

Communications Report 2012

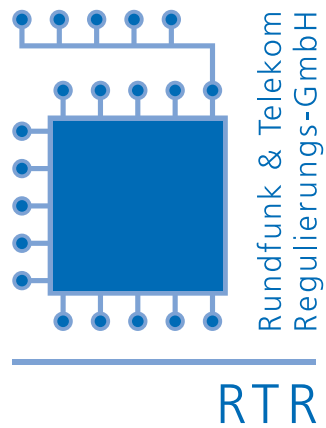




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Preface

Dear readers,

In response to constant changes in the market, we have dealt in detail with a large assortment of topics related to regulation while going about our regulatory tasks in recent years. We obviously need to be involved in a much broader range of issues as well, in order to take decisions that anticipate future developments in the markets we regulate. Consequently, maintaining a close exchange with the media, postal and telecommunications industries, as well as with the private and public sectors and with interest group representatives, constituted a key concern as we went about achieving our statutory objectives as defined by the Telecommunications Act and the KommAustria Act: to ensure innovative, high-quality and secure communications at reasonable prices for all consumers, and to maintain the diversity of opinions and media as well as a forward-looking and stable general framework for these activities in Austria.

With this publication, we provide a comprehensive review of the regulatory bodies' activities in 2012. The 2012 Communications Report serves to document the regulatory activities of the Austrian Communications Authority (KommAustria), the Telekom-Control-Kommission and the Austrian Regulatory Authority for Broadcasting and Telecommunications, and fully meets the statutory reporting requirements. The report additionally provides insights into changes in the communications markets in Austria as well as a description of RTR, which is an organisation managed according to private-sector principles.

The Communications Report meets the requirements for transparency and accountability that apply to regulatory duties. We sincerely hope that this publication provides you with interesting reading.

Vienna, June 2013

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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 strives to promote and strengthen the following:

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

The Austrian Communications Authority (KommAustria), the Telekom-Control-Kommission (TKK) and RTR present the Communications Report as an account of their business activities and the operational fulfilment of regulatory objectives in the interests of all market participants and for the benefit of consumers, as specified in Art. 19 Par. 2 and 3 KommAustria Act (KOG).


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. Specifically, 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 2012.

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

1.1 Media: Contribution to the achievement of objectives under the KommAustria Act (KOG) and the Telecommunications Act 2003 (TKG 2003)

The Austrian Communications Authority (KommAustria) was established under the 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 provisions of law, infrastructure regulation, issuing alternative rulings on agreements pertaining to transmission platforms, broadcasting facilities and reporting coverage rights, and frequency coordination. In this regard, KommAustria is responsible for private organisations (broadcasters, media service providers, communications network operators) as well as the Austrian Broadcasting Corporation (ORF) and its subsidiaries. KommAustria also fulfils responsibilities in the area of media transparency in respect of reporting on funding awarded (as advertising contracts and grants) to media owners by legal entities that are subject to the Austrian Court of Audit.



In addition, the KOG requires KommAustria to administer grants awarded pursuant to federal law as part of press and journalism subsidies (see Chapter 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 interests 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 a modern, high-quality communications infrastructure in order to reinforce Austria's high quality as a location.

In addition, the regulatory objectives of KommAustria and RTR's Media Division include promoting competition in the field of electronic communications as specified in Art. 1 Par. 2 TKG 2003.


The specific concern in this regard is to enable competition, along with a diversity of opinions and media, in the interests 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 2012 can be categorised under the duties defined in Art. 2 KOG and Art. 120 TKG 2003, or under 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 2012, and the number of procedures and parties involved was largely comparable to previous years.

One focus of activities in the field of radio broadcasting in 2012 was on the completion of numerous terrestrial radio licensing procedures which had been initiated as part of official tasks. Such completion was necessary because the previous licences expired or were scheduled to expire in 2012 or 2013. Several additional licensing procedures were also initiated for the supply of services to the *Länder* capitals, including Vienna. A large number of applications from local and regional broadcasters also resulted in a continuously large volume of procedures and public invitations to tender in the area of terrestrial radio broadcasting. A significant area of activity in 2012 resulted from the expansion of the technical range of KRONEHIT, a nationwide radio broadcaster, along with the additional option for radio broadcasters to apply for another nationwide radio licence.

In the field of digital television, the expansion of national, regional and local digital terrestrial television coverage continued. The Schau TV channel has also been broadcast since 2012 via the nationwide multiplex platform MUX B. Additional local and regional private multiplex platforms and channels were approved or were able to launch operations in 2012, with two multiplex licences being relinquished and one revoked. Again in 2012, KommAustria continued to be involved with licensing procedures concerning two nationwide multiplex platforms for digital terrestrial broadcasting based on the DVB-T2 standard (MUX D and MUX E), as well as with a procedure concerning an additional nationwide multiplex platform for digital terrestrial broadcasting in DVB-T2 (MUX F).



This expansion of the digital terrestrial television network was based on the 2011 Digitisation Plan. The plan called for a survey of demand for digital radio within the broadcasting industry. The survey completed in 2012 did not, however, reveal any evidence of a substantial need for digital radio to be introduced at the present time. The 2013 Digitisation Plan presents additional strategic decisions relating to radio digitisation (refer to Chapter 5). As part of the plan, members of the Digital Platform Austria held preliminary consultations in 2012, and extensive preparation work took place.

The KommAustria 2011 Digitisation Plan Ordinance came into effect on 1 May 2011 and is valid until 30 April 2013. The main subjects of the ordinance include expansion of digital terrestrial television, and specifically the launch of broadcasts using the DVB-T2 transmission standard, as well as the option of introducing digital radio in Austria.

Since late 2012, KommAustria and RTR have been preparing an amendment of the ordinance, which will result in the 2013 Digitisation Plan and is to replace the ordinance in effect until 1 May 2013.


In this way, KommAustria is meeting its legal obligation to publish a new digitisation plan every two years as a means of supporting the launch, expansion and advancement of digital broadcasting in Austria.

Active frequency planning is a key prerequisite for efficient licensing activities. Support for the ongoing development of broadcasting frequency management at the national and international level is indispensable for ensuring that all of the technical prerequisites for broadcasting are fulfilled. 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 disruption and interference, the purpose of these meetings is to optimise the use of the frequency spectrum: broadcasting frequencies are a limited commodity in any country, especially in a small one such as Austria.

Alongside the conventional activities of allocating broadcasting frequencies and issuing licences for broadcasting and multiplex platform operations, media and opinion diversity as well as the ORF's potential competitors were affected by the launch of new content services by the ORF and its subsidiaries. In this regard, one focus of activities was carried over from 2011: two prior evaluations (*Auftragsvorprüfung*) of new ORF media services were carried out in 2012 as well. Approval was given to expanding the existing web services available at oesterreich.ORF.at to include a special sub-service (Focus Sendungsarchiv). The expansion and commercial use of the ORF TVthek (TVthek.ORF.at), currently without advertising, is also being investigated as part of an official procedure.

The regulation of market access for content services, where ensuring diversity of opinions is a key concern, is complemented by the large area of regulatory supervision: KommAustria and RTR as its operative arm are also responsible for the legal supervision of multiplex operators, public and private broadcasters, plus web-based audiovisual media services. These activities serve to encourage pluralism in the Austrian media landscape as well as to create 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 both as part of official duties and in response to complaints submitted to the authority.

Another focus of regulatory activities in 2012 was in the continually expanding area of legal supervision. Specifically, the responsibility most recently assigned to KommAustria by legislators, in 2012, concerns supervision of companies not necessarily belonging to the media sector: pursuant to the Act on Transparency in Media Cooperation and Funding (MedKF-TG), as of 1 July 2012 legal entities subject to monitoring by the Court of Audit are required to provide KommAustria with quarterly reports of payments made for advertising orders and as funding for media owners. The main objective of this legal regulation is to ensure comprehensive transparency in the awarding of



advertising contracts and funding by public authorities. In accordance with the objectives of the KOG, this responsibility also supports media diversity, by facilitating the transparency of fund transfers to media owners. In 2012, 5,600 legal entities prepared reports for the first time, for the third quarter of 2012, and published the reports in line with legal requirements. Penal procedures for infringements of the reporting requirement were also introduced. The reporting deadline for Q4 of 2012 was after the close of 2012.

Many of the legal supervisory procedures in 2012 concerned changes in ownership or programming, multiplex operators and their obligations to launch operations, the legal must-carry requirement for cable networks, and several complaints by competing radio broadcasters due to various legal violations. The authority also received frequent complaints regarding the ORF. Mention should also be made of assessment procedures against the ORF on account of legal infringements as well proceedings for confiscating revenues due to a transgression of the ORF's public mandate.

The ORF Act also calls for further official measures related to content monitoring, which were also handled by KommAustria to a great extent in 2012. 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). KommAustria fulfils the latter responsibility through a specifically appointed audit commission pursuant to Art. 40 ORF-G. Special mention is made of the authority's auditing activities in 2012 in preparation for setting the new ORF programme fees as of 1 June 2012.

It is also important to note the ongoing monitoring of broadcasts and web 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 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 2012, KommAustria continued its ongoing market analysis procedures with regard to the three markets specific to broadcasting.


Austrian Digitisation Fund

In 2012, 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 relating to broadcasting. The fund is derived from those broadcasting fees that are collected jointly with ORF programme fees but flow primarily into the federal budget.

The focal areas of the Digitisation Fund's activities in 2012 again 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; the development and implementation, by ASFINAG Maut Service GmbH, of a pilot trial for mobile reception of traffic information via DVB-T2; and the development of an additional, HbbTV-based service by SevenOne Media Austria.

Austrian Television Fund

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



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

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 KOG in 2009. In 2012, the Private Broadcasting Fund held assets of EUR 12.5 million (EUR 15 million as of 2013) and the Non-Commercial Broadcasting Fund assets of EUR 2.5 million (EUR 3 million as of 2013).

The funds serve the purpose of promoting the dual broadcasting system in Austria and helping broadcasters deliver diverse, high-quality programming. The funds are allocated in accordance with the provisions of applicable law and with a set of guidelines that were subject to approval by the European Commission under the state aid rules of the EC Treaty. Following an evaluation, the guidelines for each of the funds were revised and adapted to current requirements, while the corresponding notification procedures were not completed in the year under review. The funding decisions are taken by the management of RTR's Media Division after the Review Board has submitted an opinion.

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 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 that serve educational purposes. Research projects are supported with advance grants, while all other grants are awarded afterwards 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 that 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 2012, the competence centre's activities comprised RTR studies on topics related 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 promotes and strengthens competition in broadcasting, telecommunications and postal services, as well as promoting the efficient use of limited resources, electronic communications infrastructure and services, the production of media content, and the interests of 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.

The regulatory authorities implement the objectives defined in the TKG 2003, which form a framework for the activities of the Telekom-Control-Kommission (TKK) and RTR.

The activities pursue the following objectives:

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

The section below 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

Market analysis procedures are to be carried out regularly, serving as the basis for regulating competition in Austria's telecommunications markets. Under a three-stage procedure, the relevant markets for regulation are determined along with any imbalances in the markets, and a mandate for eliminating any imbalance is issued.


Mobile termination

Termination ensures that subscribers can be reached by others in the same network as well as outside. The market power and monopoly position enjoyed by companies with respect to their own network are typical features of termination markets.

In its meeting of 3 December 2012, the TKK adopted a proposal for enforcement action that is based on the cost calculation standards included in the EU proposal to apply the "pure LRIC" cost accounting method in the regulation of fixed and mobile termination rates (2009/396/EC, OJ L 124/67). Using this method, a mobile termination fee of 0.8049 EUR cents per minute was calculated for Austria.

Wholesale fixed network

Under the procedure for fixed network termination, on 3 December 2012 the TKK adopted proposals for enforcement action relating to the individual markets for fixed network termination. Firstly, it was established that A1 Telekom Austria AG (A1 Telekom) had significant power in the relevant market and appropriate measures were taken (see 7.1.2). In line with the pure LRIC cost accounting method, the fees were set at 0.137 EUR cents for peak and 0.085 EUR cents for off-peak periods. Secondly, the potential challenge to competition entailed in setting excessive termination fees was identified in the case of alternative fixed network operators (a total of 34 subscriber network operators



provide fixed network termination), who also have significant power in their particular termination markets; a symmetrical fee of the same amount was defined in this case. Refer to 7.1.2 for more details.

On 17 December 2012, the TKK established that A1 Telekom also held significant market power in the fixed network origination market, and appropriate measures were introduced (refer to 7.1.2).

Network access

As a wholesale service, network access is fundamental for providing communications services; correspondingly this market is among the most important. The analysis procedures for this market are almost complete, and a draft decision is expected for early 2013.

The Austrian Administrative Court (VwGH) issued a ruling on 17 November 2011 (2008/03/0174), which overturned an official decision by the TKK that had regulated unbundling services between Tele2 Telecommunication GmbH (Tele2) and A1 Telekom, due to procedural errors. The specific issue was that of the retroactive application of fees (in this case of set-up charges). The TKK issued a substitute decision on 13 February 2012 that takes into account the VwGH's objections (refer to 7.2).

An official decision issued by the TKK on 6 September 2010 requires A1 Telekom to offer a new wholesale product for virtual unbundling. Detailed guidelines for this product were released by the TKK on 17 December 2012 (refer to 7.2).

Wayleave rights and rights of joint use

Pursuant to the 2011 amendment to the TKG, Federal Law Gazette I No. 102/2011, the TKK is now also required to take decisions regarding the granting of wayleave rights on private property and legal issues in this context. Three related procedures were completed in 2012. The specific issues concerned the granting of wayleave rights, cost reimbursement for moving Telekom lines on public property as a result of construction activity and the question of the admissibility of operating a switching station (refer to 7.3).

Supervisory procedures

It was ascertained in the course of procedure R 3/12 that A1 Telekom had violated the requirement for equal treatment. The case concerned the inability to establish an internet connection for the customer of an internet service provider, while at the same time sending information about A1 Telekom products to the end user directly.

General terms and conditions and fees

A significant change in this area is that, as of 21 February 2012, the TKK is now entitled to raise objections not only to terms of business but also to fee conditions (yet not to fee levels). In 2012, the TKK completed a total of 243 objection procedures pursuant to Art. 25 Par. 6 TKG 2003 (refer to 7.6).

Frequencies

Since the takeover of Orange Austria Telecommunication GmbH (Orange) by Hutchison 3G Austria Holdings GmbH (Hutchison 3G) was approved on 13 December 2012, final activities in preparation for the multiband auction in 2013 have been proceeding at full speed. The auction, originally scheduled for September 2012, had to be postponed due to the pending procedure for takeover approval. The plan is to design the tender documentation in such a way as to preserve existing competition in the mobile sector. For example, the conditions have been defined so as to allow a fourth mobile network operator to enter bidding as part of the frequency auction. Plans have also been made to award the 450 MHz frequencies in 2013.

Electronic signatures

The Signatures Act (SigG) empowers the TKK as Austria's supervisory authority for electronic signatures. In 2012, four procedures under the SigG were initiated before the TKK, and a third procedure that had been pending as of 31 December 2011 was completed. An example of the cases reviewed involved determining whether replacement of the software used for a certification service conformed with the provisions of the SigG. Another case related to the issue of the trustworthiness of certain registration offices, specifically in the context of financial services providers.

Conciliation procedures pursuant to Art. 122 Par. 1 No. 1 TKG 2003 involving end users

Once again, conciliation procedures involving end users were among RTR's core activities in 2012. It is encouraging to note that significantly fewer conciliation procedures were recorded in 2012 than in the previous years. The main reason was the Cost Limitation Ordinance (KostbeV) that entered into force on 1 May 2012, which protects consumers against excessively high bills arising from mobile data service use. This meant that the number of cases involving conciliation was reduced from 5,470 in 2011 to 4,370 in 2012. The most frequent subjects of complaint are nonetheless mobile internet access and payable services, the latter becoming increasingly common.

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

The provision under Art. 117 Para. 3 of the Communications Parameters, Fees and Value-Added Services Ordinance 2009 (KEM-V 2009) entered into force on 30 June 2012, introducing protection against the misuse of value-added service numbers and aimed at ensuring that value-added services are provided in a timely and transparent manner.

In its role as conciliation body, in 2012 RTR dealt with 239 complaints concerning value-added voice telephony and 97 involving value-added text messaging. Conciliation procedures involving value-added services thus represent 7.7% of all conciliation cases.

International roaming in the European Union

Significant changes were introduced to roaming as a result of the amendment to the EU Roaming Regulation, which entered into force on 1 July 2012. The legislation focuses on wholesale roaming access and on the separate sale of regulated roaming services at the retail level. The goal is to reinforce the position of end users; consequently another reduction in the euro-voice tariff is planned for the coming years. Again in line with the trend towards cost reduction, a euro-data tariff was also established for the first time.

Services subject to notification requirements

Under Art. 15 TKG 2003, the regulatory authority must be notified of the intention to provide public communications networks or services, and of any modification or termination of such networks or services, prior to the start of operation or to the modification or termination.

As at 31 December 2012, a total of 727 operators had given notification of 1,446 active services.

Communications parameters

The entry into force of the amendment to the KEM-V 2009 as of 30 June 2012 resulted in additional changes in number administration. One example is the requirement for communications service providers to offer a toll-free number for reporting trouble. In addition, the rates charged for individual service numbers such as (0)810, (0)820 and (0)821 are now published on the RTR website for enhanced transparency.

RTR ordinances

Through the amendment to the TKG, RTR was empowered to issue a number of ordinances, and the following were subsequently issued:

- Number Porting Ordinance 2012 (NÜV 2012)
- Cost Limitation Ordinance (KostbeV)
- Information Requirement Ordinance (MitV)

For details on the specific ordinances, refer to Section 8.6.

Focus on NGN/NGA

Experts at RTR continued to devote intensive efforts to the areas of next generation access (NGA) and next generation networks (NGNs) in 2012. RTR is involved in close consultations as the migration progresses, since the process is precipitating a fundamental change in Austria's telecommunications landscape.

International activities

RTR took over the chair of BEREC, the Body of European Regulators for Electronic Communications, in 2012. At the four plenary meetings, the body's ambitious work programme was completed almost entirely. By serving as chair, RTR succeeded in achieving milestones that pave the way for the future of Europe's telecommunications industry. The main items of the work programme included international roaming, NGN/NGA and a revision of the Common Positions. In addition, 17 procedures pursuant to Article 7/7a were conducted, requiring special resources from BEREC and the BEREC Office. Nonetheless, during the specified brief period BEREC succeeded in preparing and adopting a statement that meets high standards.

Security and integrity of networks and services

Operators of public communications networks or services are required to report to RTR any security violation or loss of integrity occurring within their networks or services using a specified form. RTR received three reports of security violations in 2012.


In the domain of network security, RTR works closely on an international basis with other regulatory authorities, plus the European Network and Information Security Agency ENISA. This is of particular significance considering that one of ENISA's tasks is to prepare technical guidelines on this topic.

Competence centre

Under Art. 9 KOG, RTR is also responsible for maintaining a competence centre for media and telecommunications industry affairs.

The staff department ICT provides administrative support to the Internet Society Competence Centre (*Kompetenzzentrum Internetgesellschaft*, or KIG), a federal government institution; the KIG initiated numerous projects in 2012.

RTR, which is responsible for managing the KIG's business operations, laid important foundations in 2012 towards developing a national ICT strategy for the period 2014-2018. A consultation paper containing proposals for future projects relating to ICT has been drawn up as a basis for discussion by the ICT sector, science and public authorities in the coming months.



Another activity by the RTR competence centre was a NetTest developed to reinforce the demand side of the market (i.e. end users). Following commencement of the beta phase of the test at the end of the year, it is planned to publish the final version in the course of 2013. The RTR-NetTest provides users with a way of checking various parameters of their internet connection, for example, speed and latency.

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 1 January 2011. According to the explanatory comments on the government bill, the purpose of this legislation is to completely liberalise the Austrian postal market. 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 entrepreneurs to provide postal services.

The PMG aims especially to ensure sufficient basic postal services at reasonable prices for the population of the entire federal territory of Austria (universal service) and to enable fair competition in the provision of postal services (Art. 1 PMG). Yet the provisions of the PMG can be clearly seen to focus on ensuring the availability of universal service. As a result, the act contains a large number of regulations governing postal service points as well as their hours of operation, delivery, handling times and mailboxes. 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 postal service points.

The PMG contains only a few specific provisions regarding competition, including conditions for market entry (notification requirement and licensing system), enforceable access to private mailbox installations in buildings and rural post boxes belonging to Österreichische Post AG (but de facto not until 1 January 2013), and the use of postal codes free of charge. Therefore, the PMG follows a completely different system compared to the TKG 2003. Austrian telecommunications law specifies regulatory objectives, which conflict in part and thus have to be balanced by the regulatory authorities, as well as measures to be imposed in advance according to the extent of market failure (*ex ante* regulation), and can thus be regarded as sector-specific competition law in the narrower sense, yet the same does not apply to Austrian postal law.

Consequently, in 2012 as in the previous year, the activities of the Post-Control-Kommission (PCK) and of RTR focused predominantly on various matters related to universal service. The efforts of the regulatory authorities in establishing and guaranteeing competition were limited to individual cases, such as intervening in the event of the required refitting of mailbox installations in buildings and reviewing the cost calculation system applied by Österreichische Post AG.

The procedures conducted by the regulatory authorities in the area of universal postal service have resulted in a significant contribution towards a high level of service availability and quality. In contrast, the fact that little competition in the postal sector has developed can be attributed to the less than ambitious goals set forth in the framework regulations governing the opening of the market.





2 Regulatory authorities and environment

2.1 Regulatory authorities

In implementing the EU framework legislation in 1997, two regulatory authorities for telecommunications were established through the Austrian Telecommunications Act 1997 (TKG 1997): the Telekom-Control-Kommission (TKK) and the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR; formerly known as Telekom-Control GmbH). The Austrian Communications Authority (KommAustria) was later set up in 2001 on the basis of the KommAustria Act (KOG) as the regulatory authority for the broadcasting markets. The duties and objectives of all regulatory authorities responsible for electronic communications markets are defined in the relevant laws, specifically in the Austrian Telecommunications Act 2003 (TKG 2003) and the KOG.

2.1.1 Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR)

RTR is a convergent regulatory authority that is wholly owned by the Republic of Austria. The organisation is headed by two managing directors: in the year 2012, 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. to serve as the operative arm for KommAustria, the Post-Control-Kommission (PCK) and the TKK;
2. in the Telecommunications and Postal Services Division, to fulfil specific official duties (e.g. powers to issue ordinances and to carry out procedures in the area of numbering, duties under the Postal Market Act, PMG);
3. to fulfil the tasks specified in the Signatures Act (SigG);
4. to administer and allocate grants from the Austrian Digitisation Fund, Non-Commercial Broadcasting Fund, Private Broadcasting Fund and the Austrian Television Fund (handled by the Media Division);
5. in both divisions, to manage a competence centre for issues including the convergence of media and telecommunications;
6. to maintain the list pursuant to Art. 7 of the Austrian E-Commerce Act (ECG).


2.1.2 Telekom-Control-Kommission (TKK)

The TKK, which has been constituted as an independent panel authority with the powers of a court, passes major decisions relating to telecommunications regulation. 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:

Until 4 November 2012:

- Elfriede Solé (Chairperson)
- Erhard Fürst
- Günter Haring



Alternate members:

- Nikolaus Schaller
- Mathias Grandosek
- Otto Petrovic

After 4 November 2012:

- Elfriede Solé (Chairperson)
- Erhard Fürst
- Günter Haring

Alternate members:

- Nikolaus Schaller
- Mathias Grandosek
- Franz Ziegelwanger

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, which has been constituted as an independent panel authority with the powers of a court, passes major decisions relating to the regulation of postal services. Each member of the commission is appointed for a term of five years.

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

Until 4 November 2012:

- Elfriede Solé (Chairperson)
- Erhard Fürst
- Alfred Stratil

Alternate members:


- Nikolaus Schaller
- Mathias Grandosek
- Alfred Taudes

After 4 November 2012:

- Elfriede Solé (Chairperson)
- Erhard Fürst
- Sabine Joham-Neubauer

Alternate members:

- Nikolaus Schaller
- Mathias Grandosek
- Alfred Ruzicka



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

In 2012, 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 KOG, the Audiovisual Media Services Act (AMD-G), the Private Radio Act (PrR-G), the Competition Act (WettbG) and the TKG 2003, as well as the administration of press and journalism subsidies, KommAustria is also responsible for the legal supervision of the Austrian Broadcasting Corporation (ORF) and its subsidiaries, for duties under the Act on Exclusive Television Rights (FERG) and for the legal supervision of audiovisual media service providers. Since 2012 the authority has also been responsible for duties under the Act on Transparency in Media Cooperation and Funding (MedKF-TG). The authority relies on RTR for administrative support.

Federal Communications Board (BKS)

The BKS is responsible for handling appeals against KommAustria decisions. Pursuant to Art. 37 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 (BKA).

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
- (Currently no appointee)
- Robert Streller

2.2 Lines of command and levels of appeal

The members of KommAustria are independent in the performance of their official duties 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 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, RTR is bound only by orders and technical 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 areas of electronic audio media and electronic audiovisual media, and with KommAustria's administration of grants and subsidies.

The duties that RTR is required to perform independently in the Media Division, such as grant and subsidy administration, are subject to supervision and instruction by the Federal Chancellor. Such instructions must be issued in writing and justified accordingly.

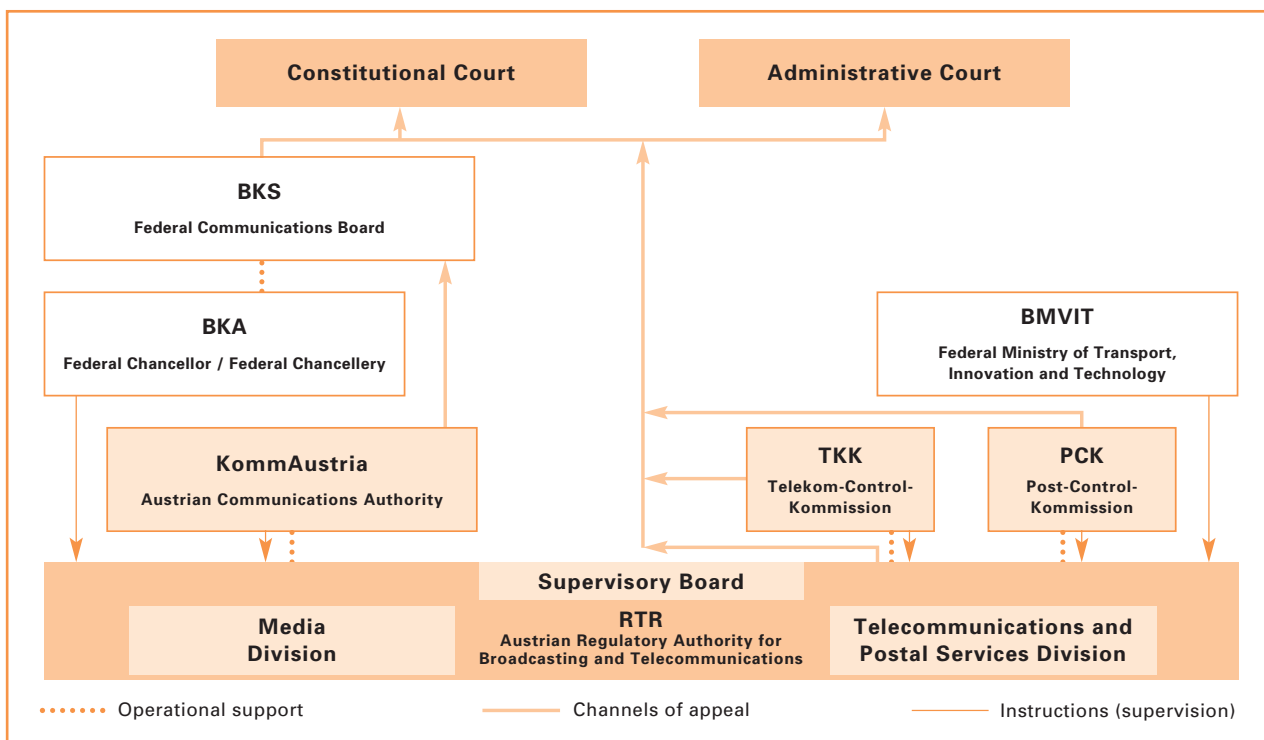
In the areas of telecommunications and postal services, the Austrian Federal Minister of Transport, Innovation and Technology has the power to issue instructions to the managing director of RTR's Telecommunications and Postal Services Division; such instructions must likewise be issued in writing and justified accordingly.

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

Both the TKK and PCK are independent panel authorities chaired by a high court judge. 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 filing complaints with Austria's high courts, namely the Austrian Administrative Court (VwGH) and/or the Austrian Constitutional Court (VfGH). RTR hands down decisions (in matters pertaining to the Telecommunications and Postal Services Division) as the last-instance authority, i.e. there is no right of appeal against RTR's official decisions; complaints can only be submitted to the VwGH and/or the VfGH.

Figure 1: Lines of command and levels of appeal (as at 31 December 2012)



In addition, the BKA also has the right to require information from KommAustria, as does the Federal Ministry of Transport, Innovation and Technology (BMVIT) from the TKK and PCK.

Source: RTR

2.3 National regulatory environment

In order to fulfil their duties, and to achieve the regulatory objectives defined under Austrian law, the regulatory authorities cooperate with numerous national institutions. Cooperation with these institutions works well in all cases. The main institutions are presented briefly 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 RTR and KommAustria (refer to Section 2.2 above). In addition, the BKA provides administrative support for the BKS.

Federal Ministry of Transport, Innovation and Technology (BMVIT)

The BMVIT is responsible for defining the general legal conditions 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, RTR advises the BMVIT on the ongoing development of these general conditions.

Telecommunications authorities

The telecommunications authorities are the Federal Minister of Transport, Innovation and Technology (as the highest authority), the Telecommunications Offices and the Office for Radio Systems and Telecommunications Terminal Equipment. The duties of these authorities are specified in Articles 112 to 114 TKG 2003. Of particular note with a view to RTR's Telecommunications and Postal Services Division is the competence of the telecommunications authorities as the administrative penal authority as well as their competence 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 compliance with the technical parameters approved for such facilities.

Postal service authorities

The postal service authorities are the Federal Minister of Transport, Innovation and Technology, as the highest postal authority, and the Postal Bureau, as the first-instance postal authority. The duties of the postal authorities are specified in Art. 37 PMG. In this context, the first-instance postal service authority mainly has the role of administrative penal authority.

Post Office Advisory Board

The Post Office Advisory Board was established under Art. 43 PMG as an advisory body to the PCK in matters related to ensuring nationwide coverage with postal service points. The board must be consulted and submit its comments before the PCK takes supervisory measures or passes decisions concerning postal service points. 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 *Länder*. 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 15 April 2012:

- Paul Trippl (Liaison Office of the *Länder*; Chairperson)
- Bernhard Haubenberger (Austrian Association of Municipalities; 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:

- Albert Kreiner (Liaison Office of the *Länder*)
- Nikolaus Drimmel (Austrian Association of Municipalities)
- Sabine Marchart (Austrian Association of Cities and Towns)
- Wolfgang Feiel (RTR)

After 15 April 2012:

- Bernhard Haubenberger (Austrian Association of Municipalities; Chairperson)
- Paul Trippl (Liaison Office of the *Länder*; Deputy Chairperson)
- Thomas Weninger (Austrian Association of Cities and Towns)
- Wolfgang Feiel (RTR)

Alternate members:

- Nikolaus Drimmel (Austrian Association of Municipalities)
- Albert Kreiner (Liaison Office of the *Länder*)
- Sabine Marchart (Austrian Association of Cities and Towns)
- Michael Kuttner (RTR)

Digital Platform Austria

The Digital Platform Austria working group was established by the Austrian Federal Chancellor under Art. 21 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, i.e. KommAustria and 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 Digital Platform Austria will continue to provide support for these developments in the future. For more information, please refer to Chapter 5.

Public Value Advisory Board

This advisory board established within KommAustria must be given the opportunity to submit comments and opinions on new services offered by the Austrian Broadcasting Corporation (ORF), as part of the procedure for prior evaluation (*Auftragsvorprüfung*) specified in 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, on its own initiative or on the basis of a complaint or petition, whether special web 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 be authorised to teach at a university in Austria or abroad, or have another form of outstanding expert qualification. Through their prior academic and scientific work, board members must be recognised as having specialised knowledge 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 of the Press Subsidies Act 2004 (PresseFG 2004). Before subsidies are allocated, 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.



For the period of service from January 2012 to the end of December 2013, the Federal Chancellor has appointed new members, while all others were reappointed. The six members elected Gerhard Benn-Ibler to the chair.

The commission included the following members in 2012:

- Gerhard Benn-Ibler (Chairperson)
- Gisela Kirchler-Lidy (appointed by the Federal Chancellor)
- Wolfgang Trimmel (appointed by the Federal Chancellor)
- Gerald Grünberger (appointed by VÖZ)
- Paul Pichler (appointed by VÖZ)
- Gisela Vorrath (appointed by the Austrian Federation of Trade Unions, ÖGB)
- Fritz Wendl (appointed by ÖGB)

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 the Federal Chancellor for a term of three years, represent various areas of the public sphere as specified in Art. 9 PubFG.

New members were appointed to the board in 2012 for the period of service lasting until the end of 2014. From among their ranks, the members elected Matthias Karmasin to the chair and Gabriele Ambros as his deputy.

The board comprised the following members in 2012:

- Matthias Karmasin (media and communication sciences; Chairperson)
- Gabriele Ambros (Austrian Magazine Association, ÖZV; Deputy Chairperson)
- Manfred Lamplmair (Austrian Social Democratic Party, SPÖ)
- Daniel Kosak (Austrian People's Party, ÖVP)
- Klaus Nittmann (Austrian Freedom Party, FPÖ)
- Michael A. Richter (Alliance for the Future of Austria, BZÖ)
- Marco Schreuder (Austrian Green Party)
- Christoph Höllriegl (ÖGB)
- Alexander Baratsits-Altempergen (Union of Salaried Private Sector Employees and of Printers, Journalists and Paper Workers, GPA-djp)
- Klaus Schönbach (Universities Austria and Austrian Academy of Sciences)
- Gerald Leitner (continuing education)
- Thomas Dasek (churches and religious communities)
- Matthias Traimer (BKA)
- Wolfgang Schneider (Austrian Federal Ministry of Economy, Family and Youth, BMWFJ)
- (Currently no appointee, Austrian Federal Ministry of Science and Research, BMWF)
- Hanspeter Huber (Austrian Federal Ministry for Education, Arts and Culture, BMUKK)
- Andreas Csar (VÖZ)
- Annemarie Kramser (Concordia Press Club, PCC)
- Leopold Wundsam (Chamber of Professional Accountants and Tax Advisors)



Alternate members:

- Martina Thiele (media and communication sciences)
- Thomas Zembacher (ÖZV)
- Merja Biedermann (SPÖ)
- Andreas Kratschmar (ÖVP)
- Gerfried Nachtmann (FPÖ)
- Markus Fauland (BZÖ)
- Judith Schwentner (Austrian Green Party)
- Nani Kauer (ÖGB)
- Arno Miller (GPA-djp)
- Herbert Matis (Universities Austria and Austrian Academy of Sciences)
- Hubert Petrasch (continuing education)
- Paul Wuthe (churches and religious communities)
- Andreas Ulrich (BKA)
- Dieter Böhm (BMWFJ)
- Gerhard Pfeisinger (BMWF)
- Julia Kopetzky (BMUKK)
- Matthias Hranayai (VÖZ)
- Elisabeth Horvath (PCC)
- Helmut Puffer (Chamber of Professional Accountants and Tax Advisors)

Broadcasting Fund Review Board

The review board pursuant to Art. 32 Par. 3 KOG comprised the following members in 2012:

- Michael Holoubek (Chairperson)
- Claudia Fuchs (Deputy Chairperson)
- Cornelia Breuß
- Philipp Graf
- Daniela Sabetzer

Austrian Television Fund Review Board

The Austrian Television Fund Review Board consisted of the following members in 2012:

- Andreas Hruza (Chairperson)
- Werner Müller (Deputy Chairperson)
- Bettina Leidl
- Gabriele Kranzelbinder
- Matthias Settele

Federal Competition Authority (BWB)

In Austria, substantial law regulating competition in specific sectors and legislation governing competition in general are parallel to some extent, even though the competence of the authority responsible in the particular case is basically maintained. For this reason, on the basis of statutory rights to submit comments and petitions, it is necessary for the regulatory authorities to cooperate closely with the BWB in matters relating to general competition law. Austrian law and EU legislation provide for differing forms of cooperation between the general competition authority and sector-specific competition authorities.

Other organisations and working groups at the national level

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

2.4 International regulatory environment

The EU framework legislation applying to the electronic communications sector is an important and vital component for regulating this sector. This legislation was further developed in 2009, resulting in a major amendment to a revised legal framework. In Austria this resulted in turn in the enactment of an amendment to the TKG. The effects of the new regulations were put into practice in Austria as well in 2012. Important insights for this process were also gained from the Body of European Regulators for Electronic Communications (BEREC). During the year 2012, RTR as an institution representing Austria took over the chair of BEREC. An opportunity thus emerged, not only to launch discussions on topics that significantly affect Austria and the rest of the EU, but also to directly draw on trends observed among international developments in all of the areas that are pooled for discussion with BEREC, and to use these observations as a basis of comparison for addressing issues in Austrian regulation.

BEREC was originally set up in order to ensure standardisation and consistency in the European telecommunications market. In this way, this body replaced its precursor organisation, the European Regulators Group (ERG). BEREC's mandate includes providing assistance to the European Commission and national regulatory authorities (NRAs) wherever possible in the implementation of the European regulatory framework in the field of telecommunications.

Brief summary of BEREC's main tasks:

- Participate in procedures under Article 7/7a of the Framework Directive
- Identify best practices, assist NRAs, advise the European Parliament and the Council, and assist these institutions and NRAs in their relations with third parties
- Prepare opinions on recommendations and directives
- Prepare opinions and recommendations on cross-border disputes

BEREC is governed by a collegial body, referred to as the Board of Regulators, which is composed of the heads of the NRA established in each EU Member State. This body consults on issues relating to international regulation, adopting decisions with a two-thirds majority. BEREC is assisted in organisational matters by the BEREC Office, which has its seat in Riga, Latvia and took up operations in late 2011. In addition, all organisational topics and decisions that BEREC deals with are discussed by the Management Committee, consisting of the heads of the NRAs and a representative of the European Commission; this body also adopts decisions through a two-thirds majority vote. Regular sessions of the Board of Regulators and of the Management Committee are held quarterly. In order to address issues and adopt decisions on short notice, procedures can also take place through electronic clearance, i.e. a voting procedure via electronic communications; this option allows BEREC's bodies to pass decisions during the intervals between regular sessions as well.

In particular during Austria's term as BEREC chair, Georg Serentschy made frequent use of this vehicle in order to take decisions quickly.

Another important international institution alongside the European Commission, the European Parliament and the Council as well as BEREC, is the Independent Regulators Group (IRG). This association was established under Belgian law in 2008. The IRG provides regulatory authorities with an international platform for coordination, discussion and international comparison of the methods applied, whereas the focus can be broader than the one taken by BEREC.



This is especially due to the fact that the IRG includes representatives from the EU Member States as well as from the regulatory authorities established in the European Economic Area (Iceland, Liechtenstein and Norway) and representatives from candidate countries for EU accession (Croatia, the Former Yugoslav Republic of Macedonia, Montenegro, Serbia and Turkey) and from Switzerland. This range of members consequently results in a broader scope and adds to the array of options for international comparisons. As part of its activities in 2012, the IRG organised numerous workshops on specialised topics and issues, which were met with keen interest and a high degree of acceptance. For more information, please also refer to the discussion of the various activities at the international level in Section 8.8.

The European Regulators Group for Post (ERGP) is a similar institution existing for the postal sector. The body was established through a resolution by the European Commission dated 10 August 2010. As Austria's independent NRA, RTR is also a member of this group.



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


3.1 Media Division

3.1.1 Procedures before the Federal Communications Board (BKS) and the Independent Administrative Tribunals (UVS)

KommAustria's official decisions regarding broadcasting regulation issues can be contested by means of appeals, which are decided on by the Federal Communications Board (BKS). The BKS issues decisions on the cases themselves and can amend official first-instance decisions in any way. In administrative penal cases, this competence is assigned to the Independent Administrative Tribunal (UVS) in Vienna. As the highest authority with material jurisdiction, the Federal Chancellor also takes decisions on appeals filed against official decisions by KommAustria in some cases.

In the reporting period, the BKS issued numerous decisions in response to appeals, with several cases pertaining to complaints against the Austrian Broadcasting Corporation (ORF). In three cases, the BKS did not identify any violations of regulations or principles regarding the content of the ORF's broadcasts; in two further cases it identified such violations as proven, and in all cases confirmed KommAustria's legal interpretation. As a result of complaints regarding violation of advertising regulations by the ORF, the BKS also ruled on two appeal decisions, in each case confirming KommAustria's legal interpretations, which had identified a violation in one case. The BKS also had to examine two cases pertaining to violations of prohibitions imposed by the ORF Act (ORF-G), confirming KommAustria's ruling that the violations had been committed. An official decision by KommAustria that ruled one part of an online service as violating the ORF-G was, however, overturned by the BKS; this came after a corresponding ruling by the Austrian Administrative Court (VwGH) that had been handed down following the BKS's original first-instance decision to confirm the claim. In addition, the BKS, as KommAustria previously, identified a violation of the ORF's public mandate as a result of transgressing the scope of a service plan. In three further cases the BKS confirmed the first-instance rejection of complaints against the ORF on the grounds that the complaints lacked legitimacy.

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 the ORF and a private broadcaster. In all three cases KommAustria's official decisions were confirmed in their entirety. In the field of radio broadcasting, three KommAustria licensing decisions were confirmed in their entirety, one of which concerned a temporary licence for a broadcasting event. In one case BKS found a planned programming change by an existing radio broadcaster to be a significant change, thereby confirming the decision by KommAustria. In the field of television regulation, the BKS confirmed one official decision in which a licence for operating a regional terrestrial multiplex platform (MUX C) was revoked by KommAustria on the grounds of repeated legal violations. In another case, the BKS overturned a first-instance decision after the VwGH had overturned the second-instance decision, which had originally confirmed the first; specifically, a German satellite television broadcaster had been found to breach regulations by exceeding the portion of time approved for broadcasting specific Austrian content. The BKS also confirmed an official decision by KommAustria pertaining to the supply of channels to cable networks. Upon application by a cable network provider, KommAustria had confirmed that the must-carry requirement applied to the ORF SPORT+ channel in both digital and analogue programme packages. One official decision, issued by KommAustria in rejection of a request for an



assessment decision confirming that the notification requirement did not apply to an audio-visual media service, was overturned by the BKS, stating that a substantive decision in respect of notification requirements was necessary in this case. KommAustria subsequently issued an official decision ascertaining that the notification requirement applied, against which in turn an appeal was filed. The BKS upheld KommAustria's official decision.

Finally, the BKS overturned a KommAustria decision in which the authority had ordered parties to pay financing contributions for the expenses of the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) and KommAustria, as the VwGH had previously overturned the corresponding BKS decision due to unlawful content.

An appeal to the BKS was upheld, since KommAustria had wrongly rejected a licence application on the grounds of failure to comply with a previously issued instruction to correct defects. It was the opinion of the BKS that no such defect existed.

In addition, until the 2010 amendment to Austrian broadcasting law entered into force, 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-G had been violated, KommAustria was required to report such violations to the BKS until that time. In the broadcasting law amendment, the first-instance adjudicative powers held by the BKS 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 entered into force. During the period under review, in response to reports by KommAustria, the BKS issued one official decision ruling that a private radio broadcaster had not violated the ORF-G through the broadcast in question.

In 2012 the Independent Administrative Tribunal (UVS) in Vienna handed down two decisions on appeals. In one case it confirmed a penal decision issued by KommAustria on the violation of advertising provisions in the ORF-G, in the other, however, it overturned a penal decision on the violation of the provisions of the Audiovisual Media Services Act (AMD-G).

In 2012 the Federal Chancellor ruled on appeals against two decisions by KommAustria, in which the latter had rejected as inadmissible requests for assessment decisions on notification requirements in the context of media transparency. The Federal Chancellor overturned these decisions, ruling as necessary the substantive decision on notification requirements, which had not been issued, however.


3.1.2 Proceedings before the Constitutional Court (VfGH)

Complaints regarding decisions handed by the BKS on appeals can be filed with the VfGH. In the period of this report, the Constitutional Court issued only few resolutions in which it refused to hear the cases submitted by private broadcasters or operators regarding BKS decisions, stating that the desired decision could not be expected to shed light on issues related to constitutional law.

Of particular note is a ruling by the VfGH in which it rejected a complaint in a radio licensing procedure, thereby confirming the legal interpretation of KommAustria and the BKS. In its ruling the VfGH stated that the right to participate in cultural institutions on equal terms as defined by Art. 7 No. 4 of the State Treaty of Vienna does not include the right to provide a radio channel in Slovenian. Nor could this provision be used as justification for claiming the right to provide a radio channel broadcasting exclusively in Slovenian.

3.1.3 Proceedings before the Administrative Court (VwGH)

BKS decisions are also subject to review by the VwGH. In contrast to the BKS, the VwGH does not hand down substantive rulings; rather, it may overturn an official decision by the BKS where appropriate, so that the BKS must subsequently amend its decision.



In the period under review, the VwGH ruled on four official decisions issued by the BKS with regard to the issuance of radio licences and on two official BKS decisions regarding the expansion of an existing licence. A further ruling by the VwGH concerned a complaint against the ORF by a private broadcaster; another ruling concerned an official procedure conducted against a private broadcaster due to a legal violation. In the case of a complaint against the ORF by a religious community, the VwGH overturned the second-instance ruling, in which the ORF's reporting had not been found to violate any laws. In another case the VwGH overturned the second-instance decision, because it did not find the ORF services in question to be inadmissible. A complaint against findings in respect of violations of advertising regulations was partially upheld by the VwGH, and the BKS decision was overturned in part. In three cases, the VwGH confirmed in its rulings the legitimacy of demanding information by official decision as specified in the Telecommunications Act 2003 (TKG 2003). One ruling concerned a complaint in respect of a penal decision by the UVS of Vienna.

In one case, the VwGH 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 decision 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.

Finally, the VwGH confirmed a decision by the BKS, in which it had discerned a violation of the ORF-G through inadmissible cooperation between the ORF and social networks.

3.2 Telecommunications and Postal Services Division

3.2.1 Proceedings before the Constitutional Court (VfGH) regarding telecommunications

In the year under review, three complaints regarding official decisions issued by the Telekom-Control-Kommission (TKK) were submitted to the VfGH. These related to two procedures in respect of approval of terms of business and fees, and one procedure in respect of changes to the ownership structure under Art. 56 Par. 2 TKG 2003. As of 31 December 2012, a total of four cases were pending.

3.2.2 Proceedings before the Administrative Court (VwGH) regarding telecommunications

During the period under review, a total of three complaints regarding TKK decisions were filed with the VwGH. These related to a procedure in respect of approval of terms of business and fees, a procedure in respect of changes to the ownership structure under Art. 56 Par. 2 TKG 2003, and a decision on interconnection fees.

The VwGH issued a total of 21 rulings in the period under review. In one case a decision was overturned due to unlawful content, and in seven cases the complaints were rejected as unjustified. Six complaints were rejected as inadmissible, in six further cases the complaints were found to be invalid and the procedure discontinued, and in one case the VwGH made use for the first time of the option of refusing to hear a complaint. As of 31 December 2012, 38 complaints before the VwGH were pending.

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

In the year under review, two complaints regarding official decisions issued by the Post-Control-Kommission (PCK) were submitted to the VfGH. These related to two procedures in respect of financing contributions under Art. 34a KommAustria Act (KOG). The VfGH refused to hear the complaints. As of 31 December 2012, there were no cases pending.



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

During the period under review, three complaints concerning the proscription of the closure of postal service points, and the related issue of the legal status of local communities in procedures, were submitted to the VwGH. The VwGH issued one decision during the period under review, in which it rejected the complaint as unfounded. As of 31 December 2012, six procedures before the VwGH were pending.







4 Regulatory activities of KommAustria

The Austrian Communications Authority (KommAustria) has been established under the KommAustria Act (KOG) for the purpose of performing administrative and regulatory duties in the area 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 provisions of law, infrastructure regulation, issuing alternative rulings on agreements pertaining to transmission platforms, broadcasting facilities and reporting coverage rights, and frequency coordination. In this regard, 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 grants awarded pursuant to federal law in the area of press and journalism subsidies (see Chapter 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 those offered via the internet), as well as reviewing the launch of new content services by the ORF and its subsidiaries.

4.1.1 Private radio broadcasting licences


In 2012, the main regulatory activities of KommAustria in the area of private radio broadcasting included the completion of terrestrial radio licensing procedures that had been previously initiated in 2011 and the start of additional licensing procedures as part of official tasks; the new procedures were necessary because the previous licences were scheduled to expire in 2013.

In addition, significant effort in the area of terrestrial radio was required on the part of the authority, and specifically of RTR as its operative arm, due to the expansion of the technical range of KRONEHIT, a nationwide radio broadcaster, and to deal with the large number of applications for temporary radio event licences.

4.1.1.1 Nationwide radio broadcasting

Since December 2004, KRONEHIT Radio BetriebsgmbH. has held a nationwide licence for private terrestrial radio broadcasting in Austria. In vast parts of the country the station broadcasts its adult contemporary radio content under the “KRONEHIT” name.

In 2012, the licensee was allocated a total of seven frequencies throughout Austria to expand its coverage along with two frequencies to improve existing service; its licence was amended accordingly. As a result, KRONEHIT Radio BetriebsgmbH. was again able to increase its coverage level in 2012. At the end of 2012, KRONEHIT Radio



BetriebsgmbH. submitted applications for the allocation of nine additional frequencies, in this way expanding the scope of the nationwide licence. The procedure could not be completed within the period. KRONEHIT Radio BetriebsgmbH. had consequently been assigned a total of 129 frequencies as of the end of the period covered by this report.

In addition, four changes to radio equipment were approved at the broadcaster's request during the period under review. Another three applications under telecommunications law for changes to radio equipment were pending as of 31 December 2012.

In the period from 16 August 2012 to 25 February 2013, the regulatory authority invited interested parties to apply for another nationwide licence in accordance with Art. 28b Par. 1 of the Private Radio Act (PrR-G). No applications had been received by the end of 2012.

4.1.1.2 Regional and local radio broadcasting

In this area of activity, a total of 46 procedures were carried out in 2012. Half of this number were pending by the end of the period under review.

Procedures regarding terrestrial radio broadcasting licences are carried out either 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 request a licence either for a new, separate coverage area or for the expansion or technical improvement of existing coverage areas (allocation of additional frequencies).


An application for the creation of a new coverage area is to be rejected in cases where, given a technical range of less than 50,000 potential listeners, 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 small range.

Applications are also to be rejected in cases where a population of 50,000 to 100,000 falls within the technical range and where, with due consideration to the existing coverage level of Austrian private radio stations and the competitive situation on the radio market, it cannot be reasonably expected that radio broadcasting within the requested coverage area will be financially viable in the long term.

KommAustria has the additional option of issuing ordinances as a means of reserving frequencies for the purpose of planning new coverage areas.

In all other cases, 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 (i.e. published in *Wiener Zeitung*, daily newspapers and on the RTR website). This procedure allows other interested parties to submit applications within a period of at least two months as specified by KommAustria. If applications are subsequently submitted for the improvement or expansion of an existing coverage area, the creation of a new coverage area or the expansion of a nationwide licence, the applications are required to be reviewed according to a legally defined sequence that is intended to ensure a dual broadcasting system.

- Top priority is given to allocating frequencies to the ORF, yet on condition that frequencies are actually required in order to meet the coverage obligations specified in the ORF Act (ORF-G).
- The next priority is the allocation of frequencies to improve coverage provided by previously licensed radio broadcasters. This case rules out, however, expanding the geographical area covered by the licensee.
- 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.



If there remains a choice of more than one equally ranking application, KommAustria is required to review whether the requested frequency should be used to create a new coverage area or to expand an existing coverage area. Both options are considered legally equivalent alternatives. The decisive criteria in this context include the diversity of opinions in the medium, 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 (similar to a 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.

In 2012, eleven licensing procedures were carried out in response to applications in the area of local or regional terrestrial radio broadcasting that the authority received. It was possible to issue four licences, specifically for the new coverage areas of the city of Salzburg at 106.6 MHz and Upper Styria, as well as for the two coverage areas of Leutschach and Kirchdorf an der Krems, each having a technical range of fewer than 50,000 listeners. The six procedures pending at the end of the year related to coverage areas in Styria, Tyrol, Upper Austria, Vienna and Vorarlberg. One licence application was withdrawn in 2012.

On the basis of official invitations to tender, eleven additional licensing procedures were carried out; these procedures concerned four licences which were set to expire in 2012 and therefore had to be reissued. The licences in five pending procedures are due to expire in 2013. An official invitation to tender was extended for one procedure due to the licensee relinquishing the licence, and this procedure was not yet completed within the period under review. KommAustria had to take a new decision in another procedure that had already been officially tendered, after the procedure was reinstated by the Federal Communications Board (BKS) as part of official activities. The procedure was completed with legal effect during the period under review.

In 2012, KommAustria carried out 22 procedures pertaining to the expansion of existing coverage areas. In detail, frequencies were assigned to several private radio broadcasters for the purpose of expanding their coverage areas, while ten procedures were pending as of the end of 2012.

Two procedures aimed at improving coverage in an existing area were filed in 2012. One of the applications for improving coverage was withdrawn by the applicant, while the second was not completed within the period covered by this report.

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 2012, licences were granted for a total of twelve event radio broadcasts. The following events were or are being covered by radio broadcasts:

- Wiener Eistraum 2012, 16 January 2012 to 11 March 2012 in Vienna (Lounge FM)
- Wiener Filmball 2012, 12-22 March 2012 in Vienna (Lounge FM)
- Vienna City Marathon 2012, 23 March 2012 to 21 April 2012 in Vienna (Lounge FM)
- Sand in the City 2012, 22 April 2012 to 22 July 2012 in Vienna (Lounge FM)
- Sommer im Museumsquartier 2012, 23 July 2012 to 14 October 2012 in Vienna (Lounge FM)
- Das Festival für Musik der Gegenwart 2012 (contemporary music festival) from 15 October 2012 to 26 November 2012 in Vienna (Lounge FM)
- Winter im Museumsquartier 2012, 27 November 2012 to 30 December 2012 in Vienna (Lounge FM)
- Wiener Silvesterpfad 2012/2013 (New Year's broadcasts) from 31 December 2012 to 8 January 2013 in Vienna (Lounge FM)
- Vienna City Marathon 2013, 18 March 2013 to 20 April 2013 in Vienna (Lounge FM)
- 120 Jahre Elektroindustrie Weiz (120 Years of the Weiz Electrical Industry), 1 May 2012 to 1 August 2012 in Weiz (NJOY Radio – 120 Jahre Elektroindustrie Weiz)
- Fest der Jugend (youth festival), 13 May 2012 to 13 June 2012 in Salzburg (Radio Maria)
- Hahnenkammrennen 2013 (skiing competition), 23-28 January 2013 in Kitzbühel (customised radio broadcasts including audio descriptions for listeners with visual impairments)

An additional decision was issued during the period under review approving coverage of Wiener Eistraum 2013, 14 January 2013 to 17 March 2013 in Vienna (Eis Radio). This licence was later relinquished.

In another case, an application requesting a licence for broadcasting a radio event was refused on grounds that the event was not an independent public event. In three other cases, the applicants withdrew their applications for a licence to broadcast a radio event.

Pursuant to Art. 3 Par. 5 No. 2 PrR-G, an educational radio licence refers to a licence granted to an institution for education or training purposes within the local area near the institution, where the programmes have a functional relationship to the duties to be provided by that institution. Such licences can be granted for a maximum of one year.

Six educational radio licences were granted in 2012:

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

The procedure for another educational radio licence (for Radio SOL in Bad Vöslau) was not yet completed by the end of the period under review.

4.1.1.4 Satellite radio broadcasting

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

In 2012, the private association Radio Maria Österreich was issued a licence to broadcast satellite radio for another ten years. The programme is the same as that broadcast by the terrestrial stations of the Radio Maria Österreich association.

4.1.1.5 Procedures under telecommunications law

For the sake of simplifying administration (i.e. to enable one-stop service), KommAustria is responsible for issuing both licences that entitle to broadcast under law as well as permits, in accordance with telecommunications law, for the radio equipment used in broadcasting.

Applications under telecommunications law without a direct connection to broadcasting law pertain mainly to technical changes planned for radio equipment, such as the use of new transmitter antennas, moving transmission sites or transmission output increases.

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 equipment.

In 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 2012, KommAustria approved six changes to radio equipment and four applications allowing private radio broadcasters to conduct test transmissions. Five other applications were pending at the end of the year. In addition, KommAustria issued approvals in 18 cases to commence radio equipment operation within broadcasting frequency bands (e.g. to cover football stadiums, drive-in cinemas etc.).

Additional information can be found on the RTR web site at www.rtr.at/en/m/Entscheidungen (in German).

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

4.1.2.1 Nationwide television


The multiplex platform MUX A was further expanded during the period under review, so that MUX A now provides service coverage for approximately 98% of Austria's population.

The MUX B platform was also further expanded. As of the end of 2012, MUX B provided coverage for approximately 91% of Austria's population. In addition to the channels previously broadcast over MUX B, broadcasting of Schau TV was approved in 2012.

The procedures for nationwide multiplex platforms supporting digital terrestrial broadcasting based on the DVB-T2 standard (MUX D and MUX E) were pending at the end of the year; the invitations to tender had been made in the summer of 2011. An additional nationwide multiplex platform for digital terrestrial broadcasting in DVB-T2 (MUX F) was put out to tender in April 2012. This procedure was also pending as of the end of 2012.

4.1.2.2 Regional and local television broadcasting

The licence for the MUX C platform covering Pongau and the Upper Enns Valley was revoked during the year under review, while the licences for the MUX C platforms for central Lower Austria and Burgenland were relinquished by the holders. In addition, licences were issued for the MUX C platforms for the Enns Valley, Strudengau, Lower Inn Valley and Wipp Valley, Vorarlberg and Vienna, and the MUX C platform for central Carinthia was expanded. As of the end of the period under review, 18 licences to operate local multiplex platforms were valid, covering a total of 64% of the Austrian population.



During the period under review, two licences were issued for broadcasting digital terrestrial TV channels on regional platforms and approval was granted for additionally broadcasting four previously approved channels via more than one regional platform.

4.1.2.3 Event television licences

No event television broadcasts were approved during the period under review.

4.1.2.4 Satellite television broadcasting

KommAustria issued licences for 13 television channels in 2012.

4.1.2.5 Media services subject to notification requirements

As of the end of 2012, a total of 130 cable television channels, 16 (linear) television channels broadcast via the internet, and 85 on-demand services had been registered with KommAustria.

4.1.3 Approvals and notifications of new ORF services


4.1.3.1 Prior evaluation

The procedure for prior evaluation (*Auftragsvorprüfung*) was introduced in the course of implementing EU state aid rules, which call for an *ex ante* test prior to the introduction of a major new media service by public service broadcasters receiving state aid. In this context, it is necessary to review whether a new service contributes to the fulfilment of social, democratic and cultural needs (as specified in the Amsterdam Protocol) and whether it can be expected that any negative impact of the new service on the competitive situation and on the diversity of media content would be disproportionate compared to the public service value added.

In the course of the prior evaluation, the Public Value Advisory Board is given the opportunity to assess from a media standpoint any new service plan submitted by the ORF with regard to the expected impact on content diversity and to submit a statement. The Federal Competition Authority (BWB), in turn, is given the opportunity to submit comments with regard to the expected impact of a service plan on the competitive situation of other media providers operating in Austria.

One prior evaluation was carried out in 2012 and completed with approval, while the ORF applied for a second test procedure, for which a ruling is expected in 2013.

The ORF first applied for approval to expand the web services available at oesterreich.ORF.at, specifically to include a service named Focus Sendungsarchiv to be made permanently available under the vorarlberg.ORF.at regional section. The Focus Sendungsarchiv service comprises the collected episodes of the Focus – Themen fürs Leben (Topics for Living) radio programme, aired by Radio Vorarlberg; the shows had previously been available for later downloading for seven days along with the accompanying material. This content is now available to be downloaded indefinitely. The essence of the decision handed down by KommAustria was that providing the episodes of this series to be downloaded for an indefinite period would contribute towards achieving the goals of the ORF's core remit as a public service broadcaster. The assessment of market impact revealed that, from the standpoint of potential substitution relationships on the demand side, the materially relevant market cannot be assumed to offer any other services, especially as no comparable service offers audio files for downloading. Thus, no negative impact on competition in the relevant market was expected.



After weighing the arguments as required in Art. 6b Par. 1 No. 1 and No. 2 ORF-G, KommAustria concluded that the planned web service was not expected to have any disproportionately negative impact on the competition situation or on programming diversity, when compared with the contribution made by the new service towards fulfilling the ORF's core remit as a public service broadcaster; KommAustria subsequently issued approval.

In addition, in late 2012 the ORF applied for approval of a plan to commercially market TVthek.ORF.at, a service that has previously been offered without advertising, whereas approval was also requested for expanding and modifying content. The application was forwarded for evaluation to the BWB and to the Public Value Advisory Board during the year under review. The decision is expected in 2013, however.

4.1.3.2 Review procedures for service plans submitted by ORF

Under Art. 5a ORF-G, service plans aim to provide concrete details of the channels and services offered by the ORF to legally fulfil its public mandate. In 2012, the ORF submitted a modified service plan for TVthek.ORF.at, however no prior evaluation took place in response to the application. In addition, a refusal of a sub-service, handed down during the year of the 2011 report, was overturned following appeal to a higher instance.

By the end of 2011, the ORF had applied for a modification to the existing service plan pursuant to Art.5a ORF-G for TVthek.ORF.at. The period specified for rejecting the modified service plan came to a close during the year of this report, 2012. The modification to the service plan related to the technical usability as well as access to TVthek.ORF.at; specifically, it included expanding accessibility to the ORF TVthek to make it available via networks owned by cable TV, telecommunications and satellite operators, in which case content access would be provided via proprietary or protected systems. In its assessment, KommAustria ascertained that the modification to the existing service plan for TVthek.ORF.at was in accordance with the provisions specified in Art. 3 Par. 4a and Par. 5 No. 2 and in Art. 4e Par. 1 No. 4, Par. 3 and Par. 4 ORF-G. Provision of the TVthek.ORF.at as specified in the modified service plan complies with the specifications of the ORF-G, moreover, no prior evaluation pursuant to Articles 6 to 6b was required. Consequently, no prohibition pursuant to Art. 5a Par. 2 ORF-G was issued.


During the year of the 2012 report, a decision issued in the previous year by KommAustria that had rejected the debatee.ORF.at service (KommAustria 20 July 2011, KOA 11.265/11-003) was also revoked without substitute, following a ruling handed down by the Austrian Administrative Court (VwGH). The reason was that the VwGH diverged from the first-instance authority in its interpretation of the meaning of the wording in Art. 4f Par. 2 No. 23 ORF-G. The VwGH did not, in effect, consider the debatee.ORF.at service to be a "forum" within the meaning of that provision.

4.2 Legal supervision

4.2.1 Supervision of private broadcasters, the ORF and its subsidiaries

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

Violations of those laws may occur through programming (in addition to advertising violations, these may include violations of fundamental programming principles such as youth protection) or through 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 (under certain legally defined prerequisites), on the basis of a petition (regarding the ORF) or on the authority's own initiative. Such procedures may result in an official decision identifying a legal violation and, in the case of repeated or severe violations, the licence may as a last resort be revoked, thereby prohibiting radio broadcasting activity or provision of the media service (the latter option does not apply to the ORF). 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 and it must establish compliance with KommAustria's legal interpretation immediately. Should it refuse to do so, the body in question may be discharged or dissolved.

In addition to these activities, in response to the violation of certain rules KommAustria has the mandate to conduct administrative penal proceedings that may result in 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 key consideration in choosing to allocate available transmission capacity to one of a number of qualified applicants. Consequently, a licensee can later modify the programming format in a fundamental way only if certain requirements are met and a special procedure is carried out before the authority. Modifying the programming format fundamentally without approval may result in the broadcaster's licence being 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 1 October 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-G, the PrR-G and the AMD-G. In determining the frequency of evaluations and selecting the sample reviewed, KommAustria accounts for the market shares of the respective broadcasters and tries to achieve a representative cross-section of programmes from various areas (culture, sports, reports, news, entertainment, feature films etc.).

ORF channels as well as those of private broadcasters were regularly evaluated during the period under review. (The list below does not include evaluation procedures initiated in response to complaints.)

In the case of ORF channels, monitoring activities were carried out for the regional radio stations in Carinthia, Lower Austria, Styria, Tyrol, Upper Austria, Vienna and Vorarlberg, as well as for the nationwide radio station Ö3 (twice) and the television channels ORF 1 (on ten occasions), ORF 2 (twice) and ORF III Kultur und Information. No breaches of law were observed.

The following private radio broadcasters' programmes were evaluated or requested: Campusradio, Radio Maria, Radio Arabella and Radio SOL (Lower Austria); Welle 1 Salzburg and Radio Alpina (Salzburg); Arabella Rock Graz (Styria); Radio Osttirol (Tyrol); Radio Steyr and LoungeFM (Upper Austria); KRONEHIT and 98,3 Superfly (Vienna). In four of these cases, KommAustria identified violations of advertising regulations.



Programmes by the following television broadcasters were selected for evaluation: PULS 4 TV GmbH & Co KG; LIWEST Kabelmedien GmbH; Kabel-TV Eisenerz GmbH; Stadtbetriebe Mariazell GmbH; René Benedikter – GTV Film- und Fernsehproduktion; Bezirks TV St. Veit Produktions- und Vertriebsges.m.b.H.; Ing. Dablander GmbH. In these cases, three violations of advertising regulations were found. Two procedures were not completed during 2012.

4.2.1.2 Programming principles

Television and radio programmes are required to uphold the principles of objectivity and of the diversity of opinions.

Under the PrR-G, broadcasters are also required to specifically present aspects of the public, cultural and economic life 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 that glorifies violence. Broadcast content and design are to respect human dignity and the fundamental rights of others and must not engender hatred on the grounds of race, gender, disability, religion or nationality. Broadcasters are required to comply with the generally recognised principles of journalism. Before being aired, news broadcasts are to be verified with regard to accuracy and origin with the degree of care dictated by the circumstances.


Similar principles are stipulated in the ORF-G, with the ORF being required to strive for quality, innovation, integration, equal rights and mutual understanding in regard to the entirety of the services offered. Information is to be comprehensive, independent, impartial and objective and contribute to the process of forming free and public opinions accompanied by democratic discourse.

Based on its public mandate, the ORF is also obligated to reflect the diversity of opinions held in public life and to respect human dignity, personality rights and individual privacy rights. Comments, analyses and moderation must be objective and based on verifiable facts.

During the period under review, 15 complaints were filed against the ORF involving alleged violations of programming principles. The majority of the complaints objected to violations of the principles of objectivity and impartiality in reporting. Another complaint cited a breach of the ORF's obligation to maintain a neutral stance on religions and world-views and the requirement for objectivity and factuality. Legal violations could be identified in two of those procedures, with the decisions taking legal effect. No violation of law was identified in six procedures, whereas two of these have not yet taken legal effect due to appeals filed with the Federal Communications Board (BKS). The seven remaining procedures were not completed by the end of the year.

In another procedure, KommAustria investigated a complaint concerning the entirety of the ORF's services and subsequently determined a breach of law, as described below.

During the period under review, KommAustria ruled on a complaint lodged against the ORF by several competing broadcasters who claimed that, during the period of 1 January 2010 to 31 August 2011, the ORF had not offered a diverse overall programme, including information, culture, entertainment and sports for everyone, and had not broadcast two full-range channels encompassing the categories of information, culture, entertainment and sports, and in competition with commercial channels had not heeded its distinctiveness in terms of content and appearance. In its decision issued in October 2012, KommAustria ruled that, during the periods of 1 January 2010 to 31 December 2010 and 1 January 2011 to 31 August 2011, the ORF had not offered a diverse overall programme, including information, culture, entertainment and sports for everyone, since no appropriate relationship had existed among the categories of information, culture, entertainment and sports. KommAustria additionally ruled that during these two periods the ORF had also not broadcast two full-range channels encompassing the categories of information, culture, entertainment and sports, since the channels had not displayed the diversity of content required by legislation. KommAustria did not agree with the reasoning presented in the portion of the complaint claiming a violation of the requirement to maintain distinctiveness in terms of content and appearance in competition with commercial



channels, because the argument was based on merely one case of contrary programming among the entertainment offerings of ORF 1, which did not suffice to prove a breach of the distinctiveness requirement. This decision has not taken legal effect due to an appeal filed with the BKS.

4.2.1.3 Other legal violations

KommAustria rules on violations of the PrR-G, the AMD-G and the ORF-G on the authority's own initiative or on the basis of complaints pursuant to Art. 25 PrR-G, Art. 61 AMD-G or Art. 36 ORF-G.

Three complaints were put forward against private broadcasters during the period under review. All three complaints related to fundamental changes to the programming format. Two of the procedures are currently pending. In the third procedure, KommAustria concurred with the reasoning presented in the complaint and identified a legal violation due to fundamental changes to the programming format.

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 on the related procedures involving legal violations.

In addition, as a result of one procedure involving digital television, KommAustria identified a breach of the conditions stipulated in the licensing decision. In another case, the multiplex operator relinquished the licence. A third procedure is pending. KommAustria additionally conducted two procedures involving legal violations by a multiplex operator due to alleged failure to notify changes to the programme package. Procedures were initiated in three other cases, where the broadcasters were suspected of having broadcast programmes without a licence. Two of the procedures are currently pending. The third procedure, conducted against a radio broadcaster on account of broadcasting without a licence has in the meantime been completed with a legally enforceable ruling. Within the framework of legal supervision, KommAustria initiated four procedures involving failure to notify an audiovisual media service. KommAustria ascertained a violation of the requirement to notify changes in ownership in two procedures. The regulatory authority additionally conducted four procedures for revoking licences, three of which have not yet been decided. One of these procedures resulted, in contrast, in the broadcaster relinquishing the radio broadcasting licence.

In the year under review, KommAustria conducted 16 penal procedures, seven of which were concluded with a legally effective penal order. Five procedures currently await completion. In three cases, KommAustria decided not to impose a penalty and discontinued the procedure. An appeal has been filed with the Independent Administrative Tribunal (UVS) against one penal decision.

4.2.1.4 Conciliation activities related to media

The RTR can also act as a conciliation body for complaints in the area of media that pertain to communication services. The task of conciliation, generally assigned to KommAustria under Art. 122 of the 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 attempts to negotiate an amicable solution or communicates to the participants its position on the case in question.

In the period under review, RTR's conciliation body received 26 complaints concerning the Media Division. Compared to the number of conciliation cases handled in the Telecommunications Division (see Section 8.1), this figure accounts for a very small percentage (0.6%) of all conciliation cases submitted in the year 2012. The procedures in this area related to general disputes regarding contracts and fees or charges; examples to be mentioned include complaints arising from the increasing prevalence of video on demand services (disputed film orders) and disputes over reception or the quality of network service.

4.2.2 Specific supervision of the ORF and its subsidiaries

4.2.2.1 Purpose of business, public mandate and bodies

Eight complaints regarding the ORF were submitted during the period under review. KommAustria issued decisions on five cases in 2012, while the remaining three procedures were not completed in 2012.

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 on the related procedures involving legal violations. In the period under review, KommAustria also initiated two assessment procedures involving the ORF, with both procedures pending at the end of 2012.

Worthy of special mention in this context is the KommAustria decision on the ORF's Facebook site (KommAustria Decision of 25 January 2012, KOA 11.260/11-018), which allowed completion of a highly controversial procedure that had been initiated in 2011. In the interim, as confirmed through rulings by the BKS and the VwGH, KommAustria has ascertained that, by making available a number of web services on the facebook.com platform, the ORF has violated the provisions specified in Art. 4f Par. 2 No. 25 ORF-G, which prohibit the ORF from providing social networks or links to such or any other cooperative activities with such while fulfilling its public mandate, except in the context of its own daily web summaries of current news events.

In compliance with Art. 31 Par. 19 ORF-G, the ORF also notified schedules of fees for commercial communication and ongoing supplements to those schedules in multiple cases. The schedules can be found on the website www.enterprise.orf.at (in German).


In addition, a procedure pursuant to Art. 38a ORF-G for confiscating revenues was initiated in the year under review due to a transgression of the ORF's public mandate. Previously, in 2011, KommAustria had found the ORF to have transgressed its public mandate by providing live broadcasts of the Austrian national team's matches at the 2011 IIHF Ice Hockey World Championship in Slovakia via ORF SPORT +, its special-interest sports channel. As a consequence of this assessment, after conducting investigations, KommAustria ordered a procedure to confiscate the revenues that had accrued from the programme fees or equivalent funds amounting to EUR 153,768.15. (The KommAustria decision is not yet legally enforceable due to an ORF appeal.)

4.2.2.2 Supervision of business activities

With the four quarterly reports on regional advertising submitted in 2011 and 2012, the ORF fulfilled its reporting obligations pursuant to Art. 14 Par. 5b ORF-G and thus disclosed its agreements on broadcasts of regional advertising.

By the end of 2011 (on 21 December 2011), the ORF Director General had submitted the resolution pursuant to Art. 21 Par. 1 No. 7 and Art. 31 ORF-G adopted by the Foundation Council on 15 December 2011, which set the new programme fees effective as of 1 June 2012.

Pursuant to Art. 31 Par. 9 second sentence ORF-G, KommAustria is required to repeal the resolution adopted by the Foundation Council to set the new programme fees pursuant to Art. 31 Paragraphs 1 to 8 ORF-G within a period of three months from receipt of the resolution, where the resolution does not comply with the provisions stated above (i.e. Art. 31 Paragraphs 1 to 8 ORF-G). Any new programme fees set do not become effective before the end of the three-month verification period. Thus, a formal decision in the form of an official decision (*Bescheid*) issued by KommAustria has been stipulated only for the case where the Foundation Council resolution is repealed; in the event that KommAustria does not decide to repeal the resolution, the statutory regulation implicitly provides for the regulatory authority to withhold its opinion.



The review of the Foundation Council resolution with regard to a possible conflict with the provisions specified in Art. 31 Paragraphs 1 to 8 ORF-G entails two aspects: firstly, verification of compliance with the formal requirements specified for setting the new fees (i.e. application by the Director General, resolution by the Foundation Council, approval by the Audience Council) and secondly, a review of the specific content of the application or resolution with regard to compliance with the specifications included in the cited provisions (in particular, correct calculations, comprehensibility and plausibility of the underlying figures and assumptions). In late 2011, KommAustria requested a review by the ORF audit commission to determine whether the assumptions underlying the application by the Director General and, similarly, the Foundation Council resolution were plausible and whether the assumptions complied with the specifications listed in Art. 31 ORF-G. On the basis of the report subsequently submitted to KommAustria by the audit commission, the regulatory authority concluded that the Foundation Council resolution did not conflict with the provisions of Art. 31 Paragraphs 1 to 8 ORF-G and KommAustria consequently did not make use of the right of repeal under Art. 31 Par. 9 ORF-G. The three-month period specified in Art. 31 Par. 9 ORF-G thus expired without repeal, so that the Foundation Council resolution setting the new programme fees became legally effective, as planned, as of 1 June 2012.

In addition, as part of its responsibilities in 2012 with regard to supervising the ORF's business activities as specified in Art. 31 Par. 15 in conjunction with Art. 31 Paragraphs 11 to 14 ORF-G, KommAustria determined that the ORF had fulfilled the conditions for reimbursement of programme fees not collected due to exemptions under Art. 31 Par. 10 ORF-G in 2011. During 2012, the year under review, KommAustria was for the first time also required to verify the ORF's compliance with Par. 13 during the previous year, which requires structural measures to be taken (including measures, indicators and target values). The Director General was required to provide proof of fulfilling the general requirements specified in Paragraphs 11 and 12 by 31 March 2012. In order to verify that the measures, indicators and target values had been undertaken or achieved, the ORF was obligated to submit a report including the necessary documents to the audit commission by 28 February 2012. The audit commission was required to submit a corresponding audit report to KommAustria by 31 March 2012. Following a detailed evaluation of all criteria, KommAustria issued an official decision on 23 May 2012, attesting to the fact that the ORF had fulfilled the requirements for the partial reimbursement of programme fees not collected in 2011 due to exemptions under Art. 31 Par. 10 ORF-G.

Supervision of ORF business activities also includes the auditing of the consolidated financial statements and the individual financial statements. Specifically, the audit commission performed an audit of the annual financial statements as at 31 December 2011 as specified in the service agreement with KommAustria. The main findings of the audit reports, submitted in mid-June 2012, are presented below.

All annual financial statements were confirmed with an unqualified audit certificate. The consolidated account level showed a gross loss of EUR 12.59 million for activities included in the public mandate in 2011. The audit commission additionally noted that one of the members of the ORF Foundation Council had refused to provide information in the context of disclosure requirements for transactions not commonly carried out with third parties that involve related companies and individuals, i.e. "related parties" as defined in Art. 237 No. 8b and Art. 266 No. 2b of the Austrian Commercial Code (UGB). In response, KommAustria conducted an administrative penal procedure pursuant to Art. 38 Par. 2 in conjunction with Art. 40 Par. 5 ORF-G and issued a penal decision, against which an appeal is pending with the Independent Administrative Tribunal (UVS) of Vienna. Yet this penal procedure does not affect the annual financial statements, which are nonetheless correct.

In accordance with the service agreement, between July and November of 2012 the audit commission also conducted an audit of the ORF's business activities (2011 business audit), in which these areas of the ORF's activities were examined:

- Cost accounting: distinction of programming-related and other material costs as specified in Art. 31 Par. 13 ORF-G (material costs of measures, indicators and target values)
- Separate accounts as specified in Art. 8a ORF-G
- Invoicing methods used by the service companies of the regional studios
- Smartcard exchange
- Technical operations: examination of the upstream and downstream organisation
- Organisation of sales of advertising time and rate schedule
- Commissioned production: Die große Chance
- Human resources: detailed examination of special contracts
- Risk management in asset investment
- “Related parties”: examination of the process applied to identify, evaluate and monitor “related parties” with regard to fulfilling statutory requirements; examination of the business transactions conducted by these individuals and companies with the ORF company group

The corresponding audit reports were forwarded to all ORF governing bodies during the year under review (2012) and subsequently to KommAustria.

4.2.3 Specific supervision of private providers

4.2.3.1 Changes in ownership


One main area of KommAustria’s responsibilities in the way of legal supervision involves monitoring private broadcasters and media service providers as well as multiplex operators with regard to ownership shares. The aim in this case is to ensure that providers continue to fulfil the legal prerequisites for broadcasting or for providing a media service also after a licence is issued or a service is notified. These prerequisites include professional, financial and organisational qualifications, absence of grounds for disqualification and safeguarding of a diversity of opinions (avoidance of excessively high media concentration). Violating or failing to meet these (licensing) prerequisites constitutes grounds for revoking the broadcasting licence or for prohibiting broadcasts.

In order to enable the regulatory authority to monitor compliance with these legal prerequisites, the PrR-G requires any and all (direct or indirect) changes in ownership or membership shares to be reported to the regulatory authority. Moreover, in those cases where new partners acquire more than 50% of the shares in a radio broadcaster, prior to the transfer of shares an official assessment must be obtained from KommAustria in order to determine whether the relevant legal prerequisites for radio broadcasting will continue to be met under the new conditions.

In the period under review, radio broadcasters notified the regulatory authority of numerous cases where the ownership of shares amounting to less than the 50% threshold was to change hands, resulting in no objections on the part of the authority. In two cases during the period under review, ownership changes were approved by official decision as specified in the PrR-G, and in each of these cases the changes involved ownership of shares amounting to more than the 50% threshold.

The AMD-G likewise requires media service providers to notify the regulatory authority of any and all changes in their ownership or membership shares. For cases where more than 50% of the shares in a television broadcaster are to be transferred to third parties, provisions of the AMD-G similar to those of the PrR-G apply, requiring an official assessment to be obtained from KommAustria prior to the transfer of shares, which certifies that the legal prerequisites will continue to be met under the changed conditions.

In accordance with the AMD-G, the authority also received several notifications of ownership changes below the 50% threshold from television broadcasters, and KommAustria issued one official decision during the period under review, approving an ownership change exceeding the 50% threshold.



Finally, both the PrR-G and the AMD-G require holders of multiplex licences to notify the regulatory authority in advance of ownership transfers subject to the assessment requirement (i.e. above the 50% threshold). Within a period of no more than eight weeks from notification, the regulatory authority is to determine whether compliance with the provisions specified in the applicable federal statute will be maintained under the changed conditions. After conducting a public oral negotiation, KommAustria is to revoke the corresponding licence if the multiplex operator transfers the shares in contravention of the regulatory authority's assessment.

No such notification was received from a multiplex operator during the period under review.

4.2.3.2 Programming changes

Under the PrR-G, radio broadcasters may also request an official assessment decision from KommAustria as to whether a planned programming change is to be considered a fundamental change of the programme format. The ruling as to whether a fundamental change in programme format is planned is to be made in light of the original licence decision. In cases where KommAustria's assessment decision finds no fundamental change of the programme format, no official approval is necessary for implementing the programming change.



However, if KommAustria determines that a planned change does constitute a fundamental change in programming, the broadcaster is required to obtain official approval. Fundamental programming changes are to be approved by KommAustria at the radio broadcaster's request and after hearing those radio broadcasters whose stations can be received by terrestrial antenna in the same coverage area, provided that the radio broadcaster has been broadcasting for at least two years and the intended change is not expected to bring about any severely detrimental impact on the competitive situation, on the economic efficiency of existing radio broadcasters in the coverage area or on the diversity of content offered to listeners. In this context, it is necessary to consider the extent to which circumstances relevant for the radio broadcaster's activities have changed, without any action on the part of the broadcaster, since the licence was issued.

During the period under review, five radio broadcasters requested assessment decisions ascertaining that the programming changes they had planned did not constitute a fundamental change of programme format. In each case KommAustria issued decisions confirming the judgement. In addition, three radio broadcasters in Styria requested approval for fundamental programming changes during the period under review. The corresponding procedures have not yet been completed.

Under the AMD-G, holders of broadcasting licences for satellite and digital terrestrial television channels also have the option of applying for permission to modify their satellite or digital television programmes. As these licences are not issued by way of a competitive selection procedure, fewer restrictions exist with regard to introducing programme changes. Satellite and digital terrestrial television licensees are required to notify the regulatory authority in advance of major changes in the programming category, the duration of broadcasts as well as the number and duration of broadcasts offering Austria-specific 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 additionally broadcast the channel on the other transmission platform in the particular case. Such notifications must especially include proof 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, provided that compliance with the provisions of Sections 3, 7 and 9 AMD-G or with requirements imposed in a multiplex licence decision is ensured. If changes of this kind are made without advance regulatory approval, an administrative penal procedure is to be initiated.



In the period under review, the authority received several notifications from satellite television licensees and one notification from a digital television licensee regarding changes in the duration of broadcasts or changes in the approved programmes offering Austria-specific content. Approval was issued for the requested programming change in all cases subject to approval requirements. In all other cases, the intervening parties were informed that no approval was required as no major change had been planned. Finally, one procedure for the approval of a change in transmission platform was carried out during the period under review. In this case, the authority approved the broadcasting of a television channel via a different satellite.

4.3 Procedures concerning must-carry requirements for cable networks

Art. 20 Par. 1 AMD-G requires cable network operators to disseminate the ORF's radio stations and television channels if this is possible without any disproportionately large expense.

In one procedure conducted during the period under review, KommAustria ascertained that the must-carry requirement specified in Art. 20 Par. 1 AMD-G applies to the entire cable network and not merely to individual portions of it and that the capability of actually receiving the ORF's programmes must be ensured for all of the households connected to the network of the particular cable network operator as part of the operator's general services. The assessment procedure was precipitated by the question as to whether LIWEST Kabelmedien GmbH (LIWEST) was fully complying with the legal requirement to disseminate the ORF's programmes by carrying the ORF SPORT + channel only in the digital programme package. KommAustria's ruling was negative because around 40% of the cable TV customers affected in the case under decision only made use of the operator's range of analogue channels. KommAustria ruled that the expense incurred to LIWEST as a result of carrying ORF SPORT + within both the analogue and the digital range of channels was proportionate as defined in the statute, arguing that legislators would also have taken into account the expense arising from any corresponding restructuring of the programme line-up.

Apart from the requirement for cable network operators to carry the ORF's radio and television programmes under certain conditions, the AMD-G specifies in Art. 20 Par. 2 the requirement for cable network operators to carry, on request and under the conditions applying to the majority of programmes carried by the cable network, those television programmes that make a special contribution to the diversity of opinions within the coverage area. If no agreement to broadcast or additionally broadcast a television programme is reached between a cable network operator and a television broadcaster within a specified period, the parties concerned may appeal to KommAustria. A procedure follows in which, barring a mutually acceptable settlement between the parties, KommAustria must rule on whether a special contribution to diversity of opinions within the coverage area would be made, as well as deciding, within two months, whether the programme is required to be broadcast or additionally broadcast and/or on the amount of the fee.

During the period under review, KommAustria had to hand down one ruling, concerning a petition by an Upper Austrian cable television broadcaster to require the broadcasting of a programme via LIWEST's cable network. KommAustria's ruling was based on the assumption that a special contribution to the diversity of opinions within the coverage area could be made in a quantitative respect if the programme, which is produced and broadcast on a daily basis, distinguished itself at least from other local and regional programmes. As KommAustria could not recognise any special contribution to the diversity of opinions within the coverage area in the particular case, the petition by the Upper Austrian cable television broadcaster to require broadcasting via LIWEST's cable network was rejected.

4.4 Broadcasting market analysis

Under the Austrian Telecommunications Act 2003 (TKG 2003), KommAustria is required to carry out regular reviews and analyses of the broadcasting markets specifically concerned with providing communications networks and services ("broadcasting transmission services").

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

1. Market for analogue terrestrial transmission of FM radio broadcasting signals to end users
2. Market via the MUX A and MUX B multiplex platforms for access to end users and for the digital terrestrial transmission of television signals to end users
3. Market for access to transmission systems and the digital terrestrial transmission of television signals to end users

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

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 in those markets from an economic standpoint and whether self-sustaining competition exists in those markets in the absence of sector-specific regulation.

After some delay in receiving data from market participants, the officially commissioned experts presented an economic evaluation report along with a supplementary evaluation report in late 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 onwards. Specifically, market analysis procedures under the TKG 2003 are no longer required to be conducted only for the companies identified as having significant market power; rather, all parties affected by the procedure must be involved. This requires KommAustria to identify the parties affected in each case.

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

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, applying to 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. The evaluation report was presented in February 2012. Oral negotiations were conducted before KommAustria in June 2012 to discuss the outcome of the procedures and specifically the economic evaluation reports. The procedures had not been completed by year's end.

4.5 Public communications networks and services

The requirement to report the planned operation or provision of a public communications network or public communications service for the transmission of broadcasts (radio and television programmes) and additional broadcasting services includes in particular dissemination by means of radio networks and cable networks, whereas separate notification is required for the launch, modification and discontinuation of such operations. Regardless of their domicile, all communications service providers rendering such services in Austria are subject to this reporting requirement. After receiving a complete notification report, the KommAustria issues a confirmation (general approval) pursuant to Art. 15 Par. 3 in conjunction with Art. 120 TKG 2003.

In practice, this notification requirement is especially important in the case of broadcasting activities by cable network operators. Fundamental issues relating to delineation need to be resolved in the face of new, convergent modes for broadcasting radio and television or similar services. Pursuant to the TKG 2003, public communications networks and services used for radio and TV broadcasting are also subject to competition regulation by KommAustria. The related activities taking place as part of the market analysis were described above in Section 4.4.

Additional information can be found on the RTR website at www.rtr.at/en/m/RFAGGVerzeichnis (in German).


Notification was made of seven new, limited-area communications networks during the period under review. Procedures involving two network operators were necessary on account of failure to report communications networks. Two network operators have discontinued services or transferred the network.

4.6 Act on Transparency in Media Cooperation and Funding

The National Council adopted the Federal Constitutional Act on Media Cooperation and Media Funding (BVG MedKF-T) and, based on this statute, the Act on Transparency in Media Cooperation and Funding (MedKF-TG) on 7 December 2011. The BVG MedKF-T entered into force on 1 January 2012 and the MedKF-TG on 1 July 2012. The main objective of these statutes is to ensure comprehensive transparency in the awarding of advertising contracts and funding by public authorities (government bill in annex 1276 to the shorthand verbatim records of the National Council, 24th legislative period). The MedKF-TG consequently requires all legal entities subject to monitoring by the Court of Audit, as specified in the applicable provisions of the federal constitution and ordinary law, to provide KommAustria with quarterly reports of expenses in the context of advertising orders and media cooperation as well as of funding for media owners. KommAustria was given a new responsibility for this area. The authority serves as the independent recipient of the reports and has the mandate to verify compliance with reporting requirements. One member of the authority is responsible for completing these tasks.

The reporting requirement applies specifically to the federal government (and the individual ministries), the *Länder*, and municipalities with at least 10,000 residents, foundations, institutions and funds owned by the above, as well as enterprises in which they hold a qualifying participation, and associations founded by municipalities. The specific funds required to be reported are, firstly, any sums payable to owners of regularly appearing media products (e.g. television, radio, print media, websites etc.) for advertising or information appearing within a particular quarter. In this case, the name of the regularly appearing media product and the total amount of the fees payable are required to be disclosed. Reports must be made, secondly, of any funds committed as a subsidy (i.e. without the media owner directly providing any goods or services in return) to an owner of a regularly appearing media product within a given quarter. In this case, the name of the media owner and the total amount of the subsidy are required to be disclosed.

Reports must be submitted for each quarter, in each case within two weeks of the last day of the quarter. Submission is required by electronic means, via a web interface. KommAustria must allow an additional period of four weeks to any legal entity not meeting the original two-week reporting deadline. If the legal entity still submits no report, KommAustria is to initiate an administrative penal procedure. Any legal entity submitting an incorrect or incomplete report also faces an administrative penal procedure.



Details of the name of the media product or the media owner and the corresponding total amount are not required where the amount in the given quarter for the regularly appearing media product or the media owner in the individual case is not above a limit of EUR 5,000. A separate zero report must nonetheless be filed in cases where, for a given legal entity in a given quarter, no advertising orders were completed and no subsidy commitments were made or the orders placed or subsidy commitments made did not exceed the limit mentioned above. Thus every legal entity subject to disclosure requirements must file a report of one kind or another via the web interface within the two-week period defined by law.

To ensure that the information subject to disclosure is complete, Art. 1 Par. 3 BVG MedKF-T specifies the requirement for the Court of Audit to submit to KommAustria at the beginning of every year an electronic list, to be updated every six months, of the legal entities known to the Court of Audit that fall under its monitoring remit, along with the information necessary for registering the legal entities (e.g. name, address, authorised representative bodies). On the basis of this legal requirement, the Court of Audit submitted to KommAustria partial lists on 21 March 2012, 31 May 2012 and 20 June 2012. A total of 1,846 legal entities were named in the first partial list, 1,081 in the second and roughly 2,600 in the third. The Court of Audit updated the three partial lists as of 1 July 2012.

The first step during the period under review was to meet the general prerequisites in terms of organisation and technical details to allow smooth and efficient report processing. The focus of the subsequent activities was on providing detailed information to all of the legal entities that the Court of Audit had made known to KommAustria. This specifically involved sending initial information letters to each individual legal entity, holding more than 20 information events as well as responding to specific enquiries on an ongoing basis; the responses were subsequently distilled to about 100 FAQs and posted on the RTR website. At the same time a database was set up as a means of registering the legal entities subject to disclosure, as was the required web interface for submitting reports. The first reporting stage subsequently took place from 1 to 15 October 2012. Data originating in Q3 2012 were required to be reported. Afterwards, on 16 October 2012, KommAustria published a list of those legal entities who had filed reports on time and those who had failed to do so. Those legal entities that had failed to file reports within the two-week period received a reminder from KommAustria, stipulating a four-week extension for meeting this obligation. KommAustria published a listing of the information disclosed in the course of the first reporting stage on 15 December 2012.

A total of 4,889 legal entities fulfilled reporting requirements during the first reporting stage. This number represents 87% of the roughly 5,600 legal entities subject to reporting requirements. Of the 700 odd legal entities not meeting the deadline, 57 also failed to file a report during the extension period. KommAustria introduced administrative penal procedures against these parties in early December 2012.

The lists published by KommAustria have been made available both as PDF documents and in an open format usable as open government data, in order to facilitate further processing of the data by the interested public.

4.7 Administration and coordination of broadcasting frequencies

The coordination procedures in broadcasting concern these services: analogue radio (FM), digital terrestrial television (DVB-T/DVB-T2) and digital terrestrial radio (TT-DAB+).

The focus of the coordination procedures in the year under review was more or less equally divided between FM (based on the GE84 Agreement) and DVB-T/DVB-T2 (based on the GE06 Agreement). Coordination of T-DAB+, which also takes place under the GE06 Agreement, continued to play a minor role in 2012, since neighbouring countries operate only few networks of this type.

Many of the cases of FM coordination in Austria were related to the continued expansion of KRONEHIT. Yet local private radio broadcasters also attempted to more fully cover or expand their broadcast areas by adding transmitter locations and frequencies.

Coordinating digital terrestrial television transmitters in Austria with neighbouring countries has proven to be a complex task. While previous GE06 layers had to be extensively reorganised (the 790-862 MHz frequency range is no longer available as a result of the digital dividend), plans for the migration to DVB-T2 had to be prepared parallel to DVB-T to some extent.

Discussions in 2012 centred more frequently on what is referred to as the “digital dividend 2”, i.e. the 694-790 MHz frequency range, currently used mainly for digital terrestrial television. It remains uncertain whether these frequencies may continue to be used in the future or should instead be made available to other telecommunications services such as public protection and disaster relief (PPDR). No uniform European policy on this issue could be identified yet in 2012.

4.7.1 Participation in licensing and allocation procedures

In the course of developing new or revised plans for FM transmitters in Austria, 44 coordination procedures were conducted involving the administrations in affected neighbouring countries.

One of the main activities in 2012 was the further expansion of the nationwide private radio service (KRONEHIT Radio BetriebsgmbH.). Existing coverage throughout Austria was further expanded and previous gaps in coverage, such as in Vienna and Salzburg, were closed.

A number of new frequencies could be successfully coordinated for north-eastern Lower Austria, a region covered by many radio stations in Slovakia and the Czech Republic, in addition to existing Austrian stations. These frequencies were finally allocated in response to applications for the expansion of existing areas covered by private radio broadcasters based in Mistelbach.

Another critical area for the frequency spectrum is the Austrian Rhine Valley. Coordination of two frequencies for that region was also successfully completed in 2012. The frequencies are the basis of a new coverage area encompassing the cities of Bregenz and Dornbirn, which was put out to tender in 2012. The past unfavourable situation surrounding frequencies could in this way be considerably improved.

A new coverage area was also created in the city of Salzburg, while new FM frequencies were allocated in Tyrol to further expand coverage by local radio broadcasters, as the frequency spectrum had been utilised to capacity particularly in the Lower Inn Valley.

A coordination procedure with the object of increasing transmission power was successfully completed for Radio Helsinki in Graz. A higher power capacity was able to be approved on renewal of the corresponding licence.

The 103.2 MHz frequency, which has been allocated for radio event licences in Vienna since 2010, was able to be coordinated with neighbouring countries, with Slovakia having proposed limiting transmission power to avoid interference with transmitters in that country. The 103.2 MHz frequency was able to be put out to tender in 2012.

It can be generally observed for the period under review that frequency planning was becoming increasingly complex due to the predominant shortage of FM frequencies.

4.7.2 Frequency coordination procedures and frequency usage

A main activity during the period under review involved cases of international coordination relating to the invitation to tender for DVB-T2. About 80 frequencies were coordinated for the planned multiplex platforms D, E and F. In some cases, frequencies had to be coordinated with as many as nine neighbouring country administrations. Extensive frequency planning was required for several exposed transmitter sites, since plans in a number of cases could not be implemented in practice due to rejections asserted during coordination and several instances of major power reductions, as shown by the antenna diagram.

The approval procedures for multiplex A and B in 2012 were primarily for the purpose of providing more complete digital coverage in urban areas. One example is the Vienna region, where two additional booster transmitters now improve coverage for reception via terrestrial room antenna.


New additional channels have been planned and coordinated for regional and local MUX-C licences. Procedures for allocating these licences have been completed for Vienna, Innsbruck and Bregenz, with the channels already in use. Plans have also been implemented that allow previous MUX C operators to intensify and expand coverage.

Austria initiated coordination procedures in a total of 126 cases in the year under review. The table below also shows the number of coordination procedures outside Austria in which Austria has received the status of a party.

Table 1: Number of coordination procedures in 2012

Country	Analogue radio	Digital radio	Digital television
Austria	44	1	81
Germany	22	48	6
Croatia	61	0	0
Poland	8	0	12
Switzerland	36	12	17
Slovakia	19	0	19
Slovenia	15	1	0
Czech Republic	50	1	80
Hungary	5	1	39
Total	260	64	254

Source: RTR



The large number of frequency coordination procedures with the Czech Republic concerned mostly transmitters and channels already included in the GE06 frequency plan. Additional channels were coordinated in a few cases.

To allow expansion of their broadcasting networks, Slovakia and Hungary also coordinated a substantial number of television channels with Austria on the basis of the GE06 frequency agreement. In addition, mostly low and medium-power transmitters were coordinated with Austria, the majority of them for local television broadcasters.

Frequency negotiations at the ADSL meeting

Two meetings of the German-speaking working group, consisting of Austria, Germany, Switzerland and Liechtenstein, took place in 2012. A focus of this group continues to be on restructuring plans for the VHF range used in digital radio, which are required due to implementation of DAB+ in Germany. Additional DVB-T2 channels were able to be stipulated in the UHF range for the Salzburg and Bregenz areas.

Issues relating to current studies by Conférence Européenne des Administrations des Postes et des Télécommunications (CEPT) on the 694-790 MHz frequency band (referred to as “digital dividend 2”) were added to the working group’s agenda, and in particular potential scenarios and their impact on digital terrestrial television were discussed.

Frequency negotiations in Ljubljana

The Slovenian frequency administration APEK invited the neighbouring country administrations in Austria, Croatia and Hungary to a multilateral working meeting in April 2012.

The main topic at the event concerned optimising and restructuring the GE06 frequency plan after elimination of DVB-T channel 60 and above (digital dividend).

The amicable discussions with the neighbouring countries revealed a certain potential for optimising frequency use. It is nonetheless expected that complex solutions will be required in view of the critical situation predominating within the frequency area shared by these countries, whereby – due to the topography of the area – the existing frequency spectrum must be divided among the four countries.

It was agreed to continue talks in 2013 with a view to equitable access of all countries to the frequency spectrum.

4.7.3 Measurement activities

Based on orders for evaluations commissioned by KommAustria, in the year under review RTR’s measurement vehicle was able to complete a vast number of frequency measurement runs for the purpose of verifying in practice the theoretical assumptions made in planning and calculation.

One example is north-eastern Lower Austria, where test transmissions and extensive measurements took place as part of the application procedure for expanding coverage by private broadcasters.

Another example is the Bregenz-Dornbirn area, where, early in 2012, an extensive measurement project was carried out jointly with the neighbouring country administration in Germany (Federal Network Agency, BNetzA) and the German broadcaster Südwestrundfunk (SWR).

Numerous measurements were also taken in the west of Vienna (Hütteldorf/Hadersdorf – Weidlingau) to analyse areas covered only weakly by the Kahlenberg transmitter.

Measurements of MUX C signals had to be taken in several cases in Styria and Salzburg in order to record progress in launching operations.

In the border area of Austria and Hungary, measurements of DVB-T transmitters were taken on both sides. The results will be used as a basis for the extensive coordination procedures with Hungary.

4.7.4 Frequency register

Data on approved broadcasting transmitters are available to the public on the RTR website (www.rtr.at) in the form of a transmitter map as well as tables.

At present, the frequency register and transmitter map include approximately 1,280 radio transmitters in the FM band, with power output ranging from less than 1 W to 100 kW.

Approximately 850 transmitters can be attributed to the ORF, while the roughly 430 other transmitters are used by private broadcasters.

The frequency register also shows a total of 32 high-power transmitters for Austria. The ORF uses 26 of those transmitters, and the remaining six are used by private radio broadcasters.

With regard to the television frequency band, the currently approved DVB-T transmitters in the frequency register were distributed among the individual MUX platforms as follows at the end of 2012:

Table 2: Number of approved DVB-T transmitters (as of 31 December 2012)

DVB-T Multiplex A (ORS multiplex)	327 transmitters
DVB-T Multiplex B (ORS multiplex)	34 transmitters
DVB-T Multiplex C (regional/local multiplex platforms)	39 transmitters

Source: RTR

As of 31 December 2012, permits had been issued for 400 DVB-T transmitters in total.

4.7.5 Participation in international working groups

Task Group (TG) 4, 5, 6, 7

TG 4, 5, 6, 7 is a technical regulatory working group of the International Telecommunication Union (ITU) with the task of completing preparations for WRC-15. The objective is to harmonise a new additional mobile frequency spectrum for worldwide use.

As part of this working group, technical studies are being carried out on the 694-790 MHz frequency range (referred to as digital dividend 2 or the 700 MHz band) with the aim of allowing future co-primary use of this range by mobile telecommunications and broadcasting services. These studies are limited to Region 1 (Europe, Africa and parts of Asia including Russia) as they were occasioned mainly in response to requirements raised by African and Arabic-speaking countries at the 2012 World Radiocommunication Conference (WRC). The underlying reason is that in these countries the 800 MHz band (digital dividend) is not available for use due to already existing military radio services. During the period under review, two meetings of this working group were held in Geneva, the headquarters of ITU. The working group is required to complete findings by July 2014. Two meetings are planned per year. In addition to RTR, representatives of the Federal Ministry of Transport, Innovation and Technology (BMVIT) and Austrian Broadcasting Services (ORS) also participate in this working group.

Study Group 6 (SG 6)

This ITU working group is involved in developing the broadcasting standards used worldwide. A main focus of activities in 2012 was to prepare a recommendation for calculating compatibility between the 800 MHz band (digital dividend) and broadcasting services using adjacent frequencies.

Another main activity was to complete the planning handbook for television broadcasting using the DVB-T and DVB-T2 standards. This handbook provides a detailed description of all technical planning criteria relevant for setting up a DVB-T or DVB-T2 broadcasting network.

Specifications have also been added that relate to the T-DAB+ and DRM+ standards (both of which apply to terrestrial radio) and adapted to reflect the most advanced technical findings.

Spectrum Engineering Project Team (SE PT43)

This CEPT working group is devoted to the topic of cognitive radio systems for the operation of novel radio systems in television white spaces within the 470–790 MHz band.

The basic intention is to be able to operate radio systems in the white spaces within the spectrum for television broadcasting (as in the case of wireless microphones) without causing interference. These novel systems, which are still in the development stage, will locate white spaces with the help of a reference database. The systems identify the current location, communicate with the reference database and subsequently receive the main transmission parameters, such as the radio channel to be used and transmission power.

Trials took place in 2012 in several countries, including Finland, Germany (Bavaria), Slovakia and the UK.

The final meeting of this working group was held in December 2012.

Conference Preparatory Group Project Team D (CPG PTD)


As part of preparations by European countries for the coming WRC-15, topics with relevance for frequency use have been assigned to the CEPT working group CPG PTD. The objective is to work out common European positions for the WRC-15 on the topic of the digital dividend 2 (694-790 MHz). It is also planned to make additional frequencies outside that band available for use by mobile services. Another objective is to ensure coordination of activities with the relevant working groups within CEPT and ITU.

Three meetings a year are planned for each organisation until 2014.

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

The major portion of technical activities for the EU project SEE Digi.TV were completed in 2012; in addition to Austria, the countries participating are Albania, Bosnia and Herzegovina, Croatia, Hungary, Italy, Macedonia, Montenegro, Serbia and Slovenia. A summary of the results achieved in the legal, technical and business areas as well as of communication activities can be found on the project website. Of total project costs, 85% are funded by the EU support programme. The project, originally scheduled for 28 months, will come to a close in April 2013.

As part of the project, in the year under review RTR conducted a national workshop on the topic of further developments and perspectives for digital television in Austria. About 60 experts discussed the digital switchover of the various transmission platforms (i.e. terrestrial, cable and satellite) and the options for further development presenting themselves in each case.



A two-day seminar dealing with the further development of terrestrial digital television was held in Austria in November 2012; experts from Germany and Switzerland also attended the seminar.

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







5 Digitisation progress report

Following completion of the switch to exclusively digital transmissions of terrestrial television broadcasts in Austria in early summer 2011, satellite transmissions of Austrian television channels have been available exclusively in digital format as well since 1 May 2012. As a result, two of the three traditional broadcasting platforms in Austria have now switched completely to digital transmissions.

The third platform, cable television, only really started the digitisation process for household customers around four years ago, although progress has been measured in increasingly larger steps since 2011. At the end of 2012, almost half of the platform had switched to a digital format. Thus the proportion of households using digital cable rose by five percentage points over the course of 2012, from 16% to 21% of all television households. This represented a 47% share of the total number of households receiving cable television. Accordingly, the proportion of cabled households still using the analogue platform fell from 28% to 23% of all television households, or from 65% to 53% of all cabled households.

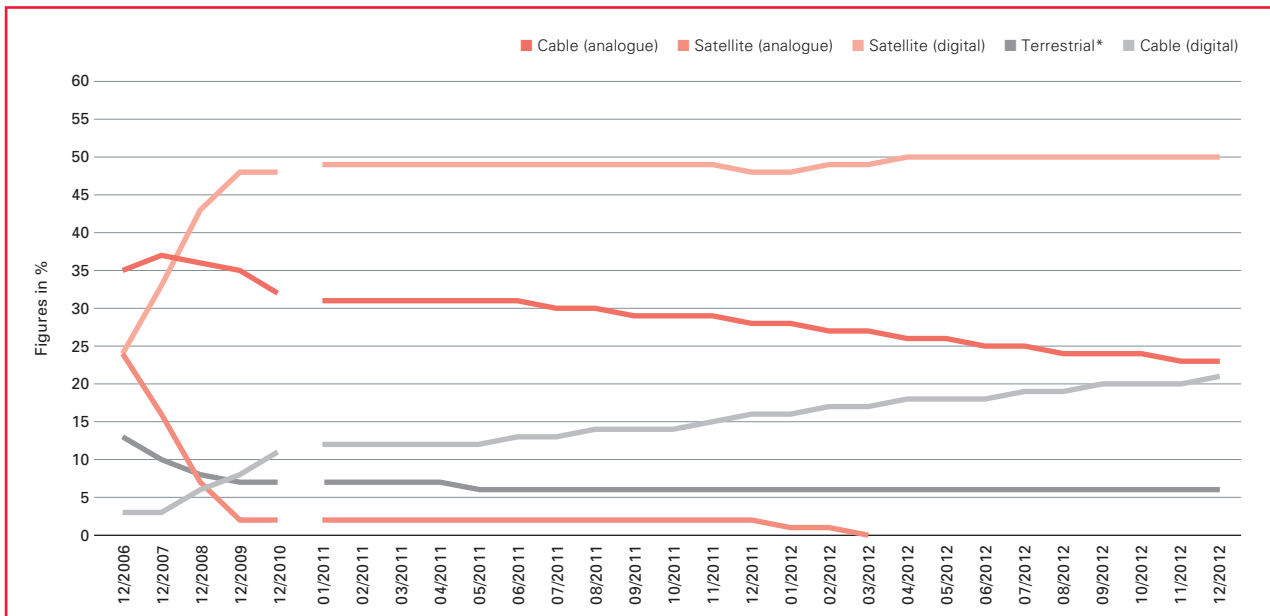
At 31 December 2012, therefore, the level of digitisation of Austrian households with television reception was 77%¹, some seven percentage points higher than the comparable figure at the end of 2011 (70%).² A good two thirds of the growth was borne by cabled households that had switched to the digital equivalent, while the remaining third represents those who were still watching analogue satellite transmissions at the end of April 2012 and were thus forced over to the equivalent digital platform on 1 May 2012 due to the satellite switchover.

On 30 April 2012, all German television broadcasts via analogue satellites ceased. Until then, some 1.5% of Austrian television households had continued to watch the German channels on an analogue satellite receiver, while receiving Austrian channels via DVB-T. The size of this group had been broadly stagnant since the end of 2009 and represented a core of analogue satellite users who could only be enticed over to digital television reception following the final switch-off of analogue satellite signals in Germany. In order to continue viewing the German television channels, these satellite households switched almost without exception to the equivalent digital platform in May 2012. There was no migration to terrestrial or cable platforms as a substitute.

¹ Concerns solely digital reception on the only or most-watched receiver in the household.

² According to the 2011 Communications Report, the figure was 69%; a final adjustment was made after publication of that report.

Figure 2: Distribution of reception modes in Austrian television households



* Around one sixth of the terrestrial television figure represents the cable households with basic coverage, i.e. receiving around eight channels.
Source: AGTT/GfK Austria


The distribution of television households according to the three platforms, which has been constant for several years, remained the same in 2012. A good 50% of the 3.55 million Austrian television households³ watch satellite broadcasts on their only or most important television set, while cabled households amount to around 44% and terrestrial television is still used by 6%.

The digitisation rate of Austrian television households in comparison with European neighbours can be derived from the Satellite Monitor study of the satellite operating company SES published in March 2012, which reflected the level of digitisation of European television households at the turn of the year from 2011 to 2012. As a result of using a different counting method⁴, Austrian television households were already reported as having achieved an 81% level of digitisation; nevertheless, the study still provides useful comparative information. It reveals that the level of digital reception in Western Europe (television households in the EU Member States⁵ and in Switzerland) is 72%. Therefore, Austria, in tenth place with 81%, is significantly higher than the average, ahead of the Netherlands (76%), Sweden (72%) and Germany (71%). In previous years, Austria occupied a position that was only slightly above the average. The level of digitisation in neighbouring Switzerland is 58%. The greatest progress has been made in digital reception by television households in Finland (100%), France and Spain (98% each), and Italy and the United Kingdom (both 93%).

³ Unless otherwise specified, all data are derived from the TELETEST Working Group (AGTT)/GfK Austria GmbH (2012).

⁴ It also counts households as having switched to digital even if the digital device is not the primary means of reception.

⁵ Excluding Cyprus and Malta.



Even though the upswing in the switch from analogue to digital within cable households that started in mid-2008 has continued and is progressing well, the process unfortunately failed to speed up at all in 2012. In 2011 the growth in households receiving digital cable broadcasts represented a 5% share of all television households, and was thus higher than in any previous year. Hopes that the digitisation of cable households would subsequently enjoy strong growth were dashed by the performance in 2012. With growth once again amounting to around 5% of all television households, it was only just possible to mirror the (nevertheless good) result of 2011, although most of this growth was contributed by a last-minute spurt in December 2012.

A comparison of the data from the SES ASTRA Satellite Monitor at the turn of the year from 2011 to 2012 reveals, however, that Austria is actually slightly above the Western European average in relation to digitisation of cable households. The proportion of cable households in the European Union⁶ and Switzerland that receive digital broadcasts is 51%. According to the SES ASTRA Satellite Monitor, the figure for Austrian cable households is 52%. In Germany, in contrast, only 46% of cable households receive digital broadcasts, while in Switzerland the figure is as low as 43%.⁷

In terms of individuals, 7.17 million viewers above the age of 12 lived in Austrian television households in 2012. Almost 81% (5.76 million) of these viewers live in the 76% of television households that have switched to digital. In comparison with December 2011, this represents an increase of almost eight percentage points, or some 609,000 people.

The rollout of digital radio in Austria remains a far-off prospect, following rejection from the vast majority of radio broadcasters including the Austrian Broadcasting Corporation (ORF). Nevertheless, the Austrian Communications Authority (KommAustria) and the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) are continuing the process of specifying the administrative and technical aspects of corresponding licensing procedures. This will ensure that there will be no delay in response to licensing requests should the mood of the market change.

5.1 2011 and 2013 Digitisation Plans

The 2011 Digitisation Plan Ordinance of KommAustria went into effect on 1 May 2011 and is valid until 30 April 2013. The ordinance focuses on expanding the range of digital terrestrial television, in particular with the introduction of channels using the DVB-T2 transmission standard, and on further preparations for a rollout of digital radio in Austria.

Since late 2012, KommAustria and RTR have been preparing an amendment of the ordinance, which will result in the 2013 Digitisation Plan and is to replace the ordinance in effect until 1 May 2013.

In this way, KommAustria is meeting its legal obligation to publish a new digitisation plan every two years as a means of supporting the launch, expansion and advancement of digital broadcasting in Austria.

⁶ Excluding Cyprus and Malta.

⁷ Over 80% since September 2012, when the largest cable operator in Switzerland (Cablecom) dropped encryption of its basic digital offering and its customers were subsequently counted as fully digital.

5.1.1 Enhancement and rollout of digital terrestrial television (DVB-T and DVB-T2)

Following KommAustria's invitation of 28 July 2011, in line with the 2011 Digitisation Plan, for tenders for two nationwide multiplex platforms (MUX D and E) for digital terrestrial television using the DVB-T2 standard, a further call for tenders was issued for another DVB-T2 multiplex platform (MUX F) in April 2012. The invitation for tenders was issued, as stipulated in the 2011 Digitisation Plan, as the demand arose. Austrian Broadcasting Services (ORS) was the sole applicant for MUX D and E, and claimed that a competitive DVB-T2 offering could only be developed on the basis of a range of programming that would exceed the combined transmission capacity of MUX D and E. ORS was also the only organisation to bid in the MUX F tender process.

In December 2012, ORS announced that it would start broadcasting in DVB-T2 from the middle of 2013, and that it wanted to offer 40 television channels of which ten would be broadcast in high definition (HD). It is planned for the range of channels offered to be concentrated on German broadcasters, which are popular in Austria.

Nevertheless, by January 2013⁸, KommAustria had been unable to award the broadcast licences for MUX D, E and F since ORS had at that point been unable to provide full documentation of agreement from the broadcasters of the television channels to be transmitted.

The expansion of the regional and local multiplex C platform in line with the Digitisation Plan was continued, with the granting of licences for, among others, the creation and operation of multiplex C platforms in Vienna, Vorarlberg (Bregenz) and the Lower Inn Valley/Wipp Valley (Innsbruck) in October 2012.

5.1.2 Pre-introduction of digital radio

With the stipulation in the 2011 Digitisation Plan that any rollout of digital radio in Austria should initially be based around the DAB+ transmission standard, KommAustria launched a survey in June 2012 to gauge interest in the market for an invitation to tender for at least one of the initially five⁹ multiplex networks offering nationwide digital radio coverage. This survey was intended by the Digitisation Plan to be used in the event that proactive requests for information were not forthcoming from the market.

While the survey did reveal some interest among established and potential radio broadcasters, a not insignificant proportion of these did not yet meet any or some of the legal prerequisites for participation in a licensing procedure. As a result, the number of remaining qualified notes of interest was not sufficiently large to fill one multiplex with at least twelve radio stations. KommAustria therefore refrained from issuing a call for tenders.


5.1.3 2013 Digitisation Plan

On 5 November 2012, KommAustria launched a consultation with the members of the Digital Platform Austria working group on the subsequent procedure relating to the introduction, expansion and further evolution of digital terrestrial broadcasting and other media services in Austria for the period from 1 May 2013 to 30 April 2015 (2013 Digitisation Plan).

The regulatory authority identified five topics for the next digitisation plan.

⁸ Correct at the time of going to press with the 2012 Communications Report.

⁹ Specified in the 2011 Digitisation Plan. In total, however, seven networks providing nationwide digital radio coverage in Austria have been arranged with other countries.



In respect of digital terrestrial television, work is required to put the nationwide MUX A/B multiplex platform back out to tender. The current licences expire in 2016.

Furthermore, the 2013 Digitisation Plan should define the options for expansion of the current digital terrestrial television multiplex platforms.

In relation to digital terrestrial radio, the work started with the 2011 Digitisation Plan to prepare the legislative framework and frequency basis for introduction of digital radio is to be continued. This is intended to allow a timely invitation for tender, given corresponding interest in digital-radio multiplexes on the part of broadcasters and/or multiplex operators.

The cable television platform remains the final as yet not fully digitised area of broadcasting. The 2013 Digitisation Plan should provide impetus for continuing the digital switchover process for cable networks with the objective of achieving complete digitisation.

No additional rules beyond the current legislative requirements are planned for other media services.

5.2 Digitisation of television broadcasting

5.2.1 Terrestrial


Terrestrial television transmissions have switched over entirely to digital platforms with the closure of the final analogue transmission equipment in June 2011.

There has been no change compared with the previous year in respect of the use of DVB-T as the primary transmission mode. The share of Austrian television households that receive only digital terrestrial television on their primary or only television set remains at 6%, or 213,000. These households are home to 430,000 viewers aged twelve or over, which corresponds to a 6% share of Austria's 7.17 million total television audience. However, in fact, DVB-T has more than double this number of users. In order to explain this more clearly, we need first to explain briefly how the official percentage of DVB-T households is calculated.

Closer technical analysis reveals that of the 213,000 DVB-T households, a proportion of around 16% (35,000) must be attributed to cable households. These are the "cable households with basic coverage", which are mostly in (Viennese) municipal housing and, while having access to cable service due to special agreements, can receive only a reduced number of channels (normally eight), which largely correspond to the channels that could be viewed using a DVB-T receiver connected to a home aerial. The listing of these households as contributing to the terrestrial segment is therefore due to the number and selection of television channels that are available to them, rather than to the means of reception.

After deduction of the individuals living in cable households with basic coverage, there remain a good 355,000 viewers aged twelve or above who actually live in households that only receive DVB-T signals. However, DVB-T is of far greater importance as a conventional means of reception for additional television sets. After evaluation of usage figures for DVB-T in all television households (i.e. including those in which the primary means of reception is either via satellite or cable), an additional 427,000 viewers aged twelve or above are revealed to have used DVB-T in 2012.¹⁰ In total, therefore, 782,000 viewers used DVB-T in 2012. This corresponds to a share of 11% of the persons aged twelve or over who live in Austrian television households.

¹⁰ ORF Media Research, TELETTEST Working Group (AGTT)/GfK Austria GmbH.



A further indication of the importance of DVB-T as a means of reception for additional devices is derived from the sales figures for DVB-T receivers. Although every television set sold today already has at least one DVB-T tuner on board, almost 23,000 DVB-T set-top-boxes were sold during the period from January to September 2012. This corresponds to 84% of the total number of DVB-T set-top boxes sold in the same period in 2011 (27,000 units; 2010: 41,000). As these devices are only needed to allow DVB-T transmissions to be viewed on old CRT television sets, the conclusion can be drawn that many old living-room (i.e. primary) television sets that had been replaced by a flat-screen television continue now to be used as additional devices for watching DVB-T in bedrooms and playrooms.

In some regions of Austria the range of channels that can be received via DVB-T has increased, as has the share of the population in general that can receive DVB-T signals.

The erection of four additional transmitters for MUX A (total now 327) completed in 2012 has improved reach in terms of coverage from a good 97% to around 98%. MUX A is used to transmit the channels ORF eins, ORF 2 and ATV. The primary purpose of the new MUX A DVB-T transmitters in Bregenz, Graz and at two sites in Vienna is to improve portable indoor reception (reception using room antennas) in these areas.

The four transmission sites will also be used for MUX B transmissions with the same primary purpose. In addition, one more transmitter was installed in each of Bad Gleichenberg, Innsbruck and Steyr in 2012, for the purpose of extending transmissions of MUX B. The technical range of coverage of MUX B has now risen from 90% of the population in 2011 to 91% in 2012, with 34 transmitters nationwide. MUX B is used for transmission of 3sat, ORF III Kultur und Information, ORF Sport+, PULS 4 and Servus TV. Since 2012, the channels available on MUX B in Vienna have been added to by the Schau TV regional broadcasts.

With the granting of three licences for the operation of regional or local multiplex platforms (MUX C coverage) in Vienna, Vorarlberg/Bregenz and Innsbruck (Lower Inn Valley/Wipp Valley), the television channels ATV II and gotv are now available for terrestrial reception in these three agglomerations. In Vienna, MUX C is also used for transmission of the community channel OKTO, with Ländle TV taking this place in Vorarlberg and tirol tv in the Lower Inn Valley/Wipp Valley. Activation of these three transmitter facilities significantly changed the range of coverage for MUX C in population terms. Whereas 35% of the population were able to receive regional or local DVB-T channels via MUX C in 2012, these channels are now open to 64% of the population.

The number of channels on these regional or local multiplexes ranges from one to three.


5.2.2 Satellite

The satellite television reception layer in Austria has been entirely digital since 1 May 2012. After all German television broadcasters ceased analogue satellite transmissions of their channels on 30 April 2012, the remaining 3% of Austrian satellite television households that received analogue transmissions at that point (1.5% of all television households) then switched to digital satellite reception.

As has been the case for a number of years, 50% of Austrian television households use satellite broadcasting for their only or primary television receiver. This corresponds to 1.78 million households, which are home to 3.93 million viewers or 55% of the television viewing population aged twelve or over.

5.2.3 Cable and IPTV

The total 1.56 million Austrian cable television households (44% of all television households) comprises 735,000 digital and 821,000 analogue households (accounting for 47% and 53% of the cable audience, respectively). The digital cable households also include IPTV households, in addition to "traditional" cable television customers. The IPTV households almost exclusively use the A1 TV product from A1 Telekom Austria AG (A1 Telekom).



The proportion of cable television households that receives digital signals has risen by eleven percentage points compared with December 2011, from 36% to 47%. Thus the very good growth registered in 2011 has been repeated in 2012. The downside to these figures is that they indicate that the process of digitisation of cable television households stagnated in 2012, albeit at a very high level.

The absolute number of digital cable households rose from 550,000 in December 2011 to 735,000 in December 2012. Analogue cable households fell from 999,000 in December 2011 to 821,000 in December 2012.

The IPTV offering from A1 Telekom (A1 TV" won significantly fewer customers in 2012 than in the previous two years (approximately 10% in the year under review compared with 33% in 2011).

Thus, IPTV as a share of total digital cable households fell for the first time in five years. While IPTV households accounted for 36% of all digital cable households at the end of 2011, this figure decreased to only just 30% in December 2012. Nevertheless, the proportion of IPTV households in respect of the total number of television households is a good 6%, and therefore just as large as the proportion of DVB-T households.

When the digitisation of cable customers is assessed not in numbers of households but in terms of the number of people aged twelve or over who live in these households, the distribution of analogue and digital is broadly equivalent, at around 50% each. According to GfK Austria GmbH, at 31 December 2012 1.41 million viewers lived in analogue cable households, while 1.40 million lived in digital cable households.


5.3 Digitisation of radio broadcasting

Since 2009, participants in the Austrian radio market have investigated the prospect of digital radio more thoroughly, in particular within the scope of the expert Digital Radio Interest Group that was formed in 2009 at the initiative of KommAustria and RTR. However, in 2012 these efforts were once again unable to produce results that would indicate a market-driven rollout of digital radio in Austria in the short or medium term.

The Digital Radio Interest Group brings together leaders of associations and groups that represent the interests of commercial and non-commercial radio broadcasters (the Austrian Association of Private Broadcasters, or VÖP, and the Austrian Association of Independent Radio Broadcasters, or VFRÖ), the Austrian Broadcasting Corporation (ORF), the Association of the Austrian Electrical and Electronics Industries (FEEL), and the management of the Media Division of RTR and the management of the authority KommAustria. Representatives of the broadcasting regulators in Germany and Switzerland also participate in advisory roles. The group observes the development of digital radio in Europe, with the aim of identifying a suitable time for its rollout in Austria, based on the DAB+ transmission standard. At the same time, in its capacity as a committee of experts the group is also able to take up an immediate role as a working group in the event that a decision is made to introduce digital radio.

The Digital Radio Interest Group invited representatives of the commercial and public radio broadcasters from Germany to a meeting in May 2012, following the launch in August 2011 of that country's first nationwide DAB+ multiplex. However, the local broadcasters' initial assessment, i.e. that the new offering in Germany had enjoyed basically positive acceptance, was not confirmed by robust figures, and was regarded with some scepticism by the Digital Radio Interest Group.

In October, representatives of the Group travelled to Oslo to visit the Norwegian public broadcaster NRK, as well as private radio broadcasters and the responsible Ministry of Culture with the aim of finding out about the digitisation of radio in Norway and the country's plans to switch off analogue FM radio by January 2017. There they learned that in particular financial incentives amounting to millions of euros (abolition of licence costs for analogue frequencies) and very long-term licences for the use of digital frequency blocks had had a positive effect on the willingness of the



commercial radio broadcasters to switch to digital broadcasts. The Digital Radio Interest Group saw once again in Norway that the process of digitisation of radio in that country would have had practically no prospect of success without the participation of the public broadcaster, just as had already become evident from the experience of Germany, Switzerland and the United Kingdom.

At a further meeting of the Digital Radio Interest Group in December 2012, the Director of Radio at ORF rejected any digital broadcasting of the ORF radio channels using the DAB+ standard for at least the immediate future, and had the support of the majority of private broadcasters in doing so.

During the meeting, the Association of the Austrian Electrical and Electronics Industry (FEEI) introduced the Austrian Association for Digital Radio (*Verein Digitalradio Österreich*), which was founded in October 2012 and whose current members in addition to FEEI include Technikum Wien GmbH, Radio Arabella and Radio Lounge FM. The objective of the association is to bring together and represent the interests of those in favour of digitisation of radio in Austria.

Since the activity of the Digital Radio Interest Group has demonstrated over the four-year period that there has been largely no change to the fundamental opposition among Austrian radio broadcasters to the introduction of digital radio and that the vast majority of them continue to reject this medium, the importance of constituting a working group that can be quickly mobilised has become broadly irrelevant for the future of the Group in the short and medium term. However, as the developments in the national broadcasting markets must always be considered in the context of the overall European development, the task of observing progress made by digital radio outside of Austria and obtaining information on this progress from broadcasters in those countries becomes increasingly important.





6 Management of funds and grants

6.1 Austrian Digitisation Fund

6.1.1 Digitisation Fund activity report


In 2012, the Austrian Digitisation Fund received an endowment of EUR 500,000. The purpose of the fund is to promote digital transmission technologies and digital applications on the basis of European standards relating to broadcasting. The funds are derived from those broadcasting fees that are collected jointly with ORF programme fees but are generally allocated to the federal budget.

On 30 April 2009, the Austrian Regulatory Authority for Broadcasting and Telecommunications (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 in Austria as MUX C platforms). 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 and must not exceed 50% of the broadcaster's total costs during the grant period. RTR signed grant agreements in line with the above 2009 guidelines with one broadcaster in 2012 (2010: 3; 2011: 4); two further applications are currently being considered. Up to this point, grants in the amount of approximately EUR 108,000 have been awarded. The 2009 guidelines expired on 6 February 2012, but continue to apply for applications submitted before that date.

RTR introduced updated guidelines on the awarding of grants for the digital terrestrial transmission of regional and local channels via MUX C platforms, having revised the 2009 edition in light of the 2011 Digitisation Plan. The new guidelines entered into force on 6 February 2012. Grants are now available to broadcasters that use a MUX C platform to transmit a channel for which a licence was approved by Austrian Communications Authority (KommAustria) in 2010 or later. The application for a MUX C grant award must be submitted within two years of receipt of the legally effective licence for the MUX C platform concerned by the application. Under the revised guidelines, RTR has so far made awards amounting to EUR 20,000. Three further applications are being considered.

In May 2010, RTR concluded a grant agreement with Austrian Broadcasting Services (ORS) for pilot broadcasts based on the DVB-T2 standard. This standard represents a further refinement of the existing DVB-T standard. The purpose of the project was to operate multiplex platforms and to conduct pilot transmissions of the 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 award amounted to EUR 463,982.40, over a period running until November 2011. The final report on the pilot was submitted to RTR in 2012.

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. A grant of EUR 204,410.40 was agreed for the project, which ran from 15 March 2011 to 15 November 2011. The final project account was settled following submission of the final report in Q3 2012.



Similarly, a grant agreement was concluded with SevenOne Media Austria GmbH for the development of an additional digital service. The service takes the form of a HbbTV-based platform for the broadcasters PULS 4, ProSieben Austria, SAT.1 Österreich and kabel eins austria, that combines television channels and web services. The project aims to further develop an additional digital service based on the open HbbTV standard, which the SevenOne Media Group has already implemented in Germany. The grant award amounts to EUR 35,875 for the period from 1 December 2011 to 30 April 2013.

Grants from the Digitisation Fund are also available for the development and implementation of pilot projects on the mobile reception of traffic information via DVB-T2. For this purpose, RTR awarded a grant of EUR 151,507.80 to ASFINAG Maut Service GmbH for the period from 1 April 2011 to 30 November 2012. The project objective was to put in place a low-cost, multimedia and user-friendly information service for transmission of up-to-date traffic information directly to vehicles. The DVB-T2 transmission technology was used to test an additional service that is closely linked to the traffic news service offered by Ö3. Information received by Ö3 from listeners and other sources was incorporated into the information stream, which was intended to progress further technical development of the TMC service at Ö3 towards the aim of creating a TPEG system or Content Management System. The project was realised through a consortium involving ASFINAG Autobahnen- und Schnellstraßen-Finanzierungs-AG, ORF and ORS. The project report will be prepared and final accounts settled in 2013.

Also worthy of support under the grant guidelines for the Digitisation Fund was the development of an additional digital service that uses the HbbTV standard to show a sign-language interpreter in live television programmes. Salzburg-based GCS Global Communication & Services GmbH was approved a grant in the amount of EUR 52,014 for the first phase of a project that has the overall objective of documenting the technical feasibility of the additional service and developing a prototype. The service is intended to link traditional broadcast transmissions with internet content and overlay in real time the broadcast image with an image supplied via internet, merging the two. The result should be to allow viewers with hearing impairments to activate a sign-language interpreter when they need it. The project duration was set in the grant agreement as 6 February 2012 to 31 December 2012, and an interim report has been submitted to RTR. Since Q3 2012, the grant recipient has been subject to insolvency proceedings. As a consequence of this, RTR has registered a claim in respect of the advance payment made.

A grant was awarded to a project running from 1 March 2012 to 30 June 2012 to encourage early adoption by consumers of digital reception using HD/3D-ready DVB-C equipment; in the context of the switch-off of the analogue satellite signals at the level of the major cable network operators UPC and LIWEST Kabelmedien GmbH, the underlying goal of the project is to accelerate the digitisation of the cable network and to raise the below-average rate of penetration of digital transmissions among small and medium-sized cable network operators. Through the grant recipient, Sky Österreich GmbH, analogue customers especially of small and medium-sized cable network operators participating in the project in agreement with Sky Österreich GmbH were given the opportunity of acquiring a HD/3D ready receiver at a cost of EUR 29.85 as subsidised by the Digitisation Fund (total grant award EUR 54,953.85). The grant was used to provide consumers with a financial incentive to upgrade to digital reception and thus reduce the barriers to switch-over. In addition, the communications costs incurred by Sky Österreich GmbH for the promotion were covered by the grant, which totalled EUR 54,953.85. The project was completed and the grant paid out in Q4 2012.

6.1.2 Notes on the 2012 annual accounts

In 2012, the Digitisation Fund received an endowment of EUR 500,000.

The funds earmarked by the Federal Ministry of Finance (BMF) as at 30 January 2012 and the existing amount in the Digitisation Fund (trustee account balance as of 31 December 2011: EUR 5,829,680.37) generated interest revenues in the amount of EUR 133,912.95 during the period under review (including interest on the repayment of unused grants in the amount of EUR 0.37). Including the repayment of unused grants in the amount of EUR 32.08 and the repayment of administrative expenses from 2011 (EUR 107,252.04), total credits to the fund came to EUR 741,197.07 in 2012.

Of the total amount available in the Digitisation Fund in 2012, EUR 293,985.65 was paid out in grants and EUR 2,615,799.60 in press/distribution subsidies (Art. 33 Par. 3a KommAustria Act, KOG), while administrative expenses and RTR's participation in projects amounted to EUR 215,300, amounting to a total of EUR 3,125,085.25.

The remaining amount of EUR 3,512,235.58 (including the EUR 66,443.39 not required for administrative activities and RTR's participation in projects that was returned to the fund) has been carried forward to 2013.

Table 3: Digitisation Fund – excerpt from 2012 financial statements

Statement of revenue and expenditure	EUR	EUR
Balance in trustee account as at 31 December 2011		5,829,680.37
Credits		
Revenues received in 2012	500,000.00	
Repayment of administrative expenses from 2011	107,252.04	
Grant repayments	32.08	
Interest	133,912.95	741,197.07
Debits		
Administrative expenses and RTR's participation in projects in 2012	-215,300.00	
Grant payments in 2012	-293,985.65	
Payment of press/distribution subsidies in 2012 (Art. 33 Par. 3a KOG)	-2,615,799.60	-3,125,085.25
Balance of initial funds, debits and credits in 2012 = Balance in trustee account as at 31 December 2012		3,445,792.19
Administrative expenses from 2012 to be repaid to the fund in 2013 and RTR's participation in projects in 2012	66,443.39	66,443.39
Balance of trustee obligations as at 31 December 2012		3,512,235.58
Approved grants pending payment	-227,227.61	
Amount allocated to press/distribution subsidies by law	-2,000,000.00	-2,227,227.61
Funds available in 2013		1,285,007.97

Source: RTR

6.2 FERNSEHFONDS AUSTRIA (Austrian Television Fund)

Founded in 2004, the Austrian Television Fund has the objective of strengthening the Austrian film industry by providing grants for television productions. With the amendment of the KOG in 2010, Articles 26 and 28 in conjunction with Articles 23 to 25 KOG now form the legal basis for the activities of the Austrian Television Fund (FERNSEHFONDS AUSTRIA). The legal provisions specify in detail the purpose of grants, eligible expenses as well as personal qualifications and material requirements.

The fund's annual endowment amounts to EUR 13.5 million. Decisions on grants are taken 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 FERNSEHFONDS AUSTRIA were revised in 2011 and have been in force since 1 January 2012. The revisions implemented requirements under KOG, incorporated proposals from the Court of Audit and took account of changes in the film industry during 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 has been possible to ensure that the needs of all parties involved were taken into account. Notification of the new guidelines was registered in Brussels, and they were approved by the European Commission as applicable until 31 December 2015.

The most major modifications include a provision that the financing contribution from the participating television company must amount to at least 30% of the total production cost. In return, providing certain prerequisites are met, some projects can now be funded by up to 30% from the fund. This relates to television projects that are distinguished by innovative ideas or involve an exceptionally significant employment effect by using creative and technical staff from Austria.

The option of commercially exploiting the promoted projects is also new. These additional exploitation grants were initiated to support the creation of audio-descriptive versions and presentations at festivals, for example.

Another objective was at the same time to retain the secondary exploitation rights with the producer and strengthen the producer's position in the exploitation of usage rights. Put and call options are no longer permitted, and the transfer of rights for other usage modes that go beyond the scope defined in the new guidelines has been prohibited since 2012. The licence period must now begin no more than twelve months after the final acceptance of the production. The distribution of revenue to producers in the event of sale to a specific broadcaster has also been modified in favour of the grant recipient.

The new guidelines will also enable even more television projects to be produced and commercially exploited in Austria. The new measures are very popular among grant applicants. In view of the fact that secondary exploitation pay TV, VoD (video on demand), streaming etc. will only increase in the future, it is necessary to monitor whether additional measures will be required to protect the interests of the grant recipient.

The current guidelines for grants from the fund can be retrieved from the FERNSEHFONDS AUSTRIA website (www.fernsehfonds.at).

6.2.2 Projects supported

In 2012, the Austrian Television Fund supported 60 projects with grants totalling EUR 15,772,088. The projects included 20 television films, four series and 36 documentaries.

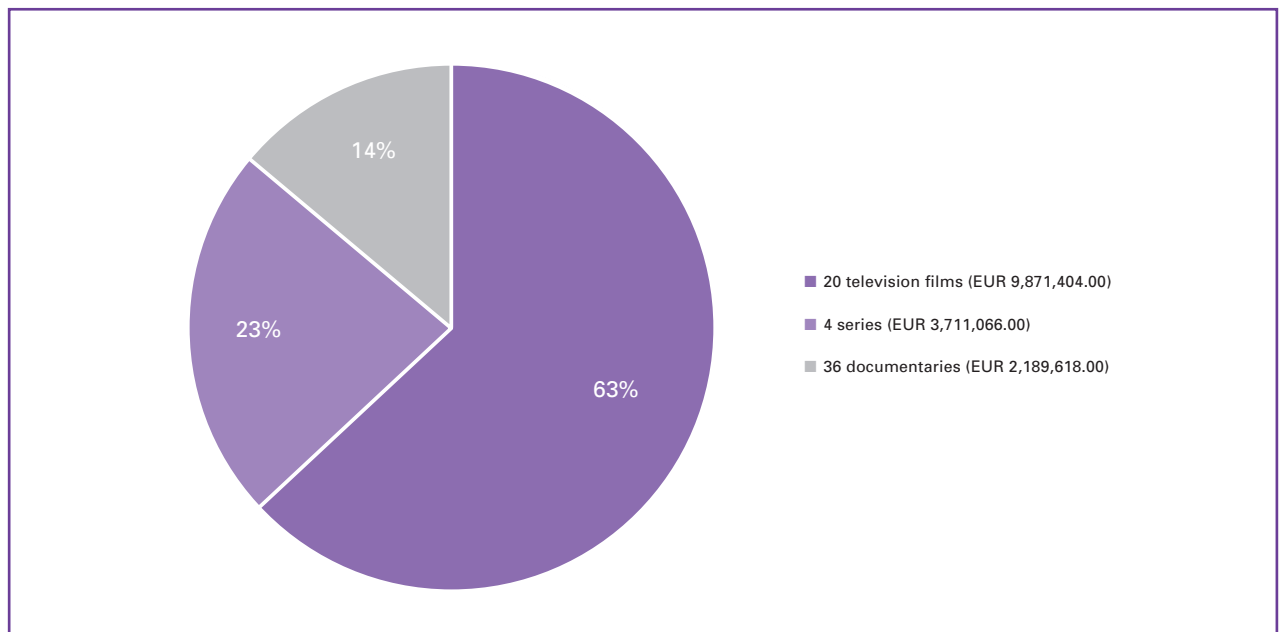
A total of 76 projects were submitted as of the four application dates in the year under review. Of those projects, nine were rejected and four were withdrawn before a decision was reached. Two producers decided not to accept their grants after approval had been given. One application was submitted too late and could therefore not be considered.

The projected overall production costs of those projects amounted to some EUR 95 million, of which some EUR 43.2 million is expected to be spent in Austria. Domestic expenditures will thus come to 2.7 times the sum of grants approved by the Austrian Television Fund.

For the first time, applications could be submitted for grants amounting to more than 20% of the total production cost. A total of 16 projects were able to meet the requirements for an elevated grant, with one receiving the highest percentage funded at 30%.

Three projects received exploitation grants in the amount of EUR 66,485.61.

Figure 3: Austrian Television Fund – grants awarded in 2012



Source: RTR

Of the projects submitted for consideration, 60% were documentaries, which received 14% of the total grant award (EUR 2,189,618). Television films, in contrast, only made up one third of submissions, but were awarded 63% of the funding (EUR 9,871,404). The four submissions for television series projects constituted 7% of the funded projects, receiving 23% of the funding (EUR 3,711,066).

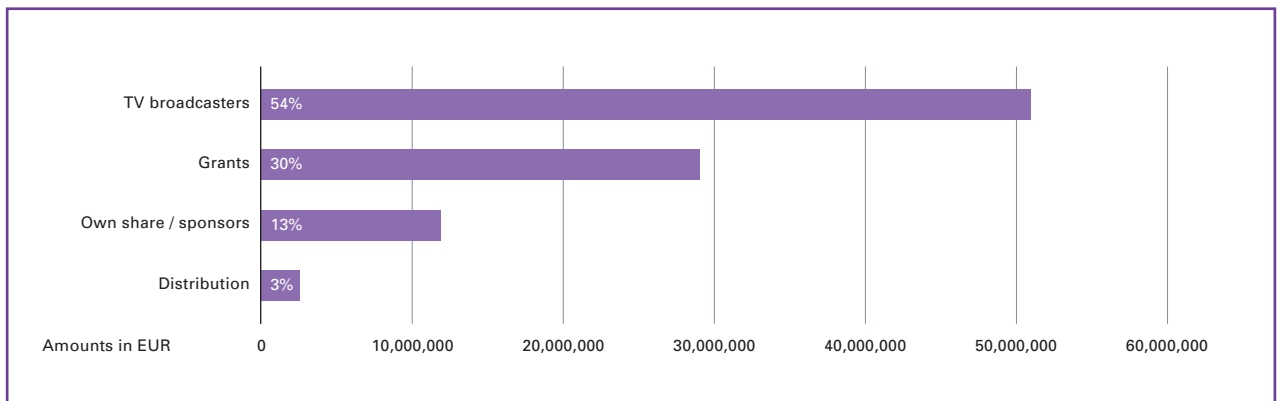
Table 4: Austrian Television Fund – television films, series and documentaries in alphabetical order

20 television films		EUR
K 2 – The Italian Mountain	Terra Internationale Filmproduktion GmbH	920,000.00
Angelique	MONA Film Produktion GmbH	800,000.00
Das Vermächtnis der Wanderhure	Aichholzer Filmproduktion GmbH	682,630.00
Die Auslöschung	MONA Film Produktion GmbH	611,195.00
Die Frau in mir	FILM27 Multimedia Produktions GmbH	345,000.00
Die Landärztin X – Vergißmeinnicht	Wega-Filmproduktionsgesellschaft m.b.H.	326,912.00
Die Schöne und das Biest	Metafilm GmbH	300,000.00
Helden	EPO – Filmproduktionsgesellschaft m.b.H.	750,000.00
Inspektor Jury	EPO – Filmproduktionsgesellschaft m.b.H.	300,000.00
Käthe Kruse	EPO – Filmproduktionsgesellschaft m.b.H.	650,000.00
Lilly Schönauer XIV – Weiberhaushalt	Graf Filmproduktion GmbH	270,000.00
Medcrimes	MONA Film Produktion GmbH	351,310.00
Nicht ohne meinen Enkel	MR-Film Kurt Mrkwicka Gesellschaft m.b.H.	413,993.00
Nur ein Schritt	MAKIDO Filmproduktion GmbH	450,000.00
Roter Schnee	MONA Film Produktion GmbH	421,266.00
Ruf der Pferde	Berge 7 Filmproduktions GmbH	320,000.00
Schon wieder Henriette	MONA Film Produktion GmbH	522,000.00
Spuren des Bösen III – Zauberberg	Aichholzer Filmproduktion GmbH	458,122.00
Steirerblut	ALLEGRO Filmproduktion GmbH	506,193.00
Stille	Sunset Austria GmbH	472,783.00
Subtotal		9,871,404.00
4 series		EUR
Soko Donau / Season 8 (16 episodes)	Satel Film GmbH	2,038,009.00
Die Unalten (9 episodes)	tv and more.net TV und Internetproduktionsgesellschaft m.b.H.	175,264.00
Es kommt noch dicker (7 episodes)	EPO – Filmproduktionsgesellschaft m.b.H.	1,008,000.00
Schlawiner / Season 2 (10 episodes)	Breitwandfilm Medienproduktion	489,793.00
Subtotal		3,711,066.00
36 documentaries		EUR
ATV Kosmos (18 episodes)	Power of Earth TV & Film Produktions Gesm.b.H.	279,400.00
24 Stunden – Die Motorradpolizei (7 episodes)	MABON FILM GmbH	41,000.00
24 Stunden – Das Unfallkommando (7 episodes)	MABON Film GmbH	40,000.00
24 Stunden – Die Lebensretter (4 episodes)	ON-MEDIA TV- und Filmproduktion GmbH	27,000.00
24 Stunden – Soko Ost (4 episodes)	HANN Filmproduktionsgesellschaft m.b.H.	20,000.00
Arik Brauer	AMOUR FOU Filmproduktion GmbH	32,620.00
Aufgetischt (6 episodes)	Satel Film GmbH	108,013.00
Austropop made in Styria	CINEVISION TV & Videoproduktion GmbH & CoKG	19,993.00
Balkan Express Moldawien – Das Armenhaus Europas	Nikolaus Geyrhalter Filmproduktion GmbH	24,000.00
Bekenntnisse einer Wiener Maske – Ein Portrait von Michael Haneke	WILDart FILM – Vincent Lucassen	42,000.00
Cern	Nikolaus Geyrhalter Filmproduktion GmbH	63,500.00
Das Dorf in der Großstadt	Metafilm GmbH	30,423.00
Das Wunder Heilung	Langbein & Partner Media GmbH & Co KG	32,100.00
Der Neue – Alexander Pereira	Langbein & Partner Media GmbH & Co KG	17,500.00
Die Akte Aluminium	Langbein & Partner Media GmbH & Co KG	65,000.00
Die Ballclique (20 episodes)	makido film GmbH	100,000.00

36 documentaries		EUR
Die Burgenländischen Kroaten (6 episodes)	artkicks. DI Helmut Potutschnig	11,381.00
Die Gentleman baten zur Kasse (2 episodes)	NAVIGATOR FILM PRODUCTION	65,000.00
Die Notaufnahme IV (8 episodes)	ON-MEDIA TV- und Filmproduktion GmbH	54,000.00
Euphoric Nights in Vienna	MISCHIEF FILMS KEG	52,523.00
Food Markets – The Belly of the City	Golden Girls Filmproduktion & Filmservices GmbH	70,000.00
Generation Österreich (4 episodes)	OTTO PAMMER FILMPRODUKTION	20,000.00
Gespräch mit Herrn V	Nikolaus Geyrhalter Filmproduktion GmbH	33,000.00
Im Gespräch mit André Heller (6 episodes)	Dor Film-Produktionsgesellschaft m.b.H.	31,000.00
Leben im Zoo – Logbuch einer Arche	Metafilm GmbH	98,296.00
Nationale Träume – Ungarns Abschied von Europa?	Dor Film-Produktionsgesellschaft m.b.H.	53,750.00
Pfusch am Bau IV (8 episodes)	ON-MEDIA TV- und Filmproduktion GmbH	56,000.00
Pfusch am Bau V (8 episodes)	ON-MEDIA TV- und Filmproduktion GmbH	56,000.00
Planet der Spatzen	Kurt Mayer Films	98,608.00
Pralle Schönheit – Die Reise der Paradieser	MR-Film Kurt Mrkwicka Gesellschaft m.b.H.	109,732.00
Putins Olympia	Satel Film GmbH	78,428.00
Raiders – Russische Firmenjäger	Satel Film GmbH	71,221.00
Sounds of Music	Kurt Mayer Filmproduktion	23,000.00
Ulrich Seidl und die bösen Buben	Navigator Filmproduktion GmbH & Co KG	65,000.00
Universum – Das Ausseerland	RAN-Film TV-Filmproduktion Alfred Ninaus	91,085.00
Universum Gonsalvus	EPO – Filmproduktionsgesellschaft m.b.H.	109,045.00
Subtotal		2,189,618.00
Total		15,772,088.00

Source: RTR

Figure 4: Austrian Television Fund – share contributed to projects funded in 2012



Source: RTR

Overall, the supported projects received funding from the following sources: 54% from television stations, 30% from other grants, 13% from the producer's own contribution and 3% from distribution agreements.

In 2012, there were once again more European and international co-productions than in the previous year.

German television companies were involved in 32 projects, while other European broadcasters from Belgium, Denmark, Finland, France, Hungary, Italy, Spain, Sweden and Switzerland participated in twelve other projects. Four projects were co-financed by Israeli and Qatari television companies. An Australian television company also participated in a project for the first time.

Seven of the 60 funded projects did not involve any Austrian television broadcaster.

Table 5: Austrian Television Fund – funding contributions according to television broadcaster

Television broadcaster	Percentage	Projects
ORF	21.1	40
ZDF	17.1	8
SAT.1	11.4	3
French TV	10.7	3
ARD	9.8	5
RTL	8.0	2
RAI	5.8	2
ATV	3.3	8
NDR	2.7	2
Swiss TV	2.1	7
ServusTV	1.7	2
Arte Deutschland	1.6	6
SWR	1.6	2
MDR	0.7	1
PULS 4	0.4	2
BR	0.4	2
Belgian TV	0.4	1
Israeli TV	0.3	3
Danish TV	0.2	2
Hessischer Rundfunk	0.2	1
Spanish TV	0.1	1
Qatari TV	0.1	1
WDR	0.1	1
Australian TV	0.0	1
Finnish TV	0.0	1
Swedish TV	0.0	1
Hungarian TV	0.0	1

Source: RTR

6.2.3 Notes on the 2012 annual accounts

Art. 23 Par. 4 KOG stipulates that a report on the allocation of funds and the annual accounts is to be submitted to the Austrian Federal Chancellor each year. The funds not paid out, along with the funds appropriated in grant approvals but not yet paid out, are to be allocated to reserves (Art. 23 Par. 5 KOG).

The EUR 13,586,915.91 available to the Austrian Television Fund in 2012 was composed of the endowment of EUR 13,500,000 allocated by the BMF, plus the credit from administrative expenses in the amount of EUR 28,968.04 carried over from 2011 and interest revenues of EUR 57,947.87 in 2012. In addition, the trustee account balance as at 31 December 2011 was EUR 10,214,167.97. A trustee account is an account maintained in the trustee's name on behalf of a third party.

Of the total money available in 2012, EUR 624,200 (representing 4.6% of the annual budget of EUR 13.5 million) was paid out for administrative expenses and EUR 14,488,033.87 was paid out in grants. Total payments from the fund thus came to EUR 15,112,233.87.

The balance in the trustee account as at 31 December 2012 was thus EUR 8,688,850.01. With the repayment of administrative expenses (EUR 37,190.34) for 2012, the balance of trustee obligations amounted to EUR 8,726,040.35 as at 31 December 2012.

At the year end, EUR 8,438,291.36 was reserved for grants that had been awarded but not yet paid out, on the basis of concluded agreements. Therefore, as a result of the economical and expedient use of resources, additional funds in the amount of EUR 287,748.99 will be available for 2013.

A separate statement of revenues and expenses for 2012 is presented below in order to ensure transparency with regard to the funds required and available.

Table 6: Austrian Television Fund – excerpt from 2012 financial statements

Statement of revenue and expenditure	EUR	EUR
Balance in trustee account as at 31 December 2011		10,214,167.97
Credits		
Revenues received in 2012	13,500,000.00	
Surplus from administrative expenses from 2011	28,968.04	
Interest	57,947.87	13,586,915.91
Debits		
Administrative expenses in 2012	-624,200.00	
Grant payments	-14,488,033.87	-15,112,233.87
Balance of initial funds, debits and credits in 2012 = Balance in trustee account as at 31 December 2012		8,688,850.01
Administrative expenses from 2012 to be repaid to the fund in 2013	37,190.34	37,190.34
Balance of trustee obligations as at 31 December 2012		8,726,040.35
Approved grants pending payment		
Appropriated amounts from 2010	-27,253.34	
Appropriated amounts from 2011	-1,394,148.50	
Appropriated amounts from 2012	-7,016,889.52	-8,438,291.36
Funds available in 2013		287,748.99

Source: RTR

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 set up in 2009 with the amendment of the KOG.

Both funds received an original total endowment of EUR 6 million, with the funding rising on an ongoing basis to EUR 18 million by 2013. The money comes from part of the fees levied in accordance with Art. 3 Par. 1 of the Broadcasting Fees Act (RGG), which were previously allocated to the federal budget. These funds must be managed by RTR and used to support private broadcasters.

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

Broadcasters whose programmes 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.

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. The funding decisions are taken by the management of RTR's Media Division after the Review Board has submitted an opinion.

Full disbursement of the agreed grant amount is only made once all invoices and documentation has been verified in the scope of a final report; an advance amounting to 50% of the agreed grant amount can, however, be paid on application when the agreement is signed.

6.3.1 Non-Commercial Broadcasting Fund

6.3.1.1 Revision of guidelines

On 23 October 2012, pre-notification was sent to the European Commission of an amendment to the funding guidelines. The draft amendments comprise the following points:

1. Open access is given more central prominence as an objective of funding. The grant recipient's programme offering must now mainly be produced on the basis of open access.
2. It is now possible to use more than 10% of the total funding amount for training measures.

In addition, a suitable legal framework has been created for submission of applications using a web form.

The new guidelines will enter into force in 2013.

6.3.1.2 Application dates in 2012

First application date (2012)

In 2012, a total of around EUR 2.5 million was available in the Non-Commercial Broadcasting Fund. In the first round of applications (due by 31 October 2010), the fund awarded grants to a total of 13 non-commercial radio stations, three community television stations, and two education and training initiatives in radio broadcasting. In total, EUR 2,289,108 was awarded. Some 32.93% of the funding went to television, while 67.07% was allocated to radio. In this round, grants in the amount of EUR 2.043 million were awarded for content creation, EUR 241,000 for educational measures and EUR 4,000 for reach surveys and quality studies.

The total award to television amounted to EUR 753,696. Of this, EUR 339,000 was granted to the community television station OKTO, while EUR 221,296 went to the Linz-based channel DORF TV and EUR 193,400 was awarded to the Salzburg-based FS1.

EUR 1.535 million in funding was awarded to radio broadcasters and education and training establishments working in the field of radio. The grant amounts ranged from EUR 80,000 to EUR 173,339. Broadcasters that cover a broader area or an urban area, consequently offering a wider range of programmes, received higher awards.

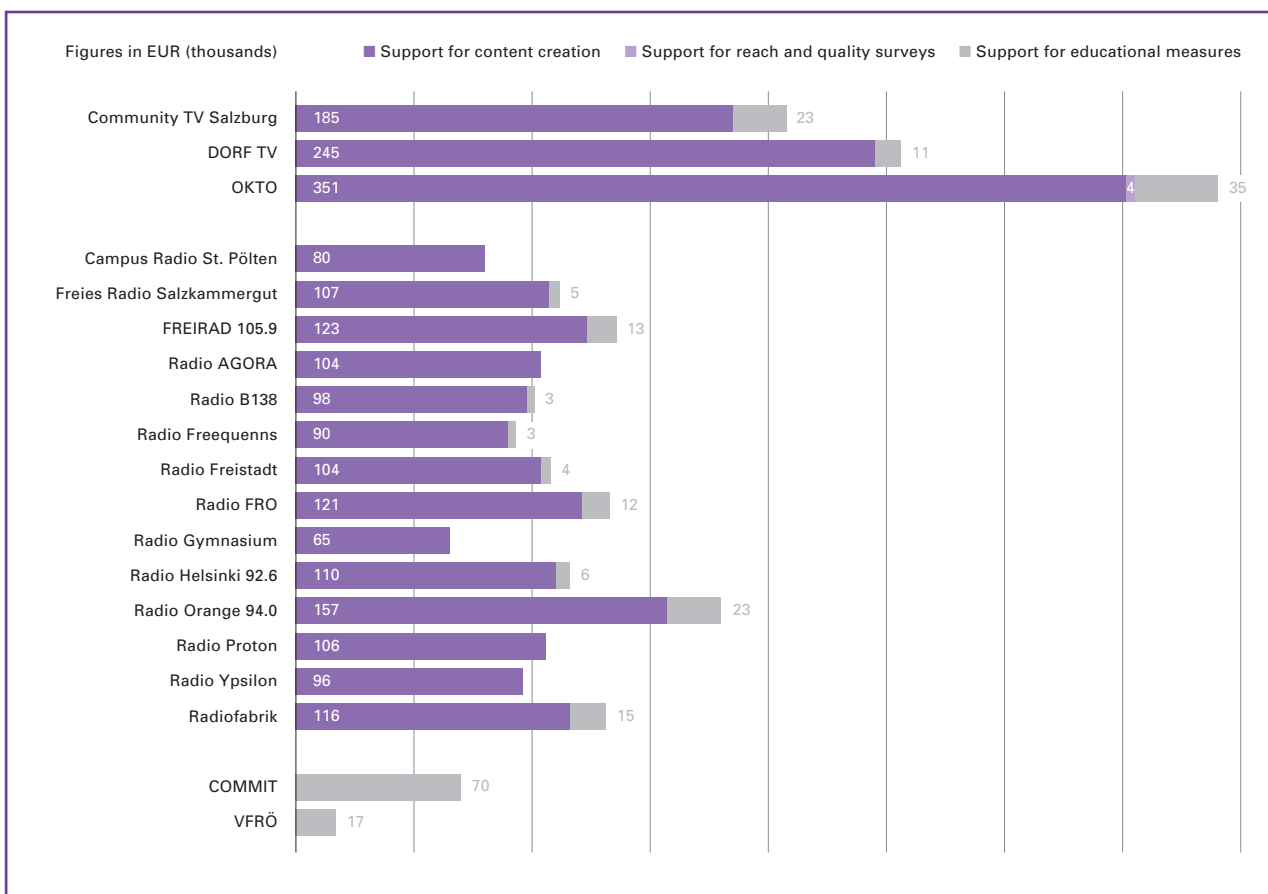
Second application date (2012)

The second round of funding closed on 2 May 2012. Remaining funds amounting to EUR 214,130 were awarded.

EUR 113,190 was allocated to radio. Radio Oberpullendorf (Radio Gymnasium) a station that did not submit an application in the first round of funding, received EUR 65,000. The remainder went to projects submitted by seven other radio stations.

EUR 100,940 was allocated to television. OKTO received EUR 50,940, DORF TV EUR 35,000 and FS1 EUR 15,000.

Figure 5: Non-Commercial Broadcasting Fund – total grants for 2012 application dates



Source: RTR

Additional information on the grant awards and decisions can be found on the RTR website at www.rtr.at/en/foe/NKRF_Fonds (in German).

6.3.1.3 Notes on the 2012 annual accounts

The Non-Commercial Broadcasting Fund received an endowment of EUR 2.5 million in 2012.

The EUR 2.5 million allocated by the Federal Ministry of Finance (BMF) and the existing amount in the Private Broadcasting Fund (trustee account balance as of 31 December 2011: EUR 471,903.65) generated interest revenues in the amount of EUR 1,808.83 during the reporting period (including interest on the repayment of unused grants in the amount of EUR 2.28). Including the repayment of unused grants in the amount of EUR 240, total credits to the fund came to EUR 2,502,048.83 in 2012.

Of the total amount available in the Non-Commercial Broadcasting Fund in 2012, EUR 2,361,376.05 was paid out in grants in 2012. EUR 77,900 was paid out for the 2012 administrative expenses, plus EUR 7,592.55 for additional administrative expenses remaining from 2011. Total payments from the fund thus came to EUR 2,446,868.60.

The balance in the trustee account as at 31 December 2012 was EUR 527,083.88. After the payment of outstanding administrative expenses for 2012 in the amount of EUR 2,195.13, the trustee obligations amounted to EUR 524,888.75 as at 31 December 2012.

On the basis of grant agreements concluded by the fund, the amount of grants approved but not yet paid out came to EUR 562,929.73 at the end of 2012. Due to increased administrative costs and grant awards agreed on the basis of the 2013 endowment, the balance for 2013 is -EUR 38,040.98.

Table 7: Non-Commercial Broadcasting Fund – excerpt from 2012 financial statements

Statement of revenue and expenditure	EUR	EUR
Balance in trustee account as at 31 December 2011		471,903.65
Credits		
Revenues received in 2012	2,500,000.00	
Grant repayments	240.00	
Interest	1,808.83	2,502,048.83
Debits		
Administrative expenses in 2012	-77,900.00	
Administrative expenses carried over from 2011	-7,592.55	
Grant payments in 2012	-2,361,376.05	-2,446,868.60
Balance of initial funds, debits and credits in 2012 = Balance in trustee account as at 31 December 2012		527,083.88
Administrative expenses from 2012 to be paid out in 2013	-2,195.13	-2,195.13
Balance of trustee obligations as at 31 December 2012		524,888.75
Approved grants pending payment		-562,929.73
Balance for 2013 (debit)		-38,040.98

Source: RTR

6.3.2 Private Broadcasting Fund

6.3.2.1 Revision of guidelines

On 23 October 2012, pre-notification was sent to the European Commission of an amendment to the funding guidelines. The draft amendments comprise the following points:

1. The distribution between television and radio, which had previously been defined as 60:40 “as far as possible”, has been changed to 60–70:30–40. This increased flexibility was needed to better respond to the actual level of submissions and the increased requirement in the television segment.
2. Item 5.5 of the guidelines, requiring a programme to be revamped after four calendar years, has been dropped, while criteria and measures relating to quality have been introduced.
3. Greater focus has been given to training in journalism and broadcasting and media law. It is now also possible to use more than 10% of the total funding amount for training measures.
4. The legal framework has been created for submission of applications using a web form.

The new guidelines will enter into force in 2013.

6.3.2.2 Application dates in 2012

First application date (2012)

In 2012, a total of approximately EUR 12.8 million was available in the Private Broadcasting Fund.

In the first round of applications (due by 17 October 2011), a total of 123 applications for grants in the field of television and 264 applications in radio broadcasting had been submitted.

Approximately EUR 10,165,328 was awarded to 40 private television broadcasters and 41 private radio broadcasters. Of those funds, EUR 6.309 million went to television broadcasters, EUR 3.632 million went to radio broadcasters, and EUR 222,808 went to the Privatsenderpraxis association, a joint training initiative established by multiple broadcasters.

Considering the distribution of grants across the categories specified in the guidelines, 89.38% of the overall amount awarded in the first round of applications (EUR 10.165 million) went to content and project grants, 7.74% went to education and training, and 2.88% went to reach surveys and quality studies.

Second application date (2012)

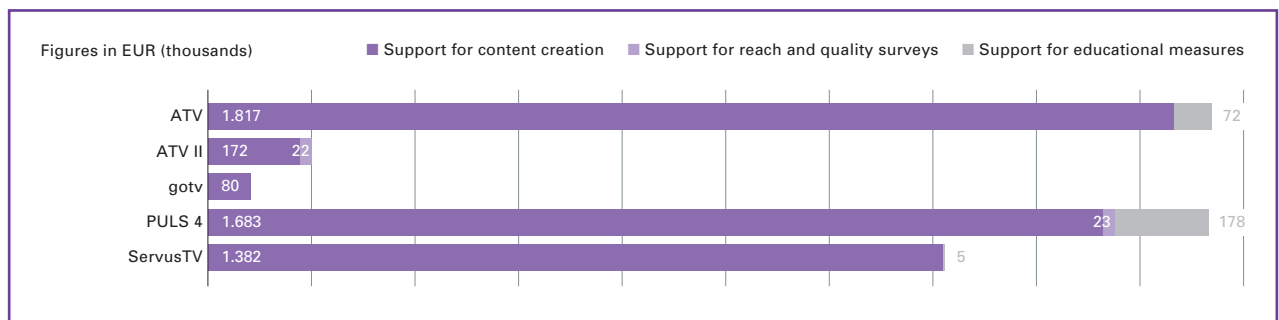
In the second round of applications (due by 14 May 2012), a total of 263 applications were received. Of those applications, 102 related to television broadcasting and 161 related to radio broadcasting. Approximately EUR 2.705 million was awarded in the second round to 31 private television operators and 29 private radio operators, as well as to the Privatesenderpraxis training initiative.

EUR 1.679 million was awarded to television broadcasters, with EUR 1.026 million going to radio. Considering the distribution of grants across the three grant categories, 77.23% of the overall amount awarded in the second round of applications (EUR 2.7 million) went to content and project grants, 8.37% went to education and training, and 14.40% went to reach surveys and quality studies.

In the allocation of grants in 2012, greater attention was once again paid to broadening the geographical distribution of grant recipients in order to include local and regional content and projects, and thus to enhance diversity. Smaller radio broadcasters with technical ranges of less than 100,000 potential listeners as well as broadcasters with a range of 100,000 to 300,000 received grants equalling nearly 100% of the funds requested.

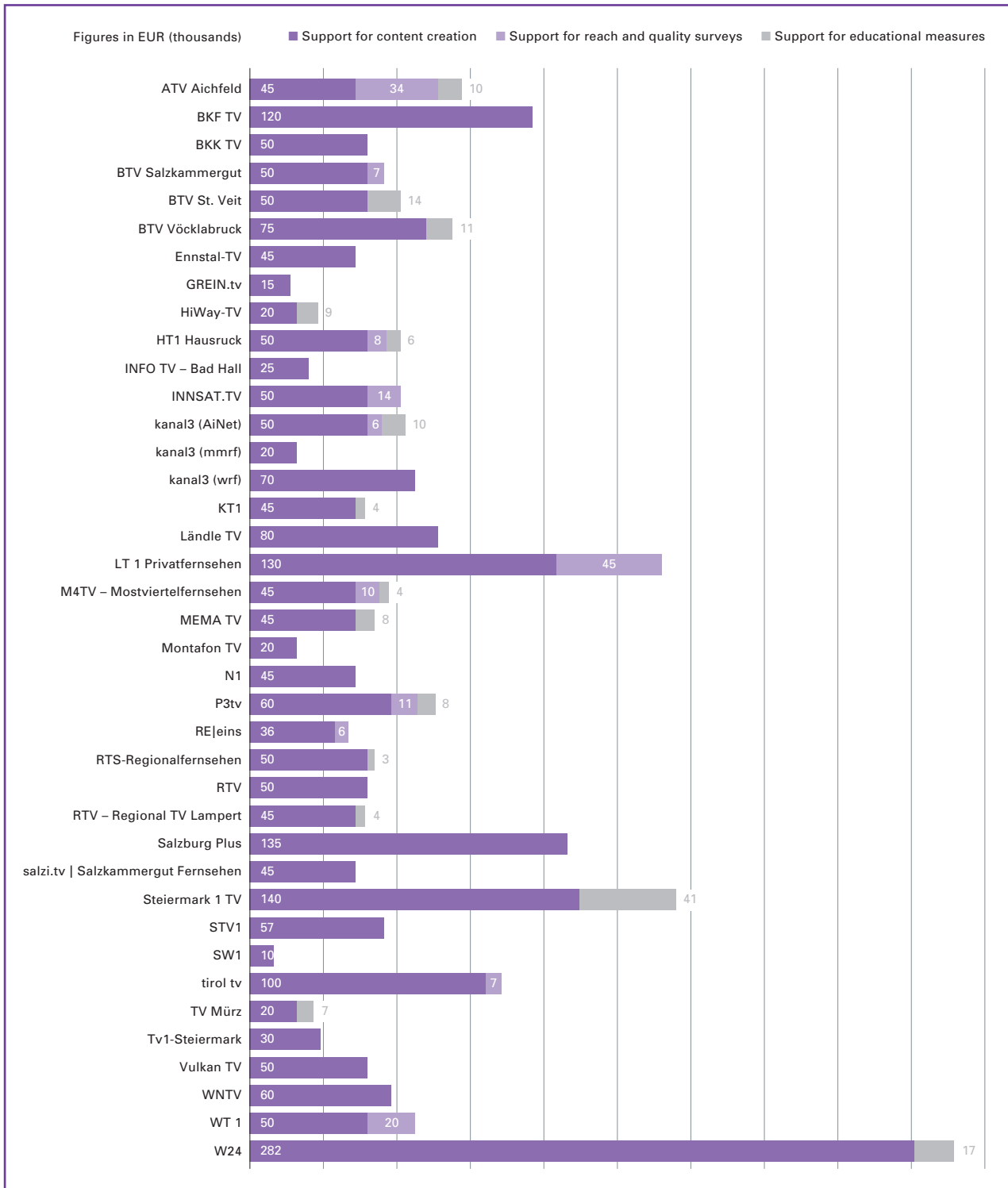
The distribution of grants for television broadcasters was rather different, with smaller, local and regional broadcasters that generally offer a new information programme once or several times a week mostly receiving a smaller grant than that specified in their submission. Nationwide television broadcasters, on the other hand, incur substantially higher costs and usually broadcast regular information shows, in many cases several times per day. The nationwide broadcasters received by far the highest awards from the Private Broadcasting Fund. In accordance with the guidelines notified to the European Commission, grants for information broadcasts, cultural broadcasts and regional broadcasts were also awarded in the reporting period.

Figure 6: Private Broadcasting Fund – total grants for 2012 application dates (nationwide TV broadcasters)



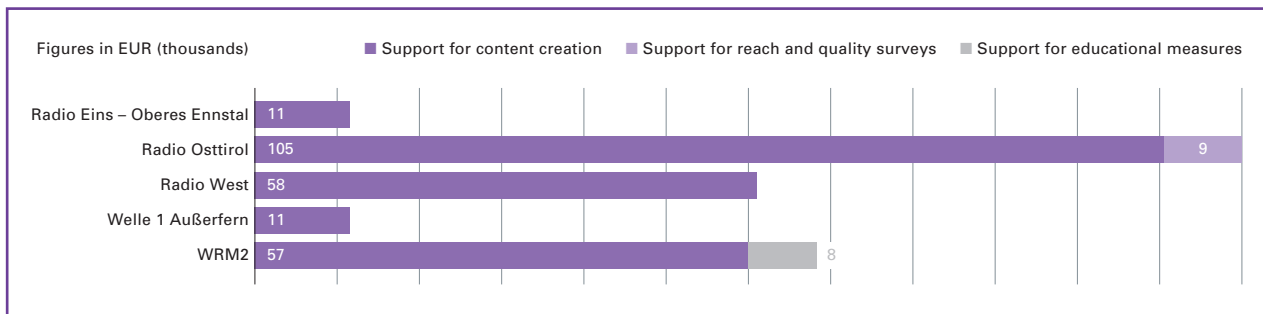
Source: RTR

Figure 7: Private Broadcasting Fund – total grants for 2012 application dates (regional TV broadcasters)



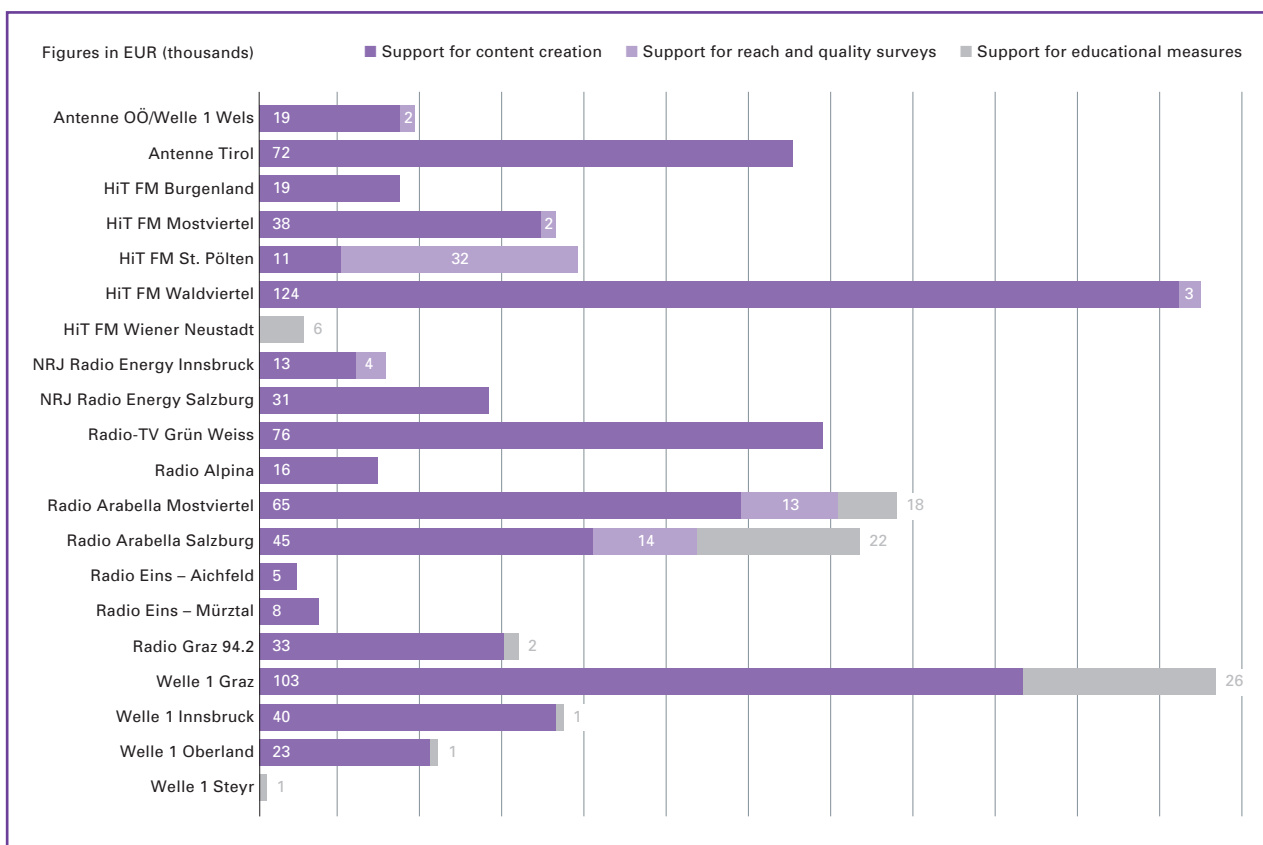
Source: RTR

**Figure 8: Private Broadcasting Fund – total grants for 2012 application dates
(radio broadcasters, technical range < 100,000)**



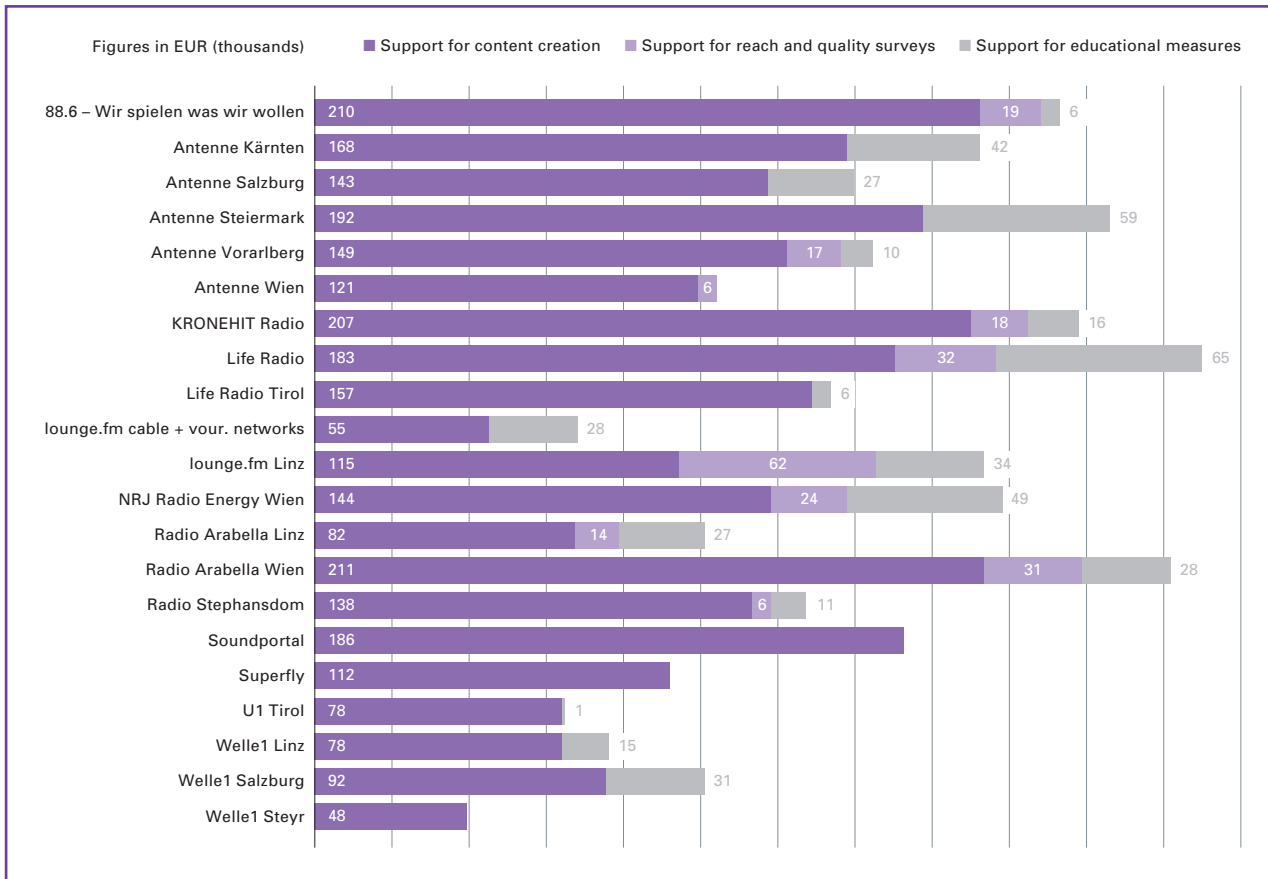
Source: RTR

**Figure 9: Private Broadcasting Fund – total grants for 2012 application dates
(radio broadcasters, technical range < 300,000)**



Source: RTR

**Figure 10: Private Broadcasting Fund – total grants for 2012 application dates
(radio broadcasters, technical range > 300,000)**



Source: RTR

Additional information on the grant awards and decisions can be found on the RTR website at www.rtr.at/en/foe/PRRF_Fonds (in German).

6.3.2.3 Notes on the 2012 annual accounts

The Private Broadcasting Fund received an endowment of EUR 12.5 million in 2012.

The EUR 12.5 million allocated by the BMF and the existing amount in the Private Broadcasting Fund (trustee account balance as of 31 December 2011: EUR 5,503,430.93) generated interest revenues in the amount of EUR 13,346.97 during the reporting period (including interest on the repayment of unused grants in the amount of EUR 508.52). Including the repayment of unused grants in the amount of EUR 65,134.44, total credits to the fund came to EUR 12,578,481.41 in 2012.

Of the total amount available in the Private Broadcasting Fund in 2012, EUR 11,129,332.41 was paid out in grants while EUR 347,300 was paid out for 2012 administrative expenses and EUR 80,675 was paid out for administrative expenses carried over from 2011. Total payments from the fund thus came to EUR 11,557,307.41.

The balance in the trustee account as at 31 December 2012 was EUR 6,524,604.93. After the payment of outstanding administrative expenses for 2012 in the amount of EUR 15,660.44, the trustee obligations amounted to EUR 6,540,265.37 as at 31 December 2012.

On the basis of the grant agreements signed, the amount of grants approved but not yet paid out came to EUR 6,242,763.68 at the end of 2012. Therefore, as a result of the economical and expedient use of resources, additional funds in the amount of EUR 297,501.69 will be available for 2013.

Table 8: Private Broadcasting Fund – excerpt from 2012 financial statements

Statement of revenue and expenditure	EUR	EUR
Balance in trustee account as at 31 December 2011		5,503,430.93
Credits		
Revenues received in 2012	12,500,000.00	
Grant repayments	65,134.44	
Interest	13,346.97	12,578,481.41
Debits		
Administrative expenses in 2012	-347,300.00	
Administrative expenses carried over from 2011	-80,675.00	
Grant payments in 2012	-11,129,332.41	-11,557,307.41
Balance of initial funds, debits and credits in 2012 = Balance in trustee account as at 31 December 2012		6,524,604.93
Administrative expenses from 2012 to be paid out in 2013	15,660.44	15,660.44
Balance of trustee obligations as at 31 December 2012		6,540,265.37
Approved grants pending payment		-6,242,763.68
Funds available in 2013		297,501.69

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 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 KOG, for which no advisory body is required. 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 governing 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 focused on the press sector
- Press clubs
- A self-regulation body for matters related to the press

The provisions governing the funding of a self-regulation body for commercial communication (Austrian Advertising Council) are specified in Art. 33 KOG.

In 2012, KommAustria received 127 applications for subsidies under PresseFG 2004. The authority granted subsidies in 122 cases, while five applications had to be rejected because they did not fulfil the relevant legal requirements for funding.

Table 9: Press subsidies – changes in grant amounts, applications and approval rates, 2008 to 2012

Year	Grant amount (EUR)	Applications	Approvals	Approval rate in %
2008	12,837,999.70	138	129	93.5
2009	12,837,999.50	130	124	95.4
2010*	12,887,999.50	125	120	96.0
2011*	12,495,999.30	126	122	96.8
2012*	10,945,800.00	127	122	96.1

* Note: From 2010 onwards, this breakdown also includes the funding from the Austrian Press Council, which amounted to EUR 50,000 in 2010, EUR 120,000 in 2011 and EUR 160,000 in 2012.

Source: RTR

In 2012 as in previous years, the amount of EUR 50,000 available in the fund for the promotion of self-regulation was allocated in its entirety to the Austrian Advertising Council as the sole applicant.

6.4.1.1 Distribution subsidies for daily newspapers in 2012 in accordance with Section II PresseFG 2004

In 2012, 14 applications for subsidies were received from daily newspapers in accordance with Section II PresseFG 2004 (distribution subsidies). The group of recipients remained unchanged compared to the previous years. All requests for subsidies were granted.

A total of EUR 2,118,851.90 was paid out in distribution subsidies to daily newspapers.

The following amounts were paid in subsidies to individual daily newspapers:

Table 10: Distribution subsidies to daily newspapers in 2012

Name of daily newspaper	Subsidy amount in 2012 (in EUR)
Kleine Zeitung (Styria and Carinthia)	162,988.60
Kurier	130,390.90
Neue Kärntner Tageszeitung	162,988.60
Neue Kronenzeitung	162,988.60
Neue Vorarlberger Tageszeitung	130,390.90
Neues Volksblatt	162,988.60
OÖ Nachrichten	162,988.60
Die Presse	130,390.90
Salzburger Nachrichten	162,988.60
Der Standard	162,988.60
SVZ – Salzburger Volkszeitung	162,988.60
Tiroler Tageszeitung	162,988.60
Vorarlberger Nachrichten	162,988.60
WirtschaftsBlatt	97,793.20
TOTAL	2,118,851.90

Source: RTR

6.4.1.2 Special subsidies to maintain regional diversity in daily newspapers in 2012 in accordance with Section III PresseFG 2004

In 2012, seven applications for subsidies were received in accordance with Section III PresseFG 2004. All requests for subsidies were granted.

A total of EUR 5,287,000 in special subsidies was paid out in the year under review.

The following amounts were paid in subsidies to individual daily newspapers:

Table 11: Special subsidies paid to daily newspapers in 2012

Name of daily newspaper	Subsidy amount in 2012 (in EUR)
Neue Kärntner Tageszeitung	795,881.60
Neue Vorarlberger Tageszeitung	675,980.40
Neues Volksblatt	695,728.70
Die Presse	941,085.40
Der Standard	877,359.20
SVZ – Salzburger Volkszeitung	726,717.40
WirtschaftsBlatt	574,247.30
TOTAL	5,287,000.00

Source: RTR

Further details on the subsidies can be found on the RTR website (www.rtr.at).

6.4.2 Supporting self-regulation of the press

In 2012, two applications for subsidies under Art. 12a PresseFG 2004 were submitted for the first time. The first came from the Austrian Press Council, while the other was a first application from the Austrian Media Council of the Austrian Journalists Club.


The Austrian Press Council is supported by the following organisations:

- Association of Austrian Newspapers (VÖZ)
- Austrian Federation of Trade Unions (ÖGB), represented by the Journalists Union as part of the Union of Salaried Private Sector Employees and of Printers, Journalists and Paper Workers (GPA-djp)
- Austrian Magazine Association (ÖZV)
- Association of Austrian Regional Media (VRM)
- Association of Editors-in-Chief
- Presseclub Concordia (PCC)

In 2012, the newspapers KTZ – Kärntner Tageszeitung and Die Presse joined the Press Council; the only remaining dailies that now do not participate are Heute, Kronen Zeitung and Österreich.

On 14 November 2012, Oskar Bronner, publisher of the daily newspaper Der Standard, was elected President of the supporting association of the Press Council, while the vice-president is Franz C. Bauer, who serves as chair of the Journalists Union in GPA-djp and editor of Trend and Profil.

The Austrian Press Council sees itself as a modern body for self-regulation of the press on the basis of voluntary participation, supporting quality assurance in journalism and helping to preserve the freedom of the press. One of the key tasks of the Press Council is to point out grievances in the press sector and to undertake efforts to resolve them. 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.



Individual parties affected by breaches of the code can submit complaints to the Austrian Press Council. Any parties who believe a publication or the behaviour of journalism professionals to be in breach of the code may also notify 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 passed.

In 2012, the Austrian Press Council examined a total of 145 cases (2011: 80). Of these, 138 were reported to the Press Council by third parties, while seven cases were initiated by the committee itself. In one case, relating to the daily newspaper Heute, 66 readers submitted a report to the Press Council, which is the largest number of reports ever received.

The Press Council also organised and participated in a range of events. These include the Medienförderung neu working group organised with the Presseclub Concordia, the Austrian Media Academy – Austrian Journalism Training Association (KfJ), and the Forum for Journalism and Media in Vienna (fjum); various training events for journalists in the financial sector; collaboration in the Day of Press Freedom in the Austrian Parliament.

KommAustria allocated a subsidy of EUR 160,000 to the Austrian Press Council for 2012. The grant comes from a fund that was endowed with revenues from the broadcasting fees.

An application from the Austrian Media Council was rejected as it failed to meet the statutory funding criteria in relation to being representative; according to Art. 12a PresseFG 2004, only representative self-regulation bodies can be funded. While the legislation itself does not provide a definition of what is representative, KommAustria reached a decision on this definition in the Funding Guidelines, following a hearing of the Press Subsidies Commission. Pursuant to this decision, a self-regulation body in relation to the Austrian press is considered to be representative if its members number both associations of Austrian newspapers and associations of journalists working in Austrian print media that have a significant economic impact on the basis of their size (number of members) and the scope of their activity. This definitely applies to the employers' and employees' associations that are authorised to conclude collective agreements in the Austrian press sector, as well as to other associations having equal importance in the Austrian press sector.

While the Austrian Media Council is an body in which journalists' associations are involved, it does not have any associations of Austrian newspapers among its membership. Self-regulation in this instance is exclusively on the side of the journalists.

The Austrian Media Council of the Austrian Journalists Club went to court over the rejection of its funding application. It questioned the criteria set forth in the press funding guidelines for determining whether self-regulation bodies are representative, claiming that the criteria were tailored solely to suit the Austrian Press Council.

6.4.3 Austrian Advertising Council

Since 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, 2010 and 2011, the Austrian Advertising Council was in 2012 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), in order to cover the costs incurred in the course of fulfilling its duties.

This fund is endowed with revenues from the broadcasting fees.

6.4.4 Journalism subsidies – promotion of print periodicals

KommAustria's duties also include the promotion of journalism that serves the purpose of educating citizens as stipulated in Section II of the PubFG. These subsidies are provided for periodicals which address at a high level issues related to politics, culture and world views.

Subsidies can be allocated to publishers in cases where the print periodicals fulfil the requirements specified in Art. 7 Par. 1 Numbers 1 to 8, where none of the reasons for exclusion specified under Art. 7 Paragraphs 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 (BFG).

The BFG 2012 designated the amount of EUR 341,000 for these subsidies. In 2012, KommAustria received 95 applications, of which 80 were accepted and 15 rejected because they did not meet the statutory funding requirements.

The subsidy amounts ranged from EUR 1,364 to EUR 10,262. The largest subsidy was allocated to SAAT, an Evangelical Church newspaper in Austria, followed by the periodicals BEHINDERTE MENSCHEN (Initiative for Disabled Children and Young People), 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 that received funding represent a broad range of content. The publications include 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 12: Journalism subsidies – changes in grant amounts, applications and approval rates, 2008 to 2012

Year	Grant amount (EUR)	Applications	Approvals	Approval rate in %
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
2012	341,000.00	95	80	84.2

Source: RTR

Details on grant awards can be found on the RTR web site (www.rtr.at).





7 Activities of the TKK

7.1 Market definition and analysis

Pursuant to Articles 36 et seq. Telecommunications Act 2003 (TKG 2003), market analysis procedures must be carried out regularly by the regulatory authority. The purpose of the market analysis procedure is to determine whether there is a relevant market that is subject to sector-specific regulation (market definition). The next step involves analysing whether one or more of the companies has significant power over this market, what challenges there are to competition in this market, and whether there is effective competition (market analysis). If there is no effective competition predominant within the market in question, suitable measures in accordance with specific obligations need to be imposed in order to effectively eliminate the competition challenges identified.

On 9 January 2012 a market analysis procedure for M 1/12 was initiated by the Telekom-Control-Kommission (TKK) as part of its official duties. The following procedures were continued, each with a separate subject:

- Physical access
- Wholesale broadband market
- Access services to the public telephone network for private customers provided at a fixed location (end user market)
- Terminating leased line segments
- End user leased lines
- Discussion with non-private customers regarding the public telephone network at a fixed location
- Call termination in specific public telephone networks at a fixed location
- Call origination in public telephone networks at a fixed location
- Call termination in specific mobile networks

Oral negotiations, as announced in an official bulletin, have already taken place in the individual procedures.


7.1.1 Mobile termination

Call termination in mobile networks is an interconnection service with the aim of ensuring that subscribers can reach one another within their own network and beyond.

A special feature of the termination markets is that each company enjoys a monopoly position within "its" termination market, i.e. each company has significant power over its own individual operator market. Furthermore, the subscriber making a call to another subscriber bears all the costs of the conversation; the call recipient bears none. This rate system, based on the "calling party pays" principle, results in the following externality: the decision as to which network calls are forwarded through (and therefore as to the cost of forwarding) is made by the call recipient, even though the costs are borne by the caller.

Under a resolution adopted on 30 July 2012, a procedure with the subject limited to "mobile termination" was continued separately under reference number M 1.10/12. On 15 October 2012, oral negotiations took place as part of the market analysis procedure in question.

In its meeting of 3 December 2012, the TKK adopted a proposal for enforcement action.



It was determined in this case that, with regard to the individual operator markets for mobile termination, each of the mobile operators has significant power over its own market. In the market analysis procedure, various potential challenges to competition were identified, such as market distortion as a result of high termination fees, subsidisation of mobile network subscribers by fixed network callers, foreclosure strategies against small network operators, or an increase in substitution of fixed networks through mobile networks.

In order to effectively counter the competition challenges identified, specific requirements have been imposed on the relevant individual operator markets, namely for (direct and indirect) interconnection, equal treatment and for fee control by the TKK.

Termination Recommendation (pure LRIC)

At the European level, a recommendation was issued by the European Commission on 7 May 2009 regarding the regulatory treatment of fixed and mobile termination rates in the EU (2009/396/EC, OJ L 124/67 “Termination recommendation”). In respect of the call termination service in fixed and mobile networks, it is recommended that termination rates be set based on the costs arising for an efficient operator. A cost calculation method, called “pure LRIC” (pure long-run incremental costs), is required that represents an approximation of the long-term incremental costs. The recommendation explicitly takes into account traffic-related costs, which, by definition, are variable over the long term. Traffic-related costs are incurred through capacity enhancements required for handling increases in traffic. Non-traffic-related costs (i.e. fixed long-term overheads and shared costs) should not be taken into account if not attributable to the service increment of termination. Hence only those costs can be covered that would be additionally incurred if the operator were not to provide the termination service for third-party companies. Only these additional costs (or avoidable costs) are allowed to be taken into account under the European Commission’s pure LRIC method. The mobile termination fee determined in this way has been set at 0.8049 EUR cents per minute.

Consultation and coordination

The national consultation as specified in Art. 128 TKG 2003 is in progress until 25 January 2013. Interested persons have the opportunity to comment on the proposal for enforcement action until then. These are published on the website of the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) at www.rtr.at/en/komp/bisherigeKonsultationen (in German). Subsequently, the proposal for enforcement action will be coordinated at the European level, i.e. the proposal for enforcement action will be made available to the European Commission, BEREC (Body of European Regulators for Electronic Communications) and the national regulatory authorities of the Member States. These have the option of commenting on the proposal within one month.


7.1.2 Wholesale fixed network

In its markets recommendation (European Commission recommendation on relevant product and service markets within the electronic communications sector, 2007/879/EC, of 17 December 2007, OJ L 344/65), the European Commission distinguishes between the retail markets and the wholesale markets.

Pursuant to the markets recommendation, the market for “call termination in individual public telephone networks at a fixed location” (fixed network termination) and the market for “call origination in the public telephone network at a fixed location” (fixed network origination) are materially relevant markets in the fixed network sector.

Fixed network termination

As previously explained in more detail under mobile termination, the monopoly position enjoyed by the relevant company and the “calling party pays” system are special features of a termination market. Reference is made to the remarks in Section 7.1.1 in this regard.



With regard to fixed network termination, procedure M 1/12 has been continued separately, with the subject matter limited to “fixed network termination”, under reference number M 1.8/10 according to a TKK resolution of 30 July 2012. The oral negotiations took place on 15 October 2012. In parallel with mobile termination, the TKK adopted proposals for enforcement action relating to fixed network termination at its meeting on 3 December 2012.

Firstly, it was established in a proposal for enforcement action that A1 Telekom had significant market power in the market referred to as “call termination in the public telephone network at fixed A1 Telekom Austria AG locations”. The potential challenges to competition in the event of non-regulation were identified, namely misuse of market power and transfer of market power to other markets by setting excessive prices, denial of access, discrimination through aspects not related to prices, and price discrimination/margin squeeze. In order to counter these potential challenges effectively, requirements for direct and indirect interconnection, fee control, equal treatment and accounting separation were imposed on A1 Telekom. In order to specifically counter the challenge posed through setting excessive prices, a termination rate was set as part of fee control measures; the fees, based on the pure LRIC method as provided for by the European Commission’s termination recommendation (see Section 7.1.1), are 0.137 EUR cents (per minute peak time) and 0.085 EUR cents (per minute off-peak time).

Secondly, the potential challenge to competition entailed in setting excessive termination fees was identified in the case of alternative fixed network operators (a total of 34 subscriber network operators provide fixed network termination), who also have significant power in their particular termination markets. This is countered through the specific requirement for fee control. As with A1 Telekom, termination fees of 0.137 EUR cents (peak time) and 0.085 EUR cents (off-peak) have been imposed on alternative operators, based on the pure LRIC method as detailed in the termination recommendation.

The draft measure is subject to national consultation until 25 January 2013 and will afterwards be coordinated at the European level. In this regard, reference may be made to the more detailed comments in Section 7.1.1 “Consultation and coordination” for mobile termination.

Fixed network origination

Call origination involves routing a call from a network to a carrier network operator or a service network operator.

As a result of the TKK resolution of 30 July 2012, procedure M 1/12 that had been pending since 9 January 2012 has been continued separately under reference number M 1.9/12, with the subject matter limited to “fixed network termination”. On 8 October 2012, oral negotiations took place as part of the market analysis procedure in question.

The proposal for enforcement action was adopted in the TKK meeting on 17 December 2012.

In the proposal for enforcement action, it was established that A1 Telekom held significant market power in the fixed network origination market. It was verified that the competition challenges of transfer of market power to adjacent markets and of the exercising of market power over subscribers (specifically with regard to price setting) existed for the market in question. To ensure a functioning market, requirements for (direct and indirect) interconnection, equal treatment, accounting separation and fee control, based on cost-oriented fees as revealed by full costs in the past, were imposed on A1 Telekom. From now on, A1 Telekom may charge a maximum fee per minute of 2.135 EUR cents (peak time) and 1.321 EUR cents (off-peak) for call origination in public telephone networks at a fixed location.

The draft measure is subject to national consultation until 4 February 2013 and will afterwards be coordinated at the European level. In this regard, reference may be made to the more detailed comments in Section 7.1.1 “Consultation and coordination” for mobile termination.

7.2 Network access

Network access refers to the exclusive or non-exclusive provision of facilities and/or services to another company for the purpose of providing electronic communications services. This can include access to network components such as the subscriber line, access to forms of physical infrastructure such as buildings, lines and masts, as well as access to software systems.

The Access Directive (2002/19/EC OJ L 108/7) sets out a uniform, technology-neutral legal framework for communication networks within the European Community. It regulates access to electronic communications networks and the interconnection of communications networks throughout the internal market. The aim of the Directive is to ensure that all subscribers of services can be reached (interoperability) and that competition is encouraged.

The main principle is for network access and interconnection agreements to be made based on private law agreements. Only when a private law agreement is not possible does the regulatory authority have subsidiary competence to issue official decisions in lieu of a private-law agreement.

In this context, reference is made to the general obligation to provide interconnection services as stipulated in Art. 48 TKG 2003: every operator of a public communications network is obliged to make an offer for interconnection to other operators of such networks on request. If no interconnection agreement is reached between the operators, each of the parties has the option of appealing to the regulatory authority.


Procedure Z 6/07 – unbundling/substitute decision

The Austrian Administrative Court (VwGH) issued a ruling on 17 November 2011 (2008/03/0174), which overturned an official decision by the TKK (decision Z 6/07-173 of 27 October 2008) in response to a complaint by Tele2 Telecommunication GmbH (Tele2) claiming an infringement of procedural rules. The TKK decision had specified the fees for unbundling services (local loop leasing, expenditure-related fees, flat fees) between Tele2 and A1 Telekom) for the period 1 March 2007 to 31 December 2008. The justification for overturning the decision in this case was that the smaller set-up fee of EUR 69.40 (instead of EUR 109.00) offered by A1 Telekom on agreement of a minimum contract period of twelve months, had not been stipulated with retroactive effect, but merely from the date of the decision. However, under the obligation of equal treatment, it may be deduced that this fee should also have been defined with retroactive effect with reference to a then (i.e. at that time) past point in time. On 13 February 2012, the TKK issued a substitute decision that provided for a regulation to make this set-up charge retroactive as well, thus taking into account the concerns put forth by the VwGH. The decision has been published at www.rtr.at/en/tk/Z6_07_188 (in German).

Tele2 also lodged a complaint against this substitute decision with the VwGH, but this was subsequently withdrawn.

Procedures Z 1/11 and Z 3/11 – virtual unbundling

In the market analysis decision issued on 6 September 2010 (M 3/09), the TKK redefined the general conditions for the expansion of broadband access networks. One of the obligations A1 Telekom was subject to in this context was to offer a new wholesale product known as “virtual unbundling”. This product ensures that alternative operators can offer their end users higher-value services, namely the kind of bandwidths that fibre optic networks (FTTC/B) are capable of carrying. The virtual unbundling product must provide the alternative operator with terms that are as similar as possible to those for the physical unbundling of the local loop, with regard to product and pricing options for end user products.



As negotiations on a (reference) offer published by A1 Telekom were unsuccessful, two key potential customers for virtual unbundling, Tele2 and UPC DSL Telekom GmbH, requested that the TTK issue a regulatory order defining the specific conditions for this new wholesale product. The procedures, which were linked due to the similarity of the petitions, were conducted under the reference numbers Z 1/11 and Z 3/11. In this regard, the TTK conducted a comprehensive fact-finding process, in the course of which numerous statements and amendments to the petitions were made by the parties, and a total of five evaluation reports were obtained on various technical and commercial subjects from official experts at RTR.

On 17 December 2012 the TTK finally issued comprehensive decisions in lieu of a private-law agreement, setting out in detail the terms under which A1 Telekom is to offer virtual unbundling as a wholesale product. Besides a general section, the order included a technical manual (Annex 1), an operating manual (Annex 2), regulations governing fees (Annex 3), problem handling (Annex 4) and permitted modems (Annex 5), a list of locations (Annex 6), regulations governing the web front end (Annex 7) and abbreviations and definitions (Annex 8). The decision has been published at www.rtr.at/en/tk/Z1_11_Z3_11 (in German).

7.3 Wayleave rights and rights of joint use

Under the 2011 amendment to the TKG, Federal Law Gazette I No. 102/2011, the responsibilities of the TTK as specified in Section 2 TKG 2003 were extended to the effect that it is also to decide in procedures on the granting of wayleave rights on private property and on legal issues relating to the modification or termination of rights of wayleave and joint use. In the period under review the following procedures were concluded:

Procedure D 2/12 – application for cost reimbursement for securing lines

In a letter dated 25 April 2012, the municipality of Wals-Siezenheim submitted an application requesting that Multikom Austria Telekom GmbH (Multikom) be obliged to reimburse costs of around EUR 1500.00. The justification given for this was that Multikom is operating communication lines on public property within the territory of the municipality, and that these needed to be properly uncovered and relaid to prevent damage during excavation work while building a canal for the community. The municipality bore the expenditure for this work.

Pursuant to TKG 2003, the use of public property for communication lines is possible without payment of a fee. However, the party entitled to erect the line is nonetheless obliged to modify their equipment, or even remove it if necessary, in the event of any “disposals” by the property owner regarding that property, such as alteration work, construction work or other measures, which make use by the erecting party appear inadmissible. It was established in the procedure that, despite repeated requests from the municipality, Multikom had neither arranged for the required uncovering or securing of their lines, nor had they assumed the costs for doing so. Therefore, in its decision of 2 July 2012, the TTK obliged Multikom to compensate the municipality of Wals-Siezenheim for the actual costs of the work necessary for securing the lines. The decision has been published at www.rtr.at/en/tk/D_2_12 (in German).

Procedure D 3/12 – rejection of a petition to prohibit the operation of a switching station

In its decision of 16 July 2012, the TTK rejected the petition of a private property owner to prohibit A1 Telekom from operating a switching station on that property and to order the switching station to be shut down. The reason for this decision was that, pursuant to TKG 2003, the plaintiff neither demanded that a new wayleave right be granted nor that an existing one be amended or terminated. Rather, an application was made to prohibit the operation of this switching station, with the justification that there was no wayleave right and that the switching station was being operated without the consent of the property owner. However, such a demand based on the right of ownership does not fall under the remit of the TTK; rather, it is regarded as a “civil matter”, falling under the jurisdiction of the ordinary courts. The decision has been published at www.rtr.at/en/tk/D_3_12 (in German).

Procedure D 4/12 – granting of wayleave rights

In its decision of 2 July 2012, the TTK granted a right of wayleave over private property – the first time this has happened under the newly introduced competence. One peculiarity of the procedure was that the applicant, A1 Telekom, had not requested a (complete) communications line, e.g. an optical fibre cable, but a power line. However, this power line was intended to operate a mobile base station and, as such, qualified as equipment associated with a communications line as specified in the TKG 2003. Since such associated equipment can be the object of a right of wayleave pursuant to the aforementioned 2011 amendment to the TKG, the right of wayleave was granted in accordance with the request. The decision has been published at www.rtr.at/en/tk/D_4_12 (in German).

7.4 Supervisory procedures

If the regulatory authority has suspicions within the scope of its responsibility that a company is in breach of the TKG 2003 or of one of the provisions issued as a result of that act (e.g. the Number Porting Ordinance, NÜV), it is to conduct a supervisory procedure pursuant to Art. 91 TKG 2003. If a request to submit a statement on the matter is ignored and corrective action is not implemented within a reasonable period, the regulatory authority is obliged to order any suitable, necessary measures to ensure compliance with the violated provision. The company is required to comply with the measures within a reasonable period determined by the regulatory authority. Otherwise the regulatory authority is entitled to suspend the provision of communications networks or services on the grounds of repeated gross dereliction of duty, until the corrective action has been taken.

Procedure R 3/12 – breach of obligation for equal treatment – promotion of own products to ISP customers

In its decision of 13 August 2012, the TTK determined that A1 Telekom was using systems and procedures that, in instances where it is not possible for A1's wholesale service partners to establish DSL connections, enable A1 Telekom to directly contact their wholesale partners' end users and offer information concerning A1 Telekom's own retail products, and that A1 Telekom was hereby in breach of the obligation for equal treatment imposed upon A1 Telekom in market analysis decision M 1/10-92 dated 15 November 2010. Underlying the supervisory procedure was a complaint from internet service provider Kapper Network-Communications GmbH, which is an A1 Telekom wholesale services partner that had ordered a DSL broadband internet connection for one of its retail customers. Without giving prior notice to Kapper-net, A1 Telekom informed this retail customer of the inability to establish an internet connection and at the same time supplied information on its own fixed network and mobile products as an alternative. However, A1 Telekom is not permitted to use its wholesale service partners' retail customer data to promote its own products to those customers in the course of carrying out a business transaction. The TTK had already objected to this in an official decision under procedure R 1/07.

Therefore A1 Telekom was prohibited from making future use of systems and procedures that enable direct contact with retail customers of A1's wholesale service partners and from providing information on its own retail products. Furthermore, A1 Telekom was obliged to ensure that written statements issued to retail customers of their wholesale partners came exclusively from the wholesale partner.

Regarding the measures ordered by the TTK with the objective of fully and finally eliminating the problem, A1 Telekom reported that their existing systems had been modified in such a way that there was no longer any technical procedure enabling retail customers of a DSL wholesale partner to be contacted directly or to receive related retail customer correspondence. Furthermore, they stated it was now ensured that written statements issued to their wholesale partners' retail customers came exclusively from the wholesale partner.

7.5 Competition regulation: general terms and conditions and tariffs

For information on the current regulation of competition, please refer to last year's Communications Report.

In decision G 147/11-8 of 30 January 2012, the TTK approved the BusinessKombi fee conditions proposed by A1 Telekom. The decision and annex can be viewed at www.rtr.at/en/tk/G_147_11 (in German).

7.6 General terms and conditions and tariffs under Art. 25 TKG 2003

With effect from 21 February 2012, the TTK is entitled to object not only to notified general terms and conditions (including contractual terms and conditions), but also to tariff conditions, in the latter case except on grounds of the amount, as specified in Art. 25 Par. 6 TKG 2003.

Furthermore, following the 2011 amendment to the TKG, the necessary minimum content of the contractual conditions pursuant to Art. 25 Paragraphs 4 and 5 TKG 2003 has been significantly expanded. Checklists from the regulatory authority regarding the minimum content of general terms and conditions and tariff conditions are provided at www.rtr.at/en/tk/AGB_EB (in German).

In 2012 the TTK completed a total of 243 procedures pursuant to Art. 25 Par. 6 TKG 2003.

Following final consideration the notified contractual conditions were published on the regulatory authority's website and can be viewed there.


In 2012 the TTK issued a total of seven decisions concerning objections pursuant to Art. 25 Par. 6 TKG 2003. These have also been published on the RTR website. The objection decisions can be viewed at www.rtr.at/en/tk/EntscheidungenGesamt (in German).

7.7 Universal service

Art. 26 TKG 2003 defines universal service as the minimum set of public services to which all end users must have access at an affordable price, regardless of their place of residence or work. It includes:

1. access to a publicly available communications network and to a publicly available telephone service via which facsimile equipment can also be operated, including the transmission of data at data rates that are sufficient for functional internet access;
2. provision of a directory assistance service covering all operators;¹¹
3. the preparation of a subscriber directory for all operators, including subscribers to publicly available telephone services, as well as access to this directory;
4. nationwide coverage with public pay telephones at generally and readily accessible locations.

¹¹ 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;



In addition, universal service must be available nationwide at an affordable price and at a specified quality level (Art. 27 TKG 2003).

In defining the scope of universal service, a major change was required as a result of the 2011 amendment to the TKG: whereas the universal service had until then been limited to access to publicly available telephone service via a connection at a fixed location, this has been replaced with the expression “access to a publicly available communications network and to a publicly available telephone service via which facsimile equipment can also be operated, including the transmission of data at data rates that are sufficient for functional internet access”. The main change in this provision is that the expression “at a fixed location” has been eliminated, which means that connections may also be made via a mobile communications service. De facto, this means that the provisions of the law now reflect the reality of a very high mobile penetration rate and usage in Austria. For the provision of universal service, it means that more than one company are now considered eligible to be universal service providers.

Under Art. 31 Par. 1 TKG 2003, the provider of universal service is to be compensated for the verifiable costs incurred in the provision of universal service which cannot be recovered despite efficient management where those costs constitute an unreasonable burden. As in previous years, the universal service provider A1 Telekom was once again able to reach private-law agreements with each of the alternative telecommunications operators regarding the amount of compensation to be paid (for 2012); 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). These include target values for the time limit for providing a connection, the outage frequency, the billing accuracy and the voice transmission quality. Under Art. 27 Par. 3 TKG 2003, A1 Telekom is required to provide RTR with an annual report on the extent to which it has fulfilled those criteria. The regulatory authority’s review of the 2011 report did not give rise to any objections to key parameters. The UDV, which defines the basis for those measurements, can be viewed at www.rtr.at/en/tk/UDVerordnung.

Pursuant to Art. 30 Par. 1 TKG 2003, the Federal Ministry of Transport, Innovation and Technology (BMVIT) – with the support of the regulatory authority – has the mandate to review every five years whether the universal services are being provided by the market in a competitive environment. The transitional provisions in the amendment to the TKG 2003 (Art. 133 Par. 9) also require the Austrian Federal Minister of Transport, Innovation and Technology to review whether universal services are being provided in a competitive environment, no later than one year after the amendment enters into force. Consequently RTR was commissioned with this review in 2012 and reported the results to the BMVIT in a timely manner.

At the international level, RTR was part of a BEREC working group in 2012 that prepared the joint statement of BEREC members on the European Commission’s universal service report, published at the end of 2011.¹² In this report, the European Commission had set out a range of criteria and principles to be taken into consideration by countries that are considering defining a specific bandwidth for internet access as part of universal service (“functional internet access”). Furthermore, the European Commission commented in the report on suitable mechanisms for designating the universal service provider, emphasised the importance of consistent methods for calculating the net costs of providing the universal service and offered suggestions for financing the universal service.

¹² COM (2011) 795 final. Universal service in e-communications: report on the outcome of the public consultation and on the third periodic review of the scope of the universal service in accordance with Art. 15 of Directive 2002/22/EC.



In the statement published by BEREC¹³ the European regulators welcomed the need for an *ex ante* analysis when deciding on a specific bandwidth for internet access for the universal service; however, they also emphasised the importance of the principle of subsidiarity in respect of the details of such an *ex ante* analysis, the designation of the universal service provider and the financing. The Commission's final recommendation is expected in 2013.

7.8 Frequencies

On 13 December 2012, pursuant to Art. 56 Par. 2 TKG 2003 the TKK approved the change of the ownership structure of Orange resulting from the transfer of the entirety of shares in Orange Austria Telecommunication GmbH (Orange) to Hutchison 3G Austria Holdings GmbH, and the change of the ownership structure of Hutchison 3G and Orange resulting from the merger of Orange with Hutchison 3G Austria GmbH (Hutchison 3G), under the imposition of conditions (e.g. regarding frequencies, base station locations etc.).

By imposing these conditions, and particularly through the decision regarding the frequency spectrum, the regulatory authority has fulfilled the prerequisites for allowing a fourth mobile operator to enter the Austrian market as part of the frequency auction scheduled for 2013. This is of great significance, particularly since international experience shows that reducing the number of mobile operators from four to three providers has led to an increase in rates or to a reduction in quality of service in certain European markets. This was also the reason for concerns on the part of the European Commission that have led to a merger procedure in order to assess in greater detail the planned merger of Hutchison 3G and Orange. Ultimately Hutchison 3G was required (in the procedure before the European Commission and that before the TKK) to divest frequencies, make available base station sites that become superfluous following the merger of the Hutchison 3G and Orange networks and open up its network to several MVNOs (mobile virtual network operators).

The invitation to tender for the multiband frequency auction (in the 800 MHz, 900 MHz and 1.8 GHz ranges) is due to take place in April 2013. The auction itself will take place in September. In order to enable a fourth mobile operator to enter the market, this operator essentially needs two types of spectrum – capacity spectrum and coverage spectrum. Frequencies in the 2.6 GHz range are well suited to serving heavily populated areas. Coverage spectrum (800 MHz and 900 MHz) will be assigned at the aforementioned auction in autumn 2013. In doing so, a part of the frequency in the 800 MHz range will be reserved for a potential new entrant. Furthermore Hutchison 3G must also divest parts of the aforementioned 2.6 GHz spectrum to the purchaser of the reserved 800 MHz band. However, merely subleasing the Hutchison 3G network to MVNOs would not be sufficient for ensuring competitiveness, as such operators can generally only mirror the host operator's (in this case Hutchison 3G's) retail price movements and are generally unable to provide greater price competitiveness.

On 13 December 2012 another decision was passed by the TKK, namely the sale of frequencies from Orange to A1 Telekom, also associated with the aforementioned merger (as part of the planned takeover of YESSS! by A1 Telekom). Pursuant to Art. 56 Par. 1 TKG 2003, the TKK approved the assignment of frequencies in the 900 MHz, 2.1 GHz and 2.6 GHz range from Orange to A1 Telekom, as well as the subsequent defragmentation (frequency exchange) of spectrum within the 2.1 GHz range. However, this approval was granted on condition that Orange is actually taken over by Hutchison 3G, i.e. the frequency transfer is only considered approved once Hutchison 3G assumes legal control over Orange.

¹³ http://berec.europa.eu/files/doc/2012/bor12_25.pdf

Preparation for the 2013 multiband auction

The auction of the 800 MHz, 900 MHz and 1800 MHz frequency ranges had been planned for September 2012. The TKK had made all the relevant preparations for this and could have carried out the auction in a timely manner. However, because of the takeover of Orange by Hutchison 3G, the invitation to tender for the frequencies had to be postponed until the corresponding European and national procedures had been concluded. This was necessary because otherwise, for competitive reasons, one operator would have to have been excluded from the allocation procedures. Furthermore, there was a risk that, had the merger not been approved, that operator would consequently not have had sufficient frequencies to continue their business activities. In addition, it became apparent very early in the merger process that competitive concerns on the part of the competent authorities could have an impact on the design of the auction. Ultimately, as a consequence of the merger the TKK decided to reserve spectrum in the multiband auction for a new entrant.

Immediately after the conclusion of the procedure, and pursuant to Art. 56 Par. 2 TKG 2003, the TKK began implementing this reserved spectrum in the design of the auction. The TKK decided to design the auction as a combinatorial clock auction. This procedure had already been used, and proven, for the assignment of frequencies in the 2.6 GHz band in 2010. As experience from abroad has shown, this auction format is particularly well suited to the pending multiband auction because there are very close value interdependencies between the frequency ranges to be assigned.

The invitation to tender is scheduled for publication at the end of Q1 or the beginning of Q2 2013 at the latest, and the auction is scheduled to begin in early September. International experience has shown that this lengthy lead time is necessary because providers need at least five months' time to prepare for a complex multiband auction of this type.

450 MHz allocation

Frequencies in the 450 MHz range were awarded back in 2006; however, the providers who were successful at that time subsequently relinquished the usage rights relating to these frequencies. As a consultation procedure that was carried out has shown, interest in this frequency range was rekindled in 2012. Consequently, an application to allocate frequencies in the 450 MHz range was received by the TKK in autumn 2012.

The TKK subsequently decided to carry out an allocation procedure pursuant to Art. 55 TKG 2003. The invitation to tender is scheduled for publication in Q1 2013, and the auction is scheduled to take place in early summer.

Furthermore, numerous procedures to assign frequency usage rights in the 3.5 GHz range were conducted by the TKK in accordance with Art. 56 Par. 1 TKG 2003 during the period under review; the transfer of such frequencies from 4G Mobile GmbH to local operators was approved in each case.

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 SigG designated the TKK as Austria's supervisory authority for electronic signatures. The TKK's duties under the SigG 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 2012, the TKK initiated a total of four procedures pursuant to the SigG. These procedures (plus one case from 2011 that was pending at the beginning of 2012) were completed in 2012.

A-Trust Gesellschaft für Sicherheitssysteme im elektronischen Datenverkehr GmbH continued to be the only Austrian-based CSP that issued qualified certificates in 2012. Three of the procedures initiated in 2012 and one pending procedure from the previous year related to this CSP.

The Austrian Federal Office of Metrology and Surveying was also Austria's only provider of qualified time-stamp services again in 2012. However, it was not involved in the procedure before the TKK.

In 2010 and 2011, A-Trust migrated to a new software application for certification services. The TKK used a procedure initiated in 2010 to test whether the changes complied with the provisions of the SigG. This procedure was not completed until 2012 because of the lengthy migration period.

Under the provisions of the Austrian Signatures Ordinance (SigV), CSPs are to be audited at two-year intervals. No audit of this kind was carried out for either A-Trust nor for the Austrian Federal Office of Metrology and Surveying in 2012, because both CSPs had been audited in the previous year.

One procedure involved the trustworthiness of specific A-Trust registration offices. This concerned a financial services provider and its sales partners, who acted as registration offices and activated citizen cards for potential customers; their intention was to access protected social security data (e.g. pension account statements and insurance data) in this way while under contract to customers. Although no breach of the provisions of the SigG could be proven, this case touches on aspects of data protection law that appear to be highly problematic. The TKK consequently expressed its position to the companies and institutions concerned in writing and issued a press release recommending precautionary measures when having one's citizen card activated through a financial adviser.

Two procedures involved special A-Trust operating situations, where specific components of the directory and revocation services had briefly failed. In both cases the TKK was able to abstain from applying supervisory measures because of the judicious response of A-Trust.

Another procedure involved developments in EU legislation (proposal for a regulation of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market COM(2012) 238 final), and the associated changes that are anticipated for the supervisory body.





8 Activities of RTR's Telecommunications and Postal Services Division

8.1 Conciliation procedures

8.1.1 Conciliation procedures pursuant to Art. 122 Par. 1 No. 1 TKG 2003 involving end users

Again in 2012, conciliation procedures between subscribers and operators of communications services played a substantial role in the activities of the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR). Such procedures are an alternative instrument for ensuring legal protection that is available to operators' customers in the case of disputes which cannot be resolved by the two parties. In such cases the conciliation body aims to negotiate an agreement between the opposing parties. If it fails to reach an agreement, the conciliation body assesses the case from a technical and legal point of view. If the subscriber's concern in the particular case cannot be substantiated, that subscriber is notified accordingly. Where the complainant's concern is at least partially justified, the conciliation body proposes a solution. In order to take effect, the solution must be accepted by both parties.

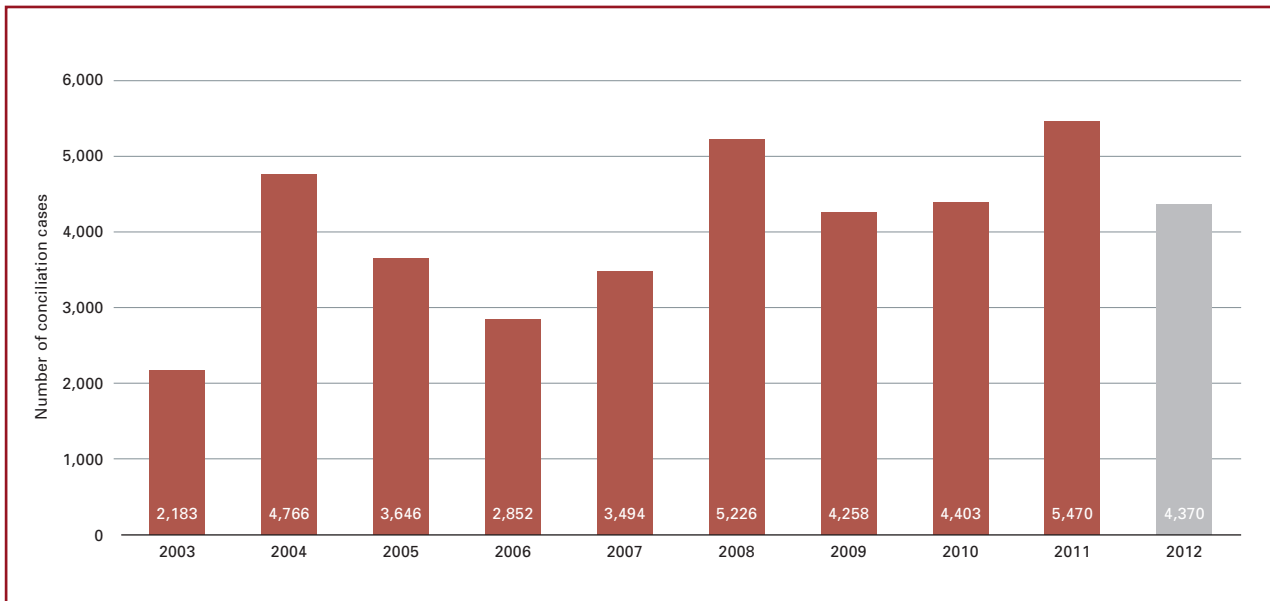
Another special characteristic of Austrian telecommunications law can be found in the deferral of the payment due date: where a subscriber notifies the conciliation body using the form mentioned above, the disputed bill amount need not be paid until the completion of the conciliation procedure (if initiated).

The procedure itself is free of charge; certain procedural rules such as, for example, time periods and limits for the amount in dispute, are specified in separate conciliation guidelines. More information is available at www.rtr.at/en/tk/SchlichtungsstelleRTR. General information on conciliation procedures is also provided by a separate hotline at 0810 511 811.

In 2012, there was a significant decline in the number of new requests filed. While the previous years were marked by a constant annual increase and even skyrocketing numbers in 2011, a considerable drop was noted during the second half of 2012. In 2012, precisely 1,100 fewer requests of this type were filed than in the year before. This positive development is clearly due to the entry into force of the Cost Limitation Ordinance (KostbeV) on 1 May 2012.

The ordinance has since protected subscribers, or at least those falling under the Consumer Protection Act (KSchG), from unexpectedly high bills. For more information in this regard, please refer to Section 8.6.2.

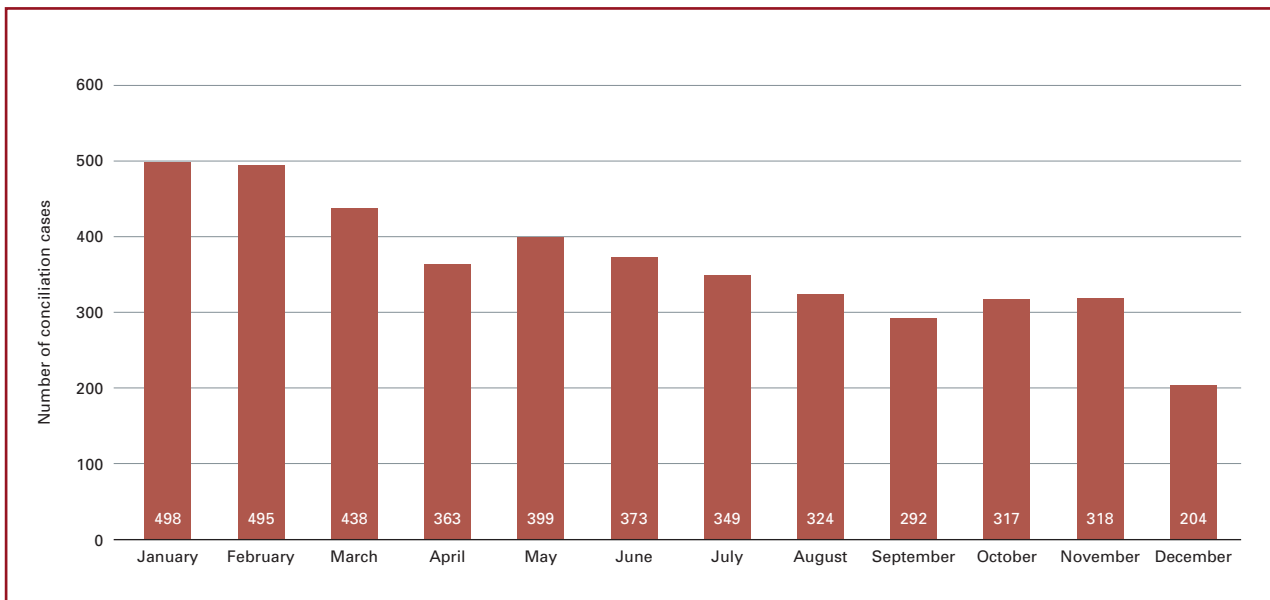
Figure 11: Conciliation cases submitted, 2003 to 2012




Source: RTR

The figure below shows the previously mentioned decline at mid-year. December 2012 was especially slow with 204 cases; the reasons for this are not known.

Figure 12: Conciliation cases submitted in 2012, the year under review (per month)



Source: RTR



In terms of content, the main focus area in 2012 continued to be the fees charged for data volumes used on mobile internet connections. Even though the above-mentioned KostbeV had created a reasonable framework for protecting users, it became effective only as of mid-year. This meant that in the first half of 2012, all concerns presented in the 2011 Communications Report still fully applied. As users were hardly able to monitor their actual use of data volumes and use-related charges could be extremely high, they sometimes experienced virtual bill shocks. The KostbeV lowered this risk to EUR 60. This amount can only be exceeded if the user expressly agrees. As the KostbeV basically applies only to consumers as defined by the KSchG, entrepreneurs are for the most part not protected, unless they actively declare to the operator the wish to be included in the scope of application of the ordinance. As a result, in its day-to-day business, the conciliation body will still have to deal with bills contested by entrepreneurs affected. Consumers who doubt the correctness of being charged EUR 60 will also continue to turn to the conciliation body. Mobile data services will, therefore, continue to be a regular subject of proceedings.


The second key issue in conciliation procedures are payable services, which are notably used ever more frequently. Depending on the operator, various terms are used to refer to such services. Terms such as “Bezahlen am Handy” (Mobile payment), “WAP” and “Web Billing” are used. The characteristic feature of these services is that a smartphone or computer interface is used for requesting the service. In the case of traditional value-added services, the service is usually requested via a phone number, most of which start with “09”. Meanwhile, the new payable services are offered as a standard service by nearly all mobile operators. Therefore, such services usually need not be specifically activated and almost any user of a mobile phone can use the device to make payments. This is where the first problematic aspect of such services becomes obvious. No special identification of the subscriber, i.e. the person who will later receive the bill, is required. Anyone using a given device, e.g. children who know how to use a mobile phone, can use it to make payments. Even if subscribers are not liable for any such unauthorised payments, they have to fend off the bill in question, otherwise the respective amounts are debited together with the phone or internet bill. This, however, has been a well-known problem of the traditional value-added services with specific phone numbers.

Another problem is the fact that operators’ customers are not well informed of such services and the associated risks. As already mentioned, almost any mobile connection can be used to make such payments. As far as the conciliation body is aware, operators do not inform their customers expressly of these services, neither when entering into a contract nor at a later date. The subscriber¹⁴ is, of course, confused all the more in cases where the connection is used by a third party and the bill unexpectedly shows amounts for an unknown service.

The third problematic area concerns distance selling. Previous observations have raised considerable doubt as to whether all disclosure obligations in accordance with distance selling rules are actually met when services are ordered. These obligations, in turn, entail important legal consequences. In particular, one has to consider any potential rights of withdrawal.

Efforts of operators to ensure technical security during ordering processes are commendable. The platforms introduced by operators for the purpose of handling orders and payment transactions mainly ensure that users receive good and helpful information about associated charges, and also require the respective approval of the user of the device. From the conciliation body’s perspective, this represents considerable progress especially when compared with the numerous value-added SMS services. While in the case of value-added SMS services some providers have not taken the requirement of providing information about charges all that seriously, the operators now have this information and can ensure that it will be provided.

¹⁴ Example: a child uses its parents’ smartphone.



In the course of 2012, the conciliation body conducted talks with most operators, with representatives of consumer protection bodies also involved in this dialogue. Hutchison 3G Austria GmbH was the only company not to take part in these talks. This dialogue provided not only a forum for the exchange of expertise and opinions, but specific steps towards enhanced transparency were also accomplished. Specifically, the participating operators published information about the services on their websites. Individual suggestions by consumer protection bodies concerning how to make services even more transparent were also accepted. RTR also put information on this topic in the FAQ section of the RTR website. It remains to be seen how this area will progress with regard to the complaints.

Finally, mention should be made of one main subject of complaints, that of disputes regarding contracts. This includes various issues such as a contracts signed under unclear circumstances, misunderstandings concerning the customer hotline or undisclosed modifications of contract terms. The last category, however, has seen some improvement since the Information Requirement Ordinance (MitV) came into force on 1 August 2012. This ordinance governs in detail the information the operator has to provide to customers in the event of unilateral modifications. Moreover, no complaints in this regard have been addressed to the conciliation body since 1 August 2012.

By way of conclusion it can therefore be stated that considerable positive effects were observed in 2012 as a result of the improvements in user protection introduced through the amendment to the Austrian Telecommunications Act 2003 (TKG 2003), which had been adopted in November 2011. New developments at service level, however, continued to bring about new challenges in terms of content.

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


Users, providers or operators of communications services and networks, and interest groups may call upon the regulatory authority as a conciliation body in the event of disputes or complaints, in particular with respect to alleged violations of this Act; this applies notwithstanding the competence of the ordinary courts. In such cases the regulatory authority has to work out an amicable solution or to communicate to the parties its position on the conciliation case in question.

The operators are obliged to participate in the procedure and to provide all information and submit all documents necessary to assess the situation.

In the year under review, no such complaints were pending.

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

With regard to value-added services, the last sentence of Art. 24 Par. 2 TKG 2003 requires the regulatory authority to each year provide information on unfair practices and the corresponding measures taken, as part of the report pursuant to Art. 34 Par. 2 TKG 2003. Of particular significance in this context is the Communications Parameters, Fees and Value-Added Services Ordinance (KEM-V 2009), which came into effect on 7 July 2009 as an amendment 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. During the year under review, a new provision was also introduced under Art. 117 Par. 3 as part of the third amendment to the KEM-V 2009, which entered into force on 30 June 2012; the provision specifies protection against the misuse of value-added service numbers in order to ensure that value-added services are provided in a timely and transparent manner.



In 2012, 239 of the complaints handled in connection with RTR's duties as a conciliation body under Art. 122 TKG 2003 were related to value-added voice telephony, and 97 to value-added text messaging, which corresponds to 5.5% and 2.2% respectively (7.7% in total). The corresponding percentages of conciliation procedures came to some 11% in 2009, to approx. 9% in 2010, and to some 7% in 2011.

Moreover, an online form for complaints about valued-added services has been available since April 2008. During the period under review, the number of complaints dropped to some 370 compared to the previous year, when approx. 440 complaints were filed in this way. The complaints were evaluated and the network operators were notified of any particularly frequent causes, in order for timely solutions to be developed in the interests of consumers. For further information on value-added service monitoring in general, please refer to the relevant sections of the Communications Report from previous years.

In response to particularly frequent complaints related to valued-added service monitoring and conciliation on grounds of suspected violations of the KEM-V 2009 as well as of clear and present danger, in two cases the Telekom-Control-Kommission (TKK) issued an administrative decision pursuant to Art. 24a Par. 1 TKG 2003, ordering a stoppage of payments to the numbers concerned for a period of three months.. This option had been introduced through the 2011 amendment to the TKG and was first taken by the TKK in the year under review. The underlying cases involved false promises of credits and the purported necessity of terminating (non-existing) contracts, which led to costs of several hundred euros incurred to the parties affected through the expensive valued-added phone calls. Payments to the providers of those value-added services were stopped for the time being through the administrative decisions. In the course of the subsequent assessment procedures pursuant to Art. 24a Par. 2 TKG 2003, it was determined that the suspected violations of the ordinance on which the administrative decisions are based actually occurred, which means that the subscribers do not have to pay the charges.

8.3 International roaming in the European Union

On 1 July 2012, the new version of the EU Roaming Regulation went into effect.¹⁵

The recast of the Roaming Regulation incorporates major innovations, strengthens the rights of roaming customers and, for the first time, sets an upper limit to retail data roaming charges within the European Union. The Regulation also expands both transparency requirements as well as the cost control function for third countries.

Major changes compared to the Roaming Regulation as amended by Regulation (EC) 544/2009 OJ L 167/12 concern the access to wholesale roaming (Art. 3) and the separate sale of regulated retail roaming services (Articles 4 and 5).

At first the provisions of the Roaming Regulation were applicable only to the 27 EU Member States. Since 7 December 2012 the Roaming Regulation has also been applicable to the EEA countries Norway, Iceland and Liechtenstein.

In addition, the EU Roaming Regulation stipulates the gradual reduction of euro-voice, euro-SMS and euro-data tariffs by 2014.

¹⁵ Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union, OJ L 172/10, 30 June 2012.

8.3.1 Roaming charges

Upper limits for euro-voice tariff (Art. 8)

The table below shows the upper price limits for voice telephony at the wholesale level as well as for calls made and calls received at retail level.

Table 13: Upper price limit euro-voice tariff

As at 1 July in euro excl. VAT	2012	2013	2014	2015	2016
Wholesale level	0.14	0.10	0.05	0.05	0.05*
Retail level – calls made	0.29	0.24	0.19	0.19	0.19**
Retail level – calls received	0.08	0.07	0.05	0.05	0.05**

* Upper price limit in effect until the Regulation expires on 30 June 2022.

** Upper price limit in effect until 30 June 2017.

Source: RTR

It has also been specified that a billing increment of no more than 30/1 can be used for calls made using the euro-tariff; like calls at the wholesale level, roaming calls received must be billed on a precise per-second basis, and no charges must be made for voicemail roaming messages received.

Upper limits for euro-SMS tariff (Art. 10)

Charges for SMS messages at wholesale and retail levels will also continue to be reduced in increments. The table shows the applicable upper price limits.

Table 14: Upper price limit euro-SMS tariff

As at 1 July in euro excl. VAT	2012	2013	2014	2015	2016
Wholesale level	0.03	0.02	0.02	0.02	0.02*
Retail level	0.09	0.08	0.06	0.06	0.06**

* Upper price limit in effect until the Regulation expires on 30 June 2022.

** Upper price limit in effect until 30 June 2017.

Source: RTR

Receipt of an SMS message is free of charge.

Upper limits for euro-data tariff (Art. 13)

As of 1 July 2012, a euro-data tariff has been in effect for the first time, which specifies the upper price limits per megabyte for regulated data services in the European Union. The euro-data tariff is required to be charged on a per-kilobyte basis (except for MMS messages).

Table 15: Upper price limit euro-data tariff

As at 1 July in euro excl. VAT	2012	2013	2014	2015	2016
Wholesale level	0.25	0.15	0.05	0.05	0.05*
Retail level	0.70	0.45	0.20	0.20	0.20**

* Upper price limit in effect until the Regulation expires on 30 June 2022.

** Upper price limit in effect until 30 June 2017.

Source: RTR

Voicemail roaming message

Roaming providers must not levy any charges for the receipt of a voicemail roaming message.

8.3.2 Access to wholesale roaming (Art. 3) and separate sale of regulated retail roaming services (Articles 4 and 5)

Since 1 July 2012, Art. 3 of the Roaming Regulation has allowed mobile network operators to directly access regulated charges levied by mobile network operators in the European Union, and it also governs the resale of roaming services at regulated prices.

Articles 4 and 5, which govern the separate sale of retail roaming services, enter into force on 1 July 2014. This provision will allow consumer to choose two different providers, one for national telecommunications services and one for regulated roaming services, while keeping their phone numbers.

8.3.3 BEREC

The Roaming Regulation also stipulates that the Body of European Regulators for Electronic Communications (BEREC, <http://berec.europa.eu>) will lay down guidelines for and opinions on certain aspects of the Roaming Regulation (Articles 3 and 5 Roaming Regulation), which are to contribute to the uniform application of these measures. Guidelines on Art. 3 (Wholesale roaming access) were drawn up by BEREC already in 2012. BEREC will subsequently work on guidelines for Articles 4 and 5 of the Roaming Regulation, to be completed in 2013. On 14 December 2012, the European Commission issued an implementation instrument for Articles 4 and 5 governing the separate sale of roaming services, in which the technical solutions for Articles 4 and 5 of the Roaming Regulation were specified.

8.4 Services subject to notification requirements

Under Art. 15 TKG 2003, the regulatory authority must be notified of the intention to provide public communications networks or services, and of any modification or termination of such networks or services, prior to the start of operation or to the modification or termination.

For further information on notification procedures, please refer to the Communications Reports of the previous years.

As of 31 December 2012, a total of 727 operators had notified 1,446 active services; 159 of those businesses were operators of call shops 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”

Since October 2012, the 116 000 “Hotline for missing children” has also been available in Austria to persons seeking help in this regard. This hotline receives reports on missing children, forwards them to the police, provides advice to the persons responsible for the missing children and offers support in the search. This short public number for harmonised services of social value had been ready for allocation as of mid-2007, which means that already back then RTR implemented this EU requirement, which falls under RTR’s competence. In 2011 the task was allocated to the Austrian Broadcasting Corporation (ORF).

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

The third amendment to the KEM-V 2009 went into effect on 30 June 2012. In addition to several adjustments regarding the allocation, transfer and return procedures for phone numbers, in particular of ported numbers, the amendment specifies major new items, listed in the following.

The requirement for communications services operators to offer a service hotline has been extended in such a way that this obligation can now be also met by providing a toll-free number or a source network-priced number (i.e. a geographical number as well). Up to now a service hotline had to be offered within the 111 number range. While operators generally complied with this requirement, additional numbers for service hotlines were frequently offered under toll-free or geographical numbers. Those were actively published, while numbers in the 111 range remained largely unknown.

The 2012 amendment to the Number Porting Ordinance (NÜV 2012), which came into force in February 2012, made it necessary to extend the function associated with the prefix for network identification as used up to now. In the future, the 061 prefix can be used not only to deactivate identification prior to establishing a connection, as has been the case, but also for activating identification. This regulation does not, however, require this prefix to be offered; i.e. operators are free to offer this service or not.

Furthermore, when providing value-added services, service providers need to ensure that, while taking into account the nature of the service, the service is rendered in a timely manner and the underlying legal transaction is carried out transparently. This regulation was introduced as a means to take action under telecommunications law against service providers who delay or intentionally protract the provision of services.

With respect to numbers in the (0)810 and (0)820 ranges, consumer advocates demanded increased transparency of rates for end users, for example through mandatory tariff information in advertising. However, as the maximum charge per minute was EUR 0.20, this measure seemed to go too far. Unlike in the case of geographical and mobile numbers, service providers and operators of the target network set the rates for these numbers, with the rates applying equally to all networks regardless of whether a call originates from a mobile or fixed network. This means that the target network operator can define a specific rate for each number. In order to make these rates available to the public, the amendment of the KEM-V 2009 specifies for the rates charged for each individual service number to be communicated to RTR and for the rates to be published on the RTR website. As a result, as of 1 January 2013 the respective rates charged for data and text message services can be queried at www.rtr.at/Rufnummernabfrage (in German) by entering a number in the range of (0)810, (0)820 and (0)821.

8.5.3 Special Communications Parameters Ordinance 2012 (SKP-V 2012)

As specified in Art. 135 TKG 2003, the most recent amendment to the TKG 2003 requires RTR ordinances to be published in Federal Law Gazette II. The entire SKP-V 2012 adopted in 2004 was, therefore, published in Federal Law Gazette II as the “new” SKP-V 2012 ordinance. SKP-V 2012 (Federal Law Gazette II No. 225/2012) entered into force on 30 June 2012.

In terms of content, only the requirement to name an individual in Austria authorised to receive correspondence was inserted for the case of applications. In addition, more universal regulations limiting the time period for the allocation of special communications parameters were adopted, in order to meet the requirements of the market.

8.5.4 Statistical analyses in telephone number administration

Table 16 provides a quantitative overview of the telephone number allocation decisions issued over the last five years. The number of allocation decisions dropped by a total of 27% compared with the previous year. While the number of allocation decisions for geographical subscriber numbers remained the same, the number of allocation decisions for non-geographical numbers fell in 2012. The main reason is the decline in allocation decisions concerning the ranges of (0)720, (0)780, (0)900, (0)901 and (0)930. Due to the increasing quantity of ported numbers, the workload resulting from porting numbers (between operators) and returning them to RTR has grown considerably, as the status of each individual number within a block (not ported or ported and, if so, to which operator) has to be determined.

Table 16: Number of decisions on telephone number requests, 2008 to 2012

	2008	2009	2010	2011	2012
Number of affirmative decisions	991	786	710	707	525
Geographical numbers	314	239	187	237	235
Non-geographical numbers	677	547	523	470	290
Number of negative decisions	75	43	35	43	22
TOTAL	1,066	829	745	750	547

Source: RTR

Within the framework of administrating special communications parameters, RTR issued a total of seven decisions (one of which was negative) in 2012.

Under 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 17, the processing time could again be limited to that seen in the previous year. Over 50% of decisions were issued within just one day. 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 17: Processing time for telephone number requests (days), 2008 to 2012

	2008	2009	2010	2011	2012
Average processing time	2.2	2.2	2.2	2.0	1.97
50% of all requests	1.2	1.2	1.2	0.96	1.01
90% of all requests	4.0	4.2	3.6	3.8	3.52

Source: RTR

Table 18 provides an overview of all telephone number ranges administered by RTR as of 31 December 2012, including allocated numbers and numbers in use.

Compared with the previous years, 2012 saw some significant changes in the use of individual number ranges. A considerable increase in usage was recorded in particular for subscriber numbers with regulated maximum rates (+ 34%), subscriber numbers for services with event-based rates, telephone directory assistance services (+ 21%), routing numbers for services (+ 22%), and for subscriber numbers for SMS services with regulated maximum rates (+ 348%). As these figures are based on mandatory notification of use, the increase can be partially explained by a considerable improvement in the quality of notifications in the previous year. In 2012, subscriber numbers in use fell slightly among subscriber numbers for convergent services (- 1%), subscriber numbers for dial-up internet access (- 4%), and subscriber numbers for toll-free dial-up internet access (- 9%).

The number of geographical subscriber numbers in use at A1 Telekom Austria AG (A1 Telekom) declined somewhat (by 1%). The increase of numbers in use among alternative operators (+ 7%) led to a small Austria-wide increase in geographical numbers of 1% overall.

Table 18: Numbers allocated and in use in Austria as of 31 December 2012

	Range	Allocated	Numbers	
			In actual use	Change from previous year
Geographical subscriber numbers: A1 Telekom	(0)1, (0)2xx, (0)3xx, (0)4xx, (0)5xx, (0)6xx, (0)7xx	25,830,000*	2,348,312****	- 1%
Geographical subscriber numbers: Alternative network operators	(0)1, (0)2xx, (0)3xx, (0)4xx, (0)5xx, (0)6xx, (0)7xx	3,032,700*	686,082****	+ 7%
National destination codes (NDCs) for private networks	(0)5	670	592	+ 7%
NDCs for mobile networks**	(0)6xx	9	9***	0%
Dial-up internet access	(0)718	7,100	26	- 4%
Location-independent fixed network numbers	(0)720	286,600	68,079****	+ 9%
Convergent services	(0)780	1,900	1,900	- 1%
Toll-free services	(0)800	80,685	15,972	+ 4%
Toll-free dial-up internet access	(0)804 00	226	20	- 9%
Services with regulated maximum rates	(0)810, (0)820, (0)821	98,712	25,838	+ 34%
SMS services in the range of services with regulated maximum rates	(0)828 2	1,644	121	+ 348%
Value-added services	(0)900, (0)930	111,671	28,934	+ 1%
Services with event-based rates	(0)901, (0)931	38,592	3,476	+ 16%
Diallers (value-added services)	(0)939	6,600	49	- 2%
Operator-specific prefixes (public carrier networks)	10	35	31	+ 11%
Telephone service hotlines	111	66	61	+ 2%
Telephone directory assistance services	118	46	41	+ 21%
Routing numbers for number portability	86	51	45	+ 10%
Routing numbers for number portability	87	14	12	0%
Routing numbers for services	89	33	28	+ 22%

* 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 date reported, the following nine NDCs had been allocated: (0)650, (0)660, (0)664, (0)676, (0)678, (0)680, (0)681, (0)688, (0)699. In some cases only sub-ranges within a mobile NDC are allocated.

*** Based on number of NDCs used.

**** As not all data for Q4 2012 are available yet, data for geographical subscriber numbers and subscriber numbers with the NDC (0)720 in use refer to 30 September 2012.

Source: RTR

8.6 RTR ordinances

Through the latest (seventh) amendment to the TKG 2003 (Federal Law Gazette I No. 102/2011), RTR was empowered to issue a number of ordinances.

8.6.1 Number Porting Ordinance 2012 (NÜV 2012)

Under Art. 23 Par. 3, the TKG 2003 empowers RTR to issue ordinances regulating number porting in mobile communications networks. With the seventh amendment to the TKG 2003, the NÜV passed from the jurisdiction of the Austrian Federal Ministry of Transport, Innovation and Technology to RTR. As the previous NÜV, Federal Law Gazette II No. 513/2003, expired on 1 March 2012, RTR deemed it necessary to issue a new NÜV no later than on 1 March 2012.

Number porting information (NÜVI)

The NÜV 2012 regulates in detail at which point of time the end user is to receive the number porting information, depending on whether this information is requested from the mobile phone service operator relinquishing the number or the operator potentially receiving it. If a subscriber requests the information from the former mobile phone services operator, the operator is required to hand over the information to the subscriber personally. Where that is not possible, the number porting information has to be sent to an e-mail address notified by the subscriber specifically for this purpose. If this is not possible either, the information is to be sent by registered mail no later than one business day after the request was filed, with Saturdays, 24 December and 31 December not being considered business days.

If the information is requested at the new mobile telephone services operator's place of business, it is to be personally handed over to the subscriber.


Furthermore, the validity of the number porting information has been extended from 60 to 90 days and up to 100 days on request. Specifically, this means that in accordance with the NÜV 2012 a request for number porting must be received by the potentially new mobile telephone services operator no later than within 90 days; if a specific porting date is requested, it must be no later than 100 days after the information has been issued.

Charges

The previous NÜV did not include a provision on the charges for porting to be paid by the retail customer. Pursuant to Art. 23 Par. 2 TKG 2003, the porting subscriber must not be requested to pay a deterrent charge for the porting of the number. In the course of a supervisory procedure before the TKK, an order was issued specifying that charges that do not exceed a total of EUR 19 (including VAT and the amount of EUR 4) for the number porting information are not considered deterrent (administrative decision of the TKK R 2/08 of 17 March 2008). A provision to that effect was adopted in the NÜV 2012.

Network identification

Changes were also made with respect to network identification. It had been previously stipulated that at the beginning of each call the identity of the rate-relevant target network had to be announced to the caller free of charge, unless the end user charge is identifiable directly from the number and hence dependent on the network in which the number called is used. Products have since been changed (all-in contracts), so that such an announcement is no longer required as a means of protecting customers.



In contrast to the previously applicable compulsory network identification, the NÜV 2012 now prohibits it. The customer may, however, activate network identification free of charge where this information is relevant for the rate. With respect to subscribers who are entrepreneurs as defined by Art. 1 of the Austrian Consumer Protection Act (KSchG), operators can meet the request for network identification by offering activation through dialling a prefix before the target number.

8.6.2 Cost Limitation Ordinance (KostbeV)

In the seventh amendment to the TKG 2003, Art. 25a TKG 2003 empowers RTR to issue ordinances with regard to limiting costs. After extensive preparatory work and consultations marked by controversial positions, the KostbeV was adopted in February 2012. The ordinance was subsequently published in Federal Law Gazette II No. 45/2012 and went into effect on 1 May 2012. Its scope of application covers both mobile data services and mobile voice telephony and text message service; for the latter, however, no specific measures have been ordered yet, as this segment was pending evaluation as of the end of 2012. The following items are exempt from the scope of application:

- Fixed network lines, phone booths (VoIP, etc.)
- Roaming
- Prepaid tariffs
- Phone services not requiring an access network (VoIP on a smartphone, e.g. Skype)
- Entrepreneurs as defined by the KSchG (whereas such may opt in)
- Basic monthly fees (always exempt)

Furthermore, the ordinance only applies to rates other than flat rates or which provide for a speed step-down (bandwidth limit) when the package volume has been used up. Consumers as defined by the KSchG are automatically protected by the KostbeV, whereas entrepreneurs may opt in. At the core of the ordinance are protection measures applying to mobile data services. The precautions listed below are consequently now required.

Warnings


Under Art. 4 KostbeV, operators can choose whether to notify their customers before they have used up the data volume included in their contracts or as soon as they have exceeded it by EUR 30 (charges incurred in addition to the base fee) within each billing period. The warnings are to be sent out according to the options that are technically feasible (with reference to the “Industry code of Austrian mobile phone operators”). If a data connection is active at the time the warning is sent, this session will in most cases not be included (no “real-time billing”). The minimum requirement for the operator to send a warning is to send out a text message, but the information can additionally be transmitted in some “other appropriate” way (for instance by redirection to a specific website).

The KostbeV also specifies that warnings must not contain any form of advertising or any request to waive warnings or the blocking of services.

Automatic blocking

Operators have to ensure that they do not bill more than EUR 60 (in use-related charges) for mobile data services per billing period. If this amount is reached, operators have three possible courses of action up until the end of the billing period:

- Block the subscriber from using data services
- Provide further use free of charge
- Provide further use free of charge with a minimum bandwidth of 128 kbps



The operator is required to again notify the subscriber by text message when a block or bandwidth limit is set, whereby the aforementioned advertising ban is applicable. The operator may, however, offer a data package. Neither may the message contain any request to waive precautions stipulated in the KostbeV or to continue using the services at additional cost (removal of blocking/limitation).

General bandwidth limit

According to Art. 5 KostbeV, operators are entitled (but not obliged) to apply a 128 kbps bandwidth limit to tariffs that are charged according to the data volumes used within one billing period (e.g. 25 EUR cents per additional MB) after the contractual data volumes have been used within a billing period. This limit is effective from the time the included data volume has been used or, in the case of a tariff that does not include a data package, from the very beginning of data service use. In this case charging is not based on use, which means that no fees for data services exceeding the base rate for the data tariff apply.

The precautions specified in the ordinance can be waived at least once a year for each subscription, while a resumption of the protective measures is always free of charge. A waiver can only be issued at the subscriber's explicit request (i.e. not in the form of general terms and conditions or contract form sheets) and must be submitted in writing.

Impact and outlook

The evaluation of the KostbeV already showed the effectiveness of the measures with regard to mobile data services, as the number of requests for conciliation under Art. 122 TKG 2003 dropped sharply. While in February 2012 the share of disputes regarding charges for mobile data services among all new requests was 35%, it fell to a mere 12% in October 2012. The total number of requests for conciliation submitted has also declined since the KostbeV went into effect. However, in future there will continue to be complaints concerning contracts signed by entrepreneurs, as this group is basically exempt from the scope of application but may opt in. The evaluation of complaints in the segment of voice text messages will be completed in early 2013.

8.6.3 Information Requirement Ordinance (MitV)

With a view to enhancing the transparency of information on contract changes under Art. 25 Par. 3 TKG 2003 that are not exclusively favourable, RTR also issued an Information Requirement Ordinance under Art. 25 Par. 3.

The purpose of this ordinance is to inform subscribers about the planned contract changes in a transparent manner in order to allow them to make decisions in connection with their right to terminate the contract "free of charge" pursuant to Art. 25 Par. 3 TKG 2003. Special emphasis was placed on the level of detail, content and form of the notification as well as on conveying an accurate picture of the subscriber's legal position based on this notification.

Pursuant to Art. 135 Par. 2 TKG 2003, the MitV was published in the Federal Law Gazette (II No. 239/2012 of 2 July 2012) and entered into force on 1 August 2012.

The MitV will be made available (in German), including explanatory comments, to be downloaded from the RTR website at www.rtr.at/en/tk/MitV.

8.7 Focus on NGN/NGA

The migration to next generation access (NGA) and next generation networks (NGNs), i.e. new network concepts and infrastructures in the telecommunications sector, continued in 2012. Both developments are to be viewed as a sort of evolution that does not occur abruptly but gradually over a longer period of time. The regulatory authority has accompanied this process for a few years already, as it constitutes a fundamental change in Austria's telecommunications landscape from an economic, technical and regulatory point of view.

In the field of NGA, which generally refers to fibre optics-based access networks, the focus of activities in the past year was once again on the rollout of these networks as well as the implementation of regulatory measures based on TKK's market analysis decision M 3/09 concerning the wholesale market for access to physical infrastructure. In this context, particular emphasis was placed on the details of virtual unbundling (see also Section 7.2). As far as this rollout is concerned, the regulatory authority was aware of migration projects in some 119 access areas throughout Austria at the end of 2012, with the majority of these projects involving FTTC and FTTB infrastructure. In addition, another analysis of the market for access to physical infrastructure was carried out in 2012, which deals with current developments in the field of NGA and defines the regulatory framework for the next period.


With regard to the topic of NGN migration, that is, the transition from conventional public switched telephone networks (PSTNs) to modern, packet-switched next-generation networks, A1 Telekom presented a migration plan which outlines the gradual transition to NGNs by the end of 2013. By that time, interconnection between A1 Telekom and its interconnection partners is to be reduced to the geographical locations at today's main switching exchange level, and interconnection at lower network levels is to be eliminated. At the regulatory level, in particular evaluations were performed of the wholesale markets for origination and termination in 2012, as a means of taking this development into account and thus of placing a stronger regulatory focus on NGN.

8.8 International activities

As mentioned in Section 2.4 above on international activities, the revision of the European legal framework for electronic communications entails significant changes, which have been incorporated in the Austrian Telecommunications Act. In recent years, the significance of EU-level regulation and of international cooperation has increased substantially and has consequently been intensified. In this context, RTR contributes to various international bodies and working groups focusing on various subject areas.

A major step was made by taking over the chair of BEREC in 2012. The ambitious work programme had been prepared diligently during the previous year and was subsequently implemented in the best interests of market participants, users and consumers. An important highlight of BEREC's working year in 2012, chaired by RTR, was the BEREC Plenary Meeting in Vienna, which took place in February 2012 with participants from nearly 40 countries. At this event, a workshop entitled "New players and business models – disruptive changes and new regulatory challenges" was offered, with reputable speakers representing domestic and foreign telecommunications companies, the University of Munich, Google and Skype. This workshop proved very popular as it provided an opportunity to discuss the new challenges brought about by changing trends in internet use and user potential.

During RTR's period as chair of BEREC in 2012, it was the first time that a very large number of procedures under Art. 7 and 7a of the Framework Directive were carried out. When the European Commission expresses doubts about decisions by national regulatory authorities, BEREC is required to establish an expert working group on short notice for the purpose of drafting an opinion – and all this within a very short time-frame. BEREC managed to complete all



cases in due time with expert opinions that were also widely approved in Europe-wide voting procedures. Close cooperation with the BEREC Office, i.e. the supporting unit for BEREC, was extremely important in this regard. Even though the BEREC Office became fully operative and achieved the status of an independent Community body only in autumn 2011, due cooperation evolved in a positive direction, especially in the case of procedures under Articles 7 and 7a.

BEREC's main tasks also include cooperation with EU institutions such as the Commission, the European Parliament and the Council. In his term as chair of BEREC, Georg Serentschy put special emphasis on this area. As a result, the new European Roaming Regulation and its parameters for all of Europe were able to be adopted. In addition, the topic of network neutrality was heavily discussed within the scope of cooperation with the European institutions, and individual BEREC working groups dealt with the topic in great detail with a view to issuing market guidelines.

During Austria's term as chair of BEREC, Georg Serentschy also initiated a campaign for an intensified exchange of opinions with the market and increasingly approached market participants to communicate with them in a stakeholder dialogue. The market participants warmly embraced this initiative, taking advantage of it to intensify dialogue. In this way, information and input provided by the market can ultimately be taken into account in BEREC's discussion process.

After a very intense year, the chair of BEREC passed on to Greece. An overview of the individual results and reports published by BEREC can be found on the official website (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 (Organisation for Economic Co-operation and Development), CEPT (Conférence Européenne des Administrations des Postes et des Télécommunications) / ECC (Electronic Communications Committee), the ERGP (BEREC's counterpart in postal regulation), and others. Examples of the regulatory authority's involvement include 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 from 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.

In 2012, the Eastern Partnership (EaP) programme established by the European Union in order to promote cooperation under the European neighbourhood policy with the countries of Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine was formally launched in the field of regulating electronic communications, after the act of incorporation had been solemnly signed in Chişinău, Moldova. RTR's involvement in this group will strongly contribute to its success and continued development in future.

8.9 Security and integrity of networks and services

The amendment to the TKG 2003, adopted in November 2011, requires operators of public communications networks or services to take measures ensuring the security and integrity of their networks and services. As a result, new tasks have been assigned to RTR as well. Operators of public communications networks or services are required to report to RTR, according to a form specified by RTR, any security violation or loss of integrity that has considerable impact on network operations or the provision of services. RTR, in turn, may inform regulatory authorities of other Member States or ENISA (European Network and Information Security Agency) of such notifications. It may also inform the public if the disclosure is in the public interests. Each year, RTR is required to submit a report to the European Commission and to ENISA concerning the notifications received and the measures taken.

In cooperation with national regulatory authorities, including RTR, ENISA drew up two technical guidelines:

- the “Technical Guideline for Minimum Security Measures” specifies the minimum security measures to be taken into account by all operators of public communications networks or services;
- the “Technical Guideline on Reporting Incidents” defines the prerequisites (reaching of certain thresholds) at which an incident is to be included in the annual report to ENISA and the data the report is to contain about a given incident.

The thresholds are based on the period of unavailability of service and the number of affected subscribers. They also determine whether operators submit notifications to RTR. The thresholds were consequently announced to operators at a meeting in early 2012 and made public on the RTR website. The reporting requirement was explained in detail at a workshop, designed particularly for operators’ security experts, which was hosted by RTR with ENISA’s support.

In 2012 RTR received three notifications of security violations and impaired integrity of electronic communications networks or services, as described in the following.

- In one case, mobile telephony, text message services and mobile internet access were interrupted for some 650,000 subscribers of one operator for up to seven hours.
- In another case, fixed network telephony and fixed internet access were interrupted for some 339,000 subscribers of one operator for slightly over four hours.
- In the third case, two emergency numbers in the district of Spittal an der Drau were briefly unavailable (i.e. for five minutes after the error was reported) due to an error in a local routing table.

Within the scope of the tasks RTR assumed in the field of security and integrity of networks and services, it also was involved in campaigns led by other public authorities, for example in the development of an ICT strategy for Austria, which was initiated by the Austrian Federal Chancellery (BKA), and in the “Cyber Security Initiative”, organised by the platform “Kuratorium Sicheres Österreich” in cooperation with the Federal Ministry of the Interior. As part of the latter campaign, RTR contributed to a cyber-risk analysis for Austria and to a simulation of an internet outage in most of Austria.

At European level, RTR is part of a series of workshops organised by ENISA on Art. 13a of the Framework Directive and of the “IRG Working Group on Network and Information Security”. In this working group, national regulatory authorities focus on network and information security. In 2012, one of the main fields of activity was harmonising the application of Articles 13a and 13b of the Framework Directive.

8.10 Electronic signatures

In analogy to its duties under the TKG 2003, RTR also provides operational support for the TKK under the Austrian Signatures Act (SigG). RTR performs the duties under the SigG through units within the company that are strictly separate 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 funding from the federal budget.

In its activities under the SigG, RTR primarily supports the TKK and acts on behalf of the TKK. However, RTR also handles certain activities pursuant to the SigG 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 2012. This infrastructure was upgraded in early 2012, as several components had reached the end of their life cycle.

With regard to the directories, the signature verification service operated by RTR at www.signaturpruefung.gv.at is made available free of charge; the general function of the service is to verify electronic signatures (especially qualified signatures and official signatures). In the last quarter of 2012 it became clear that this service would also be used for future verification of signatures on electronic bills, which would possibly exceed the capacity of existing systems. Therefore, the hardware was upgraded accordingly. Specifically, several data processing units used for verifying signatures were pooled in a cluster, to which further processing units can be added if necessary.

At 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 2012, FESA focused on current developments in EU legislation (proposal for a Regulation of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market, COM[2012] 238 final) and the changes to be expected in this context for the supervision and accreditation of CSPs.





9 Postal service regulation

9.1 Liberalisation of the postal market

As of 1 January 2011, when Österreichische Post AG's reserved postal service (for letters up to 50 g) was opened up to other providers, the Austrian postal market has been fully liberalised.

The legal basis for this transition is set forth in the Austrian Postal Market Act (PMG); the statute, while already published on 4 December 2009, largely entered into force when the postal market was fully liberalised on 1 January 2011.

The PMG specifies the following tasks for which the Post-Control-Kommission (PCK) is responsible:


- Measures with regard to the universal service provider pursuant to Art. 12 Paragraphs 1 and 2
- Measures with regard to the postal service points operated by Post AG 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 Paragraphs 3 and 4
- Measures related to tariff regulation pursuant to Art. 21 Paragraphs 4 to 6
- Issue, transfer, amendment and revocation of licences pursuant to Articles 27, 28 and 29
- Exercise of revocation rights pursuant to Art. 30 Paragraphs 3 and 4
- Measures with regard to general terms and conditions pursuant to Art. 31 Para. 2
- Definition of reimbursement amounts pursuant to Art. 34 Paragraphs 9 and 10 and Art. 35 Par. 1
- Measures pursuant to Art. 35 Par. 4
- Supervisory measures pursuant to Art. 50

Apart from acting as the operative arm of the PCK, the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) has a number of responsibilities as defined in the PMG, including acceptance of service notifications as specified in Art. 25 and of the replacement plan referred to in Art. 34 Par. 8 as well as the measurement of transit times under Art. 33. As of 1 January 2011 RTR has also been responsible for handling conciliation procedures pursuant to Art. 53 PMG.

9.2 Closure of postal service points

As in previous years, a focus area within postal service regulation in 2012 was the review procedures under Art. 7 PMG pending closure of postal service points (PSPs) by Österreichische Post AG (Post AG). Since Art. 7 PMG entered into effect on 5 December 2009, the PCK has been solely responsible for reviewing whether the prerequisites for the closure of a PSP operated by Post AG have been met.

A PSP operated by Post AG may only be closed down where cost-effective management of the PSP is precluded in the long term (i.e. over a period of approximately two years, viewed with reference both to the past and to the future) and the provision of universal service is ensured by another PSP (one operated by third parties, such as postal service partners, or another existing PSP). The PCK is required to issue a decision within three months of receiving complete



documentation from Post AG. In addition to documents evidencing compliance with the prerequisites mentioned above, the required documentation also includes invitations by Post AG to the mayors of the municipalities concerned to meet and discuss alternative solutions.

In any case, comprehensive coverage with PSPs must be consistently ensured. Under Art. 7 Par. 1 PMG, the comprehensive coverage requirement is considered fulfilled as long as at least 1,650 PSPs are available nationwide to users. In municipalities with more than 10,000 residents and in all district capitals, it is necessary to ensure that over 90% of residents have access to a PSP within a distance of 2,000 metres. In all other regions, which in the PCK's interpretation includes municipalities up to 10,000 residents, a PSP must be available within 10,000 metres.

For further details on the review process, please refer to the relevant section of the communications reports for previous years.

Post AG notified the regulatory authority of the planned closure of 60 PSPs in 2012. Decisions were issued on the closure of 65 PSPs in 2012, several of these cases having already been notified in 2011. Closure of a PSP was prohibited in the end in one case only. No other closures were ultimately prohibited, mainly because Post AG repeatedly withdrew PSPs from the respective procedures. One of the reasons for this was that the possibility of closure being prohibited became apparent in the course of the review procedure. In addition, the PCK issued a total of 30 "contingent" prohibitions, in which the closure was prohibited pending commencement of operations by the postal partner designated as a replacement.

In cases closely related to closure procedures as specified in Art. 7 PMG, three procedures were filed with the PCK in which municipalities requested legal status in closure procedures. The PCK rejected the petitions, ruling that only Post AG had legal status as a party to the closure procedures.

Another significant area of activity during the year under review involved the supervisory procedures initiated due to the discontinuation of third party-operated PSPs (e.g. due to bankruptcy on the part of postal service partners or the termination of contracts). In such cases, Post AG is also nonetheless required to provide universal service and ensure comprehensive coverage (Art. 7 Par. 7 PMG). Under certain circumstances, this may also be ensured through alternative service supply solutions, such as rural delivery personnel. In the course of these supervisory procedures, the supply of services to the municipalities affected by the closures was examined. In total, 47 closures of third party-operated PSPs partners were the subject of supervisory measures conducted by the PCK.

Another supervisory procedure concerned the relocation of a deposit PSP within a service area to a point much farther than 10 km from the town concerned; in the PCK's view, this did not comply with requirements for comprehensive provision of PSPs (Art. 7 Par. 1 PMG). The change was revoked in the course of the procedure. As previously, postal items are now deposited at a PSP located less than 10 km from the town.

The overall number of PSPs in Austria rose during 2012, from 1,860 (as of 31 December 2011) to 1,906 (as of 31 December 2012). As in the previous years, a clear shift could be observed, from locations operated by Post AG to third party-operated PSPs.

Pursuant to the transparency provisions that became law on 1 January 2011, all related decisions are published on the RTR website.

9.3 Other PCK and RTR procedures

9.3.1 PCK procedures

General terms and conditions and tariffs

As specified in Art. 20 Par. 1 PMG, the universal service provider (Post AG) is required to issue general terms and conditions for services in the universal service sector, which regulate the services offered and define the associated tariffs. The general terms and conditions are to be notified to the PCK when published.

Under Art. 20 Par. 4 PMG, the PCK may within two months raise an objection to any notified terms and conditions that contradict provisions 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).

Six procedures concerning modifications of Post AG's terms and conditions were conducted in 2012. Five cases were completed in 2012. The modifications concerned the terms and conditions for domestic letters, international letters, domestic parcels, international parcels, official letters with advice of receipt, newspaper delivery and Sponsoring.Post. In isolated cases during the procedures, the general terms and conditions were adapted as deemed necessary by the PCK in order to protect users' interests. All changes to the terms and conditions that were notified to the PCK ultimately complied with the criteria defined in the PMG and no objections were raised.

A review procedure concerning changes to the terms and conditions for domestic parcels and international parcels, including comprehensive tariff modifications, was initiated in 2012 and was pending as of 31 December 2012.

Payment orders for the financing contribution under Art. 34a KOG

The KommAustria Act (KOG) specifies for the postal sector as well that one portion of RTR's expenses are to be covered by funds from the federal budget and another portion by financing contributions from the postal service industry. Art. 34a Par. 3 in conjunction with Art. 34 Paragraphs 9 to 13 KOG stipulate that, in cases where postal service providers fail to meet their obligation to pay financing contributions, the PCK is to issue an official decision ordering payment of the contribution.

In cases pertaining to financing contributions due for 2011, the PCK issued decisions to two companies, dated 23 April 2012 and 18 June 2012. One company filed complaints against the decision with the Constitutional Court (VfGH) and with the Administrative Court (VwGH), and a ruling on the case by the VwGH was pending when this report was prepared. In the case of another company, the PCK initiated a procedure to order payment of the financing contribution. That procedure was pending at the end of the period under review.

Issue of licences under Articles 26 et seq. PMG

The PMG stipulates a licensing requirement for third-party commercial activities for the purpose of conveying letters up to 50 g. The licence is issued by the PCK on written request. Art. 27 PMG specifies the information required in the licence request, namely the type of service, the supply region as well as organisational, financial and technical requirements for operation by the applicant. The licence is to be granted where the applicant possesses the required efficiency, reliability and expertise to carry out a licensed service and complies with the working conditions that are appropriate and applicable in Austria for the employment of staff, including terms of remuneration.

In a decision dated 18 June 2012, the PCK issued a licence to Klaus Hammer Botendiensten for a portion of the supply region surrounding Vienna, specifically 2440 Gramatneusiedl, 2440 Moosbrunn, 2440 Reisenberg, 2435 Ebergassing and 2325 Himberg, and of the supply region of Baden, specifically 2441 Mitterndorf an der Fische, 2442 Unterwaltersdorf and 2483 Ebreichsdorf.

Application for reimbursement of non-prorated costs associated with the replacement of mailbox installations in buildings pursuant to Art. 34 Paragraphs 9 and 10 PMG

According to the provisions of the PMG, the universal service provider is to be reimbursed on request for the cost of replacing, as specified in Art. 34 Par. 8 PMG, mailbox installations in buildings that do not comply with Art. 34 Paragraphs 2, 4 and 5, for the market-based financing costs, and for the costs of handling replacement by the universal service provider. Operators of licensed postal services, including the universal service provider, with annual revenues of more than EUR 1 million from this activity are required to contribute to reimbursing these costs.

In a decision issued on 8 October 2012, the PCK rejected the request submitted for 2011 in this regard by the universal service provider, Österreichische Post AG; the main reason for the refusal was that all operators of licensed postal services either achieved far less revenue from this activity than the EUR 1 million defined as the minimum or no revenues whatsoever associated with services, the provision of which requires a licence pursuant to Articles 26 et seq. PMG, and are thus not obliged to contribute to reimbursement of costs as requested by Post AG.

9.3.2 RTR procedures

Review of 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 Post AG. 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, as specified in Art. 23 Par. 1 PMG. The internal cost accounting systems must be based on uniformly applied and objectively justifiable principles of cost accounting.

On the basis of the review of the period 2008 to 2010, it was determined that the cost accounting system complied with the criteria listed above. The procedure for this review was completed in early 2012.

Notification of provision of postal services pursuant to Art. 25 PMG

Art. 25 PMG specifies that postal service providers must notify RTR in advance of the intended provision of a postal service as well as any change to or discontinuation of the service. The list of reported postal services, including the name of the postal service provider, is to be published on the internet by RTR.

One company notified of provision of postal services pursuant to Art. 25 PMG in 2012. Three companies reported not (or no longer) providing previously notified postal services, and the firms were subsequently deleted from the list of postal service providers, the postal services of one of these companies being provided in future by another provider that is already listed. As of the end of 2012, a total of twelve companies had notified the RTR of provision of postal services.

Mailbox installations in buildings

Pursuant to Art. 34 Par. 8 PMG, the universal service provider Post AG is required by 31 December 2012 to replace all building mailbox installations that do not conform to the specifications of the PMG. To this end, Post AG was to prepare a replacement plan to be submitted to RTR. According to this replacement plan, by the end of 2012 Post AG had refitted about 89% of all mailbox installations needing to be replaced. By the end of the period under review it had not been possible to completely verify this information.





10 The Austrian communications markets in 2012

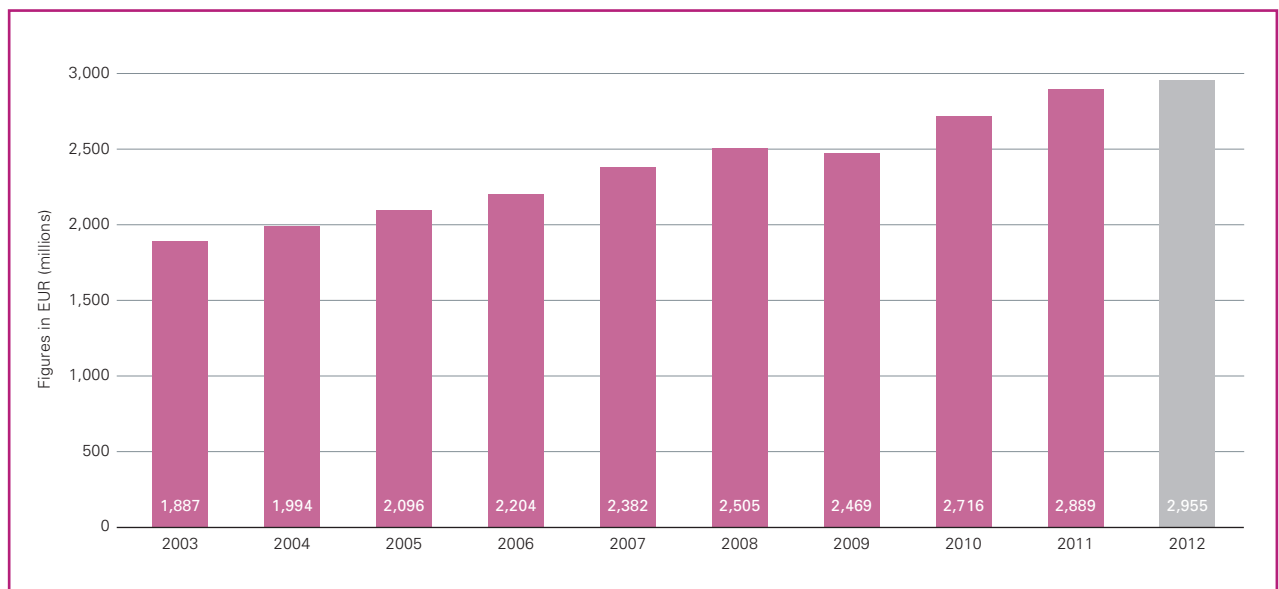
10.1 The Austrian communications and advertising markets

10.1.1 Development of the advertising market

The economic and eurozone crisis continued to maintain a firm hold on Europe in 2012. Associated negative impact was felt on advertising expenditure, which dropped considerably. Austria's advertising market was able to hold its own in the face of this trend, finishing 2012 with gross revenues that were higher, albeit slightly, than in the previous year.

As in 2011, in 2012 Europe continued to be the only one of the five major regions in the world¹⁶ to show a decrease in advertising expenditure, as reported by Nielsen Media Research. Yet the decline was even greater this time: whereas the European advertising market saw a 0.4% decrease in 2011, the industry had to absorb a heavier drop of 4.2% in 2012. Gross revenues among Austrian advertisers increased, in contrast, by 2.3%, whereas the growth rate had still been around 6.4% in 2011.

Figure 13: Total advertising expenditure in Austria, 2003 to 2012



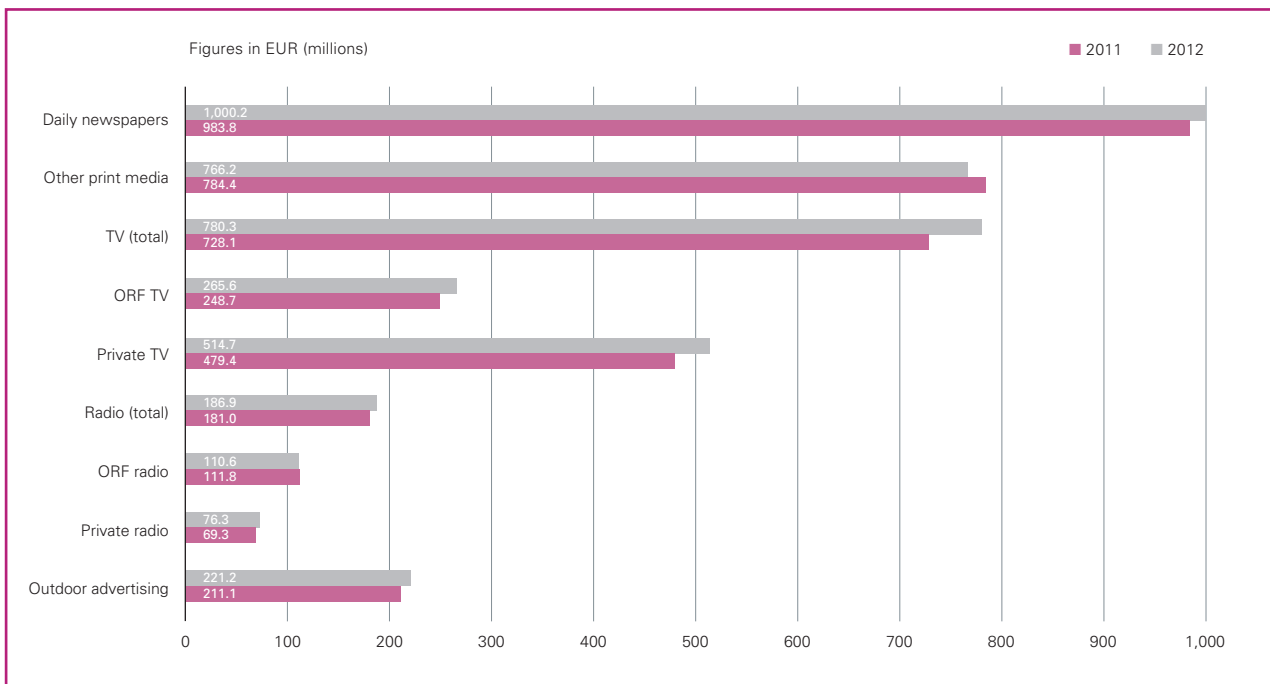
Source: FOCUS Media Research (excluding cinema, conventional flyer and online advertising)

¹⁶ North America, Latin America, Asia and Pacific, Middle East and Africa, Europe

Expressed in euros, the gross revenues achieved by the Austrian advertising market in 2012 increased by a mere EUR 66 million over 2011, reaching a level of EUR 2.955 billion. This represents the third poorest growth rate in the decade since 2003, when the increase was even smaller at EUR 35 million. The crisis year of 2009 showed a decrease of EUR 36 million from the previous year. Consequently, the average increase in gross advertising revenues dropped to EUR 110 million, as compared with the EUR 115 million calculated at the end of 2011. This result interrupted the series of disproportionately high growth rates seen since 2007 (with 2009 as the only exception) and fell short of the EUR 3 billion in gross revenues that had been expected from conventional advertising for 2012.

By way of a general note, at this point it needs to be remembered that gross advertising revenues, which are here based on the official price lists published by the media, represent only one trend indicator for the advertising market. It is practically impossible to collect data on discounts in the form of price reductions, free advertising minutes and similar offers. Therefore, gross revenues, as based on surveys of price lists made officially available and on the number of ads appearing or broadcast, allow only limited conclusions to be drawn concerning the net revenues in media sectors. Yet these figures do constitute a highly useful instrument when regarded as an indicator of the market trend.

Figure 14: Advertising expenditure in Austria by category, 2011 and 2012



Source: FOCUS Media Research (excluding cinema, conventional flyer and online advertising)

Private radio and TV achieve the largest increases

The conventional advertising media showing the best results in 2012 were Austria's private radio broadcasters, with 10.1% higher gross advertising revenues, and private television broadcasters, with a 7.4% increase; just short of these considerably above-average growth rates, the television channels of the Austrian Broadcasting Corporation (ORF) television increased revenues by 6.8%. Worthy of note in this regard is that ORF television finally again succeeded in increasing gross advertising revenues after years of decline. Private TV broadcasters, in contrast, can be less than satisfied with the results achieved in 2012, since this group had previously been accustomed to annual growth rates of 20% and had overtaken ORF television in terms of annual gross advertising revenues for the first time in 2009. The entire TV advertising sector was able to increase gross revenues by 7.2%, while the radio sector achieved a growth rate of 3.3%. While ORF radio took in almost 1.1% less in gross advertising revenues than in the previous year, private radio broadcasters were tremendously successful, achieving a 10.1% increase.

Print media advertising income increases only slightly

It was all but a good year for print media. Daily newspapers gradually recognised a trend towards falling gross advertising revenues. While print dailies still had enjoyed a 17.6% increase in 2010, this growth dwindled to 5% by 2011 and to a mere 1.7% by 2012. Apart from the globally observed tendency to shift advertising investments from print media to the web, no real reason for this trend is apparent in the Austrian market, since the daily reach figure for newspapers has been fairly constant for years, despite a very minor falling tendency (2012: 72.8%)¹⁷. Some of the most widely sold publications were able in 2012 to halt the trend towards falling daily reach or even make slight gains. Among dailies circulated nationwide, the losers were Kronen Zeitung and, for the first time, the free newspaper known as Österreich, both of which lost 0.8 percentage points in daily reach. The daily to mostly make up for these losses was the free newspaper Heute (increasing by 0.8 percentage points), while Kurier (0.4 more percentage points) and Salzburger Nachrichten (+0.3 percentage points) also gained reach. As a psychological factor, media reports of the death of the newspaper probably played a role in the unusually small increases in gross revenues that daily newspapers achieved through advertising.

Daily newspapers in particular are doubtlessly experiencing the strongest competition from current online publications. Yet, at the same time, it should be noted that four dailies are more or less cannibalising the sales of their printed editions by marketing their own web content. This is one of the reasons that the industry is now discussing whether it might not be appropriate to also present a cumulative figure of the gross revenues achieved by daily newspapers through both print and online advertising, instead of providing information on online revenues only for the survey on online advertising expenditure. This would lead to another problem, however. In no other media sector is there such a large discrepancy between the list price for advertising and the price actually paid as in online advertising. Daily newspapers in particular frequently offer online ad space at very favourable terms if the customer also orders an ad in the print edition.

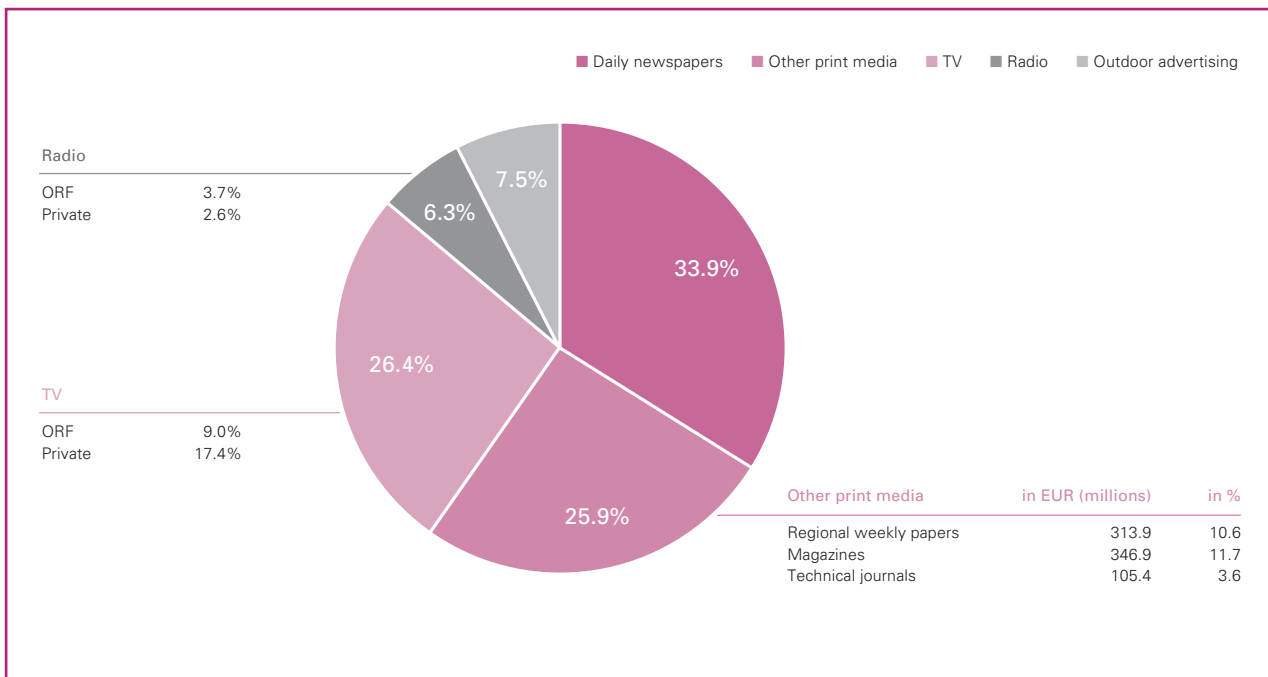
The largest revenue loss was suffered in the category of "other print publications" in 2012. Magazines and weeklies took in 2.3% less in gross advertising revenues than in 2011. This decrease is especially worthy of note in light of the fact that such publications had recorded an 8% increase in gross advertising revenues for the second time in a row in 2011, which had put them ahead of daily newspapers. On the other hand, several of the most prominent magazines lost reach in 2011. That probably had appreciable impact on advertising revenues in 2012.

¹⁷ Refer to Figure 31 Daily reach of daily newspapers, 2003 to 2012

Outdoor advertising provided a relatively good showing in 2012, increasing revenues by 4.8% over the previous year and taking in a total of roughly EUR 10 million more. Labouring under the general pressure, the sector nonetheless fell well short of the 7.9% increase recorded in 2011.

The above-average gross revenues achieved by television advertising and the below-average performance among print publications are proportionally represented in the chart showing the distribution of advertising expenditure.

Figure 15: Shares of gross advertising expenditure in 2012, conventional media



Source: FOCUS Media Research

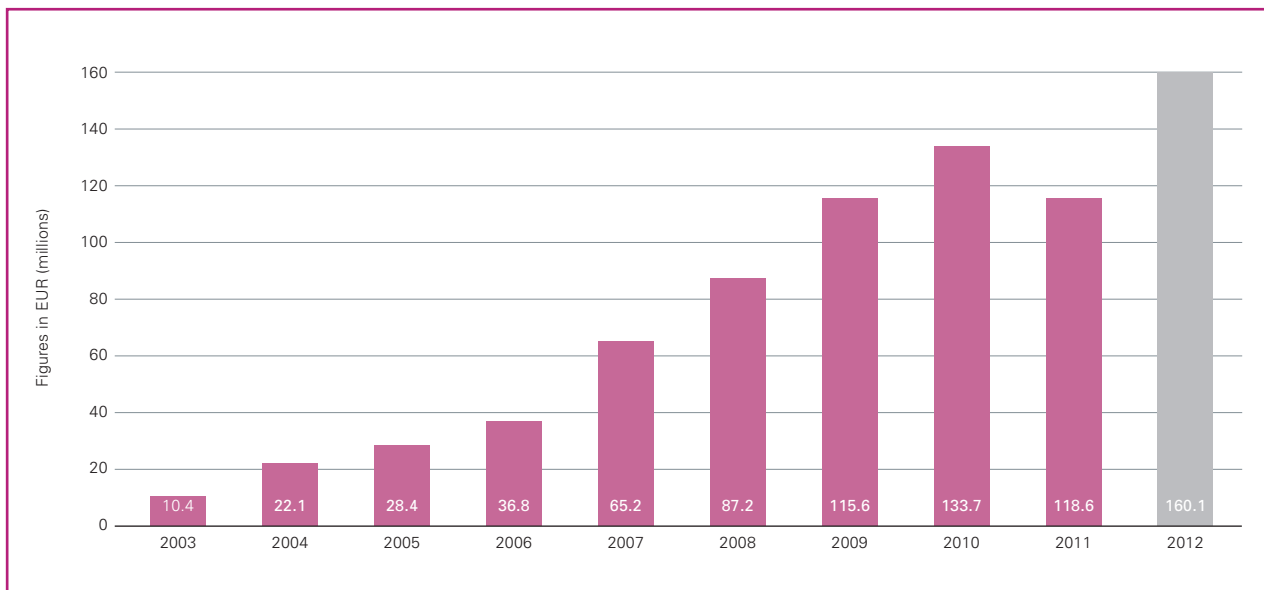
At a total of 59.8%, the largest share by far of gross advertising expenditure went to conventional print advertising. In 2010 and 2011, however, daily newspapers, magazines and other print publications were still able to take in 61.2% of the amount spent on advertising.

The share lost by print media was taken over almost completely by Austrian television broadcasters and by German stations broadcasting advertising to target the Austrian audience. Television advertising increased its share of gross revenues by 1.2 percentage points to reach 26.4%, whereas one percentage point of the increase is to be attributed to private television.

While the overall share held by radio remained constant at 6.3%, ORF radio lost 0.2 percentage points to private broadcasters. Outdoor advertising was able to increase its share by 0.2 percentage points to 7.5% of the gross expenditure for conventional advertising.

The survey of changes in advertising expenditure prepared by FOCUS Media Research for the online sector still does not result in reliable figures for year-to-year comparisons. Repeatedly adapted survey methods, the lack of full survey coverage of existing online offerings (or changes to the range of online offerings surveyed) and often unclear pricing models allow only an approximate representation of the market.

Figure 16: Online advertising expenditure in Austria, 2003 to 2012



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

Source: FOCUS Media Research

At EUR 160.1 million in 2012, the gross revenues taken in by online advertising had almost reached the level recorded for the entire radio advertising sector (EUR 186.9 million).

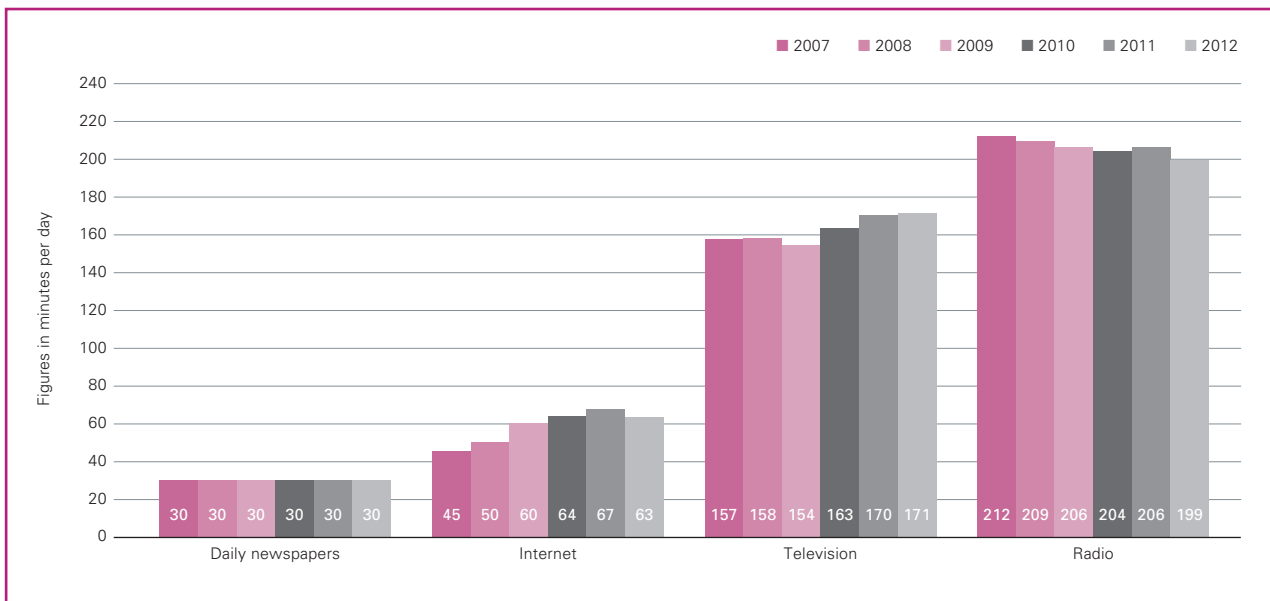
The continued increase is generally consistent with findings gathered for the global development of online advertising, even though the increase in Austria of 35% over the previous year (as reported by FOCUS Media Research) would clearly place it at the upper end of the values observed internationally. In any case, with its successful online advertising offers the ORF was able to achieve net revenues of EUR 9.7 million in 2012, representing a 7.7% increase over the previous year.

Internet and radio used less

Based on media usage as observed in 2012, the figures anticipated for radio and internet in 2013 give rise to concerns that the gross advertising revenues taken in by radio broadcasters and online media could be lower than those seen previously. These two categories have to face a massive loss of attention among consumers aged 14 and above.

For several years daily radio listening time has been decreasing at a sustainable rate, on average by two to three minutes per year, even though a slight, two-minute increase was recorded in 2011; this rate plummeted in 2012, however, dropping drastically by seven minutes, so that listeners aged 14 and above used this medium on average only 199 minutes per day.

Figure 17: Daily media usage time, 2007 to 2012



Persons 14 to 49 years of age

Source: Radiotest, TELETTEST, MTUs, AIM

In view of the slightly positive increases, both in terms of listening time and daily reach, observed for radio in 2011, and assuming a related positive impact on the amount of radio advertising sold in 2012, the possibility of a counter-reaction in this regard cannot be ruled out for 2013.

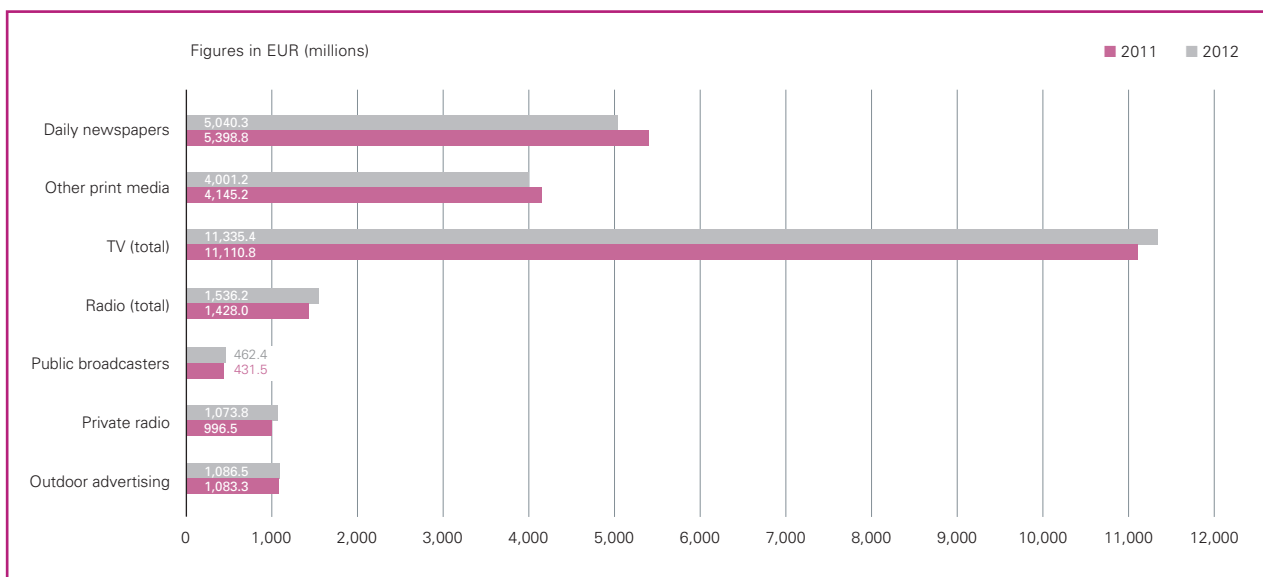
Yet even more surprising is the marked decrease in internet usage observed for the first time. At 63 minutes per day as compared with 67 minutes in the previous year, internet usage has dropped in relative terms even more drastically than radio listening time. Yet the advertising industry favours this fashionable medium, and it will probably suffer less than radio due to declining usage. Television was the only media category to again see increased usage, with 171 minutes average daily usage observed for viewers 14 and over in 2012. Granted, that is only minute more than in the previous year and is considerably less than the increases in usage observed in 2011 (seven minutes) and 2010 (nine minutes), but television is nonetheless the only media category in 2012 to gain in terms of time used daily.

Readers have been consistently devoting themselves to a daily newspaper for 30 minutes a day – in 2012 as well.

10.1.1.1 Comparison with the German advertising market

In contrast to Austria, the amounts paid for advertising in conventional media in Germany decreased in comparison with the previous year. Such a decrease was recorded in Austria only once during the past decade, during the crisis year 2009. Yet German media experienced an overall decrease of only 0.7% at a total advertising expenditure of EUR 23 billion, which still represents an acceptable balance when compared with the 4.2% decline in advertising expenditure recorded for Europe as a whole. The comparison of gross advertising expenditure in the German market had still shown a 2.5% increase between 2010 and 2011.

Figure 18: Advertising expenditure in Germany by category, 2011 and 2012



Source: Nielsen Media Research

When considered by category, print media can be seen to wholly account for the decrease in 2012. All other conventional media categories in Germany achieved an increase in advertising revenues – even if, as for outdoor advertising, the increase was only by 0.3 percentage points.

With an overall increase in gross revenues of 7.6%, radio advertising was especially successful, with public radio stations belonging to ARD and private broadcasters profiting almost equally from the increase (public: 7.2%; private: 7.8%). The slight lead held by private radio is still worthy of note, considering that in recent years public radio stations have participated much more strongly in revenue gains from radio advertising than the private competition. In 2011, for example, the ARD stations increased advertising revenues by 6.7%, while in 2010 growth had even amounted to 9.2%. Private broadcasters, in contrast, had seen gains of only 2.2% in 2011 and 3.6% in 2010.

Germany’s television sector was able to achieve only a minor, 2% increase in gross advertising revenues in 2012, up by EUR 224.6 million to a total of EUR 11.34 billion. In 2011 the increase had been 1.8% and in 2010, in contrast, 16.2%. In the face of a weak market environment, television as the heavyweight competitor was able to further expand its share in gross advertising revenues, accounting for 49.3% of total gross expenditure for conventional advertising in Germany; the comparable figure for 2011 was 48% and for Austrian TV in 2012 26.4%.

Germany’s daily newspapers, on the other hand, suffered a 6.6% decrease in gross advertising revenues. Ad sales among weeklies and magazines declined by 3.5%. Germany’s print media as a whole thus lost 5.3% of its gross advertising revenues compared with 2011 (down by EUR 502.5 to a total of EUR 9.04 billion in 2012), while its share in advertising expenditure fell by 1.9 percentage points to 39.3% (Austrian print media fell by 1.4 percentage points to 59.8% in 2012).

10.1.2 Television market

10.1.2.1 Television viewing

One change in the Austrian television market in 2012 stands out especially: the German private broadcasters, offering advertising and in some cases programmes specifically for Austria, lost 2.1 percentage points of their market share compared with 2011, achieving a total share of “only” 26.9%. This development is especially remarkable in view of the continued growth seen in recent years, interrupted only briefly by a very minor slump. Yet Austrian TV channels have on the whole profited little from the development. Rather, the market share lost by German programmes for Austrian viewers has been absorbed diffusely by the wide range of channels available to households with digital television (77% of all TV households at the end of 2012). This range includes the channels with mass appeal that are broadcast by the RTL and ProSiebenSat.1 groups as well as Germany’s public TV channels and the ARD network’s regional channels, other German special-interest channels without Austrian content, pay-TV channels and shopping channels. Channels originating outside Austria nevertheless achieved a total market share of 52.9% in 2012 (53.9% in 2011).

The gains and losses of market share by Austrian channels, as noted above, were negligible and more or less balanced, although ServusTV’s gain in market share of half a percentage point can be seen as substantial, in relative terms. This equated with a roughly 70% increase for the channel, resulting in an absolute share of 1.2%. No other Austrian channel was able to expand its average market share in 2012 to such an extent, either in absolute or relative terms.

One Austrian channel disappeared from the TV market in mid-2012: the channel slot occupied by AUSTRIA 9 in cable networks and on satellites has been used for broadcasts by sixx Austria since July 2012. Produced by the German ProSiebenSat.1 group, sixx adds to the number of German private channels available in Austria that offer advertising as well as programmes specifically for Austrian viewers and are produced by ProSiebenSat.1 PULS 4 GmbH (formerly SevenOne Media Austria GmbH), a broadcaster and advertising marketer belonging to ProSiebenSat.1 Media AG.

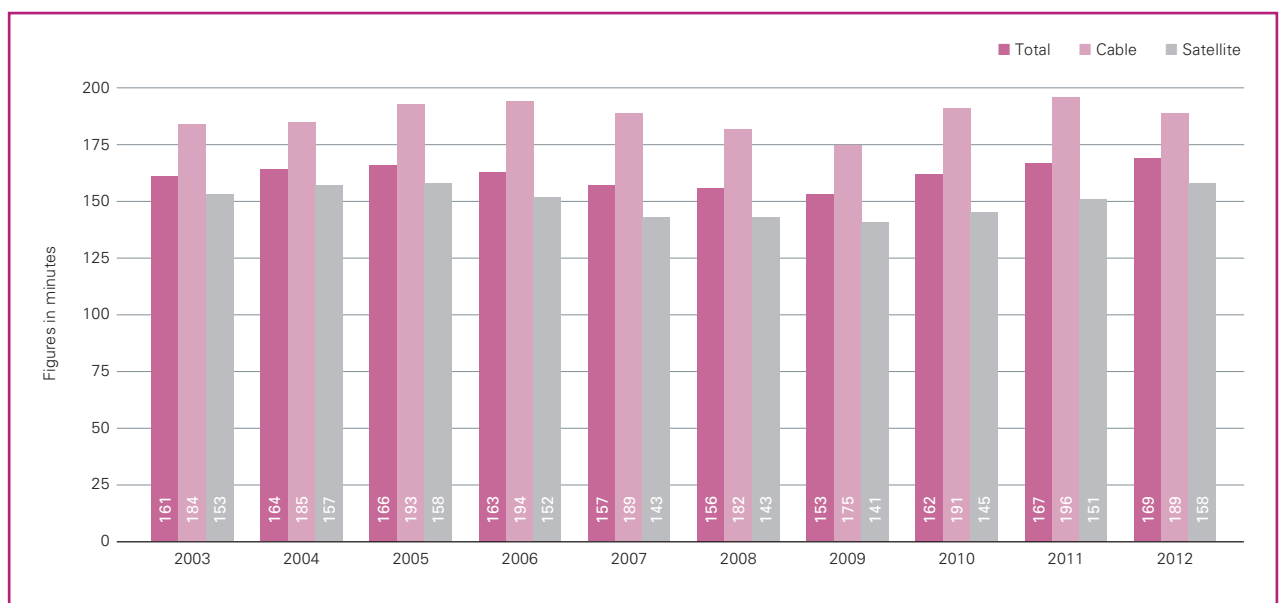
Despite gloomy forecasts on the future of TV, the daily reach of television overall as well as viewing time increased again in 2012, albeit not as strongly as in 2010 and 2011. A slight increase in daily reach and viewing time is not, however, unusual during a year like 2012, which offered viewers a European Football Championship and Summer Olympics. This was probably a major factor contributing to the 0.2-percentage-point increase in market share seen by the TV channel ORF 1, giving it a total share of 14%. After all, ten European Football Championship matches were among the 30 ORF 1 broadcasts with the highest average reach. Whereas the Olympics are missing from this top-30 listing, the broadcast of the stratosphere jump (nine minutes without coverage) by extreme skydiver Felix Baumgartner on 14 October 2012 heads the list. Yet the slight growth in market share is less significant for ORF 1 than the fact that the consistent and continuous decline in market share seen in recent years could at least be slowed down.

The usage, reach and market shares of all 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 association of the TELETEST Working Group (AGTT) has commissioned these surveys. AGTT, formed in 2005, is an association which includes the ORF, ORF-Enterprise, ATV, ServusTV, IP Österreich (the marketing organisation for the RTL Group in Austria) and ProSiebenSat.1 PULS 4 GmbH (formerly SevenOne Media Austria GmbH, the marketing organisation for the ProSiebenSat.1 group). Prior to 2007, the ORF commissioned the TELETEST survey, and AGTT took on this role as of 1 January 2007.

In 2012, the TELETEST panel consisted of 1,590 households in Austria, which were equipped with measurement systems provided by Telecontrol. In order to ensure that panel participants equally represent the increasing number of single households, panel size has been slightly increased several times in recent years. The panel comprised around 3,560 participants in 2012, including some 3,240 individuals aged twelve and over, who represented the 7.17 million adults in Austria's television households, and around 320 children aged three to eleven, who represented the 728,000 children in those households. The 1,590 test households represent a statistical population of 3.55 million television households.

A tendency towards decreasing viewing time ended and was reversed in 2010, with the reverse trend continuing on into 2012. Daily television viewing time among viewers aged 12 and over increased by nine minutes in 2010 compared with the previous year and by another five minutes in 2011. Viewing time rose by another two minutes in 2012 to a total daily average of 169 minutes (171 minutes among viewers aged 14 and over), resulting in an all-time record for Austria.

Figure 19: Viewing time, 2003 to 2012



Persons aged twelve and over in all of Austria

Source: TELETEST

Viewing time in Austria nonetheless continues to be significantly lower than the EU average. EU residents watch television 230 minutes per day,¹⁸ while in Germany viewing time decreased by three minutes in 2012 to 222 minutes daily.¹⁹ Unlike the Austrian survey, which is of viewers aged twelve and over, the German statistics includes viewers aged three and over. Yet viewing times are the lowest for the age group of children between three and eleven (in Austria 68 minutes per day), and including this group reduces the overall average, resulting in 160 minutes of daily viewing time for the entire population of Austria.²⁰ The difference to neighbouring Germany thus becomes all the

¹⁸ Figure for 2011, from: IP Deutschland, Television Key Facts 2012

¹⁹ AGF Arbeitsgemeinschaft Fernsehforschung, Frankfurt

²⁰ ORF Media Research/TELETEST

greater. Viewing time is a mean value calculated on the basis of all individuals living in one television household and as such also includes non-viewing individuals.

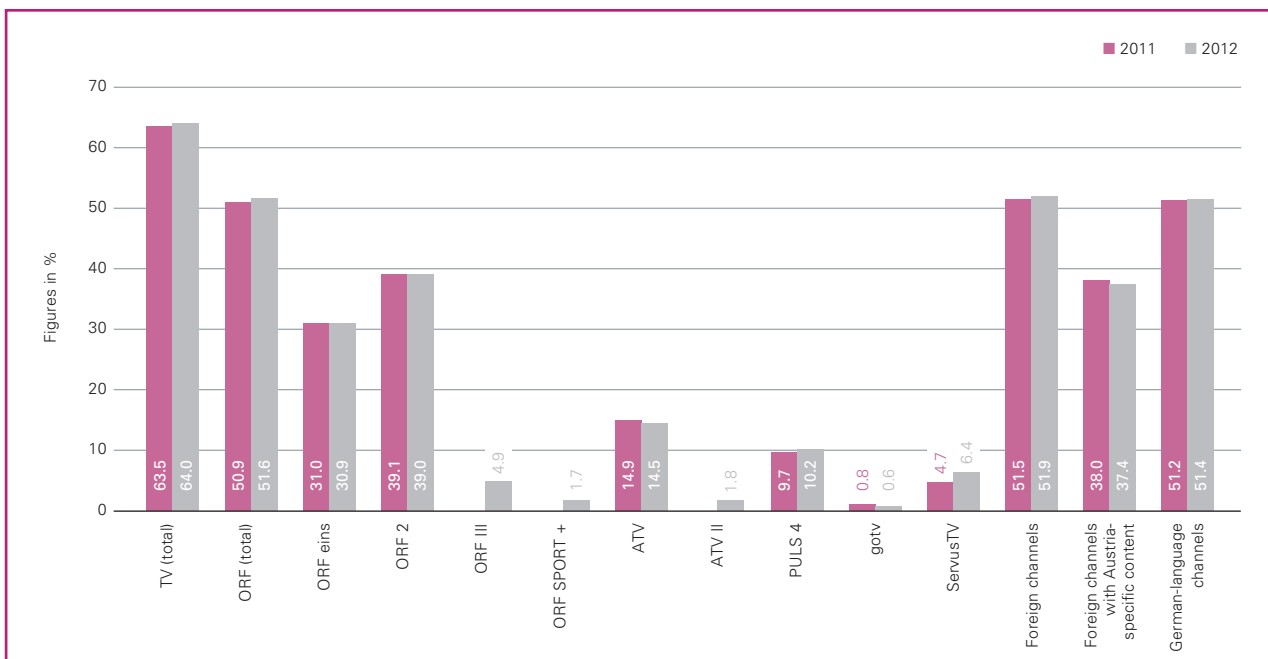
The time spent viewing, which refers to the usage time of active viewers, also increased slightly (by one minute) to make for an average of 261 minutes per day – a new record as well.

10.1.2.2 Daily reach and market shares for television

After 2010 and 2011, for the third year in succession television attracted more viewers in 2012 than in the previous year. An average of 4.57 million Austrians aged twelve and over watched television daily for at least one minute in 2012 (i.e. the definition of daily reach). This represents 35,000 individuals more than in 2011. The daily reach figure for television thus increased by half a percentage point to 64%. TV daily reach declined from 2005 to 2009. The current figure nonetheless falls well short of the record of 70.2% in TV daily reach set in 2002.

For the first time, the charts presented in this Communications Report show the ORF's overall daily reach and market shares including the special-interest channels ORF SPORT + and ORF III Kultur und Information. A verbal description of the changes in figures excluding the special-interest channels is also provided in order to facilitate comparisons with past years. Another addition is the ATV II channel, for which data covering an entire year were available for the first time in 2012.

Figure 20: Daily reach of television, 2011 and 2012



Persons aged twelve and over in all of Austria; ORF overall in 2012 including for the first time ORF III and ORF SPORT +; no 2011 data for ORF III, ORF SPORT + or ATV II

Source: TELETEST

Separate analysis of the changes in reach for TV channels in Austria reveals in particular the repeated gains by ServusTV and by PULS 4. An average of 457,000 viewers watched ServusTV for at least one minute daily in 2012. That was 122,000 more daily viewers than in 2011. The daily reach achieved by ServusTV climbed from 4.7% to 6.4% of viewers aged twelve and over. Back in 2011 ServusTV already showed above-average improvement in daily reach, with an increase from 2.7% to 4.7%.

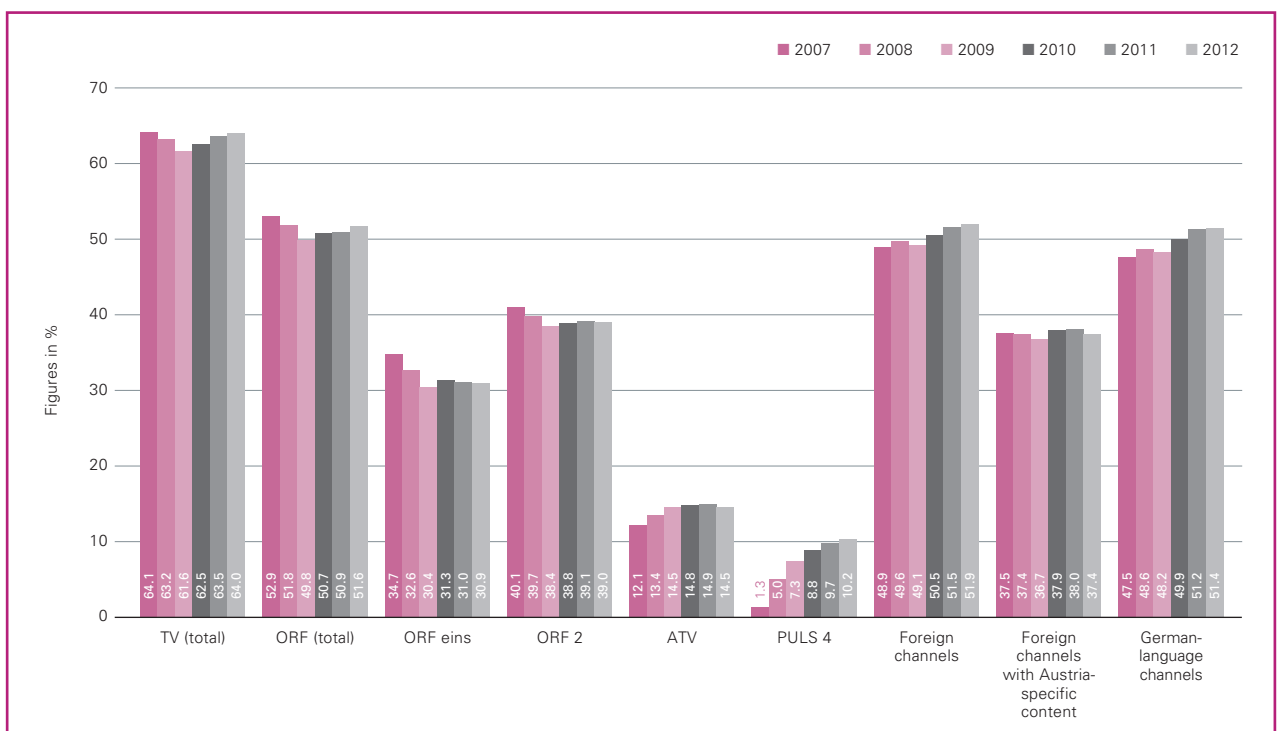
PULS 4 showed a repeated increase as well, even though the gain in daily reach of half a percentage point to a level of 10.2% cannot be compared with the growth seen in the previous two years. In 2010 PULS 4 made a gain of 1.5 percentage points, while the comparable figure for 2011 was 0.9 percentage points. The daily reach achieved by PULS 4 is thus about one third smaller than that of ATV, whereas the latter had to cope with a loss of daily reach for the first time since its nationwide launch in summer 2003, falling by 0.4 percentage points to 14.5%.

No clear trends in either direction can be recognised from the change in daily reach for the ORF's two main television channels, i.e. ORF 1 and ORF 2, whether examined as a whole or separately. In 2010 the ORF was able to stop the downward trend and has since seen slight gains. In terms of daily reach, ORF 1 and ORF 2 taken together achieved an overall increase of 0.1 percentage points and a level of 51%, while, when viewed separately, ORF 1 and ORF 2 each lost 0.1 percentage points, achieving 30.9% and 39% respectively. All ORF channels together, including ORF SPORT + and ORF III Kultur und Information, achieved a daily reach of 51.6%. In particular the daily reach of 4.9% achieved by ORF III in the first year can be considered a success.

In 2012 gotv, a music and youth channel able to be viewed free of charge throughout Europa via satellite, lost one quarter of its daily reach in the country of its origination and reached a mere 0.6% of potential viewers aged twelve and over. Since November 2012, terrestrial antenna reception (DVB-T) of gotv as well as ATV II has been possible in the urban areas around Innsbruck, Bregenz and especially Vienna. It will thus be interesting to observe whether this expansion will improve gotv's daily reach as 2013 progresses.

The Austrian-content programmes of German broadcasters also lost daily reach, specifically 0.6 percentage points, falling to a level of 37.4%, i.e. below that seen in 2010 (37.9%). RTL and SAT.1 were particularly affected by this loss of daily reach, each dropping by 1.1 percentage points to levels of 16% and 14.2% respectively.

Figure 21: Daily reach of television, 2007 to 2012

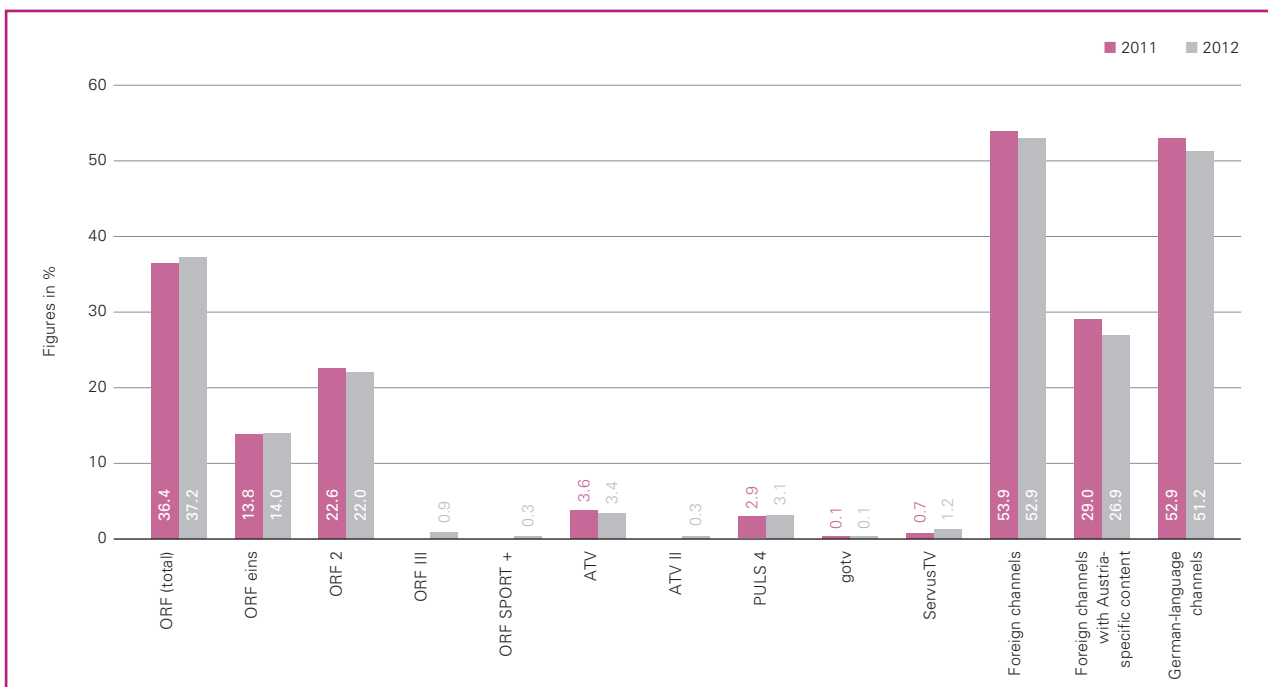


Persons aged twelve and over in all of Austria; all reception platforms; ORF overall in 2012 including for the first time ORF III and ORF SPORT +

Source: TELETEST

In 2012 as in previous years, the relative size of the Austrian television market changed little in general, though the Austria-specific German programmes lost appreciable market shares. ORF 2, holding a share of 22%, and ORF 1, at 14%, continued to be the most viewed television channels by far in Austria. Gaining 0.2 percentage points, ORF 1 was actually able to improve its standing for the first time in years – after having lost almost a third of its market share since 2006 (20.3%). ORF 2, in contrast, following a similar loss in 2011 was down by 0.6 percentage points in 2012, achieving a market share of 22% for the year. This figure corresponds to a market share loss of roughly one fifth since 2006 (27.3%).

Figure 22: Television market shares, 2011 and 2012



Persons aged twelve and over in all of Austria; ORF overall in 2012 including for the first time ORF III and ORF SPORT +; no 2011 data for ORF III, ORF SPORT + or ATV II

Source: TELETEST

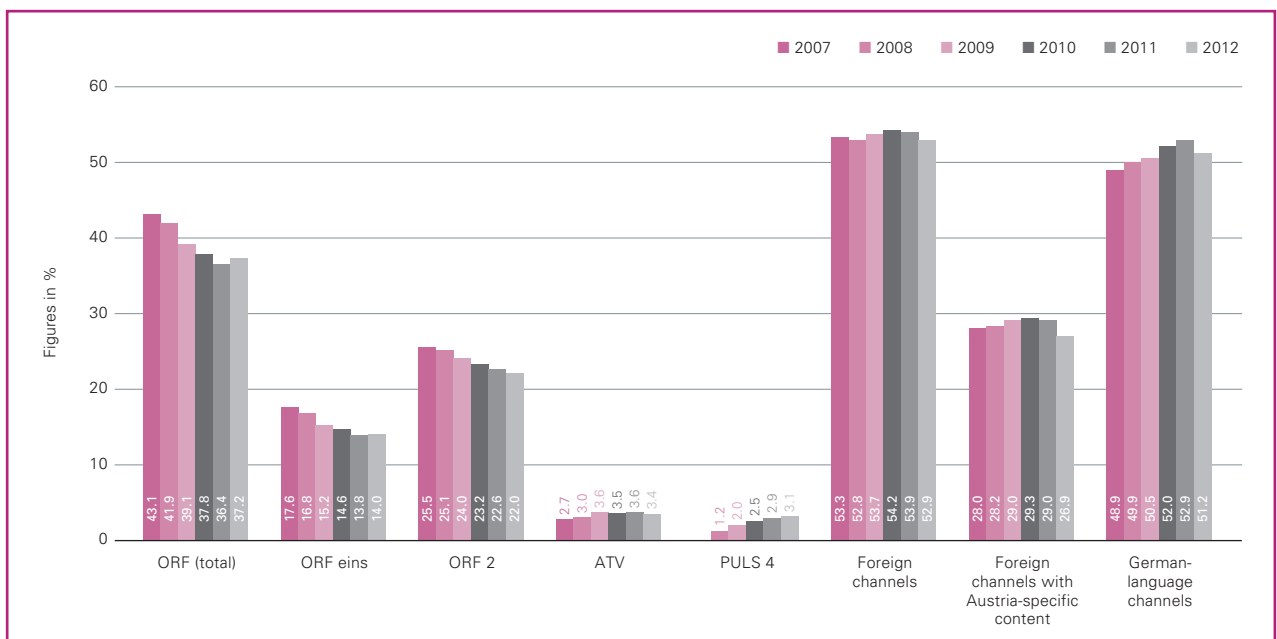
ORF 2's loss subsequently resulted in the total market share jointly held by both main ORF television channels shrinking to 36%. Considering that the combined daily reach of ORF 1 and ORF 2 has remained practically unaltered, the minor loss of market share indicates that viewers on the whole watch less TV, i.e. the market share of an individual television channel refers to its share of overall television viewing time. While the ORF has not been able to stem the decline in market share held by ORF 1 and ORF 2, the downward trend has been somewhat more moderate since 2011. When, on the other hand, the special-interest channels ORF III and ORF SPORT + are included, growth of 0.8 percentage points can be seen for the ORF, resulting in a total share of 37.2%.

In 2012 PULS 4, with a 0.2 percentage point increase, succeeded in growing its market share only slightly in comparison to previous years, yet nonetheless managed to surpass the important 3% threshold and achieve a total share of 3.1%. In contrast, ATV lost shares for the first time, dropping from 3.6% to 3.4%. Since ATV and PULS 4 target identical groups of core viewers, a migration from one channel to the other is just as conceivable as ATV falling prey to a cannibalisation effect as a result of launching ATV II in December 2011. After all, a large portion of ATV II's

schedule consists of rebroadcasts of ATV programmes, allowing delayed television viewing of sorts. In any case, achieving an annual market share of 0.3%, ATV II showed weak performance during its first year in the market. PULS 4, in comparison, conquered a 1.2% share of the market in its first year, yet it consistently targets a very young viewer group.

Consequently, it is to be attributed largely to the repeated success of ServusTV that Austria's five private television broadcasters increased their combined market share from 7.3% in 2011 to 8.1% in 2012. ServusTV was again able to expand its share by 0.5 percentage points to achieve a total of 1.2%. gotv retained its 0.1% market share.

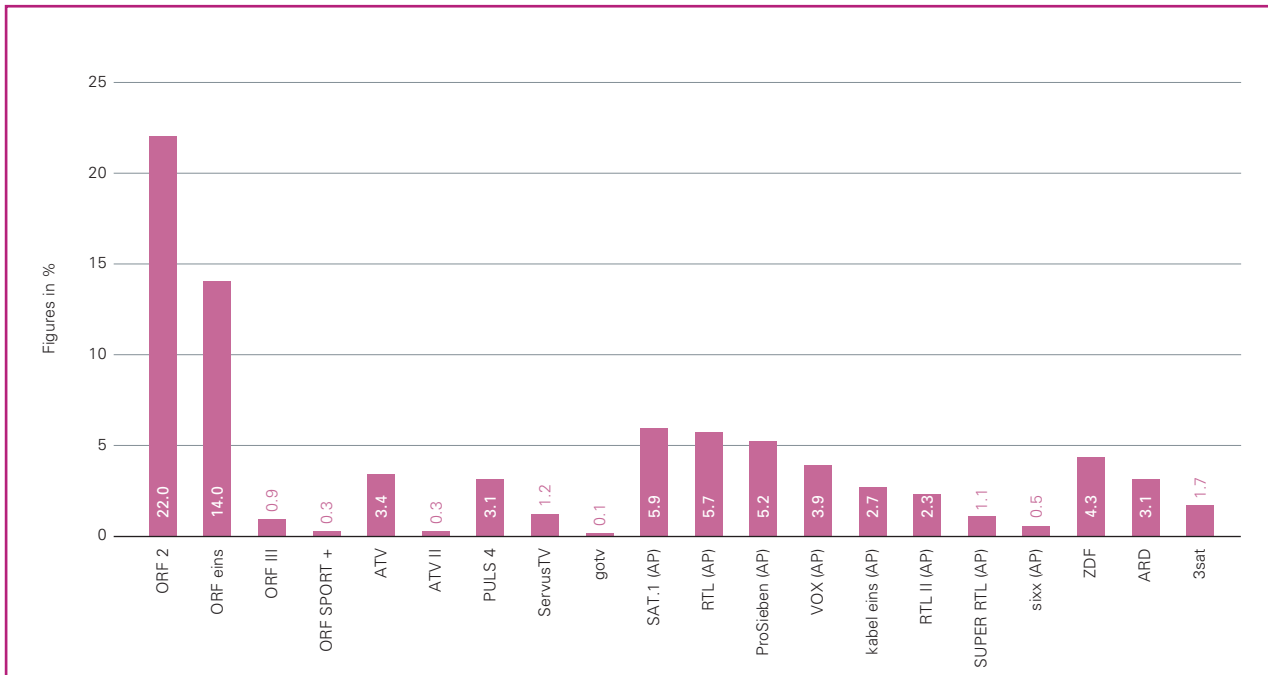
Figure 23: Television market share, 2007 to 2012



Persons aged 12 and over in all of Austria; all reception platforms; ORF overall in 2012 including for the first time ORF III and ORF SPORT +
Source: TELETEST

For the first time in years, the German private channels that offer partly Austria-specific content lost market share in 2011. Yet the drop of 0.3 percentage points still remained rather moderate. This was unlike the loss of 2.1 percentage points suffered by SAT.1, RTL and similar channels in 2012, which represents a major setback that is also expressed in a decrease of 1.7 percentage points in the overall share held in the entire German-language television market.

Figure 24: Television market share in 2012 (incl. Austria-specific programmes and German channels)



Persons aged 12 and over in all of Austria; (AP) = channels with Austria-specific programme

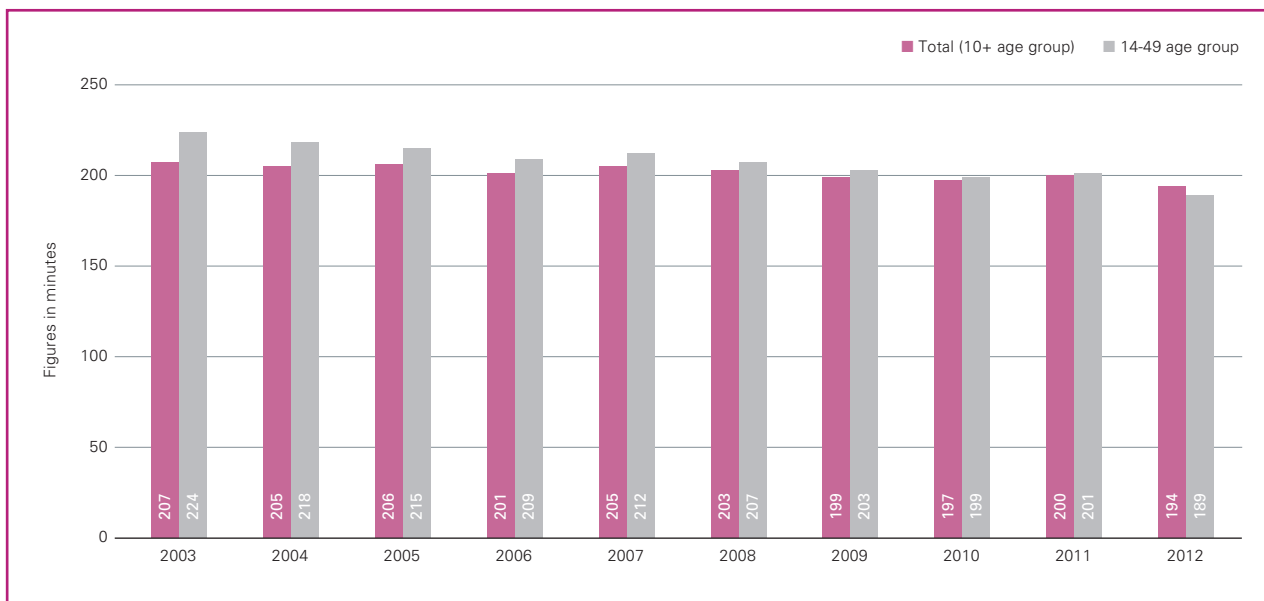
Source: TELETTEST/Evogenius/ORF Media Research

10.1.3 Radio market

10.1.3.1 Radio usage

Overall, radio listening time and daily reach increased moderately in 2011; in retrospect it can be recognised that this was only a brief respite. In fact, the long-term decline not only continued in 2012 but also gained significant momentum, with respect to the change in listening time among those aged 14 to 49, the target group relevant for advertising. There was also an unprecedented reversal in the amount of listening time spent by children aged 10 and over relative to the group of 14 to 49-year-olds. In 2012, for the first time ever, those aged 14 to 49 listened to the radio less than the 10+ group. Even though daily listening time among children aged 10 and over declined to an above-average extent by six minutes, listeners in the 14 to 49 age group switched off their radios an average of twelve minutes earlier than in 2011, devoting themselves to this medium on average for only 189 minutes per day. Listening time for this group dropped to a similar extent only once previously, in 2001 (eleven minutes less), following the previous record set for this indicator in 2000 (234 minutes). In addition, listening time among 14 to 49-year-olds had fallen below the 200-minute mark only once previously and only to 199 minutes, in 2010.

Figure 25: Listening time, 2003 to 2012



Source: Radiotest

It is of interest to briefly examine internet usage among younger target groups in the context of declining listening times among younger listeners. The 2012 Media Analysis reports a daily reach figure of 88.3% for internet usage among young people aged 14 to 19, 80.4% among 20 to 29-year-olds and still 72.1% among those aged 30 to 39. When these age groups were surveyed as to the reason for using the internet within the previous four weeks, 84.8% of the 14 to 19-year-olds responded with “listening to or downloading music”. The Media Analysis does not, however, classify listening to online radio streams as listening to music, rather, these are separate categories. At 28.6%, a much smaller portion of the youngest age group listen to internet radio. Among those aged 20 to 29, 63.8% use the internet to listen to or download music, but only 25.5% listen to radio streamed via the internet. 19.4% of the group of 30 to 39-year-olds listen to internet radio stations, whereas 39.6% listen to music or download it from other sources. In other words, the younger the user, the stronger the wish to choose music on an individual basis, according to personal interests and autonomously. The time required for this is obviously at the expense of radio listening time.

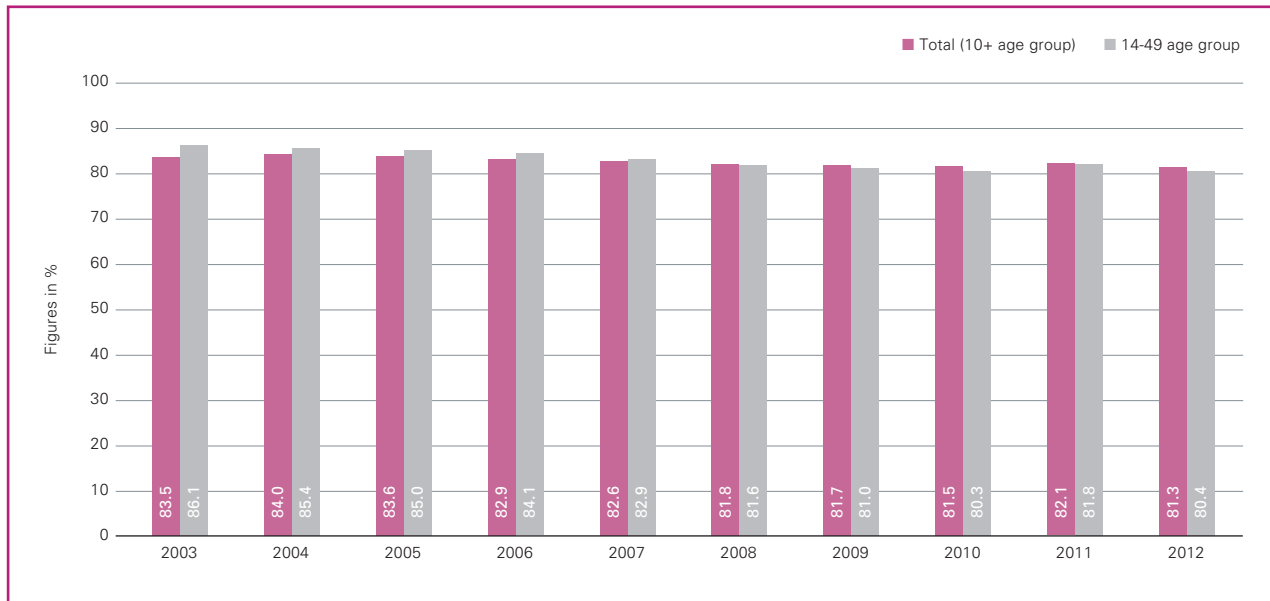
10.1.3.2 Daily reach and market shares for radio

Radiotest, the survey of radio usage in Austria, is carried out by the GfK Austria opinion research institute under a mandate from the ORF and the majority of Austrian private radio broadcasters. Radiotest is basically a reach survey, which specifically investigates radio usage among the Austrian population aged 10 and older using the methods and parameters that are currently best suited for the medium of radio. Each year about 24,000 computer-assisted telephone interviews (CATI) are carried out on a continual basis from January to December and spread over all seven days of the week. Additional interviews may also be carried out to cover local broadcasting areas, the smallest of which are political districts.²¹

²¹ GfK Austria and ORF Media Research

The daily reach among the population in both age groups, i.e. 10+ and 14 to 49, decreased and, following a slight recovery in 2011, fell back to roughly the level seen in 2010. The loss of daily reach, while not as dramatic as the decrease in listening time among 14 to 49-year-olds, was of a magnitude comparable to that observed in past years. Specifically, 81.3% of the listeners in the 10+ group listened at least 15 minutes daily (i.e. the definition of daily reach), as did 80.4% of the 14 to 49-year-olds.

Figure 26: Daily reach of radio, 2003 to 2012



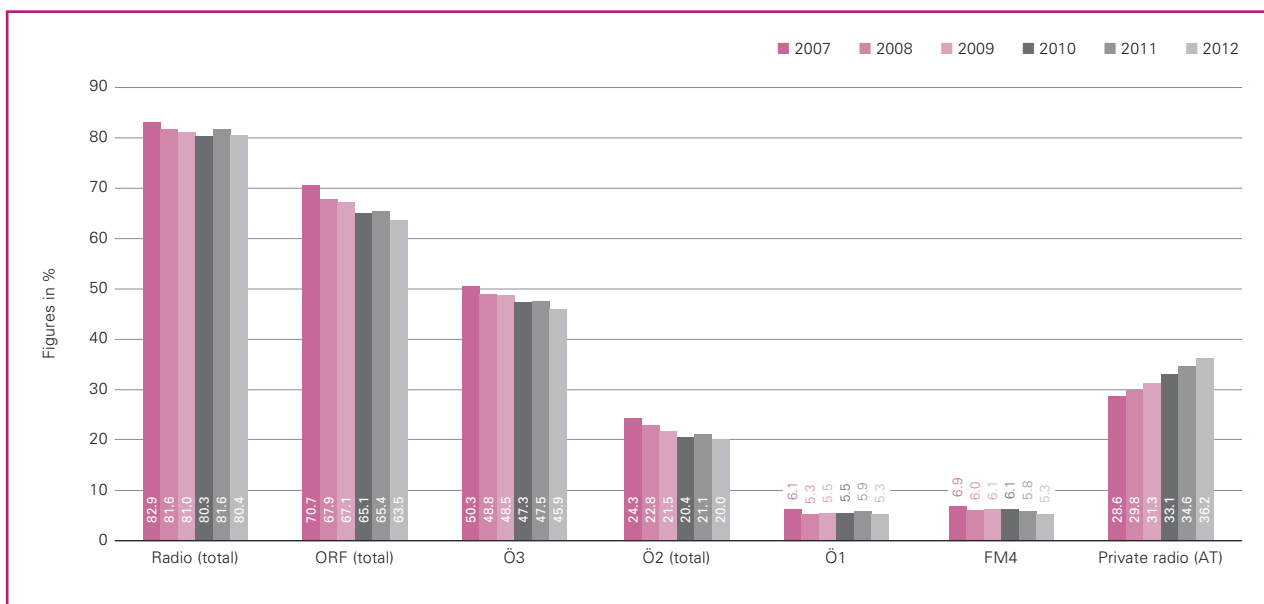
Source: Radiotest

A familiar picture presents itself when changes in daily reach of all ORF radio stations are viewed separately from the comparable aggregate figure for Austrian private radio broadcasters with regard to those aged 14 to 49, the target group relevant for advertising, i.e. the ORF is losing and private radio is gaining listeners at a relatively moderate rate. At a daily reach of 63.5%, ORF stations had a total of 1.9 percentage points fewer listeners in this age group in 2012 than in 2011. The station Ö3 was harder hit, losing 1.6 percentage points of daily reach and landing at 45.9%. The ORF regional broadcasts (Ö2) also lost 1.1 percentage points of their reach, amounting to an annual average daily reach of 20% in 2012.

In terms of daily reach among the group aged 14 to 49, the year was also a disappointment for the station Ö1 and the youth station FM4. While in recent years Ö1 had been able to continually attract an additional, small number of young listeners with its programme of culture and information, daily reach fell from the previous 5.9% to 5.3%, the level last seen in 2008. FM4 had to take a loss for the second time in a row, and even at half a percentage point the dent was greater than in 2011, with daily reach now amounting to 5.3%.

Among private radio stations, the upward trend that has been seen for some years continued in 2012, with this group increasing daily reach among 14 to 49-year-olds by an almost normal magnitude of 1.6 percentage points, to a total of 36.2%.

Figure 27: Daily reach of ORF and private radio, 2007 to 2012



Persons 14 to 49 years of age in all of Austria

Source: Radiotest

KRONEHIT was once again the radio station to contribute significantly towards an increase in daily reach among Austrian private broadcasters.²² Climbing by 1.9 percentage points in 2012 (compared with two percentage points in 2011), KRONEHIT achieved a nationwide daily reach figure of 16.5% (14.6% in 2011). This broadcaster succeeded in improving daily reach in almost every region, and especially in Vienna (14% over 10.5%), Vorarlberg (14.7% over 11.9%) and Carinthia (14.5% over 11.6%). Only in Burgenland did KRONEHIT’s daily reach among those aged 14 to 49 fall, from 20.4% to 19.5%.

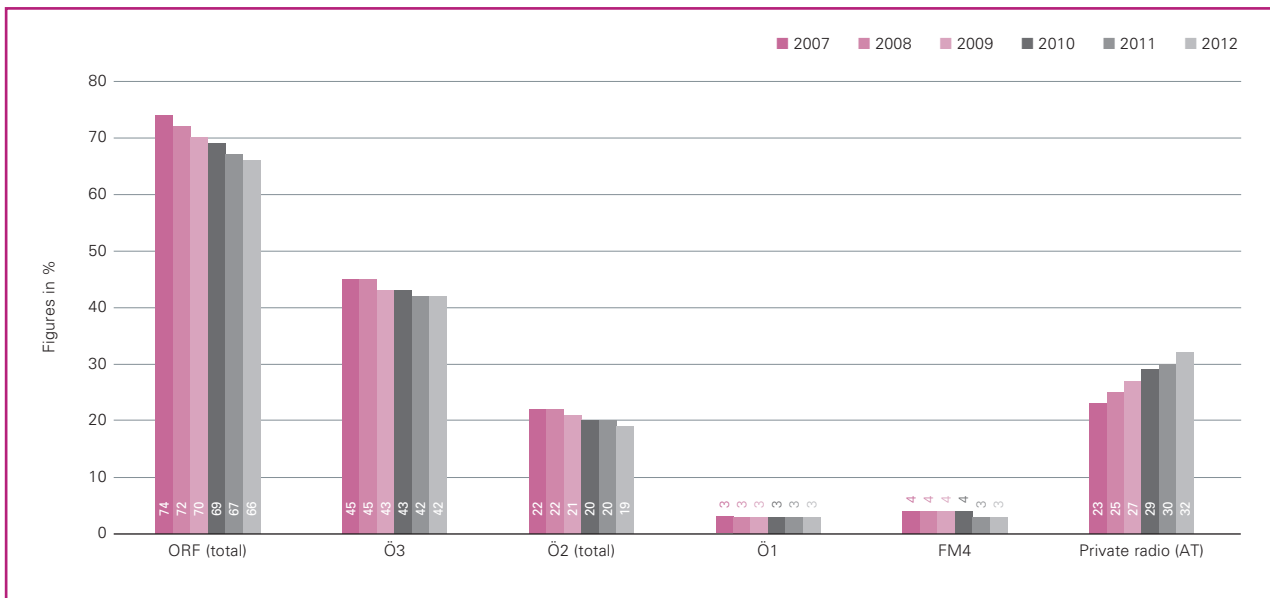
Ö3, on the other hand, which is the direct competition in all regions, fell in reach by a range between one and two percentage points.

The private radio stations to especially improve their daily reach were: Welle 1 in Upper Austria (6.8% over 5.3%), Antenne Kärnten in Carinthia (25.2% over 24%) and Antenne Steiermark in Styria (24.8% over 24.1%). Radio U1 Tirol lost some its reach, falling from 7.8% to 6.5%, as did Life Radio Oberösterreich in Upper Austria (15.4% after 16.3% previously).

Despite a loss of daily reach, Ö3 was able to hold its market share among listeners aged 14 to 49, maintaining a 42% share in 2012.

²² Refer to Table 19: Daily reach of radio stations in Austria, 2012.

Figure 28: Radio market share, 2007 to 2012



Persons 14 to 49 years of age in all of Austria

Source: Radiotest

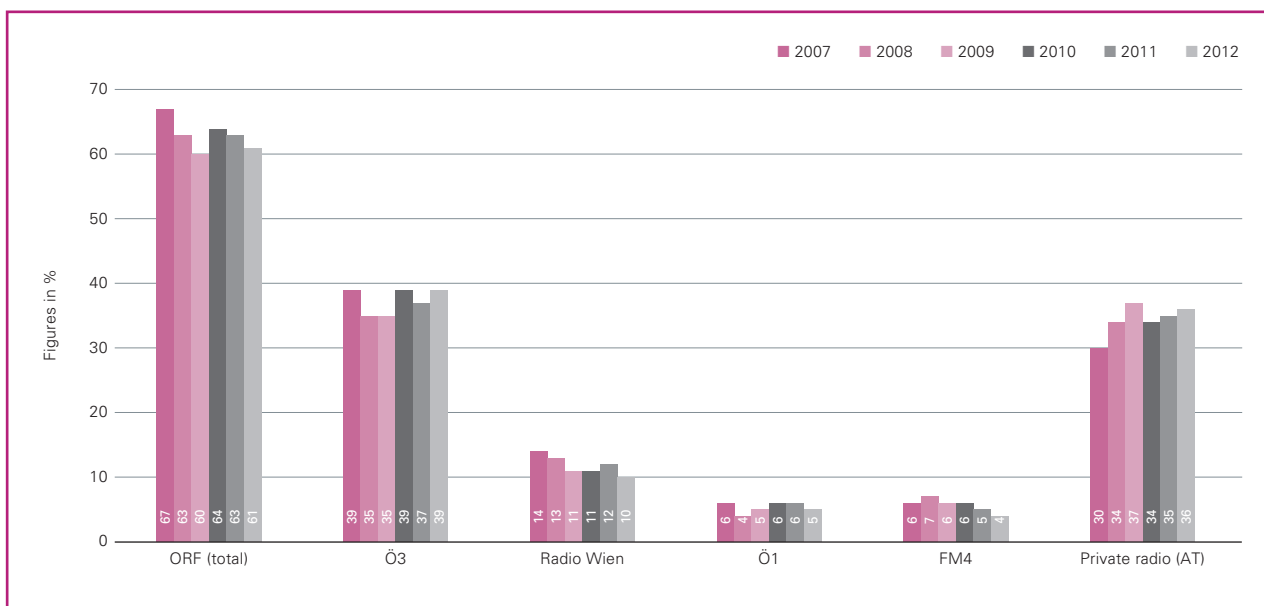
The market share of a radio station (or station group) refers to its percentage of overall listening time. Regional radio was the only group within the ORF radio network to lose market share, falling by one percentage point to a 19% share and thus reducing ORF radio’s overall share by one percentage point (after rounding) to 66%.

Private radio stations were able to translate their gains in daily reach into market share, growing their aggregated share by two percentage points to a nationwide total of 32%.

10.1.3.3 Radio market in Vienna

Reflecting the nationwide trend, Ö3’s daily reach in the Vienna market dropped by 1.8 percentage points to 33.3%. Ö3 was nonetheless able to expand the market share held in Vienna by two percentage points to reach 39%, in this way recovering the share last seen in 2010. This gain achieved by Ö3 is all the more remarkable considering that, in the Vienna market, an especially large, diverse selection of radio offerings competes for the favour of 14 to 49-year-olds.

Figure 29: Radio market share in Vienna, 2007 to 2012



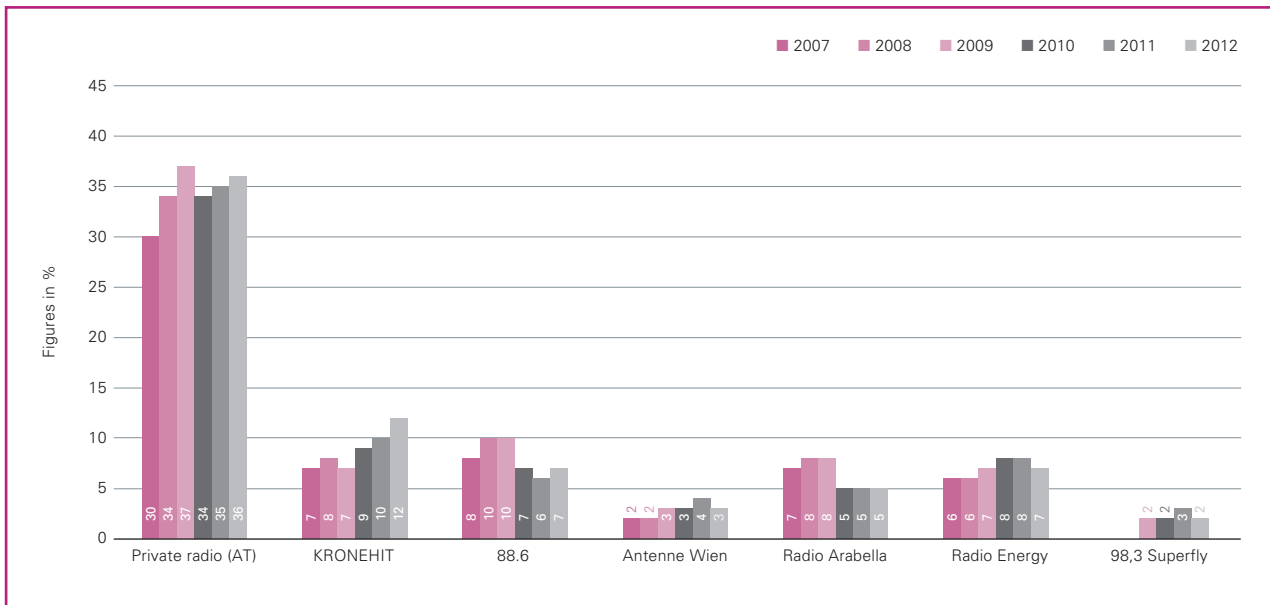
Persons 14 to 49 years of age in the Vienna region

Source: Radiotest

In contrast to Ö3, the other ORF radio stations broadcasting in Vienna had to absorb losses. For Radio Wien and Ö1, this meant the end of an upswing that had lasted around three years. In 2012 Ö1 dropped by one percentage point to a 5% market share, while Radio Wien lost a full two percentage points and was left with a 10% share. FM4 continued its decline, falling to a 4% market share. All totalled, ORF radio stations in Vienna dropped by two percentage points and now account for a market share of 61% among listeners aged 14 to 49. This is comparable to the record low seen in 2009 (60% market share).

Private radio, on the other hand, after its setback in 2010 has been climbing steadily by one percentage point a year to reach a 36% market share in 2012. Yet growth in this case is also to be attributed largely to KRONEHIT, which in a remarkable manner similar to Ö3 expanded its market share by two percentage points to a total of 12%.

Figure 30: Private radio market share in Vienna, 2007 to 2012



Persons 14 to 49 years of age in the Vienna region; the data series for 98,3 Superfly starts in 2009.

Source: Radiotest

Another station to expand its share was 88.6, gaining one percentage point for a total of 7%. Since merging with HiT FM in mid-2012, 88.6 has developed to take on a clear format. Whatever the reason, in 2012 the station was able to reverse the drastic decline in listeners seen in previous years and launch an upwards trend. It will be interesting to observe how the station progresses. Antenne Wien, Radio Energy and 98,3 Superfly each lost one percentage point of their market share. After dropping from an 8% to a 5% market share among 14 to 49-year-olds in 2010, Radio Arabella would appear to have permanently settled on this share.

Table 19: Daily reach of radio stations in Austria, 2012

	14-49 age group	Vienna	Lower Austria	Burgenland	Styria	Carinthia	Upper Austria	Salzburg	Tyrol (including Eastern Tyrol)	Vorarlberg
Total daily reach										
Radio total	80.4	69.7	82.7	85.8	83.7	85.4	83.3	81.6	84.0	81.7
ORF total	63.5	50.3	69.0	77.2	64.7	69.6	64.7	67.6	66.4	65.2
Austrian private broadcasters total	36.2	33.7	35.1	28.8	40.5	37.7	40.0	32.7	35.9	33.6
Other stations total	38.7	35.6	36.2	30.3	41.7	39.4	44.0	36.8	39.7	40.5
Minor stations total	3.9	3.4	2.1	2.0	2.3	2.6	5.6	5.8	5.4	9.5
Other minor stations	2.7	3.3	2.0	1.9	2.3	2.5	2.6	3.1	2.5	4.2
ORF's daily reach										
Ö1	5.3	7.3	4.8	5.5	4.8	4.3	4.9	6.2	3.9	4.1
Ö3	45.9	33.3	52.2	55.5	48.4	47.0	47.8	48.8	50.4	43.9
FM4	5.3	6.1	5.1	3.4	4.7	4.3	5.2	6.6	4.9	5.8
ORF regional stations total	20.0	12.1	22.7	32.0	20.6	28.2	17.6	22.6	22.4	24.9
Radio Wien	3.4	9.9	5.9	4.3	0.0	0.1	0.1	-	0.2	0.0
Radio Niederösterreich	3.8	2.0	16.8	2.5	0.4	-	0.8	-	-	-
Radio Burgenland	1.2	0.8	0.6	26.4	0.5	-	-	-	-	-
Radio Steiermark	3.0	-	0.1	1.9	20.0	0.3	0.1	0.1	-	-
Radio Kärnten	1.8	0.0	-	0.1	0.2	27.9	-	0.0	0.2	-
Radio Oberösterreich	2.9	-	0.3	-	0.1	-	16.2	1.1	0.3	-
Radio Salzburg	1.7	0.2	0.2	-	0.2	0.1	1.1	21.9	0.2	0.1
Radio Tirol	2.0	0.0	-	-	0.1	-	0.2	0.4	22.1	0.4
Radio Vorarlberg	1.2	0.0	-	-	0.1	0.1	-	-	0.4	24.5
Daily reach of private radio stations										
RMS Top	35.9	33.0	34.7	28.7	40.5	37.4	39.9	32.7	35.7	33.6
KRONEHIT	16.5	14.0	22.0	19.5	15.8	14.5	19.1	9.3	13.9	14.7
Radio Arabella (V/LA/B/UA/Sbg.)	2.6	5.0	5.2	1.5	0.0	-	2.8	1.4	-	0.1
Radio Energy total	3.8	11.3	3.8	1.6	0.0	0.1	0.3	5.2	3.2	0.1
LoungeFM total	0.5	1.0	0.4	0.1	0.2	0.4	1.2	-	-	-
Welle 1 total (Sbg./UA/Styria)	1.8	-	0.2	-	0.6	0.1	6.8	8.2	-	-
88.6 Der Musiksender/HiT FM	3.3	6.4	9.0	5.4	0.1	-	0.2	-	-	-
Antenne Wien	0.9	2.9	1.1	0.7	-	-	-	-	-	-
Radio Arabella (V/LA/B)	2.1	5.0	5.2	1.5	0.0	-	-	-	-	-
Radio Energy (V/LA/B)	3.2	11.3	3.8	1.6	0.0	-	-	-	-	-
98,3 Superfly	0.6	2.2	0.6	0.1	-	-	-	0.0	-	-
Antenne Steiermark	3.8	0.1	0.2	4.1	24.8	1.0	-	0.2	-	-
Radio Graz/Radio Eins	0.2	-	-	-	1.5	-	-	-	-	-
Soundportal	0.6	0.0	-	0.3	3.7	0.0	0.0	-	-	0.0
Radio Grün-Weiß	0.2	-	-	-	1.1	-	-	-	-	-
Radio West	0.1	-	-	-	0.5	-	-	-	-	-
Welle 1 (Styria)	0.1	-	-	-	0.6	0.1	-	-	-	-
Antenne Kärnten	1.6	-	-	-	0.1	25.2	0.2	0.1	0.1	-
LoungeFM (Carinthia)	0.1	-	-	0.1	0.2	0.4	-	-	-	-
Life Radio (UA)	2.7	0.0	0.5	-	0.1	-	15.4	0.2	-	-
LoungeFM (UA)	0.3	-	0.4	-	-	-	1.2	-	-	-
Radio Arabella (UA)	0.5	-	-	-	-	-	2.8	-	-	-
Antenne Salzburg	1.2	-	0.0	-	0.1	0.2	1.6	14.2	0.2	0.1
Radio Arabella (Sbg.)	0.1	-	-	-	-	-	-	1.4	-	0.1
Radio Energy (Sbg.)	0.4	-	-	-	-	-	0.3	5.2	-	-
Welle 1 (Sbg./UA)	1.7	-	0.2	-	-	-	6.8	8.2	-	-
Life Radio (Tyrol)	0.9	-	-	-	-	-	-	-	10.1	0.1
Antenne Tirol	0.4	-	-	-	-	0.1	-	-	4.2	-
Radio Energy (Tyrol)	0.3	-	-	-	-	0.1	-	-	3.2	0.1
Radio Osttirol	0.2	-	-	-	-	0.5	-	-	1.4	-
Radio U1 Tirol	0.6	-	0.0	-	-	-	-	0.2	6.5	0.2
Welle (Tyrol)	0.4	-	-	-	-	-	-	-	4.3	-
Antenne Vorarlberg	1.0	-	-	-	-	-	-	-	0.2	21.1

Vertical percentages, persons 14 to 49 years of age, % figures

Source: Radiotest

10.1.4 Print media market

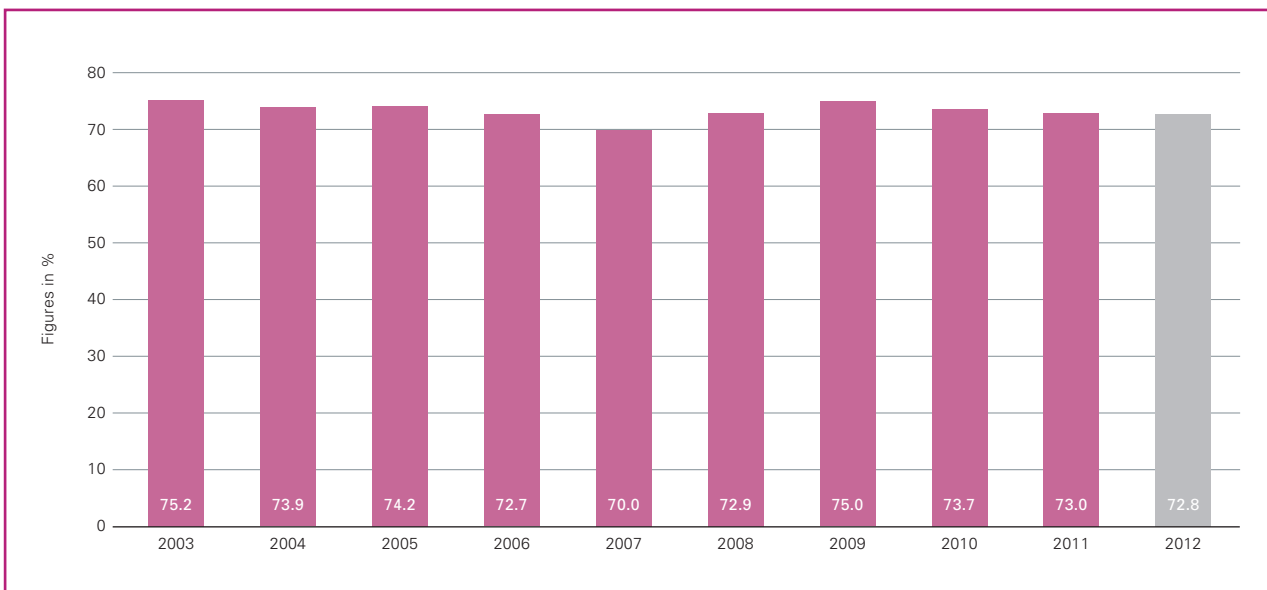
10.1.4.1 Daily newspapers

Whereas daily newspapers are suffering significant losses in the annual growth rate of gross advertising revenues, the changes in daily reach provided some respite on the whole. The decrease of two-tenths of a percentage point to a level of 72.8% among the population aged 14 and over, while confirming the declining tendency, is hardly significant and is better understood as a sign of stability in the face of heavy competition. The decline by seven-tenths of a percentage point recorded between 2010 and 2011 was also regarded more as indicating relaxation than a further threat when compared with the previous year (i.e. -1.3 percentage points from 2009 to 2010).

The main feature of 2012 was the altered impact that the free newspapers Heute and Österreich were seen to have on the total daily reach of daily newspapers. Between 2008 and 2009, when first included in the Media Analysis, the two newspapers that are available at no charge had contributed to an overall increase in total daily reach of daily newspapers; this effect is now becoming gradually diluted. Part of the new readership that was attracted by the free publications has again disappeared. Other readers, who originally purchased Kronen Zeitung, now prefer a free newspaper exclusively. Other payable newspapers, meanwhile, were able to halt the declining trend and, finding a loyal readership base, may already have settled on the lowest level of daily reach or even recorded slight gains. It was in fact Österreich, a free newspaper, that lost daily reach to the same extent as Kronen Zeitung in 2012. Only Heute was able to make gains. Thus it was mainly the competition taking place among tabloids that accounted for the total losses in reach recorded for daily newspapers in 2012.

Due to demographic change and migration, the absolute number of daily newspaper readers aged 14 and over actually rose slightly, from 5.21 million in 2011 to 5.22 million in 2012. The battle for readers that took place solely between the free newspapers Österreich and Heute in 2012, as well as between these tabloids and Kronen Zeitung, probably had strong, positive impact for most of the non-free dailies.

Figure 31: Daily reach of daily newspapers, 2003 to 2012



Persons aged 14 and over; including Österreich since 2008 and Heute since 2009

Source: Austrian Media Analysis

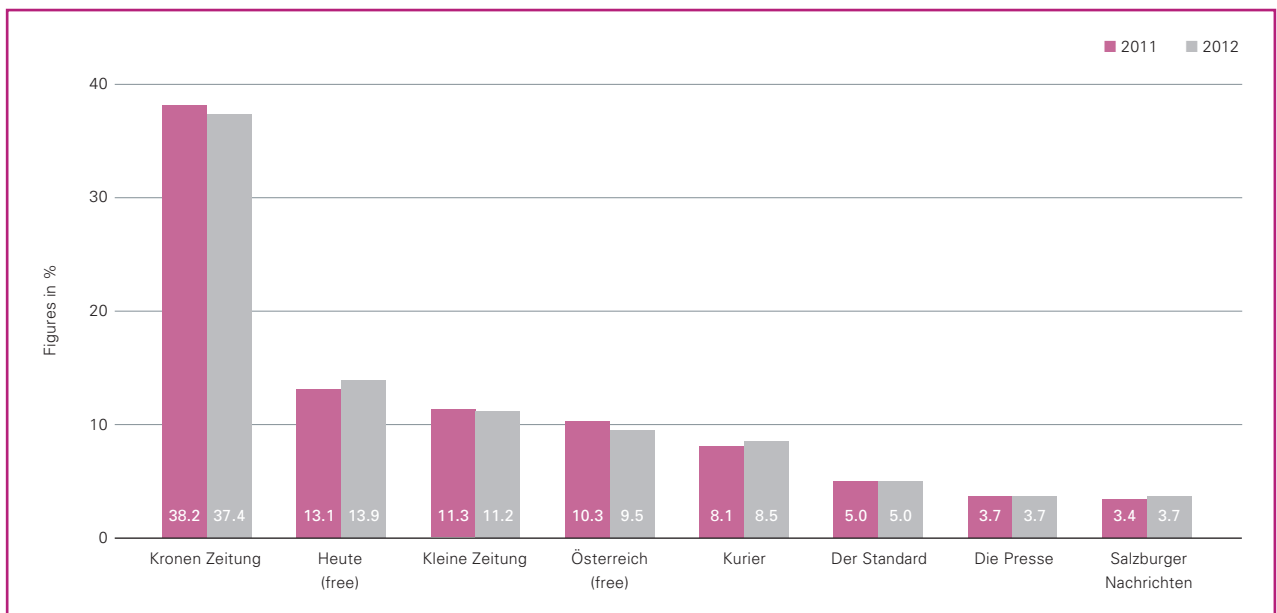
The Austrian Media Analysis is carried out on a yearly basis by the market research institutes GfK Austria, Gallup, IFES and H.T.S. Informationssysteme on behalf of the Media Analysis working group association (Verein Arbeitsgemeinschaft Media-Analysen). The survey examines media usage behaviour in the 14 and over age group in Austria. In 2012, the survey involved a total of 15,146 interviews with a sample which is considered representative of Austria's 7.18 million residents (14 and over) in 3.65 million households.

Following 2011, when all of the non-free newspapers except for Kurier recorded slight losses in daily reach, the tide did not truly turn in 2012, but the majority of non-free dailies did in fact see gains or were able to hold their market share. In the case of Kurier, daily reach improved from 8.1% to 8.5% and for Salzburger Nachrichten from 3.4% to 3.7%. Der Standard and Die Presse were able to maintain their levels of the previous year, while Kleine Zeitung suffered a sustainable loss of one tenth of a percentage point and slid to 11.2%, although the above-average drop of 0.7 percentage points in the previous year had been of the same magnitude as that suffered by Kronen Zeitung. The latter, the apparent loser among non-free dailies in 2012, lost 0.8 percentage points (amounting to a daily reach level of 37.4%), which is equal to about 57,000 fewer readers each day.

The battle for daily reach in 2012 can thus seen to have taken place almost exclusively among tabloids, with Heute again succeeding in deciding the contest in its favour and rising from 13.1% to 13.9%, or by roughly 63,000 readers to a daily total of 995,000. For the first time since being included in Media Analysis, the second nationwide free newspaper saw a decline: Österreich's daily reach, like that of Kronen Zeitung, dropped by 0.8 percentage points to 9.5%. This development left Kleine Zeitung with third place nationwide.

WirtschaftsBlatt stopped participating in the Media Analysis as of the end of 2011.


Figure 32: Daily reach of national daily newspapers, 2011 and 2012



Persons aged 14 and over

Source: Austrian Media Analysis

Wolfgang Fellner, publisher of Österreich, has questioned the validity of the Media Analysis findings in the case of his newspaper. The audit committee is reviewing the complaint, and the outcome was pending as of the editorial deadline of this report.



As an alternative source of typical press content for consumers, the internet achieved a daily reach of 54.4% in 2012 (2011; 51.4%), although its significance in this regard did not grow or wane appreciably compared with the previous year. Among internet users, 30.2% indicated accessing newspaper or magazine content as a purpose of using the web within the past four weeks, while 34.3% mentioned reading news reports.

10.1.4.2 Daily newspapers in Vienna

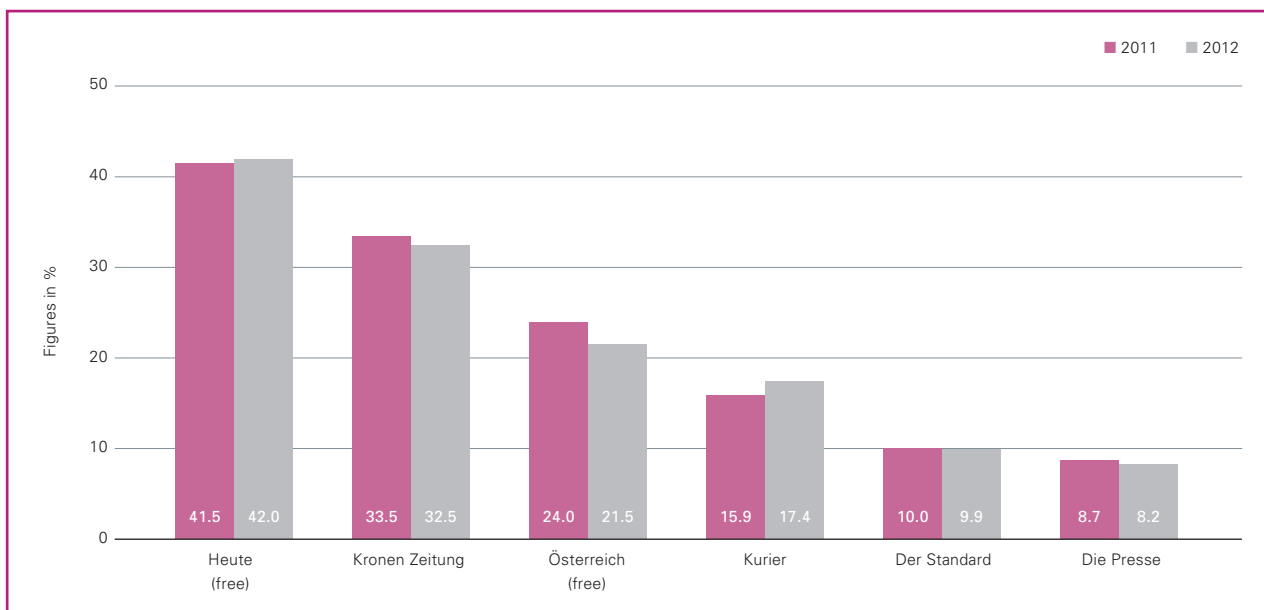
The trend characteristic of daily newspapers in the Vienna market reflected the nationwide tendency among newspapers in 2012. One feature that nonetheless stands out is the upward movement of the free newspaper Heute, which, compared with previous years, now resembles a vehicle skidding after braking hard. While Heute increased its daily reach by almost four percentage points to a level of 41.5% in 2011, in this way strongly expanding the lead taken over from Kronen Zeitung in 2010, the free newspaper was able to grow only by half a percentage point to a daily reach level of 42% in 2012. The fact that the distance between Heute and Kronen Zeitung (with daily reach of 32.5% in 2012) increased from eight percentage points in 2011 to 9.5 percentage points in 2012 is due less to Heute's success than to the loss of one percentage point suffered by Kronen Zeitung, which, however, was thus able to slow down its decline in the Vienna market.

Österreich lost more daily reach (2.5 percentage points) than on average nationwide and fell to 21.5%, a level below that last seen in 2010.

The winner among Vienna's dailies is Kurier, whose daily reach made a respectable gain of 1.5 percentage points and climbed to 17.4%, as a non-free newspaper thus growing more than any free daily.

After having to absorb a loss of almost two percentage points and settling at a daily reach level of 10% in 2011, Der Standard was not able to fully recover but nonetheless (almost) avoided any further loss in 2012, sliding back by one tenth of a percentage point to a level of 9.9%. Die Presse was harder hit in comparison. That newspaper again lost the half a percentage point in daily reach gained in 2011 and fell back to 8.2%.

Figure 33: Daily reach of daily newspapers in Vienna, 2011 and 2012



Persons aged 14 and over in the Vienna region

Source: Austrian Media Analysis

10.1.4.3 Magazines and other periodicals

In the print category of magazines and other periodicals, without exception free titles have ranked the highest in terms of daily reach for years, and several non-free titles had been hard hit in 2011. In 2012, on the other hand, a sideways movement was more characteristic for these publications, resulting in only minor losses or gains. Thus, among magazines that had shown heavy losses in 2011, a stabilising tendency was seen in 2012.

Examples from the News-Verlag publishing group include: tv-media, which in 2011 had lost 1.2 percentage points of its reach and achieved 12.4, slid back by another two tenths of a percentage point to 12.2% in 2012; and the magazine NEWS, having lost one percentage point and fallen to 9.3% in 2011, dropped further to 9%. Autorevue remained stable, at 4.6%, as did GUSTO, at 8.4%. Gewinn continued to gain, gathering 0.2 percentage points to total 3.7%, and profil climbed from 5.9% to 6.2%.

The publications put out by the Styria Multi Media group, such as Wiener, Wienerin, Sportwoche and Motorradmagazin, remained mostly stable, while Sportmagazin even increased its reach by half a percentage point to 4.6%.

Of the titles published by Red Bull Media House, Red Bulletin was first listed in the Media Analysis in 2011, rising to 13.1% in that year and further to 13.3% in 2012. Servus in Stadt & Land, a high gloss magazine by Red Bull that features rural lifestyle topics, joined the survey in 2012 and, at a reach of 9% or 649,000 readers, ranked among the top ten Austrian magazines.

auto touring, the magazine for members of the ÖAMTC automobile club, with a reach of 24.2% continues to head the top ten periodicals list, followed by Weekend Magazin (free of charge, 15%), Die ganze Woche (13.4%), Red Bulletin (13.3%), tv-media (12.2 %), Servus in Stadt & Land and NEWS (both 9%), GUSTO (8.4 %), and then WOMAN and Geo (both 7%).

10.2 Development of the Austrian telecommunications markets

Major changes to regulatory activities were introduced in 2011, when the seventh amendment of the TKG 2003 (as published in Federal Law Gazette I No. 102/2011) entered into force on 22 November 2011. 2012 subsequently began with a new round of market analyses, now highly modified as a result of the TKG amendment. Firstly, the market definition and market analysis procedures were merged, and, secondly, the market analysis interval was extended from the previous two years to three.

In addition, further consolidation of the mobile telecommunications market took place in 2012 as a result of two takeovers, of Orange Austria Telecommunication GmbH (Orange) by Hutchison 3G Austria GmbH (Hutchison 3G) and of YESSS! by A1 Telekom Austria AG (A1 Telekom). Yet the mergers were not completed until the end of 2012, so that the new conditions are not yet reflected in the data for the period under review.

The sections below provide a summary of market developments and selected indicators. In no way should this presentation be considered exhaustive, rather, it merely serves to illustrate the complexity of market relationships and to report those key figures that are 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 the data collected at other times, on a quarterly basis, under the Communications Survey Ordinance (KEV). In this regard, an additional change was introduced in 2012. An amendment to the KEV entered into force on 30 March 2012, replacing the previous version valid since 2004. Within the previous nine years, many changes had taken place in the fast-paced field of telecommunications, both in the specific technology and the relevant market. The amendment had become necessary in order to respond to this new situation.

10.2.1 General market development

There was a renewed decline in retail revenues in 2012. Table 20 shows retail revenues in each segment (fixed network, mobile, broadband, leased lines). Whereas total revenues dropped by 5.7% between 2010 and 2011, a less sharp drop was seen between 2011 and 2012 (1.8% less).

Mobile revenues, including mobile broadband, account for almost two thirds of retail revenues (62.5%). In 2012 these revenues fell by 4.8% and totalled EUR 2.36 billion. The strong growth in broadband revenues and the decline in fixed network revenues are to be attributed to the restructuring of categories as specified in the amended KEV. From 2012 onwards, all fixed network revenues accrued as part of a broadband package are no longer listed under fixed network revenues but as part of the broadband revenues. Totalling fixed network and broadband revenues results in a total of EUR 1.31 billion in 2011 and EUR 1.36 billion in 2012. The total increase thus amounts to 3.5%. In total for 2012, fixed network and broadband revenues (excluding mobile broadband) accounted for 36% of total retail revenues. It is becoming increasingly difficult to break down revenues according to individual services due to the wide prevalence of package subscriptions for end users that include several services (e.g. fixed network telephone, broadband, TV and mobile broadband). Leased lines accounted for the smallest portion of retail revenues (1.5% of total revenues). These revenues increased by 9% between 2011 and 2012 and totalled EUR 57 million.

Table 20: Retail revenues, 2010 to 2012

	2010 (EUR millions)	2011 (EUR millions)	2012 (EUR millions)	Percent change 2010-2011	Percent change 2011-2012	Percentage of total revenues 2010	Percentage of total revenues 2011	Percentage of total revenues 2012
Fixed network*	945	885	632	- 6.3	- 28.6	23.2	23.0	16.7
Mobile networks	2,642	2,481	2,361	- 6.1	- 4.8	64.8	64.5	62.5
Broadband**	430	427	725	- 0.7	69.9	10.5	11.1	19.2
Leased lines	59	52	57	- 12.5	9.0	1.5	1.4	1.5
TOTAL	4,076	3,844	3,775	- 5.7	- 1.8	100.0	100.0	100.0

* Includes voice telephony revenues from the retail fixed network market and public phones. However, due to a modified data query from 2012 onwards, voice telephony revenues accrued as part of a broadband package are no longer listed under retail fixed network revenues but under broadband.

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

Source: RTR

Table 21 shows the changes in traffic volumes and the number of lines or connections in each business area. The number of call minutes in the fixed network continues to drop steadily and came to 4.23 billion minutes in 2012, which represents a decline of 11.6% from the previous year. The number of lines also continues to decrease each year. There were 2.7 million fixed network lines in 2012, a drop of 2.6% from 2011.

Considerable growth continues to be seen for mobile networks. The number of call minutes rose by 2.9% from the previous year and totalled 22.83 billion. Consequently, mobile networks accounted for 84% of all call minutes in 2012. The number of SIM cards in use increased by 4.3%, resulting in a total of 13.6 million subscribers. A comparison of the changes in revenues as shown by Table 20 with the traffic volumes and numbers of subscribers in Table 21 reveals partially opposing developments.

The number of broadband connections continues to rise. The number of fixed broadband connections increased by 1.6% between 2011 and 2012 to a total of 2.12 million. While the growth rate is much smaller than that recorded between 2010 and 2011 (5.5%), there was nonetheless an increase. The growth rate for mobile broadband connections was 6.8%, i.e. somewhat higher than between 2010 and 2011 (an increase of 6.6%).

At 2.3%, an increase was also seen for leased lines, resulting in a total capacity of 5.49 million 64 kbps equivalents at the end of 2012. Yet this increase is not reflected proportionally by revenues, which grew at a slower rate (cf. Table 20).

Table 21: Overall changes in traffic volumes and connections/subscribers, 2010 to 2012

	Unit	2010 (millions)	2011 (millions)	2012 (millions)	Percent change 2010-2011	Percent change 2011-2012
Fixed network	Call minutes*	5,622.69	4,785.80	4,229.50	- 14.9	- 11.6
	Lines	2.78	2.77	2.70	- 0.3	- 2.6
Mobile networks	Call minutes	21,955.84	22,184.80	22,831.97	1.0	2.9
	Subscribers (contract and prepaid)**	12.20	13.00	13.60	6.4	4.3
Broadband	Fixed network connections	1.98	2.09	2.12	5.5	1.6
	Mobile subscribers	1.94	2.07	2.21	6.6	6.8
Leased lines	64 kbps equivalents	5.00	5.36	5.49	7.3	2.3

* Minutes including dial-up services and public phones, 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 listed previously in the 2011 Communications Report.

Source: RTR

10.2.2 Fixed network telecommunications

10.2.2.1 Retail markets for fixed network end users

Market participants

The shares of call minutes attributable to the five largest service providers in the fixed network retail market for voice telephony are shown in Table 22. Taken together, these five providers cover more than 80% of the call minutes handled on the retail market.

Table 22: Largest providers on the retail fixed network market for voice telephony in 2012

Company	Share of call minutes
A1 Telekom	Approx. 55%
Tele2	< 20%
UPC	> 5%
COLT	< 5%
FINAREA	< 5%

Source: RTR

Structural changes in the fixed network market

Revenues from the retail fixed network market (Figure 34) show 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 installation charges. However, as a result of the data query modification specified in the KEV, fixed network revenues accrued as part of broadband packages are not included from 2012 onwards.

Since 1999, a steady decline in revenues has been observed in fixed network telephony. Between 2011 and 2012, total revenues from this market sharply dropped by 28.6% to EUR 632 million. This decrease is considerably greater than that seen in previous years. One reason was the amended KEV, which specifies a new method of calculating revenues, i.e. fixed network revenues accrued as part of broadband packages are only included in the broadband revenues. The drop in revenues additionally highlights the growing significance of fixed network package products for the retail fixed network market. Revenues have dropped by about two thirds within the last ten years.

Figure 34: Retail fixed network revenues, 2003 to 2012

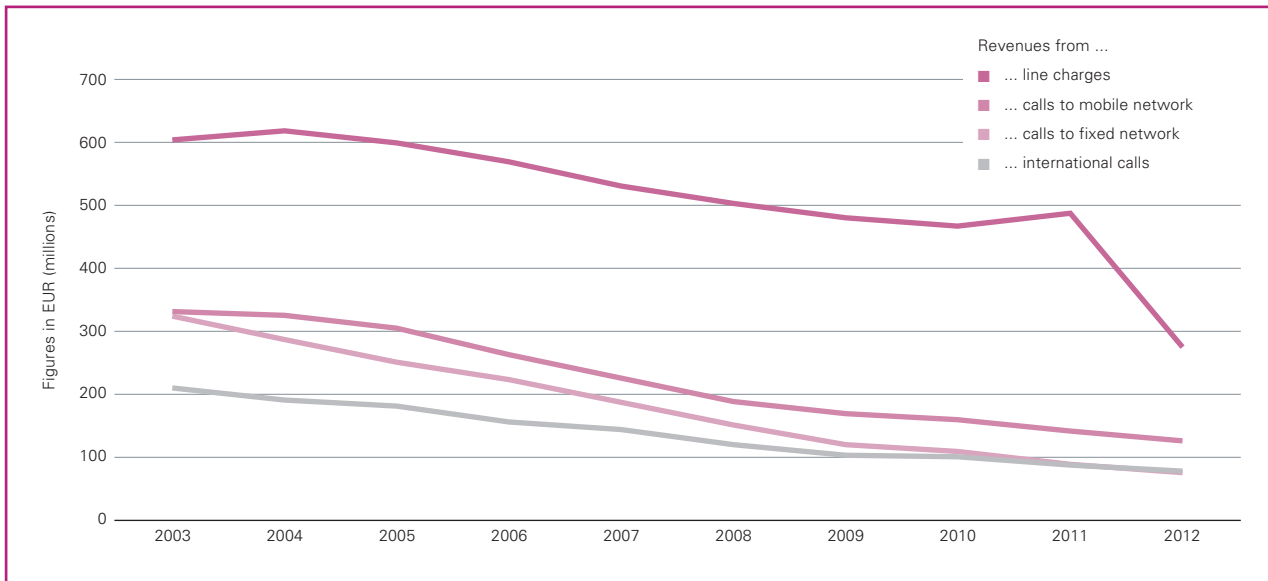


Source: RTR

Figure 35 shows the changes in revenues for each charge category (line charges, calls to mobile networks, calls to fixed networks and international calls) in recent years. The downwards trend, observed for several years, in charges for calls to mobile networks, to the fixed network and to other countries continued. Connection fees for calls to the fixed network fell by 15% compared with the previous year. There was an 11% decline in connection fees for calls outside Austria. Revenues from calls to mobile networks have also decreased steadily since 2003, most recently by 11%. This decline in connection fees can be primarily attributed to intermodal competition originating in the mobile communications sector (price reductions resulting from reductions in termination charges). Such competition has especially impacted revenues from calls within domestic fixed networks in the residential segment and, consequently, increasingly fewer calls are made using the fixed network. The revenues in this segment have fallen continuously as a result.

Following moderate 4% growth in 2011, line charges plummeted by 44% in the year under review as a result of the modified data query specified by the KEV. This highlights once again the central role played by internet package products for the market segment of fixed network end users. Revenues from line charges have fallen by roughly half since the beginning of the time series shown here.

Figure 35: Retail fixed network revenues by type of business, 2003 to 2012

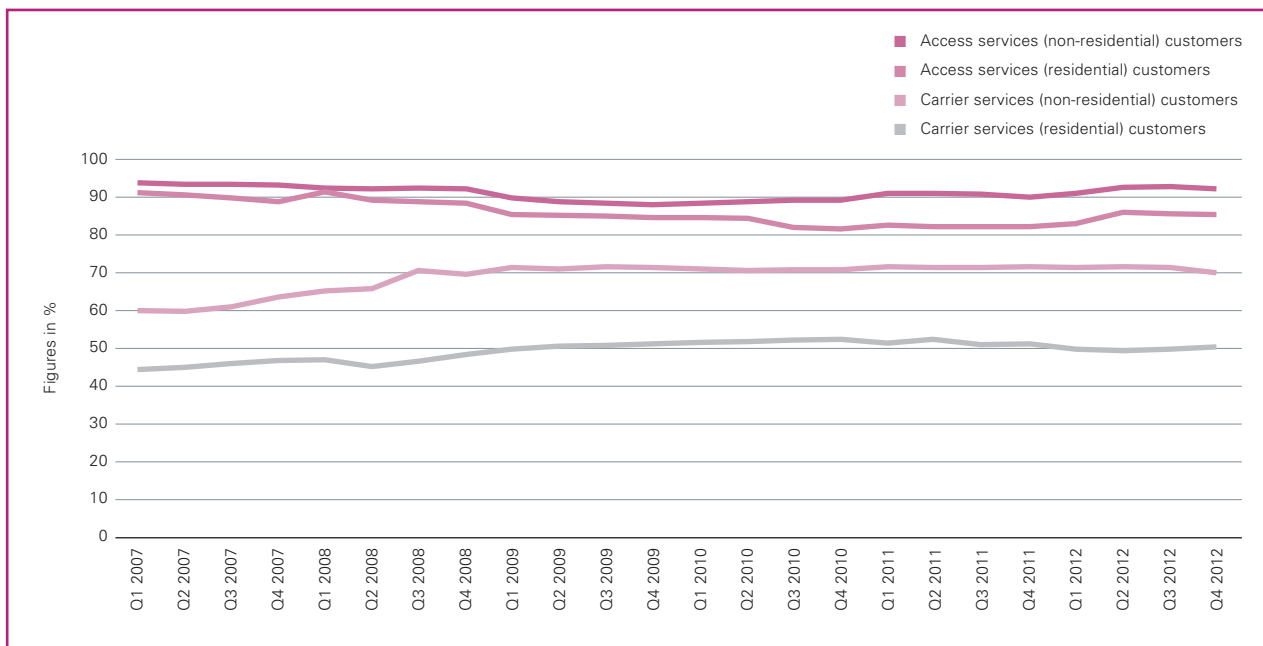


Source: RTR

A1 Telekom's market shares in terms of revenues (as shown in Figure 36) changed only little in the course of 2012. In access services, A1 Telekom's market share, as measured by revenue, increased slightly to 85% in the residential segment, and this share also grew for the non-residential segment, reaching 92%. The slightly more competitive situation in the residential segment can be attributed in particular to unbundling activities by Tele2 and the gains achieved 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 carrier services is substantially lower than in the case of access services. In the non-residential segment, A1 Telekom commands a market share of 70%, 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 network and to international destinations) for residential customers; at 50% in the fourth quarter of 2012, A1 Telekom's market share in this segment was substantially smaller than in the other segments. This value has similarly fluctuated very little in the last three 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 package products, which obviously go well beyond the scope of classic carrier services.

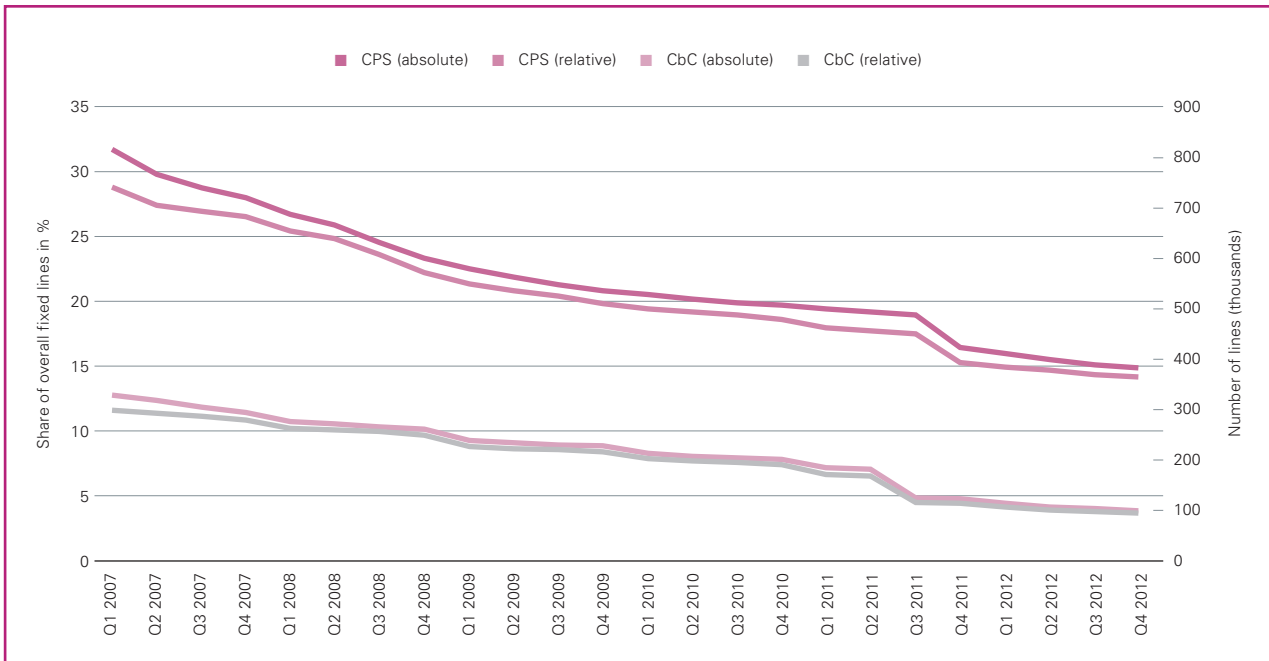
Figure 36: A1 Telekom: share of revenues from access and carrier services by customer segment, 2007 to 2012



Source: RTR

The changes in the shares held by alternative network operators in the carrier services market, which are shown only implicitly in Figure 36, are closely linked to changes in 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 network lines. A similar, declining trend can be seen for both CPS and CbC. CPS lines decreased in number by 9% after Q4 2011 and fell to a total of around 383,000 by the end of 2012 (i.e. 14% of all fixed network lines). The number of CbC customers has declined even more sharply, dropping a full 19% between the fourth quarter of 2011 and the end of 2012. The call-by-call option was used with a total of 4% of all fixed network lines, or 99,000.

Figure 37: CPS and CbC customers, 2007 to 2012



Source: RTR

While the CPS and CbC levels shown above reflect the respective aggregate values for residential and non-residential customers, these services are mainly used by residential customers.

10.2.2.2 Wholesale fixed network markets

Wholesale market refers to a market in which a telecommunications operator provides services to other such operators. Although consumers are not or only hardly aware of such markets, these markets represent an important requirement for functioning competition. The interconnection of networks, which results in wholesale market transactions, serves to enable the customers of one network operator to reach the customers of all other network operators. Without it, small networks with only few customers would be placed at a disadvantage, and there would be no guarantee of “any to any” connectivity. Network operators can also purchase wholesale services from A1 Telekom or other operators, which reduces the infrastructure investments required in order to provide retail services. This substantially reduces the barriers to market entry.

RTR has analysed the following wholesale markets for fixed network voice telephony:

- Market for call origination in the public telephone network existing at fixed locations (origination)
- (Operator-specific) markets for call termination in individual public telephone networks existing at fixed locations (termination)
- Market for transit services in the fixed public telephone network (transit)

Origination

Origination refers to a service involving 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 switching exchange where at least one network operator is interconnected with the source network and at which traffic can be transferred.

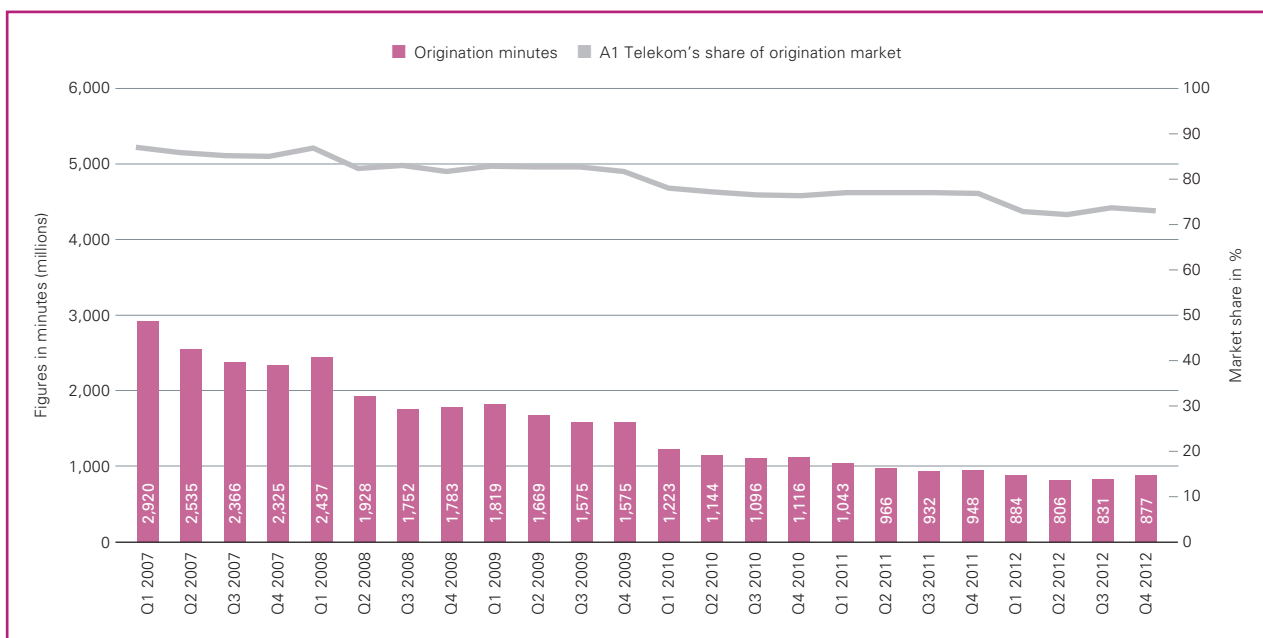
Depending on the infrastructure available to a given operator, that operator can either provide origination services directly or purchase them in the wholesale market. Operators with customers connected directly to their networks can provide the origination service directly (as part of their services) and the service generates no whole revenues. This is the case for the 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. A1 Telekom is required to offer the service because this operator has significant market power in the markets for access to fixed locations. This arrangement substantially lowers the barriers for entering carrier markets at the retail level.

In line with the tendency in the retail markets, the total number of origination minutes has been declining for several years now (cf. Figure 38). This is due to the rapidly shrinking importance of narrowband dial-up internet services and to the substitution of fixed network by mobile services in the voice telephony market.

A1 Telekom continues to maintain a very large share of the origination market (including internally provided services; cf. Figure 38). Tele2 and UPC are the largest alternative operators that have their own subscribers connected directly to their networks (via unbundling or cable networks) and thus provide origination services.

Figure 38: Origination minutes and market share for A1 Telekom, 2007 to 2012



Source: RTR

Table 23 shows the regulated origination fees charged by A1 Telekom during peak and off-peak periods. In all wholesale markets, peak hours are from Monday to Friday (business days) from 8 am to 6 pm, while all other periods are considered to be off-peak.

Table 23: Origination fees charged by A1 Telekom as of 31 December 2012

Local origination	Peak	Off-peak
A1 Telekom to carrier network operators	0.82	0.48

Rates in EUR cents (excl. VAT)

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 subscribers that are connected to the given operator's network.

As termination services can only be rendered by the provider network to which a subscriber is connected, specific termination markets are defined for each individual operator. Each subscriber network operator thus has a separate termination market in which that operator has a market share of 100%; this qualifies as significant market power as defined in Art. 35 TKG 2003. Every operator is consequently subject to fee regulation. The regulated (local) fees are shown in Table 24. The charges set for alternative operators are higher than those applying to A1 Telekom due to differing network structures.

Table 24: Termination fees charged by A1 Telekom and by alternative operators as of 31 December 2012

Termination	Peak	Off-peak
A1 Telekom	0.82	0.48
Alternative operators	1.28	0.71

Rates in EUR cents (excl. VAT)

Source: RTR

In the absence of regulation, A1 Telekom would pose other challenges to competition than smaller network operators, as the former has a large number of connected subscribers, is comparatively large and is dominant in other markets. Additional regulatory instruments are required to respond to these challenges, including requirements for a reference interconnection offer (RIO), accounting separation and equal treatment.

Transit

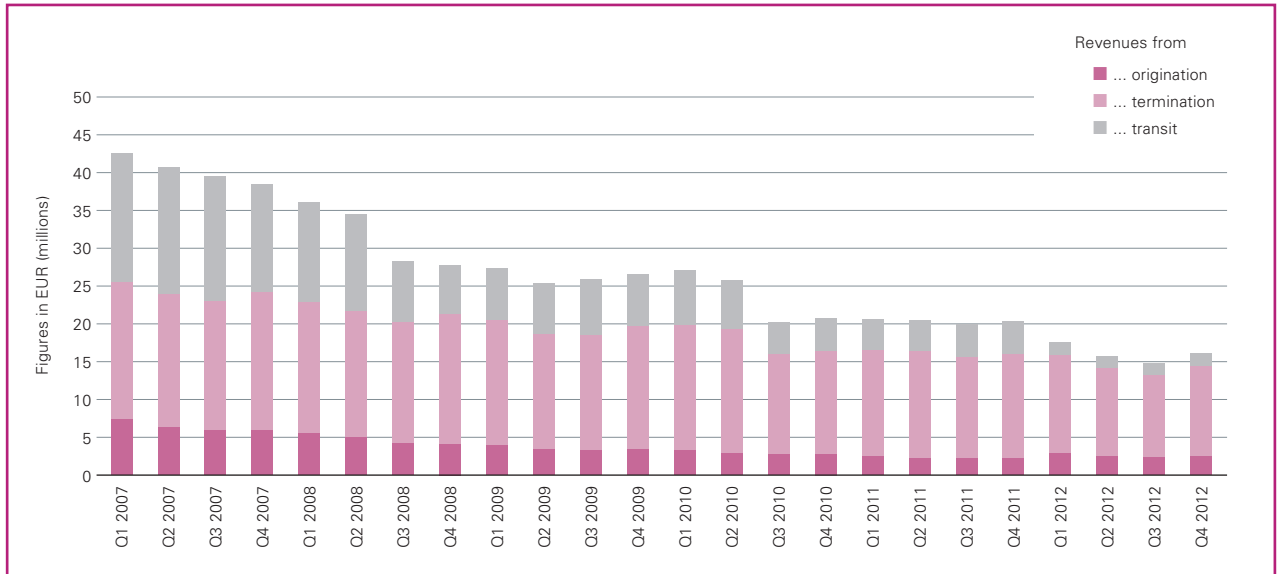
Transit services refer to carrying traffic between two networks or between two interconnectable switching exchanges within one network. Such services are thus the subject of supply or demand by communication network operators for the purpose of routing traffic through certain line sections and as such cannot be considered origination or termination as described above.

As several companies offer services in the transit market and compete with one another to a sufficiently strong extent, effective competition prevails in this market. Therefore, none of the companies are subject to sector-specific *ex ante* regulation.

Development of wholesale market revenues

Revenues again showed a slight decrease in 2012. The decline between Q2 and Q3 2010 can be attributed to the amalgamation of mobilkom (A1) and Telekom Austria to form A1 Telekom Austria AG, as no revenues flow between those two companies any longer.

Figure 39: Revenues from wholesale fixed network markets, 2007 to 2012



Source: RTR

10.2.3 Mobile communications

10.2.3.1 Market participants

During the period under review, there were four economically independent mobile network operators (MNOs) active in the Austrian market. The takeover of Orange by Hutchison 3G was notified to the European Commission in May 2012. At the same time, A1 Telekom's takeover of YESSS! was reported to the Federal Competition Authority. As a result of preliminary assessments, serious concerns were identified in both the European Commission and the Austrian procedure, and phase II proceedings were launched to investigate in detail the impact caused by the merger. Approval was finally granted in both cases in December. Two other related procedures were pending with the TKK on account of the planned takeover of spectrum. One, pursuant to Art. 56 Par. 2 TKG 2003, involved the change in ownership structure of Hutchison 3G that would result from the merger with Orange, while the other concerned Hutchison 3G's sale of frequencies to A1 Telekom. Approval was given in both cases at the meeting of 13 December 2012, with conditions being imposed.

Among the conditions, Hutchison was required to divest frequencies, make available base station sites that become superfluous following the merger of the Hutchison 3G and Orange networks and to open up its network to several MVNOs (mobile virtual network operators). With these conditions met, as well as particularly with the TKK decision to reserve the 800 MHz frequency range for the multiband auction planned for autumn 2013, the European Commission and the regulatory authority together created the preconditions that would allow a fourth mobile network operator to enter the Austrian market.

Table 25 lists the frequency spectra as allocated before and after the merger.

Table 25: Spectrum distribution before and after the merger of Hutchison 3G and Orange

Pre-merger	900 MHz	1800 MHz	2.1 GHz FDD	2.1 GHz TDD	2.6 GHz FDD	2.6 GHz TDD
A1 Telekom	34	30	29.6	10	40	25
T-Mobile	25.6	50.8	30	10	40	
Hutchison 3G			29.6	5	40	25
Orange	8	58	29.6		20	
After sale to A1 Telekom and spectrum divestment						
A1 Telekom	40.4	30	39.6	10	50	25
T-Mobile	25.6	50.8	30	10	40	
Hutchison 3G		58	49.2	5	30	25
Divestment spectrum for new entrant	1.6				20	

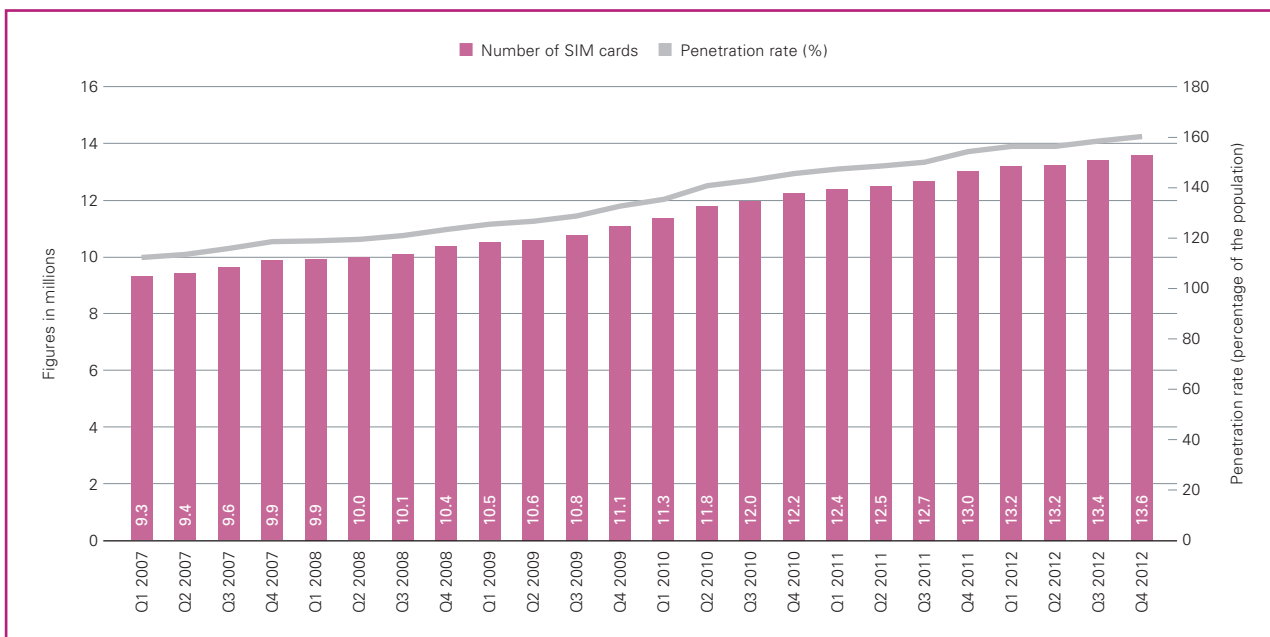
Source: RTR

10.2.3.2 Market development

2G and 3G-compatible SIM cards

Figure 40 shows the number of activated SIM cards. By Q4 2012 the number of SIM cards had increased by 46% over the first quarter of 2007. This figure rose by 4% in the course of 2012 to total 13.6 million SIM cards by Q4. The corresponding penetration rate, i.e. relative to Austria's population, was 160% by the end of 2012.

Figure 40: SIM cards, 2007 to 2012

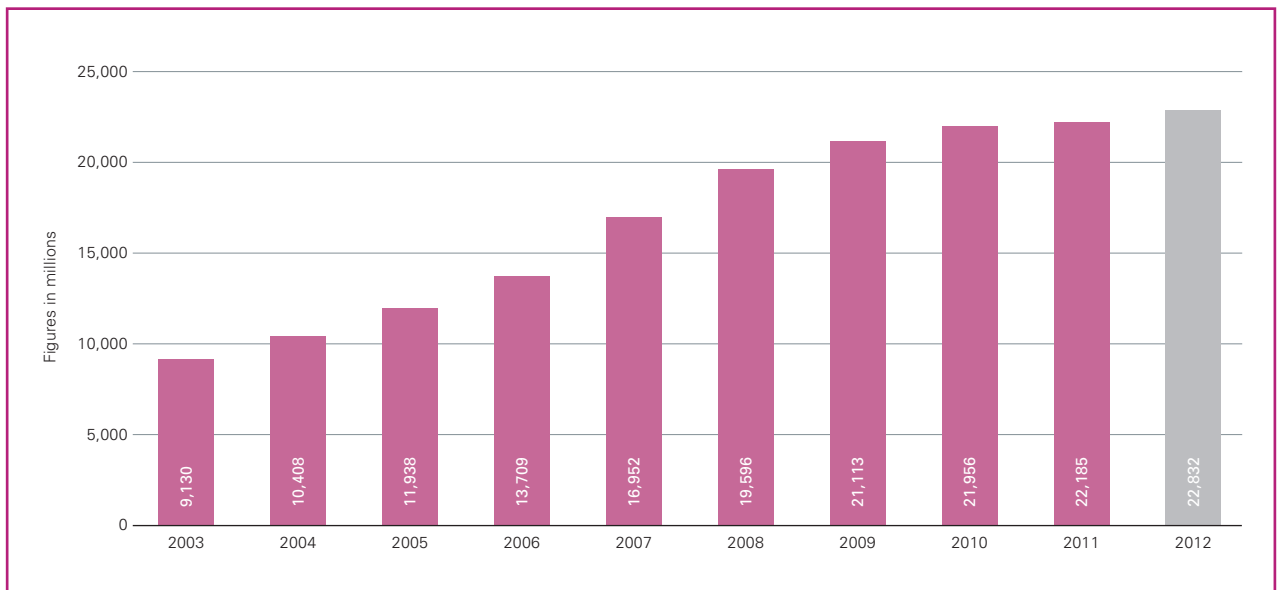


Source: RTR

Call minutes and text messages

The number of call minutes continued to rise in 2012, albeit less rapidly than in previous years. Figure 41 shows the number of technical call minutes for the retail mobile market, which amounted to more than 22.8 billion in 2012. Call minutes consistently showed very high growth rates of about 15% per year from 2003 to 2006, after which the growth rate peaked at 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 3% compared with the previous year.

Figure 41: Real minutes* in the retail mobile communications market, 2003 to 2012

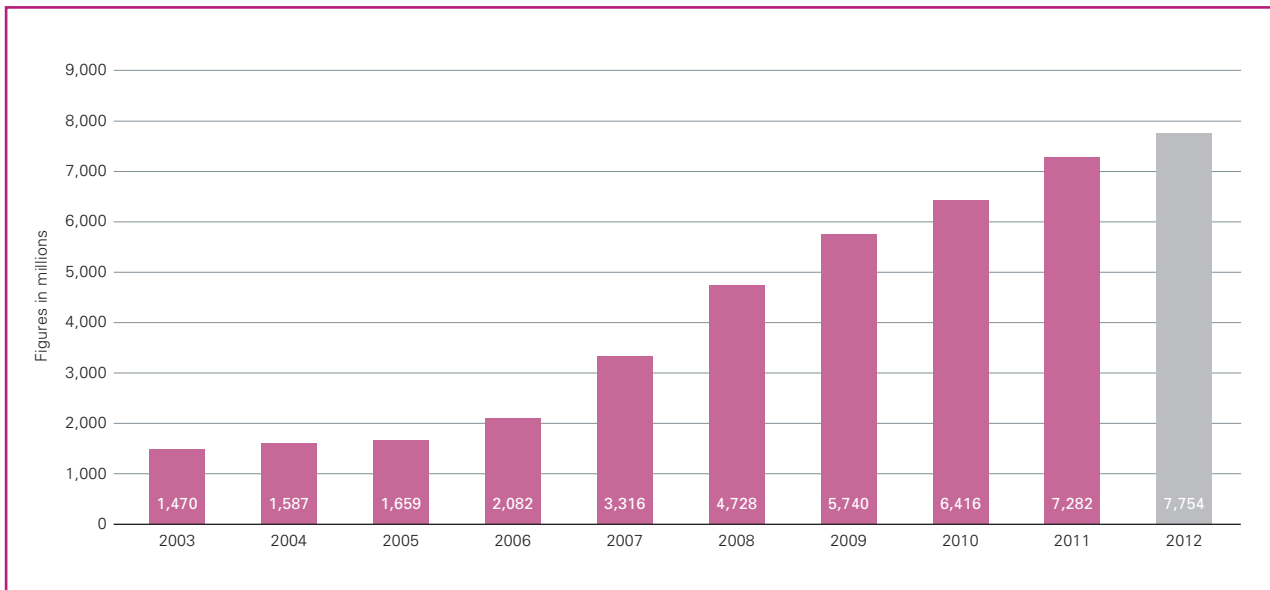


* This figure refers to the actual time retail customers spent talking on their mobile phones (without accounting for billing increments). In contrast, billed call minutes refer to the number of call minutes charged to retail customers (using the applicable billing increments).

Source: RTR

Due to the above-mentioned introduction of flat rate packages, the growth rate for the number of text messages similarly peaked at 59% in 2007. In the ensuing years, growth declined steadily and at 6% in 2012 reached the lowest growth rate seen during the last seven years. As shown in Figure 42, subscribers to Austrian mobile services sent approximately 7.8 billion text messages in 2012. The slower growth rate can be partly attributed to widespread use of instant messaging services such as WhatsApp and iMessage that, allowing smartphone users to send pictures and videos, represent an attractive alternative to conventional text messaging.

Figure 42: Text messages in the retail mobile communications market (technical measurement)*, 2003 to 2012

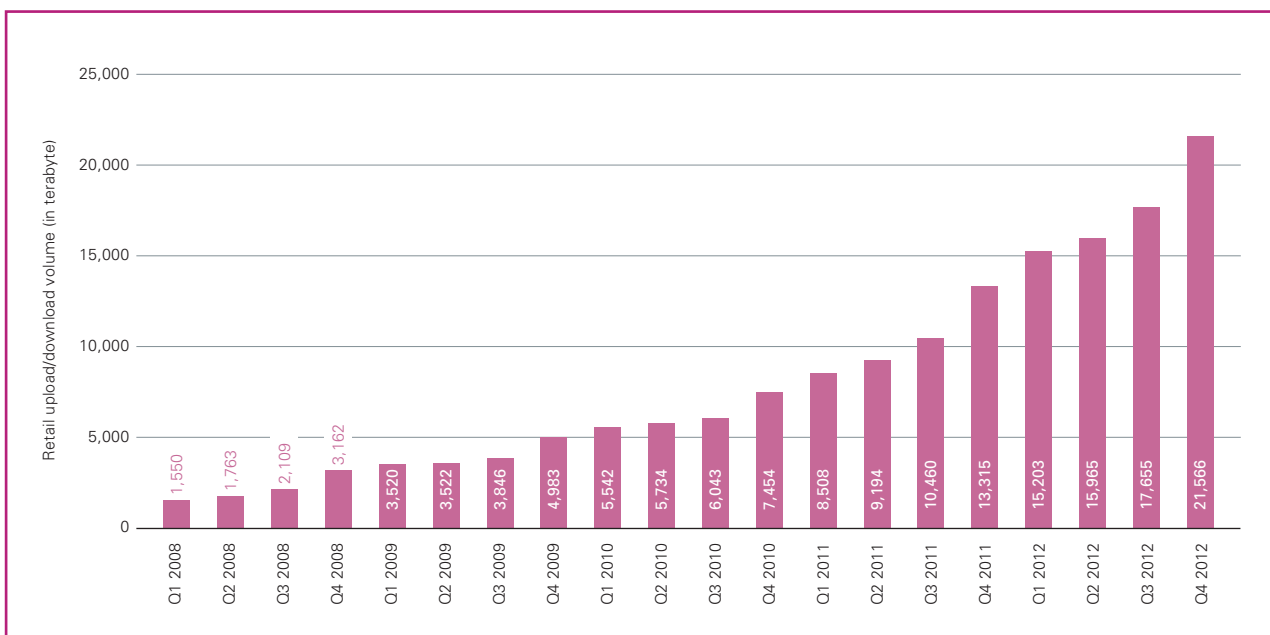


* This figure refers to the actual number of text messages sent by retail customers. In contrast, billed text messages refer to the number of text messages charged to retail customers.

Source: RTR

At the end of 2012, 59% of Austrian households had mobile broadband access and 30% of the Austrian population subscribed to a smartphone price plan. This high penetration rate as well as the flat rates offered are reflected by data volume usage. Mobile data volumes have continually increased in recent years. While 8,600 terabytes (TB) were uploaded or downloaded in 2008, the figure in 2012 totalled some 70,400 TB – more than eight times the data volume in 2008.

Figure 43: Data volumes uploaded and downloaded via mobile networks, 2008 to 2012

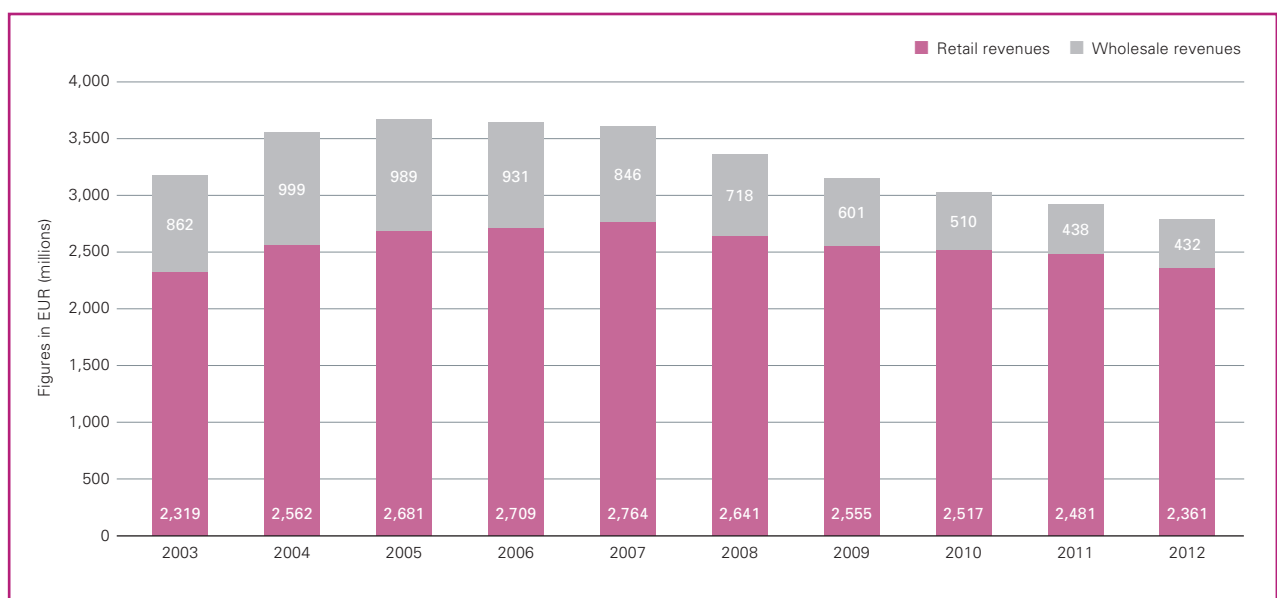


Source: RTR

Revenues

The trend seen for mobile market revenues in 2012 was similar to that observed in previous years. Despite a rapidly growing number of subscribers and continued growth in traffic volumes, overall revenues again dropped slightly during the period under review, as can be seen in Figure 44. Since 2006 there has been a constant decrease in revenues, both from end users and wholesale customers. Retail revenues totalled EUR 2.36 billion in 2012 or 4.8% less than in 2011. Revenues have been dwindling in the wholesale market segment and totalled EUR 432 million in 2012 or 1.3% less than in the previous year. This can largely be attributed to the gradual reduction of termination fees as well as the further reduction of international roaming charges in accordance with the EU Roaming Regulation. Yet the fact that wholesale revenues have decreased significantly also indicates that operators have achieved cost reductions. Assuming equal traffic volumes between two operators, on balance this development could even result in zero change. The decline in revenues thus has only had a partial impact on profits.

Figure 44: Mobile market revenues, 2003 to 2012



Source: RTR

In Figure 44 revenues have been calculated by totalling these revenue categories:

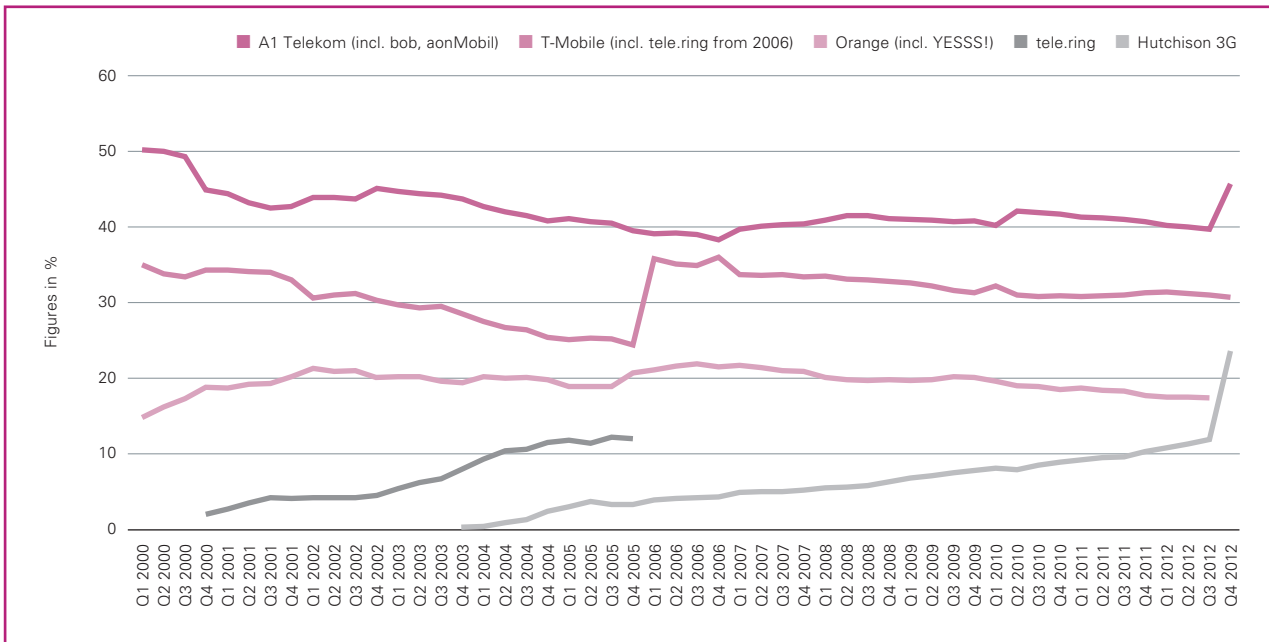
- Retail revenues: connection fees for voice calls, text messages and data services, basic monthly fees, activation fees
- Wholesale revenues: revenues from voice termination and text messages, revenues from inbound international roaming (i.e. when customers from abroad make calls in Austria)

10.2.3.3 Market shares and concentration

Figure 45 shows the market share held by each of the mobile operators since 2000 as measured in terms of the number of subscribers. Resellers are included in the data for the host network operator to which they belong (i.e. the operator whose network the reseller uses in order to provide services).

The sharp 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 T-Mobile and A1 Telekom held nearly equal market shares. Further market consolidation took place in 2012, as indicated by the chart data for Q4 2012. Thus, by the end of 2012, A1 Telekom's market share (including YESSS!) was 45.7% and Hutchison 3G's (including Orange) 23.6%. T-Mobile continues to hold the second-largest market share for mobile network operators, amounting to 30.7% by the end of 2012.

Figure 45: Mobile market share based on number of subscribers, 2000 to 2012



From Q4 2012 onwards, A1 Telekom is shown including YESSS! and Hutchison 3G including Orange.

Source: RTR

10.2.4 Broadband

10.2.4.1 Introduction

In the last decade the internet has become our society's most important platform for information and communication. For private households and businesses alike, internet access has become a decisive factor for participating in social and economic life. With more and more applications requiring high bandwidths, a broadband connection has practically become a prerequisite for satisfactory internet use. As used here, broadband refers to internet connections that are not based on dial-up modems (via POTS or ISDN with a maximum of 144 kbps) but utilise DSL, cable networks, fibre optics, or 3G or 4G mobile networks (i.e. 3G and LTE).

This section first discusses the most important broadband technologies in use as well as the wholesale products that are currently available as specified in regulatory requirements. More detail then follows, specifically descriptions of developments in the retail broadband market and of changes in the wholesale broadband market in recent years. The section ends with a discussion of key developments relating to establishing next generation access (NGA) networks.

10.2.4.2 Broadband basics

Access technologies

The most important broadband technologies as well as their availability and the largest providers on the market are presented below. The providers shown in the table below cover more than 95% of all broadband connections.

Table 26: Broadband access technologies

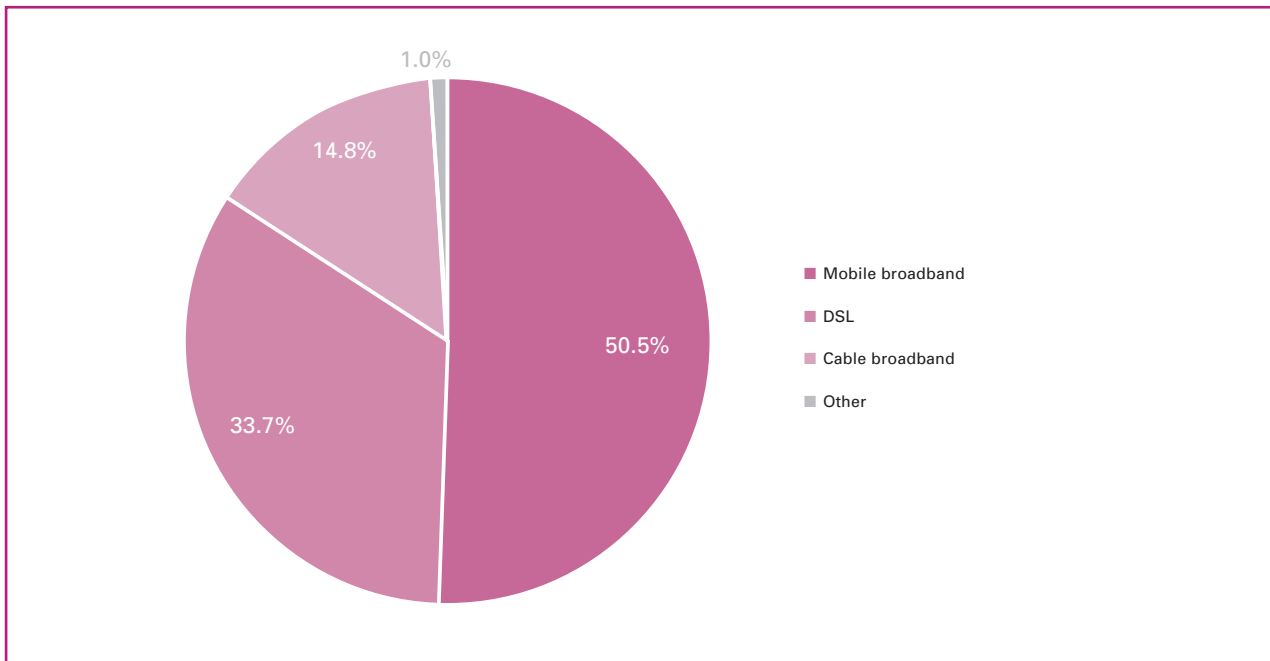
Access technology	Largest providers	Availability (percentage of the population)
(x)DSL: transmission technology based on copper wire pairs	A1 Telekom Tele2, UPC (unbundled lines)	> 99% Unbundled lines: approx. 65%
Cable broadband: DOCSIS coaxial cable-based transmission technology	UPC, LIWEST, Salzburg AG, kabelplus, Teleport, Cablecom	Approx. 50%
Mobile broadband: UMTS/HSPA/LTE transmission technology in mobile networks	A1 Telekom (incl. bob), T-Mobile (incl. tele.ring), Orange (incl. YESSS!), Hutchison 3G	Approx. 95% (HSPA)

Source: RTR

Other broadband access technologies such as wireless networks (W-LAN/WiFi/WiMAX), PLC (power line communications), fibre optics (FTTH) and satellite accounted for an overall share of only about 1% of all broadband connections at the end of 2012. Yet it is important to note the role played by FTTH, as it is expected that coverage with this technology will be further expanded in the coming years (refer to Section 10.2.4.5).

Figure 46 shows the percentage of the total number of active connections or subscribers accounted for by each different access technology at the end of 2012. Mobile broadband represents the sum of all dedicated broadband connections that include at least 250 MB in the basic monthly fee or, in the case of prepaid cards, that were used by the subscriber to access the internet at least once during that particular 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 concurrently with fixed broadband access, and more than one mobile broadband connection used by the same household or business are also counted separately.

Figure 46: Percentage accounted for by each broadband access technology as at 31 December 2012




Source: RTR

Wholesale products

Wholesale products and services refer to such that are offered by companies to other providers in the market and that facilitate the provision of communications services to end users. In the provision of broadband internet services to end users, local loop unbundling and bitstream services are the most important wholesale products. Both products are offered by A1 Telekom in accordance with its regulatory obligations. As of 2010 A1 Telekom was also required to offer “virtual unbundling” in areas where new technologies are being 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 via such 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 physically (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 connectivity (usually offered in a package with voice telephony). At the end of 2012, the number of broadband lines realised by means of local loop unbundling totalled about 181,000, or 4.2% of all broadband connections (including mobile broadband) and 12.6% of all DSL connections in Austria.
- **Virtual unbundling:** As of TTK Decision M 3/09 of 6 September 2010 (Market for physical access to network infrastructures), A1 Telekom is required to offer “virtual unbundling” in NGA rollout areas (see also Section 10.2.4.5). Unlike physical local loop unbundling (see above), where the alternative operator is allowed to use the actual



copper wire pair, in this case a service is provided through which alternative operators are able to offer the same retail products as via physical unbundling.²³ This product is a substitute for physical unbundling in cases where the latter is no longer either technically feasible (e.g. where vectoring is used) or economically feasible for the alternative operator.

- **Bitstream access:** With this product, the wholesale customer is provided with a data stream (bitstream) at a higher network level (in the case of A1 Telekom, for example, at one of nine exchange points). This requires fewer 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 to business customers is offered by A1 Telekom as specified in regulatory requirements²⁴ and by some alternative operators (unbundling partners, cable network operators). At the end of 2012, in about 41,300 cases broadband access was being provided via A1 Telekom bitstream services.

10.2.4.3 Development of retail markets

Within the end user market it is important to distinguish between the market for residential customers, which includes DSL as well as cable, FTTH and mobile broadband access, and the market for business customers, which includes only DSL and FTTH access.²⁵ In the market for residential customers, infrastructure-driven competition predominates, making any regulation of the broadband wholesale market (i.e. of bitstream services) no longer necessary.²⁶ For the business customer sector, however, appropriate regulation continues to be required. Yet in the chart below, which shows changes in the numbers of connections in the retail markets, no distinction is made between residential and business customers, because the corresponding data are not available at this level for the entire time period. Consequently, only changes in total numbers of connections are shown. Residential customers request the majority of connections (about 85%).

Figure 47 shows the changes in the number of broadband connections, broken down according to the major transmission technologies. About 4.3 million broadband connections existed as of the end of 2012. The number of mobile broadband connections continues to increase at a much higher rate than the number of DSL and cable broadband connections. On the whole, it can be assumed that fixed network broadband in the residential sector continues to be under significant pressure from the mobile broadband competition.

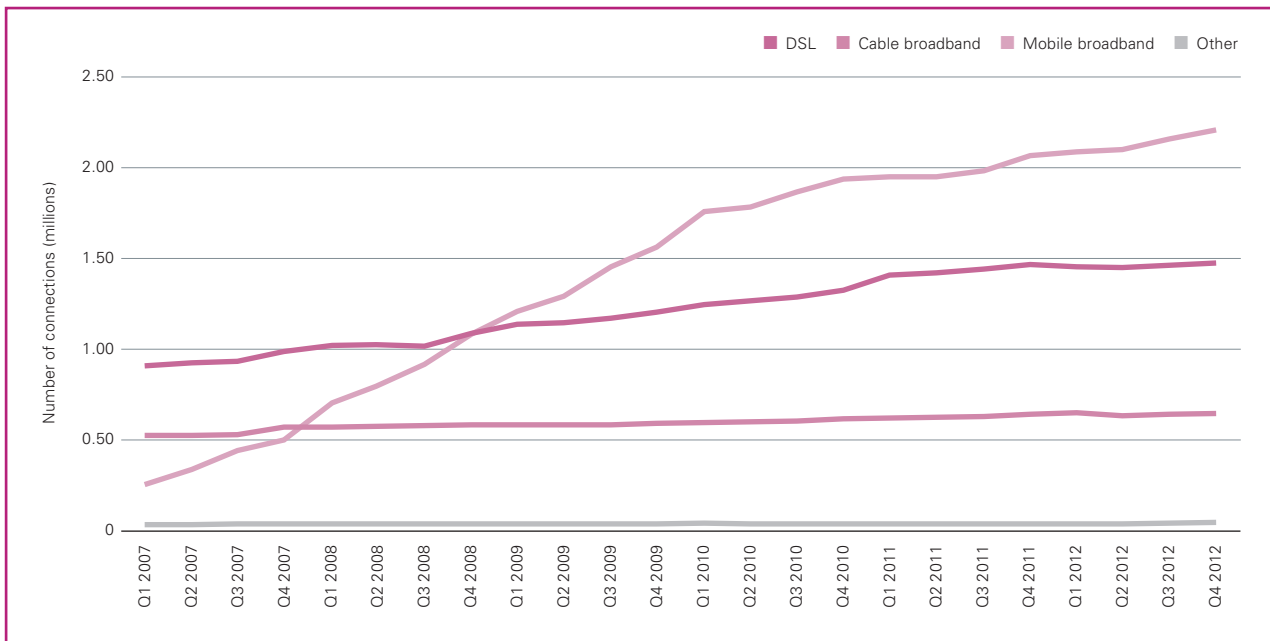
²³ Where technically possible in the A1 Telekom network.

²⁴ The regulatory requirement applies only to bitstream products for the purpose of providing connections to non-residential customers.

²⁵ Refer to the RTR study (published in August 2009) aimed at defining the wholesale broadband access market, www.rtr.at/en/komp/Konsultation_TKMV08/Begleittext_zur_Novelle_der_TKMV_2008.pdf, and the proposal for enforcement action in procedure M 1.2/12, March 2013, www.rtr.at/en/komp/Kons_M_1_2_12 (both in German).

²⁶ A1 Telekom continues to offer the corresponding wholesale products, however.

Figure 47: Broadband connections, 2007 to 2012



Due to subsequent corrections by the network operators, the figures shown here differ slightly from those originally reported in the 2011 Communications Report.

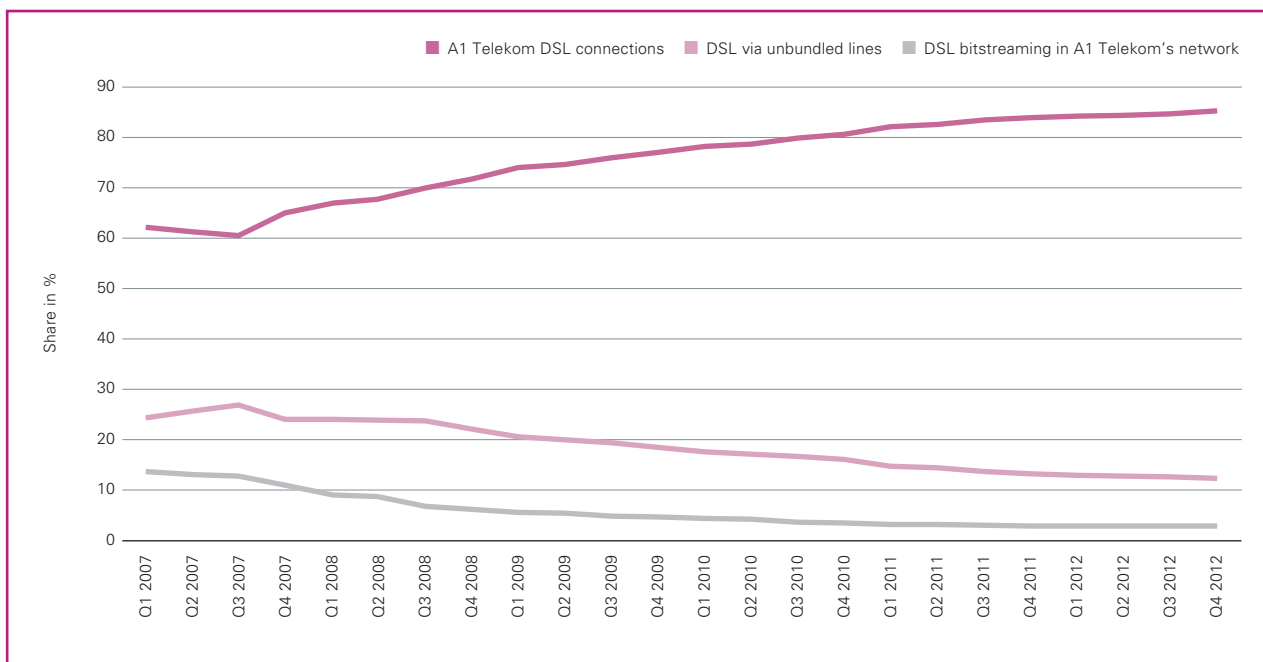
Source: RTR

10.2.4.4 Development of wholesale markets

This section describes the changes in the broadband markets for bitstream access products and for unbundled subscriber lines (see also Section 10.2.4.2, subsection “Wholesale products”). The discussion below focuses on the wholesale products offered by A1 Telekom, some of which are regulated, as these products represent by far the largest share of wholesale products sold.

Figure 48 shows the percentage of broadband connections that were realised for retail customers using DSL, either by A1 Telekom or by alternative operators using bitstream access or unbundling. While the share realised by A1 Telekom tended to shrink up to late 2007, it has grown again since Q4 2007, amounting to more than 85% of DSL connections at the end of 2012.

Figure 48: Percentage of DSL connections using bitstream and unbundling technology, 2007 to 2012



Source: RTR

This development can be attributed to the drastic price reductions introduced by A1 Telekom in late 2007, which were in turn a response to the price cuts for mobile broadband. Although the wholesale charges for bitstream access and unbundled lines were also reduced substantially, on the whole it has become significantly more difficult for alternative operators using those products to undersell A1 Telekom, cable network operators or mobile broadband providers to an extent that allows substantial growth.


Yet this does not automatically mean that there is less competition in the retail broadband market, as such competition – at least in the residential segment – is largely driven by cable and mobile network operators that are not dependent on A1 Telekom’s wholesale products.

10.2.4.5 NGA rollout

“Next generation access” (NGA) is generally used to refer to the rollout of fibre optic networks to the end user. In this context, various options exist for laying the fibre optic cable, i.e. either all the way to the customer (fibre to the home, FTTH) or where the existing copper wire pair is retained for the last section (fibre to the curb, FTTC, or fibre to the building, FTTB).

A1 Telekom continued rollout activities for FTTC, FTTB and FTTH in 2012. Bandwidths of up to 30 Mbps are offered with FTTC and FTTB lines, and 50 Mbps and 100 Mbps with FTTH. Yet full geographical coverage with FTTH is still limited to parts of Vienna’s 15th and 19th districts. Moreover, certain newly built residential units are being equipped with FTTH. As of the end of 2012, roughly 435,000 households were provided service via FTTC, FTTB or FTTH.²⁷ In

²⁷ Refer to the Capital Market Day 2013 presentation by A1 Telekom: www.telekomaustria.com/dateien/Austria.pdf, page 20.



addition, A1 Telekom carried out initial field trials of vectoring technology in 2012. This technology allows significantly greater bandwidths to be achieved with existing copper wire pairs by reducing the effect referred to as “crosstalk” (i.e. signal interference between lines within the same cable bundle). A further rollout is planned for the coming years.

In some cases, bandwidths in cable networks were substantially increased by implementing fibre optics and the DOCSIS 3.0 transmission technology. Austria’s largest cable network operators – UPC, LIWEST, Salzburg AG and kabelplus – now offer bandwidths of up to 100 Mbps; these services cover some 45% of Austria’s population.

With the HSPA+ technology, bandwidths of up to 42 Mbps can be achieved in mobile networks. While the bandwidths actually able to be achieved in the specific case depend on a variety of factors, such as the number of users in one cell at any one time, signal damping (indoors) and the base station connection, the maximum speeds are comparable to those supported by the most popular fixed network products. With the next generation access technologies LTE/4G, bandwidths of as much as 100 Mbps can be achieved in urban areas.

10.2.5 Leased lines

10.2.5.1 Introduction

Leased lines refer to symmetrical, bidirectional point-to-point connections that support voice or data transmission. 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 pair, fibre optics, microwave radio) and various transmission technologies, such as synchronous digital hierarchy (SDH) and plesiochronous digital hierarchy (PDH).

Telecommunications operators use leased lines to supplement 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. Communications service providers and network operators request leased lines in order to offer retail communications services (e.g. mobile communications, internet access) and are therefore referred to as wholesale customers in the market for leased lines. As end users, companies generally employ leased lines to create a network between two or more business locations, for example in order to connect a branch and headquarters (intranet) or to connect business partners, suppliers and customers (to form an extranet).

In recent years demand for Ethernet services has increased substantially, especially at the wholesale level. Like leased lines, Ethernet services can similarly be used for transmissions, such as of data and voice traffic, but Ethernet is generally more flexible (i.e. offering 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 (refer to changes in revenues as shown in Figure 49).

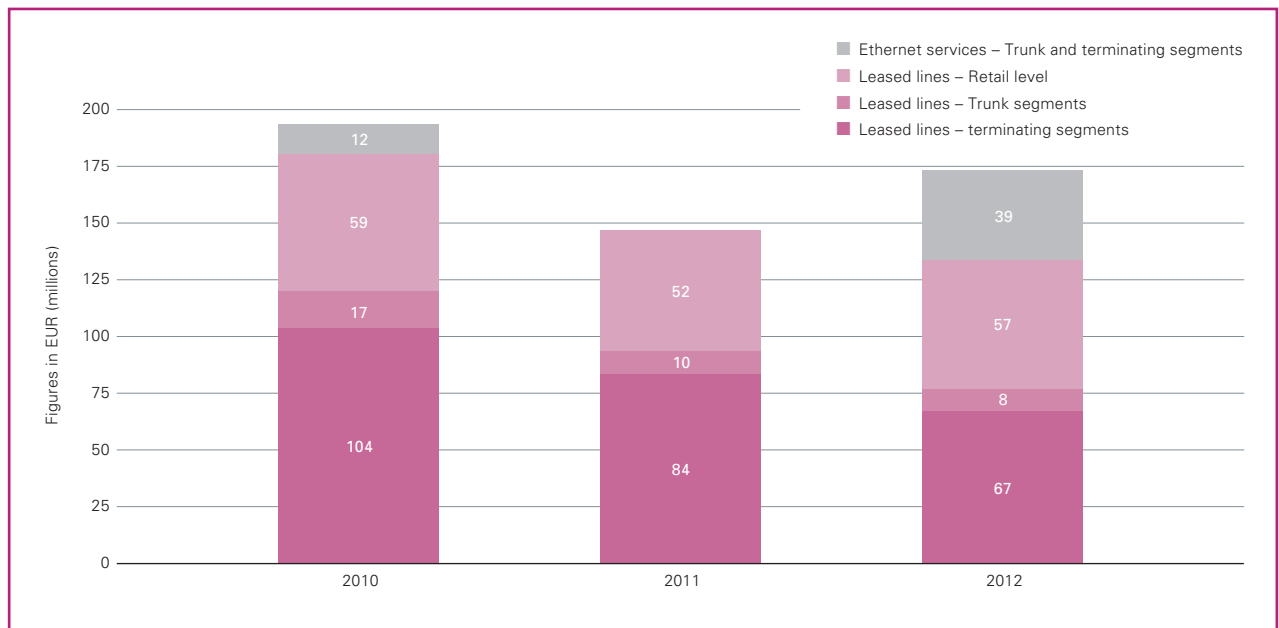
Leased lines and Ethernet services are required with varying bandwidths depending on the application. These range from 64 kbps to 2 Mbps and even 155 Mbps or more (1 Gbps and 10 Gbps are common in Ethernet services). At the wholesale level, it is also necessary to distinguish between trunk segments and terminating segments. Trunk segments refer to those leased lines and Ethernet services that, while not generally extending to the subscriber’s network termination point, mainly serve to link exchange points in those 28 Austrian towns where A1 Telekom has established points of interconnection (POIs) with other telecommunications operators. Terminating segments, in contrast, 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

Alongside A1 Telekom, the major providers of leased lines and Ethernet services in Q4 2012 were Tele2, Energie AG Oberösterreich Data, T-Systems Austria, kabelplus and Wien Energie.

Figure 49 shows the volume of revenues generated in Austria through leased lines in the period 2010 to 2012. Revenues from leased lines consistently decreased from 2010 to 2012, mostly due to substitution with Ethernet services.

Figure 49: Revenues from leased lines and Ethernet services, 2010 to 2012



Revenue data were not available for Ethernet services in 2011.

Source: RTR



11 RTR's activities as a competence centre

11.1 Media Division

11.1.1 Scientific studies commissioned by the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR)

The study entitled "On the quality of private broadcasting – research for the evaluation of the Austrian Private Broadcasting Fund" by Corinna Wenzel, Josef Trappel and Stefan Gadringer (Media Policy and Media Economics, Department of Communication Studies, University of Salzburg) was presented in April. The research presents the structures as well as working and production conditions prevalent among private television and radio broadcasters.

Appearing within RTR's publication series, the 2011 programming analysis of full-range television channels in Austria by Jens Woelke was presented in February. The study, which is published at two-year intervals and now appears for the fourth time, investigated in detail the two major programming areas of entertainment and television journalism for the channels ORF 1, ORF 2, ATV, PULS 4 and, for the first time, ServusTV.

During the year under review, Jan Krone of the Department of Media Economics at the St. Pölten University of Applied Sciences was contracted for a programming analysis of free media in Austria. This study will be completed in 2013.

The studies can be viewed (in German) at www.rtr.at/en/komp/Publikationen.

11.1.2 Research Institute for Electronic Mass Media Law (REM)

REM, which was founded in early 2005, once again in 2012 dedicated its efforts to academic research on electronic mass media law at the national and international level.

REM was established as a non-profit association within RTR. The members of REM's Board of Directors are: Christoph Grabenwarter (Vienna University of Economics and Business), Walter Berka (University of Salzburg), 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).

REM held a workshop on 3 May 2012 that was focused on "Independence and organisation of public service broadcasting" and related issues.

As in previous years, the association held the Austrian Broadcasting Forum, an event allowing the exchange of ideas among researchers and practitioners. The eighth annual Austrian Broadcasting Forum in late 2012 was devoted to various aspects of a topic with current legal relevance for the creative industry, "Intellectual property law in electronic media". The presentations covered a range of Austrian and European perspectives, offered comparisons of laws and related jurisprudence, addressed the legal situation of collecting societies, and detailed the relationship between rights holders and users.

11.2 Telecommunications and Postal Services Division

11.2.1 Information and communications technologies (ICTs)

The staff department ICT provides administrative support to the Internet Society Competence Centre (Kompetenzzentrum Internetgesellschaft, or KIG), a federal government institution. In the course of 2012, as the related catalogue of priorities was prepared by the KIG in cooperation with RTR, numerous projects were launched and realised. One example was RTR's intensive and successful efforts to win the Federal Ministry of Finance (BMF) as the main sponsor for the Home Office Day project. The goal is to emphasise, in concert with business, the importance of mobile work and to draw attention to the mobility opportunities available in the working world through ICTs. As a result of the Home Office Day, which is highly popular in Germany and Switzerland as well, it has been possible to heighten awareness of this topic and to motivate private and public sector organisations to offer to employees such options for working. It is hoped that the same effect will be seen for Austria.

Business-Research Interface is another project, which is taking place under the Federal Ministry of Science and Research in close cooperation with business and research institutions. To realise the project, RTR held in-depth discussions with stakeholders and acted as a driving force in initiation. The project entails founding a platform with the Austrian Association of Libraries for the purpose of coordinating the research interests of the business and research sectors more closely. This platform will serve as a market place for research topics. Interested students can find here research topics for masters or doctoral theses that are closely aligned with practice. While similar platforms can currently be found in isolated cases among universities, there has been no such platform encompassing all institutions.

The KIG applies the World Economic Forum's Networked Readiness Index (NRI) as a measure of Austria's progress in the ICT sector. The index, which is published annually, underwent major restructuring in 2012, with the number of indicators reduced from 71 to 53. The indicators are assigned to sub-categories, which were completely revised as well. Acting on behalf of the KIG, RTR consequently studied the NRI in detail and prepared a sensitivity analysis. This analysis reveals how changes in indicator values affect overall ranking, in this way allowing a forecast of the impact that any measures taken will have on the index.

RTR, as the KIG's operative arm, laid important foundations in 2012 towards developing a national ICT strategy for the period 2014-2018. A consultation paper containing proposals for future projects relating to ICT has been drawn up as a basis for discussion by the ICT sector and public authorities in the coming months. The strategy paper proposes four subject areas of focus for Austria in the coming years, in order not only to further enhance the quality of life enjoyed by the population but also to simultaneously enable Austria to rank up front in the ICT sector when compared at the European and international levels.


RTR, acting under the KIG, will continue in 2013 to ensure further progress in realising projects and will develop a further strategy that identifies additional areas requiring action.

11.2.2 RTR-NetTest to reinforce the demand side

RTR offers the NetTest for users who are interested in obtaining information concerning the quality of service that is provided in practice (including upload, download, ping, signal strength) by their particular internet access set-up (refer to www.netztest.at or www.rtr.at/en/tk/KonsumentenService -> RTR-NetTest). In this way users have the opportunity to test their internet connections.

RTR's legal mandate for offering the NetTest is set forth in Art. 17 Paragraphs 4 and 5 of the Telecommunications Act 2003 (TKG 2003).

In addition to the RTR-NetTest version for browsers, a mobile version is available for Android devices. As outlined in the following, the RTR-NetTest consists of two tests that can be used entirely independently of each other.



The first test (RTR multithreaded broadband or RMB test) measures latency (by pinging), download and upload data rates as well as signal strength (mobile version only). The second, optional test (Network Diagnostic Tool by the M-Lab research platform, NDT test) for technically-oriented users provides greater detail and measures additional quality parameters.

Features of the RTR-NetTest include:

- Map showing previous test results
- Statistical comparison of all internet providers based on all tests completed, including various filters
- Measurement results rated on traffic light system, with green signifying a good, yellow a moderate and red a poor result
- Option of displaying aggregated results for various devices in a browser
- Display of individual user's test history
- Extensive help with background information listing potential causes of a poor connection

In the next stage it is planned to develop the RTR-NetTest for additional platforms (e.g. other operating systems and form factors) and to add other functions.

11.3 Public relations and service

The regulatory activities of the Austrian Communications Authority (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. Consequently, numerous public relations activities took place in 2012 in order to ensure transparency and to meet public needs for information.

The key medium for the regulatory authority's public relations work is the website. At www.rtr.at comprehensive documentation is provided, of the regulatory authorities' activities as well as of changes in markets, in the areas of media, telecommunications, electronic signatures, subsidies and postal services. Decisions as well as information on regulatory activities and grant administration that is designated for disclosure are regularly published on the RTR website. Subscribers to the RTR newsletter at www.rtr.at/en/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 appearing each year. RTR's annual Communications Report covers activities of RTR, the Austrian Digitisation Fund, the Austrian Television Fund, the Private Broadcasting Fund and of the Non-Commercial Broadcasting Fund in accordance with statutory reporting requirements, and provides a record of the authority's regulatory work as well as an overview of developments in the telecommunications and media markets.

The activity report of the conciliation body discusses the major problems during the year under review and provides a detailed picture of developments in the arbitration of disputes involving end users.

The RTR Telecom Monitor, which appears four times a year, is based on data collected by RTR for the fixed network, leased line, mobile telecommunications and broadband markets. One issue of the RTR Telecom Monitor (Annual Review) additionally includes international comparisons. RTR's regular media and telecommunications newsletter (RTR Aktuell) provides timely information on regulatory decisions and official activities of the authority's two divisions as well as concerning international topics of relevance for the regulatory environment.

Furthermore, two issues of RTR's publication series appeared in 2012, the year under review: one entitled "TV programming analysis – full-range channels in Austria 2011" and the other "On the quality of private broadcasting – research for the evaluation of the Austrian Private Broadcasting Fund".

All publications are made available as PDF documents on the RTR website under Competence Centre.

Events

The regulatory authority conveys relevant information to market participants and a broader audience at national and international levels through the presentation activities of selected RTR employees and by organising numerous professional conferences, discussion forums and workshops. Particularly worth mentioning are: seven information events on the Act on Transparency in Media Cooperation and Funding held for legal entities subject to reporting requirements, the eighth annual Austrian Broadcasting Forum on the topic of "Intellectual property law in electronic media", and the 13th Salzburg Telecom Forum, which addressed the question "Ultra-fast internet – are we achieving the goals of the Digital Agenda?".

Enquiry management

Every day, RTR receives a large number of enquiries in writing and by telephone, most of which are answered individually. In the year under review, more than 3,572 written requests were addressed to rtr@rtr.at, which represents an increase of 16% compared to the previous year. The subjects of enquiries relate to the entire scope of the regulatory authorities' activities, although during the year under review, as in previous years, the bulk of written enquiries involved concerns relating to end users, such enquiries having dropped by 25%, from 3,067 in 2011 to 2,325.

Table 27: Enquiries addressed to rtr@rtr.at, 2010 to 2012

Year	2010	2011	2012
Number of enquiries	3,406	4,263	3,572

Source: RTR

End users seeking initial advice on issues such as telephone bill disputes, conciliation procedures or mobile data services are served by the RTR call centre at 0810 511 811. As for written enquiries addressed to rtr@rtr.at, there has been a major drop in call centre enquiries. In 2012 the RTR call centre received 4,909 calls, about 25% fewer than in the previous year.

Table 28: Call centre enquiries, 2010 to 2012

Year	2010	2011	2012
Number of calls	5,818	6,578	4,909

Source: RTR



Media relations

In order to provide the public with timely and accurate information on the authorities' activities, as well as on regulatory and other legal decisions taken by the organisation, during the year under review RTR prepared a great number of press releases and held press conferences, in addition to answering numerous press enquiries and giving individual interviews to media representatives.

Social media: Twitter

RTR has been using Twitter, the social media platform, since October 2012. By way of supplementing the information services described above, in numerous cases tweets containing links to information about publications and activities were sent out. RTR's Twitter page can be viewed at <https://twitter.com/RTRGmbH>.



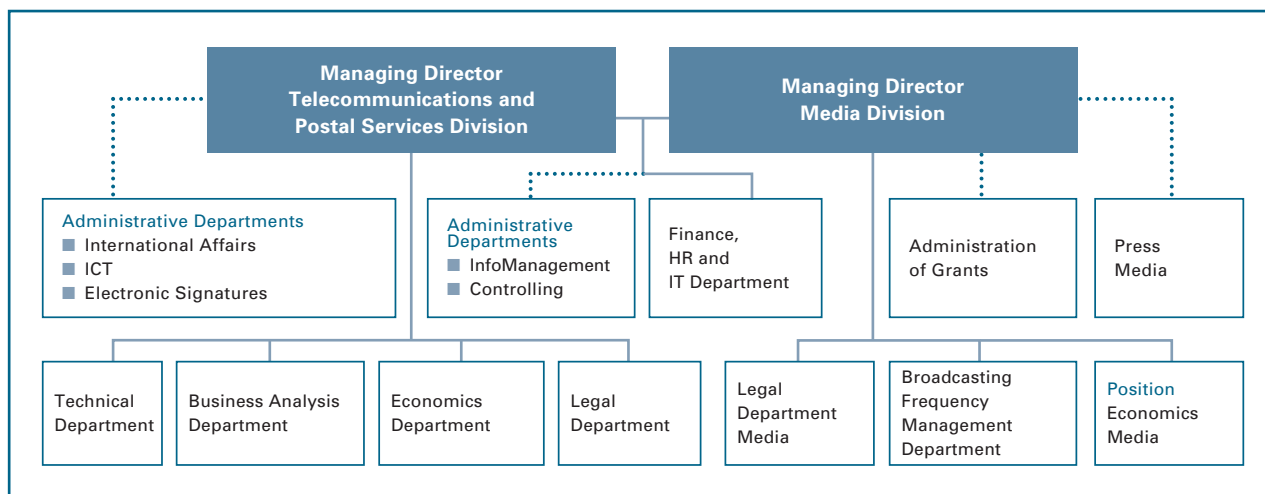
12 The company

The Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) 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 Austria 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.

RTR is a regulatory institution under the sole ownership of the Republic of Austria. The authority is headed by two managing directors and is subdivided into two specialist divisions. During the year under review, Alfred Grinschgl was responsible for the Media Division, including all grant administration, while Georg Serentschky was in charge of the Telecommunications and Postal Services Division.

RTR’s organisational structure is depicted in the chart below.

Figure 50: RTR organisation chart



Source: RTR

12.1 Staff development

RTR’s human resources strategy is aligned with the goal of ensuring the company’s success as a result of an above-average level of commitment on the part of every staff member. This goal is supported by consistent staff development measures, each targeting a specific focus. Continuous training in response to current needs is a key factor in this context. Such training, which supports RTR’s staff in developing both professional and personal competencies, is a prerequisite for superior performance at work and for continued motivation.

In 2012, the Media Division received the additional statutory mandate to implement measures for the Act on Transparency in Media Cooperation and Funding (MedKF-TG). A team of staff members was subsequently recruited to fulfil these responsibilities. These new staff members account for the main increase in the number of full-time equivalents (FTEs) in the area of media regulation.

An additional half-time position was also created for the Non-Commercial Broadcasting Fund and the Private Broadcasting Fund. The endowments to these funds were increased.

The average increase in FTEs working in the Media Division was by 2.10 and was mostly attributed to the factors mentioned above.

There were no significant changes in FTEs active in the Austrian Television Fund and in the Austrian Digitisation Fund.

As a result of increased involvement at the international level and the term of service as chair of the Body of European Regulators for Electronic Communications (BEREC), a staff increase in the area of international activities was necessary.

In implementation of an EU Directive, the amendment to the TKG in 2011 stipulated additional responsibilities in the area of network security for the Telecommunications and Postal Services Division.

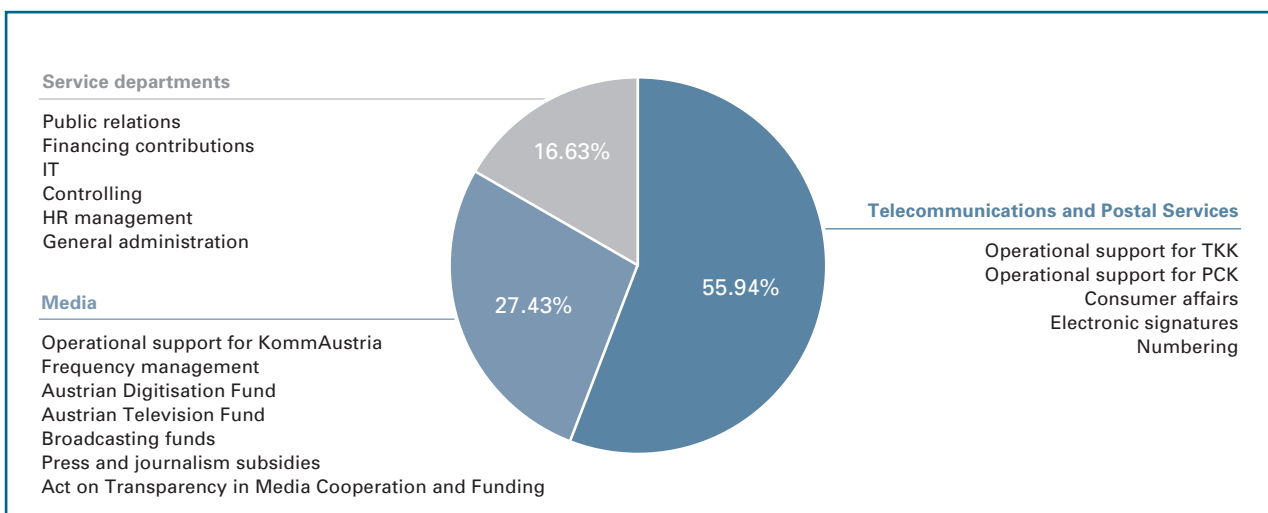
To meet these responsibilities, the number of FTEs in the Telecommunications Division was subsequently increased by 1.68.

The number of FTEs active in post regulation was kept at almost the same level as in the previous year.

Despite an increased RTR headcount and additional tasks (e.g. activities stipulated by the MedKF-TG and expansion of IT infrastructure mobility), the number of FTEs working in the service area nonetheless decreased by an average of 0.63 during the period under review.

On average in 2012, a total of 105.60 FTEs were employed at RTR on the basis of an employment contract with the authority. With an average increase of 3.15 FTEs over the previous year, RTR was able to fulfil the new responsibilities taken on during the period under review.

Figure 51: Staff structure and size as of 31 December 2012



Source: RTR

12.2 RTR's financial statements for 2012

The financial statements presented below were prepared in accordance with the Austrian Commercial Code (UGB) as amended.

The external auditors at Deloitte Audit Wirtschaftsprüfung GmbH have issued an unqualified audit certificate confirming RTR's financial statements for the 2012 business year (1 January to 31 December 2012).

From RTR's financial statements, the profit and loss statement and balance sheet are presented below.

The regulatory authority's activities are funded by various sources, and funding for both divisions is governed by the KOG.

RTR's two divisions receive both federal funding, to finance those tasks which are primarily in the public interest, and contributions from the relevant sectors of media, telecommunications and postal services, since market participants are required by law to contribute a portion of the funding required for the organisation's regulatory activities in those sectors. These contributions are adjusted for inflation and limited to a maximum amount.

In addition to its regulatory activities, RTR also has responsibilities relating to grants and subsidies. Specifically, RTR administers various grant funds consisting of federal government endowments.

In order to ensure that the funding objectives specified in each case are fulfilled, grants from the Austrian Digitisation Fund, the Austrian Television Fund, the Private Broadcasting Fund and the Non-Commercial Broadcasting Fund are allocated according to guidelines, which are notified to the European Commission.

The expenses incurred in the administration of these funds are separately itemised and reimbursed to RTR accordingly from each 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 30 June of the following year.

For more information on the accounting of grant funds, refer to Chapter 6.

In addition, RTR provides operational support for the fulfilment of supervisory duties under the Signatures Act (SigG). For these services the authority collects fees, the total of which is not, however, sufficient to cover the costs incurred. The amount lacking is reimbursed by an annual subsidy of EUR 90,000.00 from the federal budget.

The company's revenues are thus made up of contributions from these sources: 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); postal service providers that are subject to the notification requirement under Art. 25 Postal Market Act (PMG) or that hold a licence under Art. 26 PMG (Art. 34a Par. 2 KOG); 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 fee revenues (Art. 13 Par. 4 SigG).

RTR closed the 2012 business year (1 January to 31 December 2012) with a balanced result.

Table 29: Profit and loss statement for the business year from 1 January to 31 December 2012

	2012		2011	
		EUR		EUR (thousands)
1. Net revenues		12,352,232.92		11,872
2. Other operating income				
a) Income from disposal of fixed assets (excluding financial assets)	724.02		12	
b) Income from release of provisions	10,240.42		13	
c) Other	789,860.96	800,825.40	715	740
3. Personnel expenses				
a) Salaries	-6,711,993.70		-6,227	
b) Severance payment expenses and payments to staff provision funds	-118,538.94		-85	
c) Pension insurance expenses	-222,512.01		-201	
d) Statutory social insurance contributions as well as salary-dependent charges and mandatory contributions	-1,652,147.64		-1,564	
e) Voluntary benefits	-111,147.24	-8,816,339.53	-104	-8,181
4. Depreciation, amortisation and write-downs				
a) Tangible and intangible fixed assets		-284,938.09		-246
5. Other operating expenses				
a) Other	-4,202,798.58	-4,202,798.58	-4,364	-4,364
6. Operating result		-151,017.88		-179
7. Income from other securities held as financial assets		102,317.13		55
8. Miscellaneous interest and similar income		32,819.92		31
9. Income from disposal and write-up of financial assets		20,846.90		42
10. Financial result		155,983.95		128
11. Result from ordinary activities		4,966.07		-51
12. Taxes on income		-15,462.95		0
13. Net annual loss		-10,496.88		-51
14. Release of capital reserves				
a) Release of appropriated capital reserves		10,496.88		11
15. Loss for current year		0.00		-40
16. Profit carried forward		0.00		40
17. Unappropriated income		0.00		0

Source: RTR

Sector-specific expenses in RTR's specialist divisions

RTR does not prepare annual financial statements showing a breakdown of funding use by division. For this reason, Table 30 below provides a breakdown of the main items listed in RTR's profit and loss statement for the Telecommunications and Postal Services Division and the Media Division. In the 2012 business year, income and expenses were distributed as follows:

Table 30: RTR income and expenses by division

Figures in EUR (thousands)	Telecommunications and Postal Services	Media	TOTAL
Net revenues	7,627	4,725	12,352
Other operating revenues	19	782	801
Personnel expenses	-5,803	-3,013	-8,816
Depreciation, amortisation and write-downs	-195	-89	-284
Other operating expenses	-1,747	-2,456	-4,203
Operating result	-99	-51	-150
Financial result	99	56	155
Result from ordinary activities	0	5	5
Taxes on income	-10	-5	-15
Net annual loss	-10	0	-10
Release of capital reserve	10	0	10
Profit carried forward	0	0	0
Unappropriated income	0	0	0

Source: RTR

The table below shows RTR's income and expenses for the individual areas of activity of each division. Within the Telecommunications and Postal Services Division, these are telecommunication regulation, electronic signatures and postal services regulation; and the areas within the Media Division are media regulation, Austrian Digitisation Fund, Austrian Television Fund and broadcasting funds.

Table 31: Profit and loss statement broken down by specific area of activity for the business year from 1 January to 31 December 2012

Figures in EUR	RTR TOTAL	Telecom regulation	Electronic signatures
1. Net revenues	12,352,232.92	6,850,514.19	99,989.01
2. Other operating income	800,825.40	18,125.63	92.90
3. Personnel expenses	-8,816,339.53	-5,228,503.47	-85,482.05
4. Amortisation, write-downs and depreciation of tangible and intangible fixed assets	-284,938.09	-175,652.91	-3,687.20
5. Other operating expenses	-4,202,798.58	-1,545,151.81	-22,542.81
6. Operating result	-151,017.88	-80,668.37	-11,630.15
7. Income from other securities held as financial assets	102,317.13	58,921.56	832.37
8. Miscellaneous interest and similar income	32,819.92	18,697.33	258.88
9. Income from disposal and write-up of financial assets	20,846.90	11,855.63	162.61
10. Financial result	155,983.95	89,474.52	1,253.86
11. Result from ordinary activities	4,966.07	8,806.15	-10,376.29
12. Taxes on income	-15,462.95	-8,806.15	-120.59
13. Net annual loss	-10,496.88	0.00	-10,496.88
14. Release of capital reserves	10,496.88	0.00	10,496.88
15. Result for current year	0.00	0.00	0.00
16. Profit carried forward	0.00	0.00	0.00
17. Unappropriated income	0.00	0.00	0.00

Figures in EUR	Postal service regulation	Media regulation	Digitisation Fund
1. Net revenues	676,375.64	3,587,364.85	139,244.88
2. Other operating income	615.19	779,426.17	594.25
3. Personnel expenses	-489,174.57	-2,251,949.00	-113,751.16
4. Amortisation, write-downs and depreciation of tangible and intangible fixed assets	-16,326.82	-73,095.73	-2,288.48
5. Other operating expenses	-178,926.50	-2,079,937.06	-25,397.03
6. Operating result	-7,437.06	-38,190.77	-1,597.54
7. Income from other securities held as financial assets	5,436.97	27,551.40	1,226.53
8. Miscellaneous interest and similar income	1,717.85	9,123.17	326.90
9. Income from disposal and write-up of financial assets	1,088.21	5,841.30	168.86
10. Financial result	8,243.03	42,515.87	1,722.29
11. Result from ordinary activities	805.97	4,325.10	124.75
12. Taxes on income	-805.97	-4,325.10	-124.75
13. Net annual loss	0.00	0.00	0.00
14. Release of capital reserves	0.00	0.00	0.00
15. Result for current year	0.00	0.00	0.00
16. Profit carried forward	0.00	0.00	0.00
17. Unappropriated income	0.00	0.00	0.00

Figures in EUR

	Austrian Television Fund	Broadcasting funds
1. Net revenues	587,009.66	411,734.69
2. Other operating income	559.07	1,412.19
3. Personnel expenses	-430,230.47	-217,248.81
4. Amortisation, write-downs and depreciation of tangible and intangible fixed assets	-8,363.21	-5,523.74
5. Other operating expenses	-155,690.85	-195,152.52
6. Operating result	-6,715.80	-4,778.19
7. Income from other securities held as financial assets	4,950.21	3,398.09
8. Miscellaneous interest and similar income	1,520.08	1,175.71
9. Income from disposal and write-up of financial assets	952.70	777.59
10. Financial result	7,422.99	5,351.39
11. Result from ordinary activities	707.19	573.20
12. Taxes on income	-707.19	-573.20
13. Net annual loss	0.00	0.00
14. Release of capital reserves	0.00	0.00
15. Result for current year	0.00	0.00
16. Profit carried forward	0.00	0.00
17. Unappropriated income	0.00	0.00

Source: RTR

Table 32a: Balance sheet as at 31 December 2012 – assets

	December 31, 2012		December 31, 2011	
	EUR		EUR (thousands)	
A. Fixed assets				
I. Intangible assets				
1. Rights	224,955.04		203	
2. Prepayments on intangible assets	32,520.80	257,475.84	26	229
II. Tangible assets				
1. Buildings on third-party land	96,627.71		132	
2. Other equipment, operating and office equipment	268,221.27	364,848.98	205	337
III. Financial assets				
1. Securities held as financial assets		3,391,480.61		3,371
		4,013,805.43		3,937
B. Current assets				
I. Receivables and other assets				
1. Trade receivables	726,800.55		791	
2. Other receivables and assets	418,336.40	1,145,136.95	397	1,188
II. Cash in hand and at banks		2,881,824.59		3,329
		4,026,961.54		4,517
C. Deferred income		75,952.66		82
D. Trustee accounts – funds		19,466,808.85		22,306
		27,583,528.48		30,842

Source: RTR

Table 32b: Balance sheet as at 31 December 2012 – liabilities

	December 31, 2012		December 31, 2011	
	EUR		EUR (thousands)	
A. Equity				
I. Capital stock	3,633,641.71		3,634	
II. Capital reserves				
1. Appropriated	42,749.56		53	
III. Net retained profits/accumulated losses	0.00	3,676,391.27	0	3,687
B. Provisions				
1. Provisions for severance payments	213,610.00		178	
2. Other provisions	1,476,230.00	1,689,840.00	1,337	1,515
C. Liabilities				
1. Trade payables	297,763.77		843	
2. Other payables	2,335,625.55	2,633,389.32	2,443	3,286
(taxes payable: EUR 390,269.78 [2011: EUR 399,000]; social security obligations: EUR 155,996.50 [2011: EUR 157,000])				
D. Trustee obligations – funds		19,583,907.89		22,354
		27,583,528.48		30,842

Source: RTR

The company's equity as at December 31, 2012 was as follows:

Table 33: Equity as at 31 December 2012

Figures in EUR		
Capital stock as at 31 December 2012		3,633,641.71
Capital reserves as at 31 December 2012		42,749.56
Loss from performance of duties under SigG (1 January to 31 December 2012)	-10,496.88	
= Loss for current year	-10,496.88	
Release of capital reserve	10,496.88	
Profit carried forward	0.00	
Retained profit		0.00
Equity as at 31 December 2012		3,676,391.27

Source: RTR

12.3 The RTR Supervisory Board

During 2012, the year under review, the Supervisory Board of RTR consisted of members as follows:

Harald Glatz, Federal Chancellery (BKA)
Chair of the Supervisory Board

August Reschreiter, Federal Ministry of Transport, Innovation and Technology (BMVIT)
Deputy Chair of the Supervisory Board

Alfred Ruzicka (BMVIT)
Matthias Traimer (BKA)
Erhard Fürst (TKK)
Michael Ogris (KommAustria)
Brigitte Hohenecker, staff representative
Martin Ulbing, staff representative
Dieter Staudacher, staff representative







13 Appendix

13.1 Tables and figures

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13.2 Abbreviations

3D	Three-dimensional
3G	Third generation (UMTS)
4G	Fourth generation (LTE)

A

A1 Telekom	A1 Telekom Austria AG
ABGB	Austrian General Civil Code (<i>Allgemeines Bürgerliches Gesetzbuch</i>)
AGB	General terms and conditions (<i>Allgemeines Bürgerliches Gesetzbuch</i>)
AGTT	TELETEST Working Group
AIM	Austrian Internet Monitor
AMD-G	Audiovisual Media Services Act (<i>Audiovisuelles Mediendienste-Gesetz</i>)
APEK	Post and Electronic Communications Agency of the Republic of Slovenia
Art.	Article
A-Trust	A-Trust Gesellschaft für Sicherheitssysteme im elektronischen Datenverkehr GmbH
ATV	ATV Privat TV GmbH & Co KG
AVG	General Administrative Procedure Act 1991 (<i>Allgemeines Verwaltungsverfahrensgesetz 1991</i>)

B

BEREC	Body of European Regulators for Electronic Communications
BKA	Federal Chancellery (<i>Bundeskanzleramt</i>)
BKS	Federal Communications Board (<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>)
BNetzA	German Federal Network Agency (<i>Bundesnetzagentur</i>)
B-VG / BVG	Federal Constitutional Act (<i>Bundesverfassungsgesetz</i>)
BVG MedKF-T	Federal Constitutional Act on Media Cooperation and Media Funding (<i>Bundesverfassungsgesetz Medienkooperation und Medienförderung</i>)
BWB	Federal Competition Authority (<i>Bundeswettbewerbsbehörde</i>)

C

CATI	Computer-assisted telephone interview
CEPT	Conférence Européenne des Administrations des Postes et des Télécommunications
CPG PT	Conference Preparatory Group Project Team
CSP	Certification service provider



D

DAB	Digital audio broadcasting
DRM	Digital Radio Mondiale / digital rights management
DSL	Digital subscriber line
DVB-C	Digital video broadcasting – cable
DVB-T	Digital video broadcasting – terrestrial

E

EaP	Eastern Partnership
EC	European Community
ECC	Electronic Communications Committee
ECG	E-Commerce Act (<i>E-Commerce-Gesetz</i>)
EEA	European Economic Area
EEN-V 2011	Itemised Billing Ordinance 2011 (<i>Einzelentgeltnachweis-Verordnung 2011</i>)
E-GovG	E-Government Act (<i>E-Government-Gesetz</i>)
ENISA	European Network and Information Security Agency
ERG	European Regulators Group
ERGP	European Regulators Group for Post
EU	European Union
EuGH	European Court of Justice (<i>Europäischer Gerichtshof</i>)

F

FAQs	Frequently asked questions
FBZV	Frequency Range Allocation Ordinance (<i>Frequenzbereichszuweisungsverordnung</i>)
FDD	Frequency division duplex
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	Frequency modulation
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

G

GB	Gigabyte
Gbps	Gigabits per second
GE06	Geneva Agreement 2006
GE84	Geneva Agreement 1984
GfK Austria	GfK Austria GmbH
GHz	Gigahertz
gotv	gotv Fernseh-GmbH
GPA-djp	Union of Salaried Private Sector Employees and of Printers, Journalists and Paper Workers (<i>Gewerkschaft der Privatangestellten, Druck, Journalismus, Papier</i>)

H

HbbTV	Hybrid broadcast broadband TV
HD	High definition
HSPA	High speed packet access
Hutchison 3G	Hutchison 3G Austria GmbH



I

ICT	Information and communications technology
IFES	Institute for Empirical Social Research (<i>Institut für empirische Sozialforschung</i>)
IIHF	International Ice Hockey Federation
IP	Internet protocol
IRG	Independent Regulators Group
ISDN	Integrated services digital network
ITU	International Telecommunication Union

K

KartG 2005	Cartels Act 2005 (<i>Kartellgesetz 2005</i>)
kbps	Kilobits per second
KEM-V	Communications Parameters, Fees and Value-Added Services Ordinance (<i>Kommunikationsparameter-, Entgelt- und Mehrwertdiensteverordnung</i>)
KEM-V 2009	Communications Parameters, Fees and Value-Added Services Ordinance 2009 (<i>Kommunikationsparameter-, Entgelt- und Mehrwertdiensteverordnung 2009</i>)
KEV	Communications Survey Ordinance (<i>Kommunikations-Erhebungs-Verordnung</i>)
KIG	Internet Society Competence Centre (<i>Kompetenzzentrum Internetgesellschaft</i>)
KOG	KommAustria Act (<i>KommAustria-Gesetz</i>)
KommAustria	Austrian Communications Authority (<i>Kommunikationsbehörde Austria</i>)
KostbeV	Cost Limitation Ordinance (<i>Kostenbeschränkungsverordnung</i>)
KSchG	Consumer Protection Act (<i>Konsumentenschutzgesetz</i>)
kW	Kilowatt

L

LIWEST	LIWEST Kabelmedien GmbH
LRIC	Long-run incremental costs
LTE	Long term evolution

M

MB	Megabyte
Mbps	Megabits per second
MDF	Main distribution frame
MedKF-TG	Act on Transparency in Media Cooperation and Funding (<i>Medienkooperations- und -förderungs-Transparenzgesetz</i>)
MHz	Megahertz
MitV	Information Requirement Ordinance (<i>Mitteilungsverordnung</i>)
MIZ	Measures, indicators, target values
MMS	Multimedia messaging service
MNO	Mobile network operator
MTUs	Multi-topic surveys (<i>Mehr-Themen-Umfragen</i>)
Multikom	Multikom Austria Telekom GmbH
MUX	Multiplexer
MUX-AG-V 2011	Multiplex Operator Selection Principles Ordinance 2011 (<i>MUX-Auswahlgrundsätzeverordnung 2011</i>)
MVNO	Mobile virtual network operator

N

NDT	Network diagnostic tool
NGA	Next generation access
NGN	Next generation network



No.	Number
NRI	Networked Readiness Index
NÜV 2012	Number Porting Ordinance 2012 (<i>Nummernübertragungsverordnung 2012</i>)
NÜVI	Number porting information (<i>Nummernübertragungsinformation</i>)

O

OECD	Organisation for Economic Co-operation and Development
OGH	Austrian Supreme Court of Justice (<i>Oberster Gerichtshof</i>)
OJ	Official Journal
Orange	Orange Austria Telecommunication GmbH
ORF	Austrian Broadcasting Corporation (<i>Österreichischer Rundfunk</i>)
ORF-G	ORF Act (<i>ORF-Gesetz</i>)
ORS	Österreichische Rundfunksender GmbH & Co KG
ÖZV	Austrian Magazine Association (<i>Österreichischer Zeitschriftenverband</i>)

P

Par.	Paragraph
PCC	Concordia Press Club (<i>Presseclub Concordia</i>)
PCK	Post-Control-Kommission
PDH	Plesiochronous digital hierarchy
PLC	Power line communications
PMG	Postal Market Act (<i>Postmarktgesetz</i>)
POTS	Plain old telephone service
PPDR	Public protection and disaster relief
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>)
PSP	Postal service point
PubFG	Journalism Subsidies Act 1984 (<i>Publizistikförderungsgesetz 1984</i>)
PULS 4	PULS 4 TV GmbH & Co KG

R

REM	Research Institute for Electronic Mass Media Law (<i>Forschungsinstitut für das Recht der elektronischen Massenmedien</i>)
RFMVO 2009	Broadcasting Market Definition Ordinance 2009 (<i>Rundfunkmarktdefinitionsverordnung 2009</i>)
RGG	Broadcasting Fees Act (<i>Rundfunkgebührengesetz</i>)
RMB	RTR multithreaded broadband
RRV 2009	Broadcasting Reference Rate Ordinance 2009 (<i>Rundfunk-Richtsatzverordnung 2009</i>)
RTR	Austrian Regulatory Authority for Broadcasting and Telecommunications (<i>Rundfunk und Telekom Regulierungs-GmbH</i>)

S

SAT	Satellite
SAT.1	Sat.1 Privatrundfunk und Programmgesellschaft mbH
SDH	Synchronous digital hierarchy
SE PT	Spectrum Engineering Project Team
ServusTV	ServusTV Fernsehgesellschaft m.b.H.
SG	Study group
SigG	Signatures Act (<i>Signaturgesetz</i>)
SigV 2008	Signatures Ordinance 2008 (<i>Signaturverordnung 2008</i>)
SIM	Subscriber identity module
SKP-V 2012	Special Communications Parameters Ordinance 2012 (<i>Spezielle Kommunikationsparameter-Verordnung 2012</i>)



SMS	Short messaging service
SWR	Southwest Broadcasting (<i>Südwestrundfunk</i>), Germany

T

TAIEX	Technical Assistance and Information Exchange Instrument
T-DAB	Terrestrial digital audio broadcasting
TDD	Time division duplex
Tele2	Tele2 Telecommunication GmbH
TG	Task group
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>)
TMC	Traffic message channel
T-Mobile	T-Mobile Austria GmbH
TPEG	Transport Protocol Expert Group
TRV 2009	Telecommunications Reference Rate Ordinance 2009 (<i>Telekom-Richtsatzverordnung 2009</i>)
TV	Television

U

UDV	Universal Service Ordinance (<i>Universaldienstverordnung</i>)
UGB	Commercial Code (<i>Unternehmensgesetzbuch</i>)
UHF	Ultra high frequency
UMTS	Universal mobile telecommunications system
UPC	UPC Austria GmbH
ÜVO	Monitoring Ordinance (<i>Überwachungsverordnung</i>)
UVS	Independent Administrative Tribunal (<i>Unabhängiger Verwaltungssenat</i>)

V

VAT	Value added tax
VBKG	Cooperation of Consumer Protection Authorities Act (<i>Verbraucherbehörden-Kooperationsgesetz</i>)
VfGH	Constitutional Court (<i>Verfassungsgerichtshof</i>)
VFRÖ	Association of Independent Radio Broadcasters (<i>Verband Freier Radios Österreichs</i>)
VHF	Very high frequency
VoD	Video on demand
VoIP	Voice over internet protocol
VÖP	Austrian Association of Private Broadcasters (<i>Verband Österreichischer Privatsender</i>)
VÖZ	Association of Austrian Newspapers (<i>Verband Österreichischer Zeitungen</i>)
VRM	Association of Austrian Regional Media (<i>Verband der Regionalmedien Österreichs</i>)
VStG	Administrative Penal Act (<i>Verwaltungsstrafgesetz</i>)
VwGH	Administrative Court (<i>Verwaltungsgerichtshof</i>)

W

WettbG	Competition Act (<i>Wettbewerbsgesetz</i>)
WiFi	Wireless fidelity
WiMAX	Worldwide interoperability for microwave access
W-LAN	Wireless local area network
WRC	World Radio Conference

Z

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 108/7 of 24 April 2002 as amended by Directive 2009/140/EC, OJ L 337/37 of 18 December 2009)
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 95/1 of 15 April 2010 including the Corrigendum of OJ L 263/15 of 6 October 2010)
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 108/21 of 24 April 2002 as amended by Directive 2009/140/EC, OJ L 337/37 of 18 December 2009)
Competition Directive	Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services (OJ L 249/21 of 17 September 2002)
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 201/37 of 31 July 2002 as amended by Directive 2006/24/EC, OJ L 105/54 of 13 April 2006 and Directive 2009/136/EC, OJ L 337/11 of 18 December 2009)
EU Roaming Regulation	Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union (OJ L 172/10, 30 June 2012)
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 108/33 of 24 April 2002 as amended by Directive 2009/140/EC, OJ L 337/37 of 18 December 2009)
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 364/1 of 9 December 2004 as last amended by Regulation (EU) No 954/2011, OJ L 259/1 of 4 October 2011)
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 13/12 of 19 January 2000 and Regulation (EC) 1137/2008, OJ L 311/1 of 21 November 2008)
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 108/51 of 24 April 2002 as amended by Directive 2009/136/EC, OJ L 337/11 of 18 December 2009)



13.3.2 Austrian legislation

13.3.2.1 Acts

Access Control Act (ZuKG)	<i>(Zugangskontrollgesetz)</i> Federal Act on the Protection of Services Subject to Access Control, Federal Law Gazette I No. 60/2000 as last amended by Federal Law Gazette I No. 32/2001
Act on Transparency in Media Cooperation and Funding (MedKF-TG)	<i>(Medienkooperations- und -förderungs-Transparenzgesetz)</i> 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 Penal Act (VStG)	<i>(Verwaltungsstrafgesetz)</i> Administrative Penal 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)	<i>(Audiovisuelle Mediendienste-Gesetz)</i> Federal Act on Audiovisual Media Services, Federal Law Gazette I No. 84/2001 as last amended by Federal Law Gazette I No. 16/2012
Broadcasting Fees Act (RGG)	<i>(Rundfunkgebührengesetz)</i> Federal Act Enacting a Law on Broadcasting Fees and Amending the Telephone Rates Act, the Broadcasting Ordinance, the Telecommunications Act, the Broadcasting Act, and the Act on Contributions to the Promotion of the Arts, Federal Law Gazette I No. 159/1999 as last amended by Federal Law Gazette I No. 50/2012
Cartels Act 2005 (KartG 2005)	<i>(Kartellgesetz 2005)</i> Federal Act on Cartels and Other Restrictions on Competition, Federal Law Gazette I No. 61/2005 as last amended by Federal Law Gazette I No. 2/2008
Competition Act (WettbG)	<i>(Wettbewerbsgesetz)</i> Federal Act on the Establishment of a Federal Competition Authority, Federal Law Gazette I No. 62/2002 as last amended by Federal Law Gazette I No. 111/2010
Consumer Protection Act (KSchG)	<i>(Konsumentenschutzgesetz)</i> Federal Act Enacting Provisions for the Protection of Consumers, Federal Law Gazette 140/1979 as last amended by Federal Law Gazette I No. 100/2011
Cooperation of Consumer Protection Authorities Act (VBKG)	<i>(Verbraucherbehörden-Kooperationsgesetz)</i> Federal Act on the Cooperation of Authorities in Consumer Protection, Federal Law Gazette I No. 102/2011
E-Commerce Act (ECG)	<i>(E-Commerce-Gesetz)</i> Federal Act Regulating Certain Aspects of Electronic Commercial and Legal Transactions and Amending the Signatures Act and the Civil Procedure Code, Federal Law Gazette I No. 152/2001
E-Government Act (E-GovG)	<i>(E-Government-Gesetz)</i> Federal Act on Provisions Facilitating Electronic Communications with Public Bodies, 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 Broadcasting 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. 65/2012
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 Constitutional Act Ensuring the Independence of Broadcasting, Federal Law Gazette No. 396/1974
General Administrative Procedure Act 1991 (AVG)	<i>(Allgemeines Verwaltungsverfahrensgesetz 1991)</i> General Administrative Procedure 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 Education and Journalism 1984, Federal Law Gazette No. 369/1984 as last amended by Federal Law Gazette I No. 22/2012
KommAustria Act (KOG)	<i>(KommAustria-Gesetz)</i> Federal Act on the Establishment of an Austrian Communications Authority (KommAustria) and a Federal Communications Board, 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. 15/2012
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
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 Act 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 th 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 2009)</i> 12 th Ordinance of the Austrian Communications Authority (KommAustria) on the relevant national markets for broadcasting transmission services for the provision of broadcasting content to end users, subject to sector-specific regulation under the Telecommunications Act 2003 (TKG 2003), Federal Law Gazette I No. 133/2005
Broadcasting Reference Rate Ordinance 2009 (RRV 2009)	<i>(Rundfunk-Richtsatzverordnung 2009)</i> 13 th Ordinance of the Austrian Communications Authority (KommAustria) defining a uniform nationwide reference rate for one-off compensation for the use of lines or systems safeguarded 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 provisions governing communications parameters, fees and value-added services, Federal Law Gazette II No. 212/2009 as last amended by Federal Law Gazette II No. 224/2012
Communications Survey Ordinance (KEV)	<i>(Kommunikations-Erhebungs-Verordnung)</i> Ordinance of the Austrian Federal Minister of Transport, Innovation and Technology specifying statistical surveys on communications, Federal Law Gazette II No. 365/2004 as amended by Federal Law Gazette II No. 104/2012
Cost Limitation Ordinance (KostbeV)	<i>(Kostenbeschränkungsverordnung)</i> RTR Ordinance specifying measures for cost control and cost limitation for subscribers using telecommunications service, Federal Law Gazette II No. 45/2012
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, 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
Information Requirement Ordinance (MitV)	<i>(Mitteilungsverordnung)</i> RTR Ordinance specifying the level of detail, the content and the form of notification of not exclusively favourable changes as specified in Art. 25 Par. 3 of the Telecommunications Act 2003 (TKG 2003), Federal Law Gazette II No. 239/2012.
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 th Ordinance of the Austrian Communications Authority (KommAustria) specifying the selection principles for issuing terrestrial multiplex licenses for digital television, 2011.
Number Porting Ordinance 2012 (NÜV 2012)	<i>(Nummernübertragungsverordnung)</i> RTR Ordinance concerning number porting among mobile phone service operators, Federal Law Gazette II No. 48/2012
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 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 2012 (SKP-V 2012)	<i>(Spezielle Kommunikationsparameter-Verordnung)</i> RTR Ordinance defining a partial plan for communications parameters, Federal Law Gazette II No. 225/2012
Telecommunications Markets Ordinance 2008 (TKMV 2008)	<i>(Telekommunikationsmärkteverordnung 2008)</i> RTR Ordinance identifying the relevant national markets subject to sector-specific regulation in the telecommunications sector, Federal Law Gazette II No. 05/2008 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 safeguarded 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



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