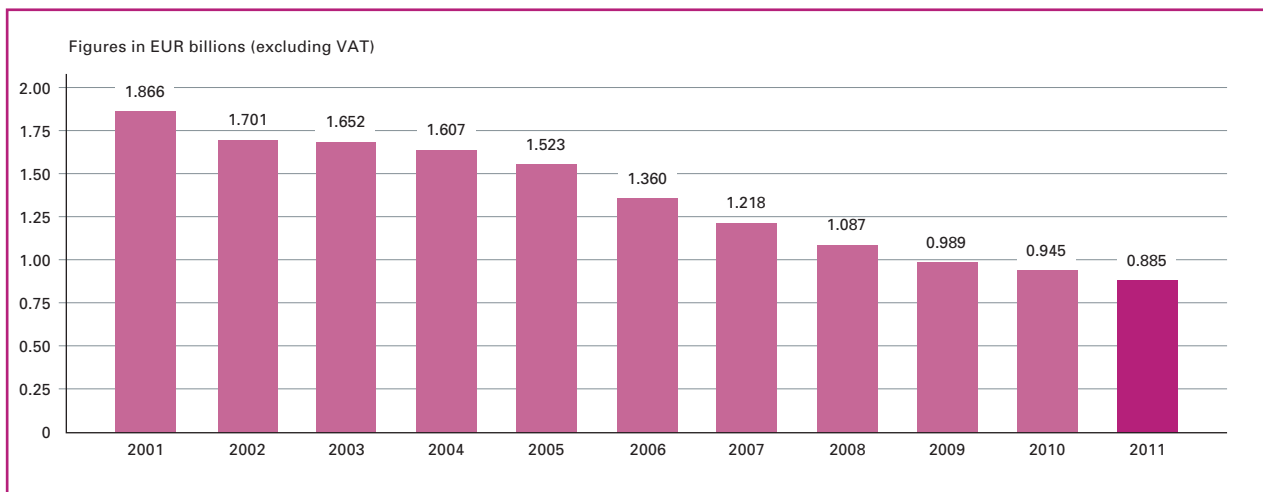
Source: RTR

**Structural developments on the fixed-link market**

The development of revenues on the retail fixed-link market (see Figure 34) shows a clear downward trend over time. The revenues shown here include carrier 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.

Since 1999, a steady decline in revenues has been observed in fixed-link telephony. In 2011, total revenues on this market fell by 6.3% to EUR 885 million, meaning that these revenues have dropped by half over the last ten years. In contrast, the decline in the number of fixed-link lines (as discussed in the previous section) has been substantially less pronounced, which can be explained at least partly by the increasing significance of bundled products on the fixed-link telephony market in recent years.

**Figure 34: Development of retail fixed-link revenues, 2001 to 2011**



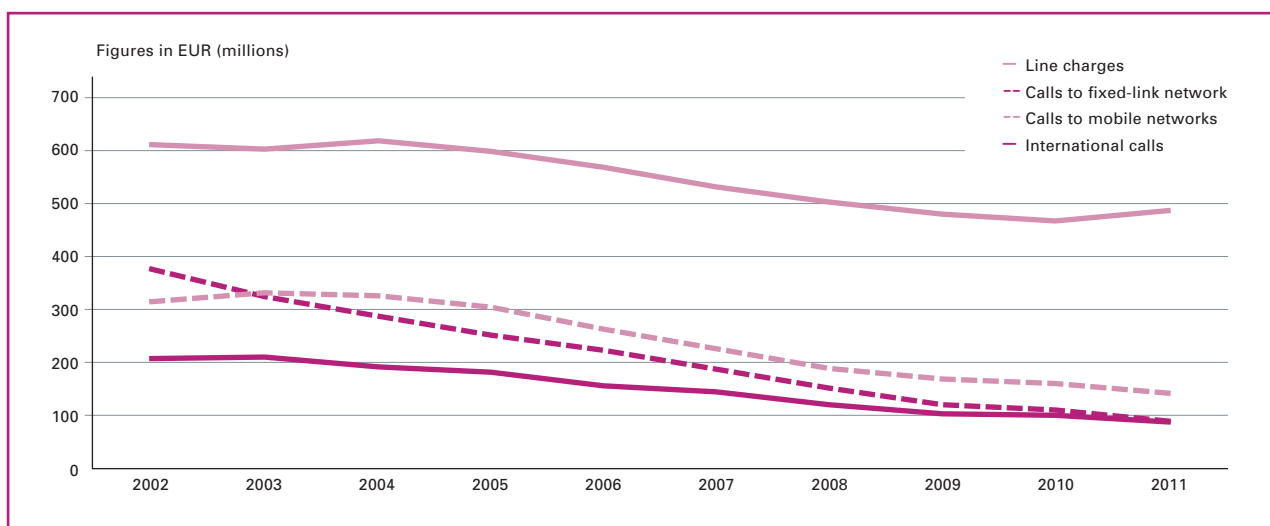
Due to subsequent corrections based on data from RTR’s operator survey, the values shown here differ slightly from those previously indicated in the 2010 Communications Report.

Source: RTR

Figure 35 shows the development of revenues in each charge category (line charges, calls to mobile networks, calls to fixed-link networks and international calls) in recent years. The largest decline was observed in charges for calls to fixed-link networks (-18% compared to the previous year) and international calls (-13%). Revenues from calls to mobile networks have also decreased steadily since 2003 (most recently by 11%). This decline in call charges can primarily 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 and has steadily decreased the number of calls made from the fixed-link network. The revenues in this segment have fallen continuously as a result.

In contrast, the decline in line charges has been less pronounced over time. In 2011, this figure even rose by 4%. Since the start of the observation period, revenues from line charges have dropped by 20%, while revenues from call charges in 2011 have plummeted to one third of the revenues reported in 2002.

**Figure 35: Development of retail fixed-link revenues by segment**



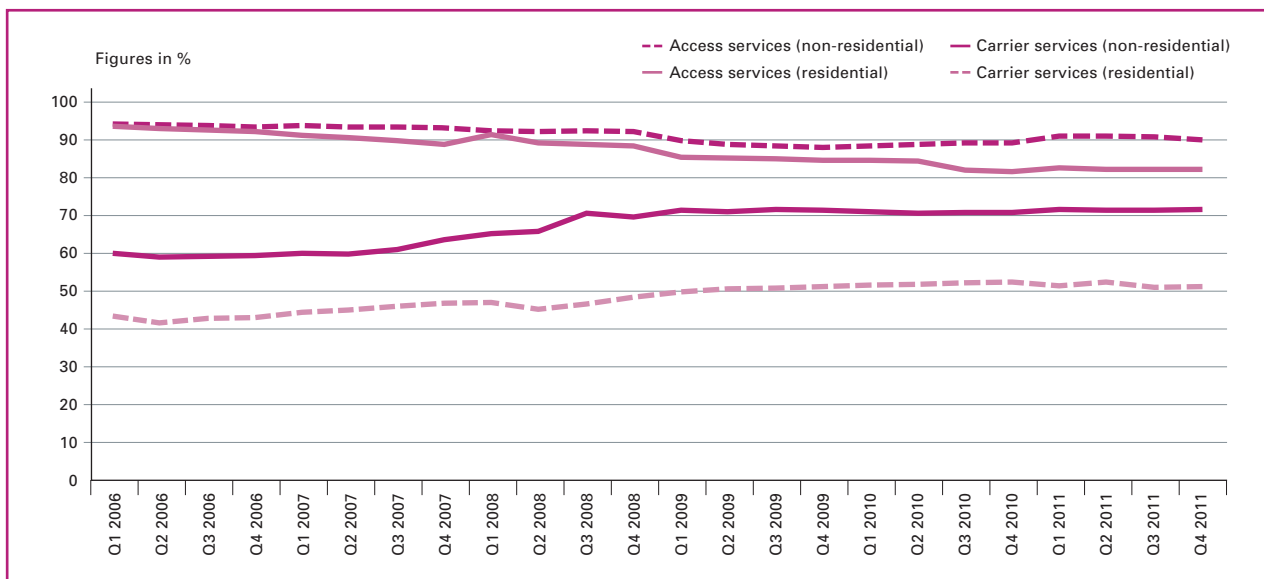
Due to subsequent corrections based on data from RTR's operator survey, the values shown here differ slightly from those previously indicated in the 2010 Communications Report.

Source: RTR

A1 Telekom's market shares in terms of revenues (as shown in Figure 36) barely changed in the course of the year 2011. In access services, A1 Telekom holds a market share of 82% in the residential segment, and this share is even larger in the non-residential segment (90%). The slightly more competitive situation in the residential segment can be attributed in particular to the unbundling activities of Tele2 and the gains posted by the cable network operator UPC. In the business segment, alternative operators have not yet been able to establish themselves to the same extent as in the residential segment.

A1 Telekom's market share in terms of revenues from call charges is substantially lower than in the case of access services. In the non-residential segment, A1 Telekom commands a market share of 72%, and this value has remained largely unchanged since early 2009. Alternative operators have enjoyed the greatest success in carrier services (calls to mobile networks, to the fixed-link network and to international destinations) for residential customers, where A1 Telekom's market share – 51% in the fourth quarter of 2011 – was substantially lower than in the other areas. This value has likewise shown very little fluctuation in recent years. Apparently, it is becoming increasingly difficult for conventional carrier network operators to sustain their positions on the market in times of decreasing traffic volumes and shrinking profit margins as well as increasing competition in bundled products, which of course go well beyond the scope of classic carrier services.

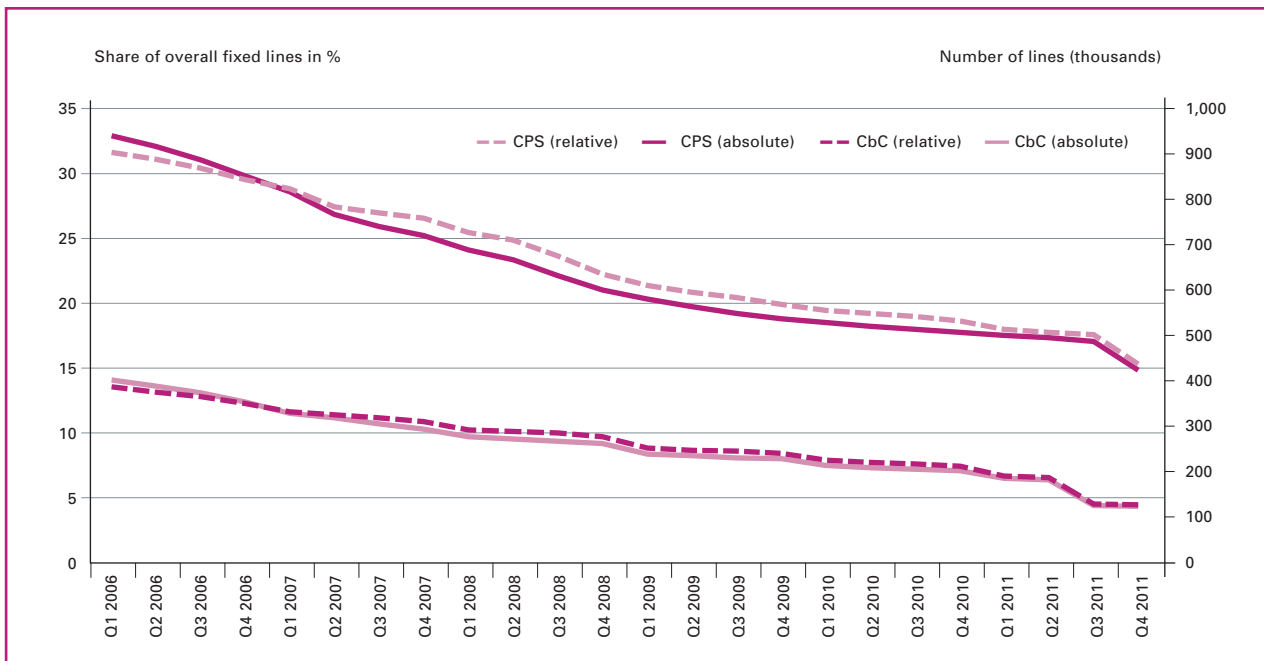
**Figure 36: A1 Telekom's share of revenues from access and carrier services by customer segment, 2006 to 2011**



Source: RTR

The development of the alternative network operators' market shares in 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 subscribers in relation to the overall number of fixed lines. Both CPS and CbC have followed a similar – declining – trend. Since the fourth quarter of 2010, the number of CPS lines has declined by 16%, falling to a total of approximately 423,000 lines (15% of all fixed lines) at the end of 2011. The number of CbC customers has declined even more sharply, dropping a full 39% between the fourth quarter of 2010 and the end of 2011. Overall, CbC services were used on 4% (123,000) of all fixed lines. The sharp decrease in the third quarter of 2011 can be attributed to data corrections by one operator, among other factors.

**Figure 37: Development in number of CPS and CbC customers, 2006 to 2011**



Due to subsequent corrections based on data from RTR's operator survey, the values shown here differ slightly from those previously indicated in the 2010 Communications Report.

Source: RTR

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

In order to offer their services 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.

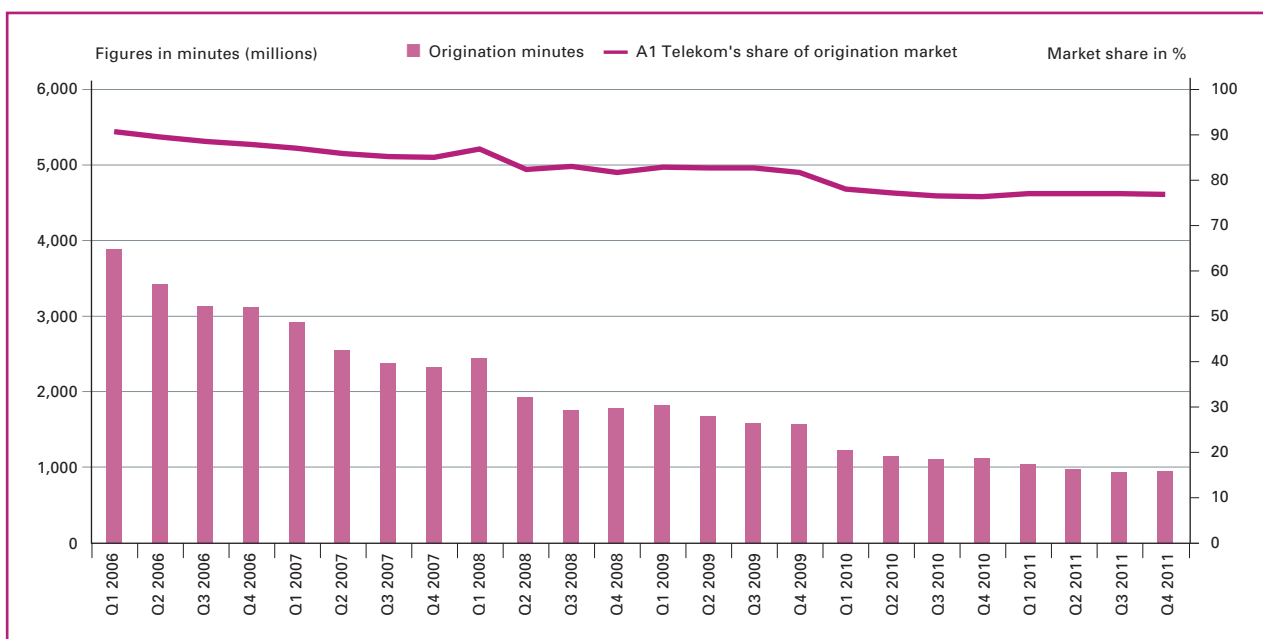
Depending on the infrastructure they have at their disposal, operators can either provide origination services themselves or purchase those services on the wholesale market. If an operator has customers connected directly to its network, the operator itself provides the origination service (i.e. as a 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). The 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.

On the origination market (including internally provided services), A1 Telekom still holds a very large market share (cf. Figure 38) which has largely remained stable in the last two years. 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), 2006 to 2011**



Source: RTR

Table 21 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 21: A1 Telekom's origination charges as of December 31, 2011 (EUR 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.

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 22. The charges set for alternative operators are higher compared to those of A1 Telekom due to differences in network structure.

**Table 22: Termination charges of A1 Telekom and alternative operators as of December 31, 2011 (EUR 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.

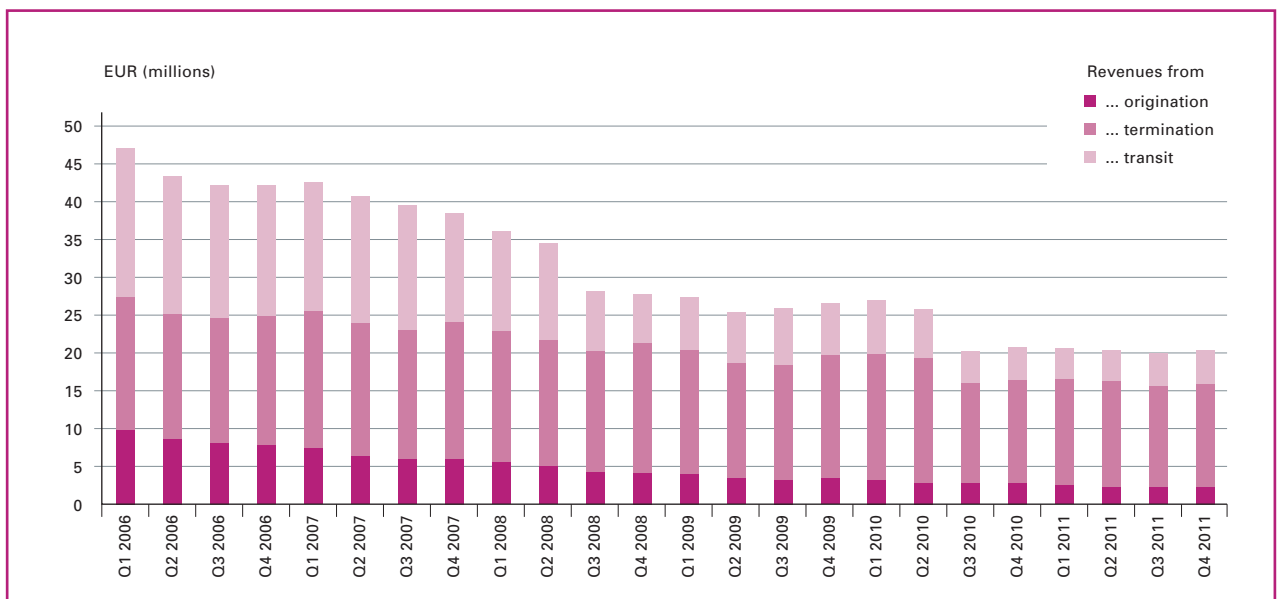
All network operators which transport traffic from one exchange to another provide services on the transit market. This service may be provided within as well as beyond the boundaries of the operator's own network. The operators which offer services on this market thus include subscriber network operators and "pure" transit network operators, as well as carrier network operators which 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 with each other. 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 several 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.

### 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 amalgamation of mobilkom (A1) and Telekom Austria to form A1 Telekom Austria AG, as the revenues between those two companies have now been eliminated from this market.

**Figure 39: Development of revenues on wholesale fixed-link markets**



Source: RTR

## 10.2.3 Mobile communications

### 10.2.3.1 Market participants

During the reporting period, there were four economically independent mobile network operators (MNOs) operating on the Austrian market. New MNOs can only enter the market if they can obtain frequency usage rights through assignments or transfers. Austria's fully integrated mobile network operators are A1 Telekom, T-Mobile, Orange and Hutchison.

Mobile virtual network operators (MVNOs) are communications network operators which do not have their own radio communications networks (or have not been allocated frequency usage rights), but they do operate essential network elements in the core network (home location register [HLR], mobile switching centre [MSC], etc.), have the corresponding addressing elements (e.g. a mobile network code), and administer SIM cards themselves. Operators in this category are active on all wholesale and retail markets except for the Austrian wholesale market for international roaming. According to the definition above, the only MVNO currently operating in Austria is Mundio with its “Vectone Mobile” brand.

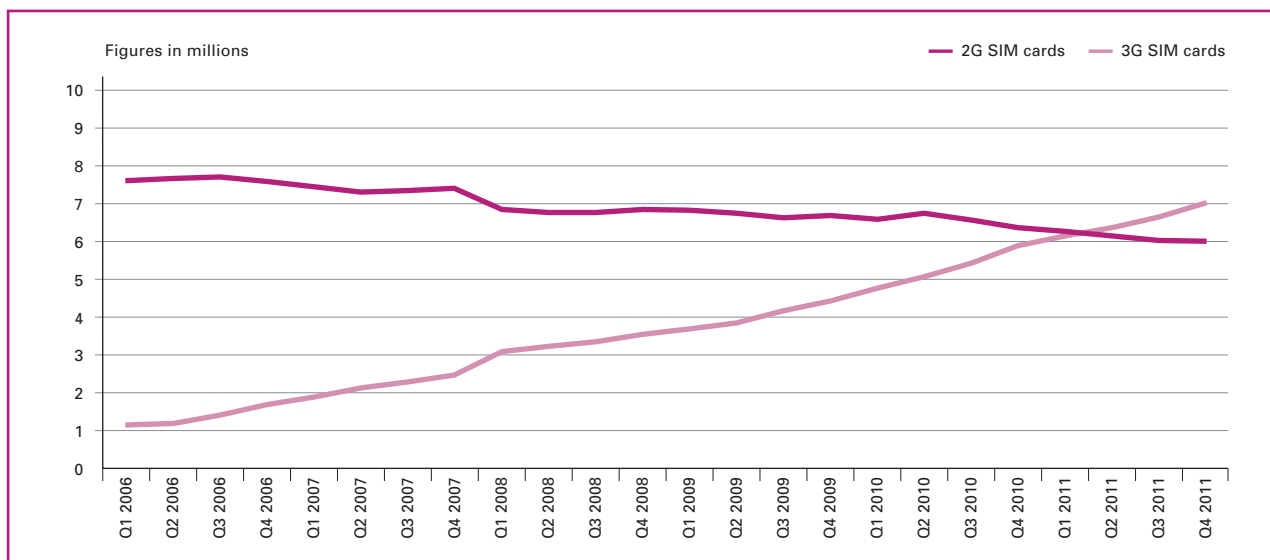
The primary function of airtime resellers is the separate marketing of mobile communications services in their own name and for their own account. However, they are not in any way involved in the production process underlying mobile services. Operators in this category only provide services at the retail level (customer support, billing and acquisition). In 2011, there were only very few independently owned, active airtime resellers in Austria.

### 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) 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, falling to approximately 6 million at the end of 2011. By the end of 2011, over 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, 2006 to 2011**



Due to subsequent corrections by the network operators, the values shown here differ slightly from those originally reported in the 2010 Communications Report.

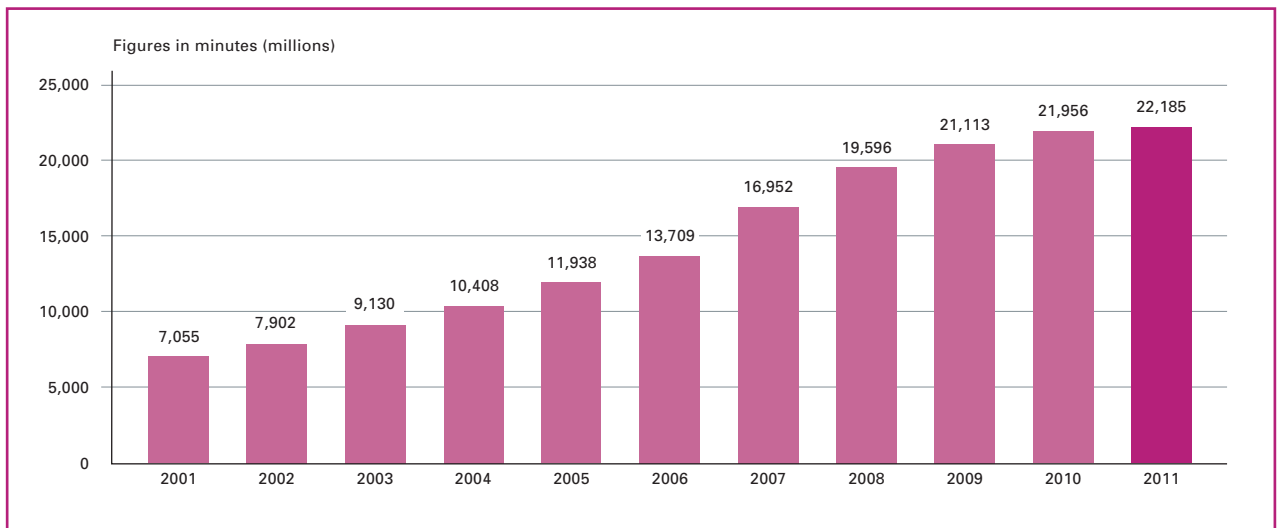
Source: RTR



## Development of call minutes and text messages

The number of call minutes continued to rise in 2011, albeit less rapidly compared to the previous years. Figure 41 shows the number of technical call minutes on the retail mobile market; in 2011, this figure came to more than 22 billion. Call minutes consistently showed very 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 mobile service packages were introduced. In the ensuing years, the growth rate declined steadily. In the year under review, the number of mobile call minutes rose by only 1% compared to the previous year.

**Figure 41: Call minutes on the retail mobile communications market (technical measurement\*), 2001 to 2011**

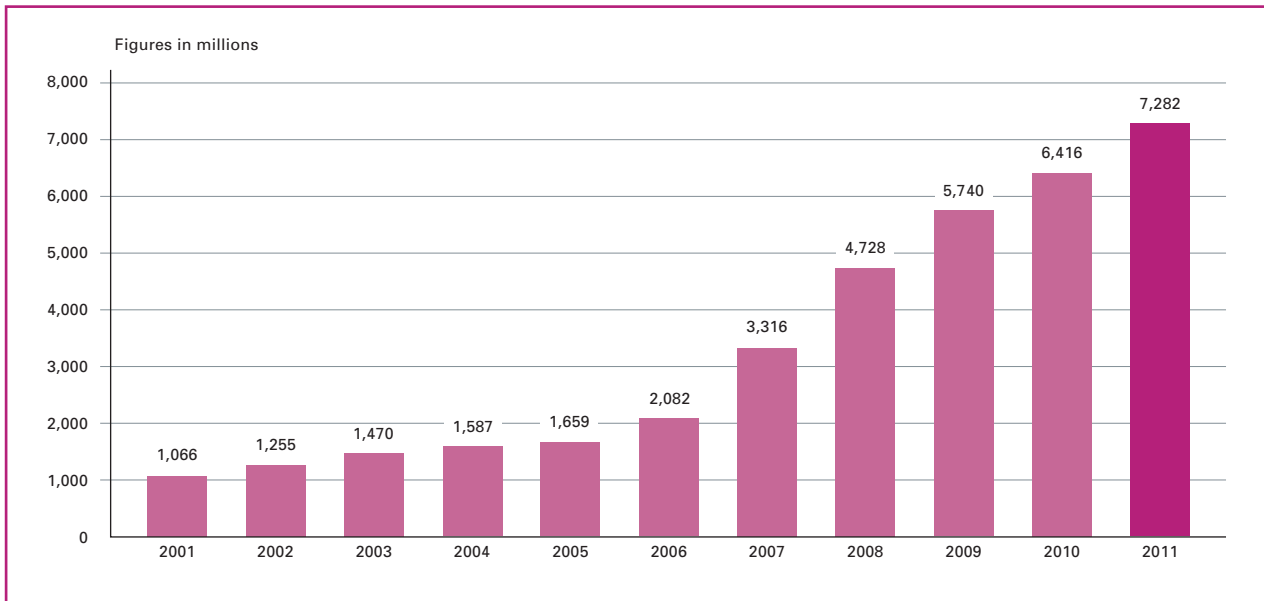


\* This figure refers to the actual time retail customers spent talking on their mobile phones (without accounting for billing increments). In contrast, billed call minutes refer to the number of call minutes charged to retail customers (using the applicable billing increments).

Source: RTR

Due to the above-mentioned introduction of flat rate packages, the growth rate in the number of text messages sent likewise reached a peak of 59% in 2007. In the ensuing years, growth declined steadily; the lowest growth rate in the last six years (12%) was observed in 2010. In 2011, the number of text messages sent rose by 13%, meaning that the growth rate increased by one percentage point compared to the previous year. As shown in Figure 42, subscribers to Austrian mobile services sent approximately 7.3 billion text messages in the reporting period.

**Figure 42: Text messages on the retail mobile communications market (technical measurement\*), 2001 to 2011**

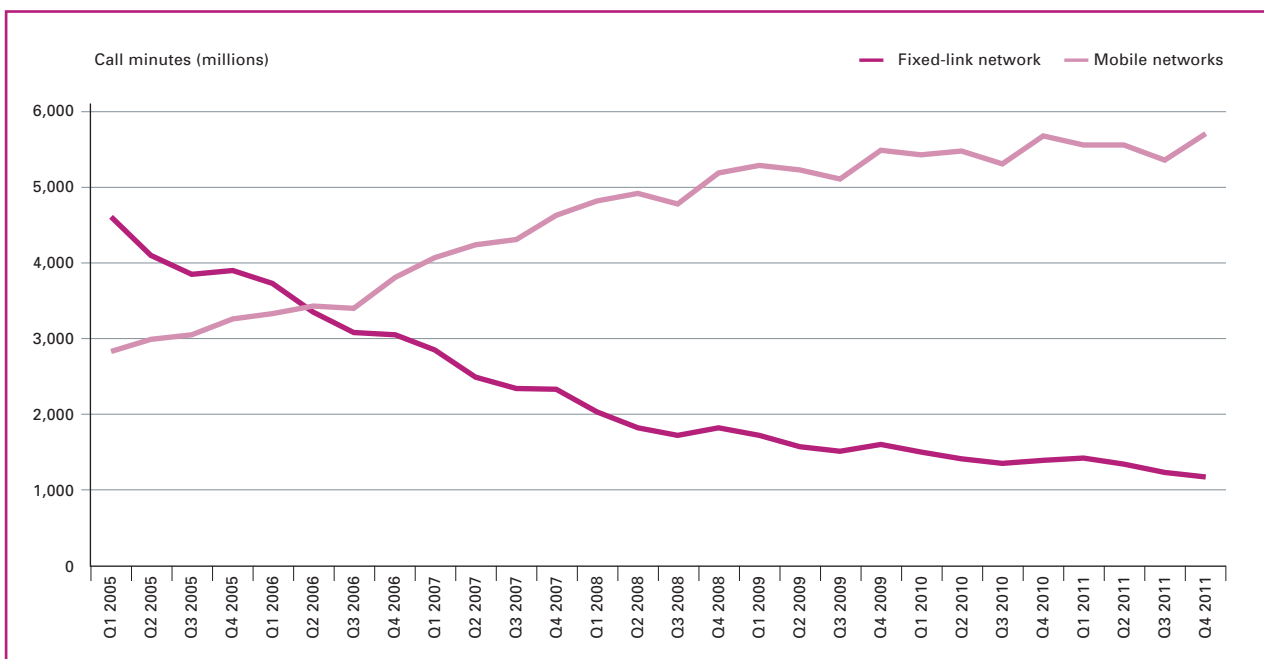


\* This figure refers to the actual number of text messages sent by retail customers. In contrast, billed text messages refer to the number of text messages charged to retail customers.

Source: RTR

The increasing importance of the mobile sector in voice telephony also becomes apparent in a direct comparison of call minutes in fixed-link and mobile networks. At the beginning of the time period shown in Figure 43, the fixed-link networks were clearly in the lead with 4.6 billion call minutes. In the second quarter of 2006, fixed-link and mobile networks saw an equal number of call minutes. Finally, at the end of 2011, the mobile networks saw a total of 5.7 billion minutes, while the fixed-link networks handled only 1.2 billion minutes. Therefore, the number of call minutes in mobile networks is now nearly five times the number of call minutes in fixed-link networks.

**Figure 43: Retail call minutes (technical measurement) in fixed-link and mobile networks, 2005 to 2011**

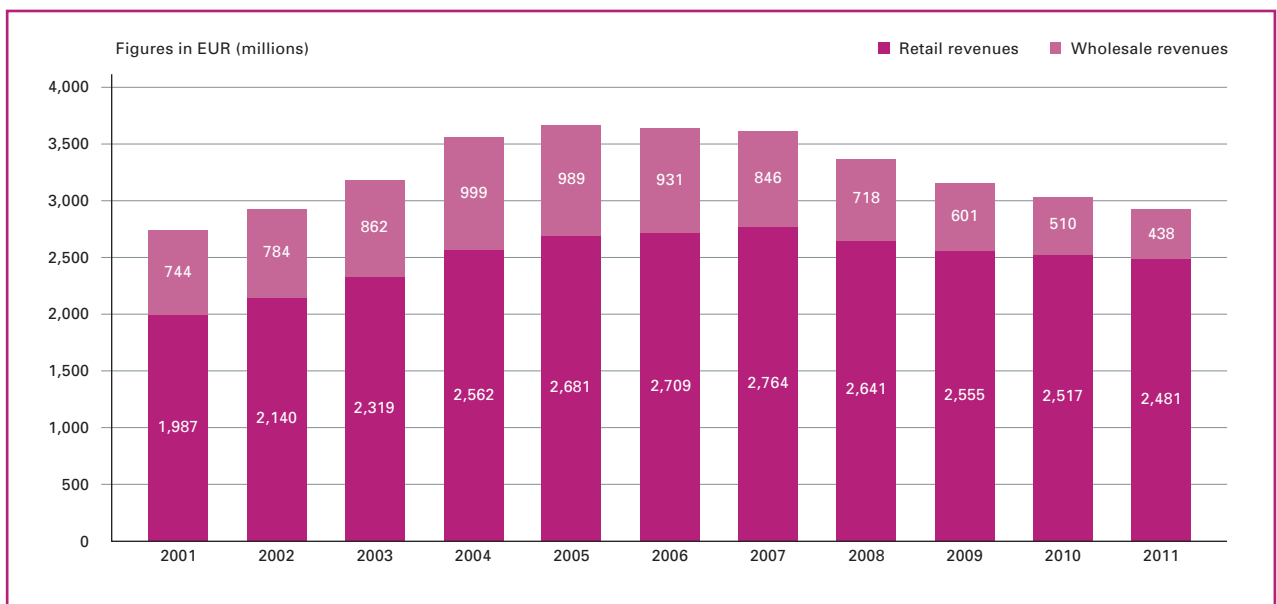


Source: RTR

## Development of revenues

In 2011, revenues in the mobile sector developed as they had in previous years. Despite a rapidly growing number of subscribers and continued growth in traffic volumes, overall revenues dropped slightly in the reporting period (cf. Figure 44). This decline can mainly be attributed to revenues at the wholesale level, which dropped by EUR 71 million (-14%); in contrast, retail revenues fell by only 1.4%. This can largely be attributed to the gradual reduction of termination charges as well as the further reduction of charges for international roaming in accordance with the EU Roaming Regulation. However, the fact that wholesale revenues decreased significantly in this sector also means that expenses have been reduced. Given equal traffic volumes between two operators, this development would even yield a balance of zero. Therefore, the decline in revenues has only had a partial impact on profits.

**Figure 44: Development of revenues in mobile communications, 2001 to 2011**



Due to subsequent corrections by the network operators, the values shown here differ slightly from those originally reported in the 2010 Communications Report.

Source: RTR

The calculation of revenues in Figure 44 is based on the following income types:

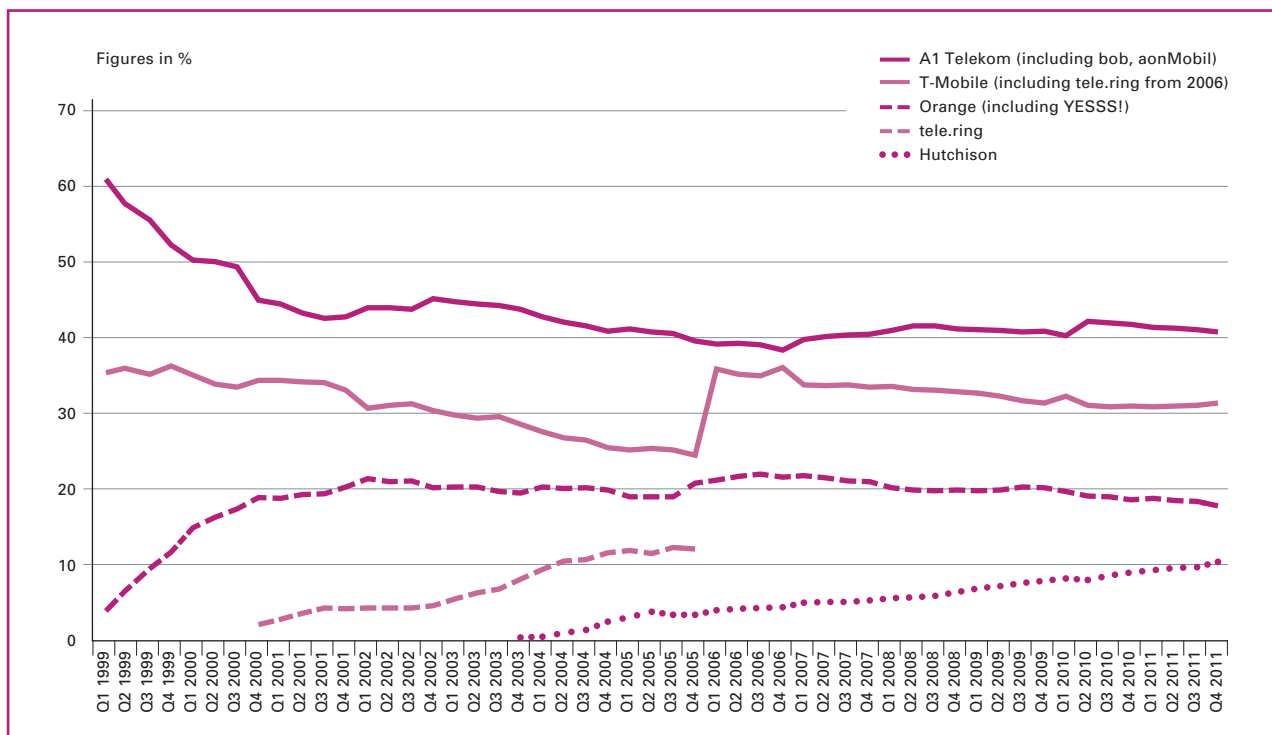
- Retail revenues: Carrier charges for voice calls, text messages and data services, periodic base fees and activation fees;
- Wholesale revenues: Revenues from voice termination and text messages, revenues from inbound international roaming (i.e. customers from abroad making calls in Austria).

### 10.2.3.3 Market shares and concentration

Figure 45 shows the development of mobile operators' market shares, measured in terms of each operator's number 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 sudden increase in T-Mobile's market share can be attributed to that company's takeover of tele.ring in 2006. At the end of 2006, the market shares held by T-Mobile and A1 Telekom were nearly equal. From early 2007 onward, A1 Telekom's market share rose slowly, coming to just over 40% at the end of 2011, while T-Mobile's market share has stabilised around 31% in the last two years. Orange's market share has dropped slightly in the last two years, coming to approximately 18% at the end of 2011. In contrast, Hutchison has consistently managed to increase its market share, which had reached 10% by the end of 2011.

**Figure 45: Development of mobile market shares (basis: number of subscribers), 1999 to 2011**



Source: RTR

## 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 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.<sup>9</sup>

This section first discusses the essential broadband technologies in use and the wholesale products available on the basis of regulatory obligations. On that basis, a description of developments on the retail broadband market and then on the wholesale broadband market is provided. The section ends with a discussion of key developments in the construction of next generation access (NGA) networks.

### 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.

**Table 23: Broadband access technologies**

Access technology	Largest providers	Availability (in % of population)
<b>(x)DSL:</b> Copper-based access technology	A1 Telekom Tele2, UPC (unbundled lines)	> 99% Unbundled lines: approx. 65%
<b>Cable broadband:</b> DOCSIS coaxial cable-based access technology	UPC, LIWEST, Salzburg AG, kabelplus, Teleport, Cablecom	approx. 50%
<b>Mobile broadband:</b> UMTS/HSPA/LTE access technology in mobile networks	A1 Telekom (including bob), T-Mobile (including tele.ring), Orange (including YESSS!), Hutchison	approx. 95%

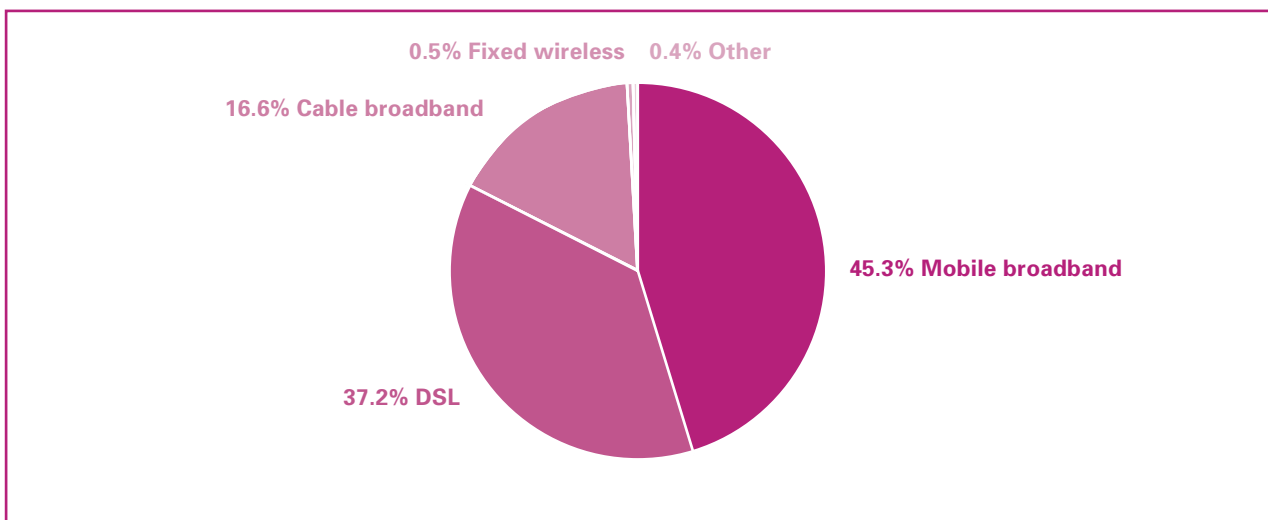
Source: RTR

<sup>9</sup> See RTR (2011): Die österreichischen Telekommunikationsmärkte aus Sicht der Nachfrager im Jahr 2011, available at <http://www.rtr.at> (in German).

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 at the end of 2011. 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 2011. Mobile broadband includes all dedicated broadband connections in which at least 250 MB are included in the monthly base fee or, in the case of prepaid cards, through which the subscriber accessed the Internet at least once 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 mobile broadband connections used as a complement to fixed broadband access as well as multiple mobile broadband connections in a single household or business.

**Figure 46: Share of broadband access technologies (as of December 31, 2011)**




Source: RTR

### Wholesale products

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 areas where new technologies are rolled out (NGA rollout areas).

- **Local loop unbundling:** 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 (e.g. using leased lines or



Ethernet services). Most unbundled lines are used to provide broadband Internet services, which are usually bundled with voice telephony services. At the end of 2011, the number of broadband lines realised by means of local loop unbundling came to approximately 192,500, or 5.4% of all broadband connections (including mobile broadband) and 13.1% of all DSL connections in Austria.

- **Virtual unbundling:** In Decision M 3/09, which was issued by the TKK 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 local loop 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.<sup>10</sup> 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, but the alternative operators did not take advantage of this offer during the reporting period.
- **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 obligations<sup>11</sup> and by some alternative operators (unbundling partners, cable network operators). At the end of 2011, A1 Telekom bitstream access was used to provide approximately 42,400 broadband connections.

#### 10.2.4.3 Development of retail markets

In line with RTR's market definitions from the year 2009,<sup>12</sup> 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 access market 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.<sup>13</sup> However, the development in the number of lines on the retail markets in 2011 in the chart below cannot be broken down into residential and business customers, as the corresponding data are not available at this level for the entire time period. 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, broken down into the most important transmission technologies. At the end of 2011, the total number of broadband connections came to approximately 3.9 million. This number has continued to grow substantially faster than the number of DSL and cable broadband connections.

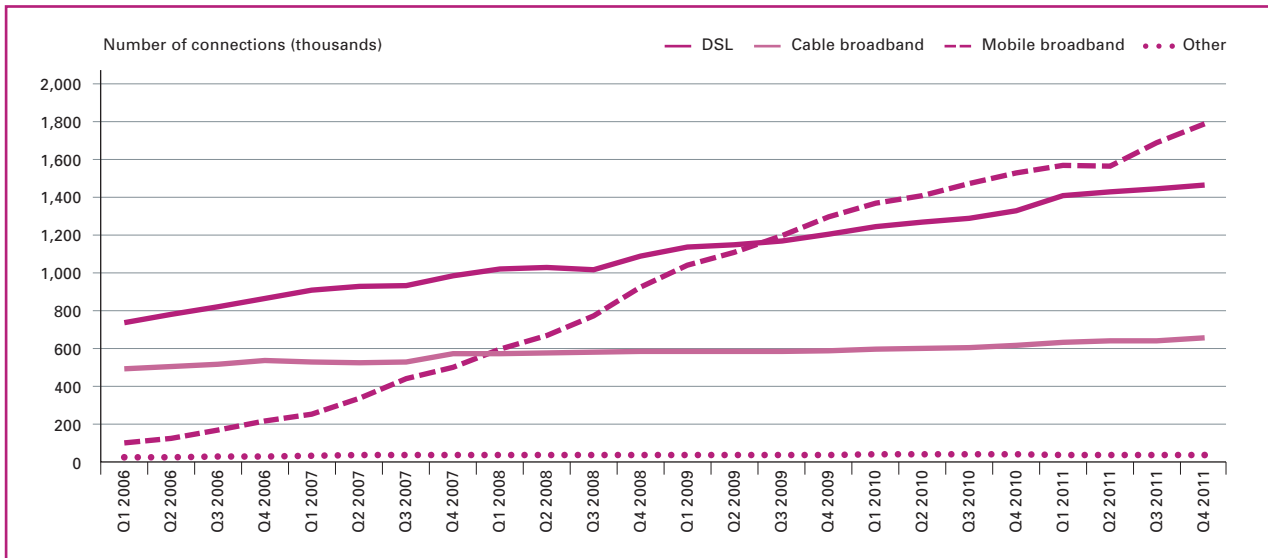
<sup>10</sup> Where technically possible in the A1 Telekom network.

<sup>11</sup> The regulatory obligation only refers to bitstream products for the provision of lines for non-residential customers.

<sup>12</sup> 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](http://www.rtr.at/de/komp/Konsultation_TKMV08/Begleittext_zur_Novelle_der_TKMV_2008.pdf) (in German).

<sup>13</sup> However, A1 Telekom still offers the corresponding wholesale products.

**Figure 47: Development in number of broadband connections, 2006 to 2011<sup>14</sup>**



Due to subsequent corrections by the network operators, the values shown here differ slightly from those originally reported in the 2010 Communications Report.

Source: RTR

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 form of 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. Overall, the competitive pressure exerted by mobile broadband on fixed broadband in the residential segment has apparently remained significant despite a certain tendency towards price increases (e.g. through the introduction of a yearly “Internet service charge” or “service charge” by the largest fixed-link operators A1 Telekom, UPC and Tele2 as well as the mobile operators).

By taking over the third-largest unbundling partner Silver Server, Tele2 mainly expanded its presence in the business segment.

<sup>14</sup> For the years 2008 to 2010, the information provided here was updated using data from the operator survey conducted in 2011 (full survey). Therefore, the information provided may deviate from the data published in the 2010 Communications Report, which was in part based on the data supplied within the framework of the Communications Survey Ordinance (KEV).

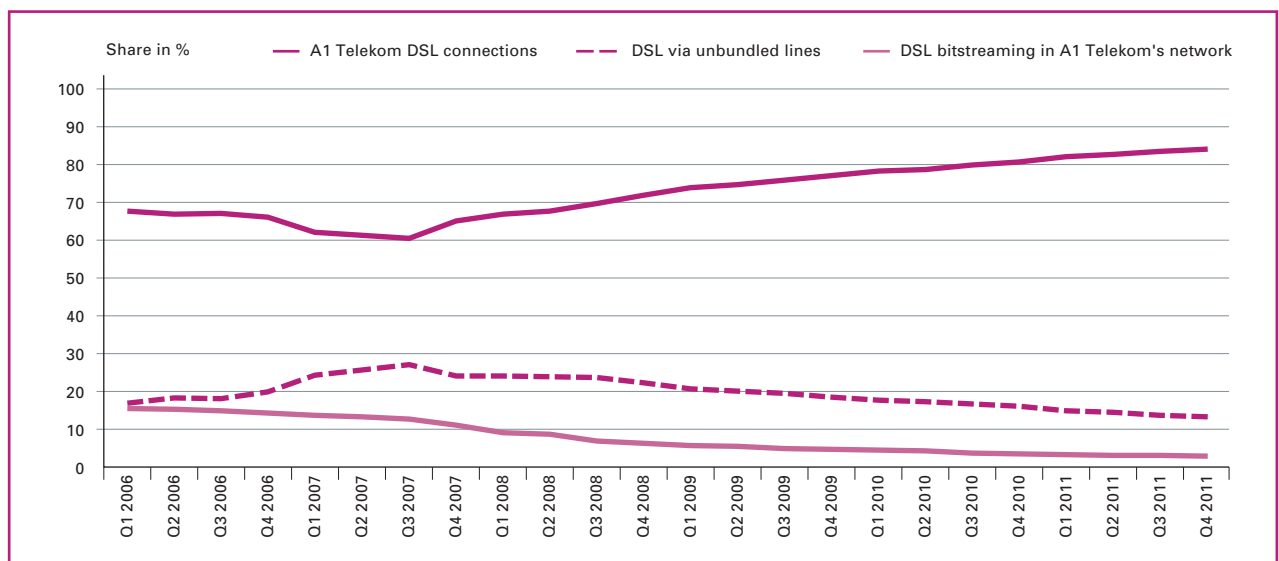


#### 10.2.4.4 Development of wholesale markets

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.

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 since Q4 2007 and had already recovered to more than 80% of DSL connections at the end of 2011.

**Figure 48: Share of DSL connections based on bitstreaming and unbundling, 2006 to 2011**




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 in 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.

However, these developments cannot be automatically equated to a reduction in competition on the retail broadband market, as this competition – at least in the residential segment – is largely driven by cable and mobile network operators which are not dependent on A1 Telekom's wholesale products.

#### 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]).



After launching NGA in the towns of Villach and Klagenfurt in 2010, A1 Telekom rolled the new technology out to further areas using FTTC in 2011, thus offering bandwidths of up to 30 Mbit/s (downstream). Since October 2011, A1 Telekom has also offered FTTH connections with bandwidths of 50 or 100 Mbit/s in parts of the 15<sup>th</sup> and 19<sup>th</sup> districts of Vienna (and in several newly constructed residential buildings).

In some cases, bandwidths in cable networks were increased substantially by implementing fibre optics and the DOCSIS 3.0 transmission technology. Austria's largest cable network operators – UPC, LIWEST, Salzburg AG and kabelplus (formerly Kabelsignal and B.net) – now offer bandwidths of up to 100 Mbit/s; these services cover some 45% of Austria's population.

Finally, the mobile network operators continued to roll out HSPA+ in their networks in 2011; this technology enables transmission speeds of up to 42 Mbit/s. This has markedly increased the actual bandwidths which can be attained in mobile networks. According to *Connect* magazine (2010/2012), the bandwidths achieved in Austrian cities were between 1 and 3 Mbit/s at the end of 2010, but this figure had reached 3 to 13 Mbit/s by the end of 2011.<sup>15</sup> These bandwidths are comparable to those offered by the most commonly used fixed-link products (8 to 16 Mbit/s). A1 Telekom, T-Mobile and Hutchison started deploying the next generation of mobile transmission technologies, namely LTE (long term evolution, also known as 4G) in densely populated areas in 2011. At present, those operators are offering products with download speeds of up to 100 Mbit/s.

## 10.2.5 Leased lines

### 10.2.5.1 Introduction

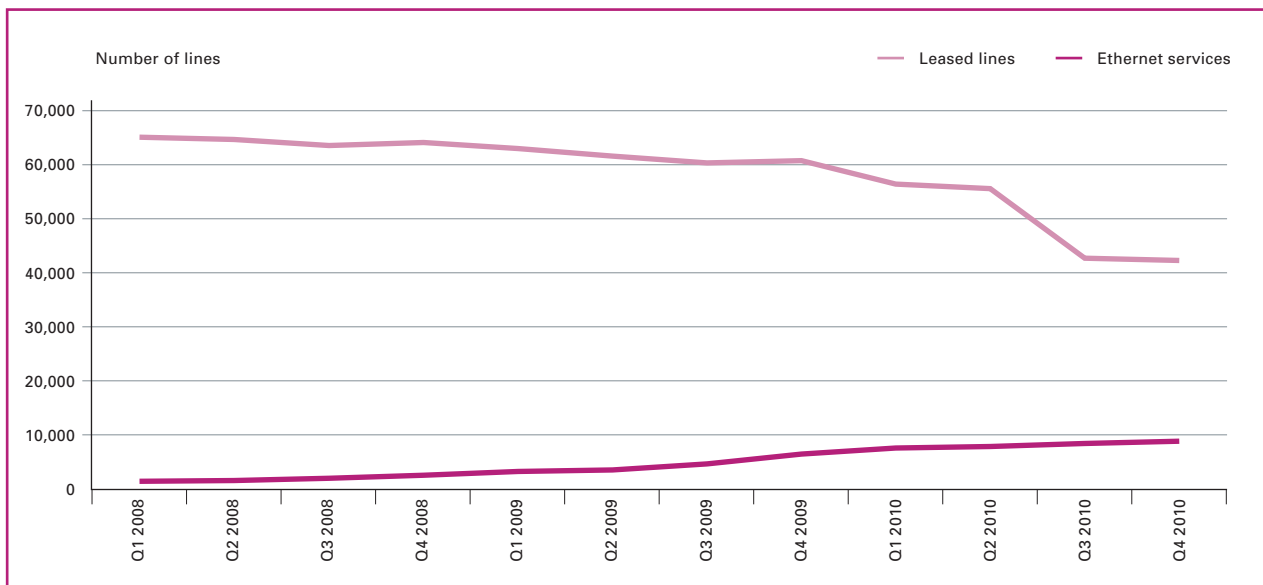
Leased lines refer to symmetrical, bidirectional point-to-point connections on which voice or data traffic can be transported. They are made available to the customer as exclusive and constant (24-hour/365-day) connections with a guaranteed minimum bandwidth. These lines are realised using various types of infrastructure (e.g. copper-wire pairs, optical fibre, microwave radio) and various transmission technologies (e.g. synchronous digital hierarchy [SDH] or plesiochronous digital hierarchy [PDH]).

Telecommunications operators use leased lines to complement and expand their networks. For example, leased lines are used to connect mobile transmission stations or unbundled main distribution frames (see Section 10.2.4), or to connect business customers to the 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).

In recent years, demand for Ethernet services has increased substantially, especially at the wholesale level. Like leased lines, Ethernet services can be used to transmit e.g. data and voice traffic, but they are generally more flexible (i.e. offer more bandwidth levels) and less expensive than conventional leased lines, which are largely based on SDH technology. At the wholesale level, therefore, conventional leased lines are increasingly being replaced by Ethernet services. This development has manifested itself in the declining number of conventional leased lines coupled with an increasing number of Ethernet services in the period from 2008 to 2010 (see Figure 49).

<sup>15</sup> Connect (2010): "Österreich und Schweiz im Netztest", Issue 11/2010, pp. 83–88. Connect (2012): "Österreich und Schweiz im Netztest", Issue 1/2012, pp. 54–66.

**Figure 49: Development in number of conventional leased lines and Ethernet services<sup>16</sup> at the wholesale level**



Data basis: RTR operator survey 2011 (Q4 2010)

Source: RTR

Demand for leased lines and Ethernet services arises in different bandwidths depending on the intended use. These range from 64 Kbit/s to 2 Mbit/s and even 155 Mbit/s or more (1 Gbit/s and 10 Gbit/s are common in Ethernet services). At the wholesale level, it is also necessary to distinguish between trunk segments and terminating segments. Trunk segments refer to those leased lines and Ethernet services 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 Ethernet services at the wholesale level which are not classified as trunk segments.

### 10.2.5.2 Market data

#### Market participants

Table 24 lists the largest providers of leased lines and Ethernet services (in terms of revenues) and indicates the markets on which those companies operate. In the fourth quarter of 2010, the companies shown in the table accounted for more than 80% of all revenues on this market. A total of 42 companies<sup>17</sup> serve the national market for leased lines in Austria, and A1 Telekom – which accounts for more than 50% of overall revenues – is by far the largest provider on the market.

<sup>16</sup> The data shown include Ethernet services with guaranteed bandwidths.

<sup>17</sup> 35 companies operate on the market for retail leased lines, 15 on the market for trunk segments, and 28 on the market for terminating segments.

**Table 24: Largest providers of leased lines and Ethernet services**

Company	Market for retail leased lines	Market for trunk segments	Market for terminating segments
A1 Telekom	■	■	■
Tele2	■	■	■
COLT	■	■	■
Salzburg AG	■		■
EVN		■	■
Energie AG Oberösterreich	■	■	■
BBI Breitbandinfrastruktur GmbH	■		■
T-Systems Austria GesmbH	■		
LINZ STROM GmbH	■	■	■

■ Operator is active on the market.

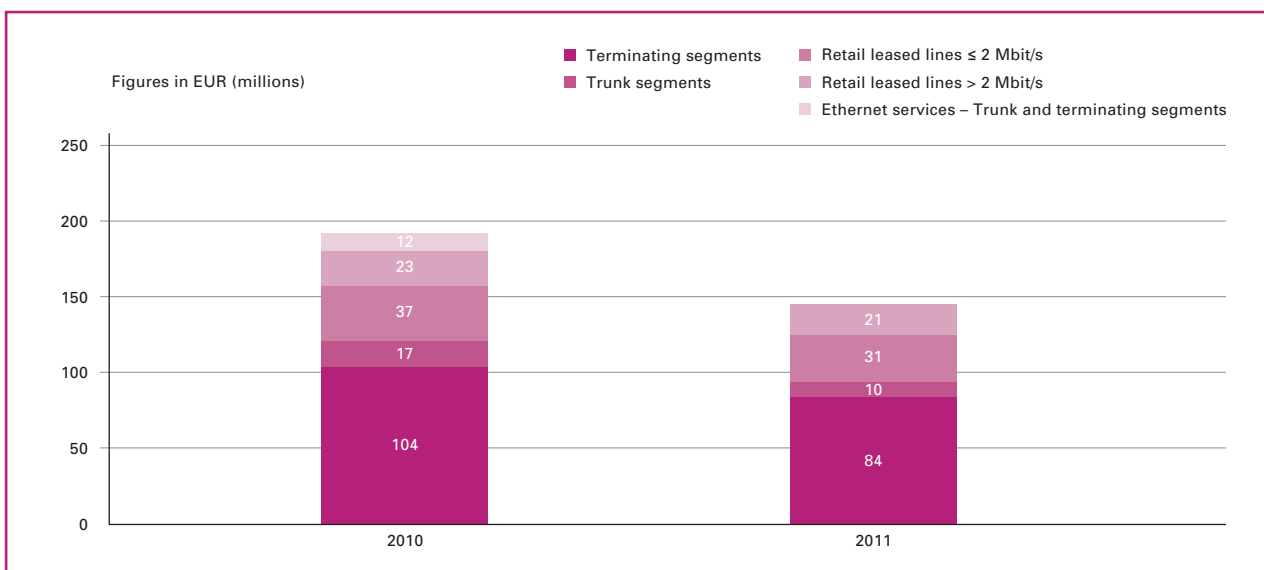
Data basis: RTR operator survey 2011 (Q4 2010)

Source: RTR

**Market volume**

Figure 50 shows the volume of revenues generated by national leased lines in the years 2010 and 2011. Data on revenues from Ethernet services are only available for the year 2010. Revenues from leased lines decreased substantially from 2010 to 2011; this can be attributed to substitution with Ethernet services, among other things. Most of the revenues from national leased lines are still generated at the wholesale level, in particular by terminating segments. The retail market accounted for 36% of overall revenues from national leased lines in 2011, and most of the demand in this segment is still for leased lines with bandwidths up to and including 2 Mbit/s.

**Figure 50: Revenues from leased lines and Ethernet services, 2010 and 2011**



Revenue data were not available for Ethernet services in 2011.

Source: RTR





# 11. RTR's activities as a competence centre

## 11.1 Activities of the competence centre

### 11.1.1 Media Division

#### 11.1.1.1 Research Institute for Electronic Mass Media Law (REM)

Once again, the Research Institute for Electronic Mass Media Law (*Forschungsinstitut für das Recht der elektronischen Massenmedien*, or REM), which was founded in early 2005, dedicated its efforts to academic research on electronic mass media law at the national and international level in the year under review.

The REM was established as a non-profit association within RTR. The REM's Board of Directors comprises Prof. Christoph Grabenwarter (Vienna University of Economics and Business), Prof. Walter Berka (University of Salzburg), 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).

One significant event in the reporting period was the workshop on confidentiality in journalism and related issues held by the REM on May 5, 2011.

Like every year, the association organised the Austrian Broadcasting Forum in order to promote the exchange of ideas between academics, researchers and practitioners. The Seventh Austrian Broadcasting Forum, held in autumn 2011 under the title "Personality Rights 2.0 – Protecting personality rights in online media and broadcasting," was devoted to various perspectives on this topic, which is currently the subject of debate 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.


In addition, the REM also produces a publication series on the topics discussed at each year's Broadcasting Forum. In 2011, the REM's eighth volume of conference proceedings was published on the topic of "Independence of the Media." This volume of REM's publication series deals with the independence necessary in the media as well as ways to ensure that independence.

#### 11.1.1.2 Scientific studies commissioned by RTR

In November 2011, a study entitled "Perception of political topics in the media" was presented at RTR's premises in Vienna. In this study, which was carried out jointly by IFES (Institute for Empirical Social Research) and GfK Austria GmbH on behalf of RTR and WH Medien GmbH (formerly Kabel-TV Wien), the perception of media journalism topics was examined in a direct comparison of television, radio, daily newspapers and the Internet with special attention to the perception of political topics, especially local and municipal politics in Vienna.

Moreover, RTR commissioned the biennial television programming analysis in the reporting period, and in 2012 the study's findings were presented by its author (Jens Woelke) along with a publication in RTR's publication series.

Prof. Josef Trappel of the University of Salzburg was commissioned to prepare a report on research accompanying the Private Broadcasting Fund, and the results will likewise be presented in the year 2012.



Moreover, the Austrian Television Fund (FERNSEHFONDS AUSTRIA) commissioned Oliver Castendyk to conduct a follow-up study on RTR's 2005 publication on reasonable terms and conditions in the relationship between television broadcasters and producers in Austria.

## **11.1.2 Telecommunications and Postal Services Division**

### **11.1.2.1 Information and communications technologies (ICTs)**

#### **ICT competence centre**

On February 9, 2010, the Austrian federal government established the Internet Society Competence Centre (*Kompetenzzentrum Internetgesellschaft*, or KIG) on the basis of a declaration of the Austrian Council of Ministers. The bodies governing the KIG are its Board of Directors and General Assembly. The following institutions are entitled to appoint 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 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. RTR is responsible for providing administrative support and managing the operations of the KIG.


In this context, the Digital Agenda, the government's declaration and the requirements of the business world and public sector shape the measures taken by the KIG, which are designed to earn Austria a place among the world's top ICT nations. The KIG decided to measure Austria's progress with regard to ICT using the Networked Readiness Index (NRI) developed by the World Economic Forum. This index includes 138 countries and is among the most comprehensive and stable indices in the ICT field. In this index, Austria is currently in 21<sup>st</sup> place, meaning that the country has dropped one place compared to the previous year. However, the Board of Directors is aware of the fact that Austria's efforts in this area should not focus solely on the index and that other general conditions have to be taken into account.

In operational terms, the KIG sees itself as a provider of stimuli for the sector, and the organisation prioritises ICT projects on the basis of proposals from the business world, various government departments and other institutions which serve to advance Austria's progress in this area. To this end, the KIG prepares a catalogue of projects which the Board considers to be high priorities. These priorities are coordinated with the federal ministries and other stakeholders, after which they are submitted to the Austrian Council of Ministers. As the KIG itself currently does not have a dedicated budget at its disposal for those projects, the group can only perform its coordinating function in agreement with the stakeholders who provide financing. At regular intervals, the bodies responsible for the projects are asked to provide progress reports in order to survey the current state of each project.

In February 2011, the first catalogue of 14 high-priority projects was submitted to and acknowledged by the Austrian Council of Ministers. These 14 projects were largely proposed and sponsored by the ministries represented on the KIG's Board of Directors. In this way, the KIG laid the foundation for productive cooperation between the public sector and private-sector businesses. All of the projects in the catalogue have been launched and are currently under way. For further information, please refer to <http://www.kig.gv.at> (in German).

In the course of an information campaign in 2011, the KIG assigned RTR the task of designing, building and launching the KIG web site. This site is an essential part of the organisation's information strategy for the purpose of raising awareness of the KIG in various institutions. The web site contains information on the structure of the competence centre, the stakeholders involved, the organisation's objectives, the above-mentioned catalogue of prioritised projects, links to current topics and other ICT-related subjects.





The working groups within the Austrian Internet Initiative, in which a majority of Austria's key ICT companies are represented, developed a large number of proposals for the second catalogue. In this context, the group worked with numerous representatives of the business world to develop 25 proposals which will advance Austria's progress in the ICT field and will be implemented in cooperation with businesses in Austria. In this context, it was also necessary to account for the ability to fund these efforts. The proposals were presented to the KIG, and other institutions likewise submitted their own proposals. RTR examined all of the project proposals with regard to their effect on the NRI and handled coordination activities with the relevant government departments. Based on the feedback from the stakeholders involved, the KIG's Board of Directors then proposed a second catalogue of priority initiatives, which includes a total of 13 projects. In most cases, it has been possible to find ministries to sponsor the initiatives. In 2012, these projects will be presented to the Austrian Council of Ministers.

Several of the projects represent significant steps in developing Austria's ICT readiness. With its open government data portal, for example, Austria is expected to take a leading role in this field of activity. In this initiative, government data will be made available in standardised electronic form so that businesses can access and use this information. In this way, Austria will be able to make an important contribution to transparency and to greater democracy. This project shows quite impressively that joint ICT activities carried out by the public sector and businesses are capable of advancing Austria's progress in this area.


In 2011, the KIG's operational support centre at RTR accompanied the process from the idea generation stage to the definition of projects and the search for project sponsors. In a few projects, RTR also carried out administrative activities, thus providing strong organisational and operational support for the KIG.

#### **11.1.2.2 Demand-side survey 2011**

The report published by RTR in May 2011 on the demand-side survey of the Austrian telecommunications markets presents the results of a survey conducted in January 2011 on the demand behaviour of residential and business customers (i.e. retail customers), mainly with regard to their use of fixed-link and mobile telephony, broadband Internet and leased lines. RTR commissioned the market research institute IFES (Institute for Empirical Social Research) to carry out the study.

In addition to examining the supply side, it is indispensable to conduct complementary investigations of the demand side of the market in order to gain deeper insight into consumer preferences for the sake of market-oriented regulation. In the past, this demand-side survey was carried out separately and at different times for the fixed-link, mobile and leased line markets on the one hand and for the broadband market on the other. In 2011, these previously separate demand-side surveys were combined in order to enable a thorough and systematic examination of consumer preferences on all of the markets mentioned above in a single survey.

The results of the survey confirm that the Austrian telecommunications sector is characterised by highly dynamic developments. Since the first demand-side survey, there have been numerous changes and new developments in terms of technology, user behaviour among residential and business customers, and pricing. While some areas of the telecommunications sector are steadily losing significance, other areas continue to enjoy rapid growth. For example, this can be observed in the penetration figures for fixed-link and mobile telephony as well as the distribution of minutes between these networks. Especially among residential customers, fixed-link telephony has conceded significant ground to the mobile networks. Such pronounced changes have not been observed among Austria's business customers in recent years; fixed-link connections have remained very popular among business customers, which is why the number of lines has not changed significantly in this segment.



Similar developments with regard to fixed/mobile substitution can also be observed in Internet services. Mobility also plays a key role in the customers' choices regarding Internet access. Mobile broadband access has continued to grow rapidly in both the residential and business segments. It can also be observed that households (especially single-person households) continue to use mobile broadband predominantly as a substitute for fixed-link Internet connections, while businesses largely use mobile broadband as a complementary means of access. On the one hand, these rapid developments in the field of mobile broadband can be attributed to technological innovation; in recent years, Austria's telecommunications operators have invested in the nationwide rollout of various forms of infrastructure (UMTS, HSPA networks, etc.). On the other hand, the prices of mobile broadband services (and subsequently for their fixed-link counterparts) have decreased substantially. Rapid growth can not only be observed in mobile broadband, but also in the overall Internet penetration rates reported in recent years. As of January 2011, more than 70% of Austrian households and over 90% of Austrian businesses had Internet access.

Another component of the report is its analysis of the frequency with which various Internet services are used in the households surveyed. Internet connections are primarily used for the purpose of sending and receiving e-mail, browsing the Web and searching for specific information. In addition, certain differences in Internet usage can be identified on the basis of various socio-demographic characteristics, such as age, household income and level of education. For example, major differences can be identified between age groups with regard to the use of online games, social networks, chat functions and Twitter.

The entire study as well as detailed evaluations of the data on telecommunications equipment and usage, focusing on the older population, the younger population, level of education, gender, household income, household size, households without Internet access and urban vs. rural areas, can be found on the RTR web site at <http://www.rtr.at/de/komp/BerichtNASE2011> (in German).

## 11.2 Public relations and service

The material work of KommAustria, the Telekom-Control-Kommission (TKK), the Post-Control-Kommission (PCK) and RTR as well as the organisation's activities as a competence centre are topics of great interest to the public. In order to ensure transparency and to meet the public's information requirements, the regulatory authority once again carried out numerous public relations activities in 2011.

The key medium used in the regulatory authority's public relations work is its web site (<http://www.rtr.at>), on which RTR provides comprehensive documentation 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 designated for publication with regard to regulatory activities and grant administration activities are regularly published on RTR's web site. Those who subscribe to RTR's newsletter at <http://www.rtr.at/de/rtr/Informationsservice> (in German) receive the relevant links via e-mail.

### Publications

Another major area of the authority's public relations activities is the large number of publications produced by RTR each year. RTR's annual Communications Report, the most comprehensive report published by the regulatory authority, 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 developments on the telecommunications, postal services and media markets.

The activity report of the conciliation body discusses the key problems and developments which arise in conciliation activities for retail consumers.

The RTR Telecom Monitor appears four times per year and is based on data collected by RTR. The Telecom Monitor includes market data on fixed-link networks, leased lines, mobile communications and broadband as well as business indicators. 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.

In addition, another volume in RTR's publication series ("Measurement of IT and technological readiness – The Networked Readiness Index and other technology indices") was published in the reporting period.

### Events

The regulatory authority conveys relevant information to market participants and a broader audience at the national and international level through the presentation activities of selected RTR employees and by organising numerous specialist conferences, discussion forums and workshops.

In the year 2011, highlights in the Media Division included the Seventh Austrian Broadcasting Forum organised by the Research Institute for Electronic Mass Media Law (REM) on the topic of "Personality Rights 2.0 – Protecting personality rights in online media and broadcasting," the information event "DigitalTV and its Prospects for the Advertising Industry" as well as the forum "10 years of RTR and KommAustria – Quality and Media Diversity for the Future."

The Telecommunications and Postal Services Division organised the 12<sup>th</sup> Telecommunications Forum in Salzburg, which was devoted to the topic of "A digital agenda for Austria" and enabled a lively exchange of ideas among telecommunications experts.

### Management of inquiries

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 4,260 written requests were sent to the e-mail address [rtr@rtr.at](mailto:rtr@rtr.at), which represents an increase of 25% compared to the previous year.

**Table 25: Number of inquiries sent to [rtr@rtr.at](mailto:rtr@rtr.at), 2009 to 2011**

Year	2009	2010	2011
Number of inquiries	3,277	3,406	4,263

Source: RTR

In terms of content, the inquiries cover the entire scope of the regulatory authorities' activities, although the bulk of written inquiries involved retail consumer concerns (as in the previous years).

Initial advising for retail consumers, e.g. with regard to telephone bill disputes, conciliation procedures, mobile data services, etc., is provided by the RTR call centre at 0810 511 811. In 2011, the call centre received more than 6,500 calls – approximately 13% more than in the previous year.

**Table 26: Number of calls (call centre), 2009 to 2011**

Year	2009	2010	2011
Number of calls	5,634	5,818	6,578

Source: RTR

### 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 49 press releases and the Telecommunications and Postal Services Division held five press conferences in 2010, in addition to answering numerous press inquiries and holding individual interviews with media representatives.





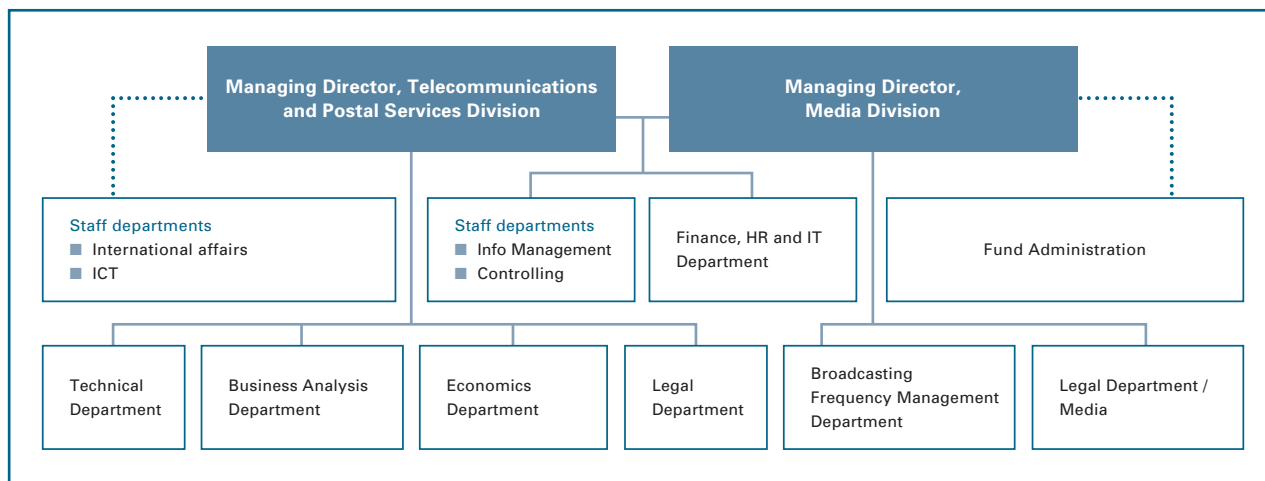
## 12. The company

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 that competition prevails on those markets. The duties of the regulatory authority are laid down in the KommAustria Act (KOG), the Austrian Telecommunications Act 2003 (TKG 2003) and in the Postal Markets Act (PMG). The organisation handles its own official duties as well as providing operational support for the Austrian Communications Authority (KommAustria), the Telekom-Control-Kommission (TKK) and the Post-Control-Kommission (PCK), and administering grant funds to support various projects and initiatives in the media field.

Established as a private limited company which is 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 (which is also responsible for the administration of grant funds), while Georg Serentschy was in charge of the Telecommunications and Postal Services Division.

RTR's organisational structure is depicted in the chart below.

**Figure 51: RTR organisation chart**



Source: RTR

## 12.1 Staff development

On average, the company had a total of 102.442 full-time equivalents (FTEs) under a contract of employment in 2011, meaning that the company's average headcount increased by 7.398 FTEs compared to the previous year. As of December 31, 2011, RTR's staff comprised 104.475 FTEs, 6.475 more than one year earlier.

The main reason for the increased number of FTEs was the amendment to the KommAustria Act (KOG), which went into effect in the fourth quarter of 2010. This amendment had an effect on the number of employees required for media regulation activities. The regulatory authority was only able to handle the additional tasks assigned to it by bringing in additional legal, economic and technical experts. The average number of FTEs was increased by 4.766 in the Media Division; for example, one employee was added to the Broadcasting Frequency Management department, as KommAustria now entirely consists of legal experts. In addition, one new economist was hired in order to fulfil the new legal requirements.

It was also necessary to increase the number of FTEs in the Non-Commercial Broadcasting Fund and the Private Broadcasting Fund. This change was necessary due to the increased endowment of the funds as well as the additional tasks required in order to allocate grants efficiently and to conduct the appropriate post-hoc reviews of the results reported by grant recipients. The number of FTEs is expected to rise again in the coming year. The Media Division was able to reduce its headcount in the Digitisation Fund and in the Austrian Television Fund, as several key projects were completed and employees on leave were not replaced for the time being.

Across the entire Media Division, the average increase in headcount came to 4.433 FTEs in the year 2010.

In telecommunications regulation, the average number of employees rose by 1.855 compared to the previous year. One reason for this increase in RTR's headcount was the authority's expanded international activities in the year under review. As Georg Serentschy will take over the BEREC Chair in 2012 and the organisation's rules provide for a "troika" system in which Serentschy held the position of Vice Chair in the reporting period, a variety of new activities were required in this area in 2011. In addition, RTR delegated an employee to the European Commission for a period of two years.

For the authority's retail conciliation activities, it was necessary to take on additional employees in order to handle the repeated rise in the number of cases submitted.

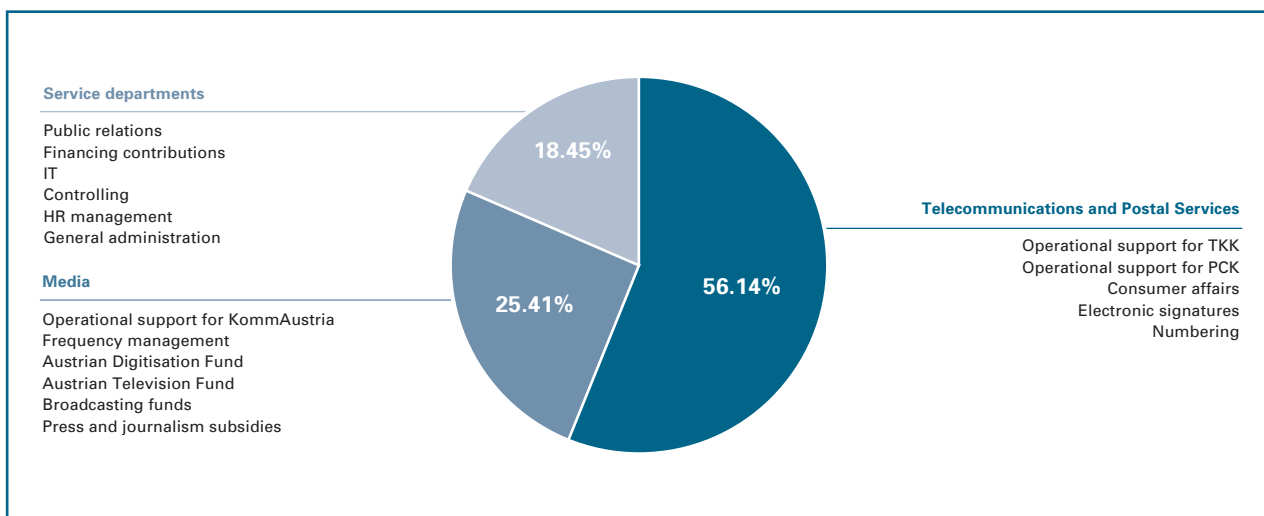
2011 was the first year in which the Postal Market Act (PMG) went into effect in its entirety. This development also had an impact on the organisation's average headcount, which rose by 1.245 in this area.

Throughout the Telecommunications and Postal Services Division, the number of FTEs rose by 3.000 in the reporting period. The slight differences compared to the average for the year arose from reductions in the number of FTEs in other areas of activity (e.g. electronic signatures).

Despite its additional tasks and the increasing number of staff members, the Service Division was able to reduce its headcount slightly.



**Figure 52: Staff structure and size as of December 31, 2011**



Source: RTR

## 12.2 RTR's financial statements for 2011

These financial statements were prepared in accordance with the Austrian Commercial Code (UGB) in its current version.

The external auditors at LeitnerLeitner have issued an unqualified audit certificate confirming RTR's financial statements for the 2011 business year (January 1, 2011 to December 31, 2011).

RTR's income statement and balance sheet from the financial statements are presented below.

The following information is provided on the basis of the amended KommAustria Act (KOG), which has been in effect since October 1, 2010: The company's revenues consist of financing contributions from the Austrian Broadcasting Corporation (ORF), broadcasters and media service providers established in Austria (Art. 35 Par. 2 KOG), providers and operators of public communications networks and services (Art. 34 Par. 2 KOG) as well as postal service providers which are subject to the notification requirement under Art 25 Postal Market Act (PMG) or which hold a licence under Art. 26 PMG (Art. 34a Par. 2 KOG), of funds from the federal budget (Art. 22 Par. 9, Art. 26 Par. 3, Art. 31 Par. 5, Art. 34 Par. 1, Art. 34a Par. 1, Art. 35 Par. 1 KOG) and of fees collected by RTR (Art. 13 Par. 4 SigG).

RTR closed the 2011 business year (January 1 to December 31, 2011) with a balanced result.

RTR's expenses showed a marked increase, which can largely be explained by costs incurred by the ORF Audit Commission. Under the relevant legislation (amendment to the ORF Act and KOG, effective October 1, 2010), these costs are to be pre-financed by RTR as the operative arm of KommAustria. However, the costs have been offset by reimbursements in the same amount.

**Table 27: Income statement for the 2011 business year (January 1, 2011 to December 31, 2011)**

	2011		2010	
		EUR	EUR (thousands)	
1. Net revenues		11,872,078.60		10,826
2. Other operating income				
a) Income from disposal of fixed assets	12,491.79		0	
b) Income from reversal of provisions	13,416.34		14	
c) Other	714,623.74	740,531.87	242	256
3. Personnel expenses				
a) Salaries	-6,226,444.87		-5,751	
b) Severance payment expenses and payments to severance funds	-85,387.09		-94	
c) Pension insurance expenses	-201,391.60		-179	
d) Cost of statutory social insurance contributions as well as remuneration-dependent charges and mandatory contributions	-1,563,406.48		-1,429	
e) Voluntary benefit expenses	-104,443.37	-8,181,073.41	-101	-7,554
4. Depreciation				
a) Intangible fixed assets and property, plant and equipment		-246,389.13		-232
5. Other operating expenses				
a) Other	-4,363,820.66	-4,363,820.66	-3,373	-3,373
<b>6. Operating result (lines 1 to 5)</b>		<b>-178,672.73</b>		<b>-77</b>
7. Income from other securities held as financial assets		54,584.33		80
8. Miscellaneous interest and similar income		31,314.54		20
9. Gains from disposal and write-up of financial assets		41,794.30		0
10. Expenses from financial assets				
a) Depreciation of financial assets	0.00	0.00		-11
<b>11. Financial result (lines 7 to 10)</b>		<b>127,693.17</b>		<b>89</b>
<b>12. Result from ordinary activities (= net annual profit/loss)</b>		<b>-50,979.56</b>		<b>12</b>
13. Reversal of capital reserves				
a) Reversal of appropriated capital reserves		10,661.74		31
<b>14. Loss for current year</b>		<b>-40,317.82</b>		<b>42</b>
15. Profit carried forward		40,317.82		-2
<b>16. Accumulated profit</b>		<b>0.00</b>		<b>40</b>

Source: RTR

### 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 28 below provides a breakdown of the main items in RTR's income statement for the Telecommunications and Postal Services Division and the Media Division. In the business year 2011, income and expenses were distributed as follows:

**Table 28: RTR income and expenses by division**

Figures in EUR (thousands)	Telecommunications and Postal Services	Media	Total
Net revenues	7,264	4,608	11,872
Other operating revenues	43	697	740
Personnel expenses	-5,442	-2,739	-8,181
Depreciation	-168	-79	-247
Other operating expenses	-1,830	-2,533	-4,363
<b>Operating result</b>	<b>-133</b>	<b>-46</b>	<b>-179</b>
Financial result	82	46	128
<b>Result from ordinary activities</b>	<b>-51</b>	<b>0</b>	<b>-51</b>
Reversal of capital reserve	11	0	11
Profit carried forward	40	0	40
<b>Accumulated profit</b>	<b>0</b>	<b>0</b>	<b>0</b>

Source: RTR

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. telecommunication 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).

**Table 29: Income statement broken down by specific area of activity in 2011**

Figures in EUR	RTR total	Telecom regulation	Electronic signatures
1. Net revenues	11,872,078.60	6,473,817.92	100,418.50
2. Other operating income	740,531.87	33,524.21	8,673.35
3. Personnel expenses	-8,181,073.41	-4,873,231.74	-85,322.20
4. Depreciation of intangible fixed assets and property, plant and equipment	-246,389.13	-148,129.17	-3,792.35
5. Other operating expenses	-4,363,820.66	-1,559,610.42	-31,805.24
<b>6. Subtotal of items 1 to 5</b>	<b>-178,672.73</b>	<b>-73,629.20</b>	<b>-11,827.94</b>
7. Income from other securities held as financial assets	54,584.33	31,444.33	496.34
8. Miscellaneous interest and similar income	31,314.54	17,844.78	282.24
9. Gains from disposal and write-up of financial assets	41,794.30	24,340.09	387.62
10. Expenses from financial assets	0.00	0.00	0.00
<b>11. Subtotal of items 7 to 10</b>	<b>127,693.17</b>	<b>73,629.20</b>	<b>1,166.20</b>
<b>12. Result from ordinary activities = Net annual loss</b>	<b>-50,979.56</b>	<b>0.00</b>	<b>-10,661.74</b>
13. Reversal of capital reserves	10,661.74	0.00	10,661.74
<b>14. Loss for current year</b>	<b>-40,317.82</b>	<b>0.00</b>	<b>0.00</b>
15. Profit carried forward	40,317.82	0.00	0.00
<b>16. Accumulated profit</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>

Figures in EUR	Postal service regulation	Media regulation	Digitisation Fund
1. Net revenues	690,244.95	3,493,606.04	147,291.68
2. Other operating income	1,065.82	693,185.49	2,478.78
3. Personnel expenses	-483,920.04	-2,011,096.46	-118,595.53
4. Depreciation of intangible fixed assets and property, plant and equipment	-15,830.31	-63,071.99	-2,823.73
5. Other operating expenses	-239,055.74	-2,146,265.60	-30,011.18
<b>6. Subtotal of items 1 to 5</b>	<b>-47,495.32</b>	<b>-33,642.52</b>	<b>-1,659.98</b>
7. Income from other securities held as financial assets	3,156.62	14,291.71	668.65
8. Miscellaneous interest and similar income	1,788.80	8,439.20	352.78
9. Gains from disposal and write-up of financial assets	2,232.08	10,911.61	638.55
10. Expenses from financial assets	0,00	0.00	0.00
<b>11. Subtotal of items 7 to 10</b>	<b>7,177.50</b>	<b>33,642.52</b>	<b>1,659.98</b>
<b>12. Result from ordinary activities = Net annual loss</b>	<b>-40,317.82</b>	<b>0.00</b>	<b>0.00</b>
13. Reversal of capital reserves	0.00	0.00	0.00
<b>14. Loss for current year</b>	<b>-40,317.82</b>	<b>0.00</b>	<b>0.00</b>
15. Profit carried forward	40,317.82	0.00	0.00
<b>16. Accumulated profit</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>

Figures in EUR

	Austrian Television Fund	Broadcasting funds
1. Net revenues	588,031.96	378,667.55
2. Other operating income	1,045.77	558.45
3. Personnel expenses	-420,299.12	-188,608.32
4. Depreciation of intangible fixed assets and property, plant and equipment	-7,972.91	-4,768.67
5. Other operating expenses	-167,232.27	-189,840.21
<b>6. Subtotal of items 1 to 5</b>	<b>-6,426.57</b>	<b>-3,991.20</b>
7. Income from other securities held as financial assets	2,750.66	1,776.02
8. Miscellaneous interest and similar income	1,565.56	1,041.18
9. Gains from disposal and write-up of financial assets	2,110.35	1,174.00
10. Expenses from financial assets	0.00	0.00
<b>11. Subtotal of items 7 to 10</b>	<b>6,426.57</b>	<b>3,991.20</b>
<b>12. Result from ordinary activities = Net annual loss</b>	<b>0.00</b>	<b>0.00</b>
13. Reversal of capital reserves	0.00	0.00
<b>14. Loss for current year</b>	<b>0.00</b>	<b>0.00</b>
15. Profit carried forward	0.00	0.00
<b>16. Accumulated profit</b>	<b>0.00</b>	<b>0.00</b>

Source: RTR

**Table 30a: Balance sheet as of December 31, 2011 – Assets**

	December 31, 2011		December 31, 2010	
	EUR		EUR (thousands)	
<b>A. Fixed assets</b>				
I. Intangible assets				
1. Rights	203,656.52		73	
2. Prepayments on intangible assets	25,902.90	229,559.42	0	73
II. Property, plant and equipment				
1. Buildings on third-party land	132,189.30		52	
2. Other fixed assets, furniture, fixtures and fittings	204,911.21	337,100.51	260	312
III. Financial assets				
1. Securities held as financial assets		3,370,633.71		3,321
		<b>3,937,293.64</b>		<b>3,706</b>
<b>B. Current assets</b>				
I. Receivables and miscellaneous assets				
1. Trade accounts receivable	791,057.80		755	
2. Other receivables and assets	396,694.59	1,187,752.39	137	892
II. Cash on hand and at banks, checks		3,328,660.79		2,929
		<b>4,516,413.18</b>		<b>3,821</b>
<b>C. Prepaid expenses and deferred charges</b>				
1. Other prepaid expenses and deferred charges		<b>81,920.34</b>		<b>87</b>
<b>D. Trustee accounts – funds</b>		<b>22,306,039.69</b>		<b>19,979</b>
		<b>30,841,666.85</b>		<b>27,593</b>

Source: RTR

**Table 30b: Balance sheet as of December 31, 2011 – Liabilities**

	December 31, 2011		December 31, 2010	
	EUR		EUR (thousands)	
<b>A. Equity</b>				
I. Capital stock	3,633,641.71		3,634	
II. Capital reserves				
1. Appropriated	53,246.44		64	
III. Accumulated profit	0.00	<b>3,686,888.15</b>	40	<b>3,738</b>
<b>B. Provisions</b>				
1. Provisions for severance payments	178,040.00		171	
2. Other provisions	1,337,278.00	<b>1,515,318.00</b>	1,237	<b>1,408</b>
<b>C. Liabilities</b>				
1. Trade accounts payable	842,621.55		437	
2. Other accounts payable (taxes payable: EUR 384,690.61 [2010: EUR 386,000]; social security obligations: EUR 157,079.81 [2010: 166,000])	2,442,846.93	<b>3,285,468.48</b>	1,988	<b>2,425</b>
<b>D. Trustee obligations – funds</b>		<b>22,353,992.22</b>		<b>20,022</b>
		<b>30,841,666.85</b>		<b>27,593</b>

Source: RTR

### 12.3 Notes on the structure of RTR financing

The regulatory authority's activities are financed by various sources, and financing for both divisions is governed by the KommAustria Act (KOG).

RTR's two divisions receive federal funds (to fund those tasks which are primarily in the public interest) as well as financing contributions from the respective business sectors (market participants are required by law to contribute) for the organisation's regulatory activities (Media, Telecommunications and Postal Services). These contributions are adjusted for inflation and limited to a maximum amount.

In addition to carrying out its legally defined regulatory duties, RTR administers a number of grant funds for the purpose of supporting various projects and initiatives in the media sector.

Grants from the Austrian Digitisation Fund, the Austrian Television Fund, the Private Broadcasting Fund and the Non-Commercial Broadcasting Fund are allocated according to clearly defined guidelines in order to ensure that the stated funding objectives are fulfilled.

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 and the Federal Minister of Transport, Innovation and Technology by June 30<sup>th</sup> each year.

For more information on RTR's administration of grant funds, please refer to Section 6.

In addition, RTR provides operational support for the fulfilment of supervisory duties under the Austrian Signatures Act (SigG). For this purpose, the authority collects fees, but those amounts are not sufficient to cover the costs incurred. The excess costs are offset by an annual allocation of EUR 90,000.00 from the federal budget.

The company's equity as of December 31, 2011 was as follows:

**Table 31: Equity as of December 31, 2011**

<b>Figures in EUR</b>		
Capital stock as of December 31, 2011		3,633,641.71
Capital reserves as of December 31, 2011		53,246.44
Loss from performance of duties under Art. 17 (Par. 3, 4) KOG (January 1 to December 31, 2011)	-40,317.82	
Loss from performance of duties under the Signatures Act (January 1 to December 31, 2011)	-10,661.74	
<b>Result from ordinary activities (= net annual loss)</b>	<b>-50,979.56</b>	
Reversal of capital reserve	10,661.74	
Profit carried forward	40,317.82	
Accumulated profit		0.00
<b>Equity as of December 31, 2011</b>		<b>3,686,888.15</b>

Source: RTR



## 12.4 RTR Supervisory Board

In the year 2011, the RTR Supervisory Board comprised the following members:

Josef Halbmayr (Austrian Federal Chancellery)  
Chairman of the Supervisory Board (until June 9, 2011)

Harald Glatz  
Chairman of the Supervisory Board (since June 9, 2011)

August Reschreiter (Federal Ministry of Transport, Innovation and Technology)  
Deputy Chairman of the Supervisory Board

Alfred Ruzicka (Federal Ministry of Transport, Innovation and Technology)

Matthias Traimer (Austrian Federal Chancellery)

Erhard Fürst (Telekom-Control-Kommission)

Michael Ogris (KommAustria)

Brigitte Hohenecker (staff representative)

Martin Ulbing (staff representative)

Angelika Belfin (staff representative, member until August 11, 2011)

Dieter Staudacher (staff representative, member since August 11, 2011)





# 13. Appendix

## 13.1 Tables and figures

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## 13.2 Abbreviations

2G	2 <sup>nd</sup> generation (GSM)
3G	3 <sup>rd</sup> generation (UMTS)
4G	4 <sup>th</sup> generation (LTE)

### A

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ABGB	General Civil Code ( <i>Allgemeines Bürgerliches Gesetzbuch</i> )
AGB	General terms and conditions
AIM	Austrian Internet Monitor
AMD-G	Audiovisual Media Services Act ( <i>Audiovisuelle Mediendienste-Gesetz</i> )
A-SIT	Secure Information Technology Center – Austria
AVG	General Administrative Procedures Act 1991 ( <i>Allgemeines Verwaltungsverfahrensgesetz 1991</i> )

### B

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BAKOM	Swiss Federal Communications Office ( <i>Bundesamt für Kommunikation</i> )
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 ( <i>Bundesministerium für Finanzen</i> )
BMUKK	Federal Ministry for Education, Arts and Culture ( <i>Bundesministerium für Unterricht, Kunst und Kultur</i> )
BMVIT	Federal Ministry of Transport, Innovation and Technology ( <i>Bundesministerium für Verkehr, Innovation und Technologie</i> )
BMWF	Federal Ministry of Science and Research ( <i>Bundesministerium für Wissenschaft und Forschung</i> )
BMWFJ	Federal Ministry of Economy, Family and Youth ( <i>Bundesministerium für Wirtschaft, Familie und Jugend</i> )
BoR	Board of Regulators
B-VG / BVG	Federal Constitutional Act ( <i>Bundesverfassungsgesetz</i> )

### C

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CbC	Call-by-call
CEPT	European Conference of Postal and Telecommunications Administrations ( <i>Conférence Européenne des Administrations des Postes et des Télécommunications</i> )
cm	Centimetre
CPI	Consumer Price Index
CPS	Carrier pre-selection
CSP	Certification service provider



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**D**

DAB	Digital Audio Broadcasting
DRM	Digital Radio Mondiale / Digital Rights Management
DSL	Digital Subscriber Line
DSLAM	Digital Subscriber Line Access Multiplexer
DVB-S	Digital Video Broadcasting – Satellite
DVB-T	Digital Video Broadcasting – Terrestrial

---

**E**

EaP	Eastern Partnership
EBU	European Broadcasting Union
EC	European Community / European Commission
ECC	Electronic Communications Committee
ECG	E-Commerce Act ( <i>E-Commerce-Gesetz</i> )
ECJ	European Court of Justice
EEA	European Economic Area
EEN-V 2011	Itemised Billing Ordinance 2011 ( <i>Einzelentgeltnachweisverordnung 2011</i> )
E-GovG	E-Government Act ( <i>E-Government-Gesetz</i> )
EPS2	E-Payment Standard
ERG	European Regulators Group
ERGP	European Regulators Group for Post
ETSI	European Telecommunications Standards Institute
EU	European Union

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**F**

FBZV	Frequency Range Allocation Ordinance ( <i>Frequenzbereichszuweisungsverordnung</i> )
FEEL	Association of the Austrian Electrical and Electronics Industries ( <i>Fachverband der Elektro- und Elektronikindustrie</i> )
FERG	Exclusive Television Rights Act ( <i>Fernseh-Exklusivrechtgesetz</i> )
FESA	Forum of European Supervisory Authorities for Electronic Signatures
FM PT	Frequency Management Project Team
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

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**G**

g	Gram
GE06	Geneva Agreement 2006
GE84	Geneva Agreement 1984
GHz	Gigahertz
GSM	Global System for Mobile Communication

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**H**

HbbTV	Hybrid broadcast broadband TV
HD	High definition
HDTV	High-definition television
HLR	Home Location Register
HSPA	High Speed Packet Access

**I**

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ICT	Information and communications technology
IFES	Institute for Empirical Social Research ( <i>Institut für empirische Sozialforschung</i> )
IMT 2000	International Mobile Telecommunications 2000
IP	Internet Protocol
IRG	Independent Regulators Group
ISDN	Integrated Services Digital Network
ITU	International Telecommunication Union
ITU-R	ITU Radiocommunication Sector

**K**

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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>KommAustria</i> )
KSchG	Consumer Protection Act ( <i>Konsumentenschutzgesetz</i> )
kW	Kilowatt

**L**

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LTE	Long Term Evolution
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**M**

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MB	Megabyte
Mbit/s	Megabits per second
MC	Management Committee
MDF	Main distribution frame
MedKF-TG	Act on Transparency in Media Cooperation and Funding ( <i>Medienkooperations- und -förderungs-Transparenzgesetz</i> )
MHEG	Multimedia and Hypermedia information coding Expert Group
MHP	Multimedia Home Platform
MHz	Megahertz
MNO	Mobile network operator
MSC	Mobile switching centre
MT	Mobile terminated
MUX	Multiplexer
MUX-AG-V 2011	Multiplex Operator Selection Principles Ordinance 2011 ( <i>MUX-Auswahlgrundsätzeverordnung 2011</i> )
MVNO	Mobile virtual network operator



## N

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NGA	Next generation access
NGN	Next generation network
NGV	Next generation voice
NRA	National regulatory authority
NRI	Networked Readiness Index
NÜV	Number Porting Ordinance ( <i>Nummernübertragungsverordnung</i> )

## O

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OECD	Organisation for Economic Co-operation and Development
OFCOM	Office of Communications
OGH	Austrian Supreme Court ( <i>Oberster Gerichtshof</i> )
OJ	Official Journal
ORF-G	ORF Act ( <i>ORF-Gesetz</i> )

## P

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Par.	Paragraph
PCK	Post-Control-Kommission
PDH	Plesiochronous digital hierarchy
PLC	Power line communication
PMG	Postal Market Act ( <i>Postmarktgesetz</i> )
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

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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> )

## S

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SAT	Satellite
SDH	Synchronous digital hierarchy
SE PT	Spectrum Engineering Project Team
SG	Study Group
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> )
SMS	Short Messaging Service



**T**

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TAIEX	Technical Assistance and Information Exchange Instrument
T-DAB	Terrestrial Digital Audio Broadcasting
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> )
TSL	Trust-service status list
TV	Television

**U**

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UDV	Universal Service Ordinance ( <i>Universaldienstverordnung</i> )
UMTS	Universal Mobile Telecommunications System
ÜVO	Monitoring Ordinance ( <i>Überwachungsverordnung</i> )
UVS	Independent Administrative Board ( <i>Unabhängiger Verwaltungssenat</i> )

**V**

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VBKG	Cooperation of Consumer Protection Authorities Act ( <i>Verbraucherbehörden-Kooperationsgesetz</i> )
VDSL	Very High Speed Digital Subscriber Line
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**

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WettbG	Competition Act ( <i>Wettbewerbsgesetz</i> )
WiFi	Wireless fidelity
WiMAX	Worldwide Interoperability for Microwave Access
W-LAN	Wireless local area network

**Z**

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ZuKG	Access Control Act ( <i>Zugangskontrollgesetz</i> )
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### 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 as amended by 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 as amended by 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 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 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 Regulation (EU) 954/2011, OJ L 259 of 4 October 2011, p. 1)
Signatures Directive	Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures (OJ L 13 of 19 January 2000, p. 12, 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 as amended by 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)

*(Zugangskontrollgesetz)* 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

Act on Transparency in Media Cooperation and Funding (MedKF-TG)

*(Medienkooperations- und -förderungs-Transparenzgesetz)* Federal Act on Transparency in Media Cooperation, Advertising Orders and Funding for Media Owners of Periodical Media, Federal Law Gazette I No. 125/2011

Administrative Penalties Act (VStG)

*(Verwaltungsstrafgesetz)* Administrative Penalties Act, Federal Law Gazette No. 52/1991 as amended by Federal Law Gazette I No. 100/2011

Audiovisual Media Services Act (AMD-G) (formerly Private Television Act – PrTV-G)

*(Audiovisuelle Mediendienste-Gesetz)* Federal Act on Audiovisual Media Services, Federal Law Gazette I No. 84/2001 as last amended by Federal Law Gazette I No. 50/2010

Broadcasting Fees Act (RGG)

*(Rundfunkgebührengesetz)* Federal Act Enacting a Law on Broadcasting Fees and Amending the Telephone Rates Act, the Broadcasting Ordinance, the Telecommunications Act, the Broadcasting Act, and the Act on Contributions to the Promotion of the Arts, Federal Law Gazette I No. 159/1999 as last amended by Federal Law Gazette I No. 9/2010

Cartels Act 2005 (KartG 2005)

*(Kartellgesetz 2005)* 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

Competition Act (WettbG)

*(Wettbewerbsgesetz)* 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)

*(Konsumentenschutzgesetz)* Federal Act Enacting Provisions for the Protection of Consumers, Federal Law Gazette 140/1979 as last amended by Federal Law Gazette I No. 100/2011

Cooperation of Consumer Protection Authorities Act (VBKG)

*(Verbraucherbehörden-Kooperationsgesetz)* Federal Act on the Cooperation of Authorities in Consumer Protection, Federal Law Gazette I No. 102/2011

E-Commerce Act (ECG)

*(E-Commerce-Gesetz)* Federal Act on the Regulation of Specific Legal Aspects of Electronic Commerce, Amending the Signatures Act and the Civil Procedure Code, Federal Law Gazette I No. 152/2001

E-Government Act (E-GovG)

*(E-Government-Gesetz)* Federal Act Defining Regulations to Facilitate Electronic Correspondence with Public-Sector Authorities, Federal Law Gazette I No. 10/2004 as 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. 60/2011
Federal Constitutional Act on Media Cooperation and Media Funding (BVG MedKF-T)	<i>(BVG Medienkooperation und Medienförderung)</i> Federal Constitutional Act on Transparency in Media Cooperation, Advertising Orders and Funding for Media Owners of Periodical Media, Federal Law Gazette I No. 125/2011
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 1991 (AVG)	<i>(Allgemeines Verwaltungsverfahrensgesetz 1991)</i> General Administrative Procedures Act 1991, Federal Law Gazette No. 51/1991 as last amended by Federal Law Gazette I No. 100/2011
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. 125/2011
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. 126/2011
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 1997)	<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. 136/2003 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 Federal Law on Telecommunications and Amending the Federal Law on Traffic and Work Inspection as well as the KommAustria Act, Federal Law Gazette I No. 70/2003 as last amended by Federal Law Gazette I No. 102/2011



### 13.3.2.2 Ordinances

2011 Digitisation Plan	15 <sup>th</sup> Ordinance of the Austrian Communications Authority (KommAustria) on a digitisation plan for the introduction, rollout and further development of digital broadcasting (television and radio) and other media services.
Broadcasting Market Definition Ordinance 2009 (RFMVO 2009)	<i>(Rundfunkmarktdefinitionsverordnung 2005)</i> 12 <sup>th</sup> 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)
Broadcasting Reference Rate Ordinance 2009 (RRV 2009)	<i>(Rundfunk-Richtsatzverordnung 2009)</i> 13 <sup>th</sup> 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
Communications Parameters, Fees and Value-Added Services Ordinance 2009 (KEM-V 2009)	<i>(Kommunikationsparameter-, Entgelt- und Mehrwertdiensteverordnung 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 Range Allocation Ordinance (FBZV)	<i>(Frequenzbereichszuweisungsverordnung)</i> Ordinance of the Austrian Federal Minister of Transport, Innovation and Technology on the allocation of frequency ranges (2005), Federal Law Gazette II No. 306/2005 as last amended by Federal Law Gazette II No. 67/2011
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. 68/2011
Itemised Billing Ordinance 2011 (EEN-V 2011)	<i>(Einzelentgeltnachweis-Verordnung 2011)</i> RTR Ordinance specifying the level of detail and the form of provision for itemised billing, Federal Law Gazette II No. 414/2011
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 2011 (MUX-AG-V 2011)	<i>(MUX-Auswahlgrundsätzeverordnung 2011)</i> 16 <sup>th</sup> Ordinance of the Austrian Communications Authority (KommAustria) specifying the selection principles for the issuance of terrestrial multiplex licenses (2011)



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
Ordinance on events of major importance to society	Ordinance of the Austrian Federal Government on events of major importance to society, Federal Law Gazette II No. 305/2001
Postal Service Cost Accounting Ordinance	<i>(Post-Kostenrechnungsverordnung)</i> Ordinance of the Austrian Federal Minister of Transport, Innovation and Technology on a cost accounting system for universal postal services, Federal Law Gazette II No. 433/2010
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 <sup>nd</sup> 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)	<i>(Telekom-Richtsatzverordnung 2009)</i> 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)	<i>(Universaldienstverordnung)</i> 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
GfK Austria	GfK Austria GmbH
Hutchison	Hutchison 3G Austria GmbH
mobikom	mobikom austria AG (now A1 Telekom Austria AG)
Orange	Orange Austria Telecommunication GmbH
ORF	Austrian Broadcasting Corporation ( <i>Österreichischer Rundfunk</i> )
ORS	Austrian Broadcasting Services ( <i>Österreichische Rundfunksender GmbH &amp; Co KG</i> )
PULS 4	PULS 4 TV GmbH & Co KG
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
VFRÖ	Austrian Association of Free Radio Broadcasters ( <i>Verband Freier Radios Österreichs</i> )
VÖZ	Austrian Association of Newspapers ( <i>Verband Österreichischer Zeitungen</i> )
Wien Energie	Wien Energie GmbH



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