

Communications Report 2013

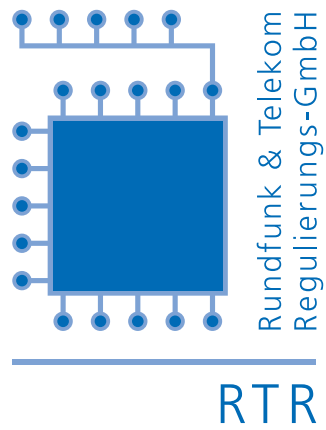









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Preface

Dear readers,

In a world that is becoming increasingly complex, the regulatory authorities for broadcasting, telecommunications and postal services view themselves as partners to all market participants and interest groups, and as service centres for consumers. By fulfilling our regulatory duties and by proactively addressing prospective future issues, we promote a functioning system of sustained competition and ensure the superior quality of products and services – in accordance with our mission statement: “We stand for competition and media diversity”.

We look back on an eventful year: this is true not only with regard to those topics that rather frequently put us in the daily newspapers, which included the multiband auction and the implementation of the Act on Transparency in Media Cooperation and Funding. We have a highly diverse portfolio of responsibilities. The Communications Report that we publish each year meets all statutory reporting requirements under the KommAustria Act (KOG) and the Telecommunications Act 2003 (TKG 2003). This report documents the activities of the regulatory authorities in 2013 in these areas: media, Digitisation Fund, Austrian Television Fund, Non-Commercial Broadcasting Fund, Private Broadcasting Fund, press and journalism subsidies, electronic signature, and postal services and telecommunications. It provides information on activities carried out in our capacity as competence centre as well as reporting on changes and trends in the communications markets. The report also provides insight into RTR as an organisation managed in line with private-sector principles that, in accordance with its public mandate, is committed to the principles of economy, efficiency and expediency. We publish this report in the hope that it will make our efforts more transparent and ‘measurable’ for the interested public and be helpful in clarifying certain decisions taken by the regulatory authorities.

We sincerely hope that this publication provides you with interesting and informative reading.

Vienna, June 2014

Elfriede Solé
Chairperson
Telekom-Control-Kommission and
Post-Control-Kommission

Michael Ogris
Chairperson
Austrian Communications Authority

Alfred Grinschgl
CEO
Media Division
RTR

Johannes Gungl
CEO
Telecommunications and Postal Services Division
RTR





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 this 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 of the 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.

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) 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. 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 media grants in accordance with Austrian federal law (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).

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

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

All of the activities of KommAustria and of RTR's Media Division in the year 2013 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) were once again a major part of the authority's efforts to establish a dual broadcasting market in 2013, and the number of procedures and parties involved was largely comparable to previous years.


As in previous years, the licensing procedures carried out for terrestrial radio broadcasting were divided between renewed invitations to tender for coverage areas, i.e. on expiry or relinquishing of licenses, and procedures tied to applications. In addition, a large number of applications from already licensed broadcasters to expand their existing coverage areas 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 2013 resulted from the expansion of the technical range of KRONEHIT, a nationwide radio broadcaster, along with the renewed invitation to tender for that licence, which is scheduled to expire in 2014.

In the field of digital television, the expansion of national, regional and local digital terrestrial television coverage continued. Three nationwide multiplex platforms for digital terrestrial broadcasting in DVB-T (MUX D, MUX E and MUX F) went into operation as of April 2013, which together (re-) transmit a total of 29 channels.

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 presented other major developments in the area of broadcasting digitisation (refer to Section 5.1).

Through the 2013 Digitisation Plan, which entered into effect as of 1 May 2013, KommAustria has continued expansion of the digital terrestrial television service by renewed allocation of MUX A and MUX B, and prolonged the option of inviting tenders for digital radio multiplexes.

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 national level, applications are reviewed for compatibility with previously allocated frequencies. At 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, the launch of new content services and the enlargement of existing services by the ORF and its subsidiaries have an impact on media and opinion diversity as well as on the ORF's potential competitors; particularly prominent in this regard is the procedure concerning the expansion and commercial use of the ORF TVthek (TVthek.ORF.at).

Such activities to regulate market access for content services, in which ensuring diversity of opinions is a key concern, are 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, private broadcasters, and now also audiovisual media services on the internet. These activities serve to encourage pluralism in the Austrian media landscape as well as 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 Exclusive Television Rights Act (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 2013 was in the continually expanding area of legal supervision. 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 grants by public organisations. In accordance with the objectives of the KOG, this responsibility also supports media diversity, by facilitating the transparency of fund transfers to media owners. More than 5,500 legal entities prepared such reports and published them in line with legal requirements. In cases of failure to publish reports or of publishing incorrect reports, corresponding administrative penal procedures were required, with the number of procedures needing to be launched falling from one reporting stage to the next until finally no procedures were required.

Supervisory procedures continue to be a focus of activities in the regulation of media services; such procedures involved the failure to provide notification of changes in ownership or programming, failure to launch operations, and the legal must-carry requirement for cable networks. In addition, the authority received complaints regarding the ORF again in 2013. Mention should also be made of assessment procedures against the ORF on account of legal infringements.

The ORF Act also calls for further official measures related to content monitoring, which were also handled by KommAustria in 2013. 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). KommAustria fulfils the latter responsibility through a specifically appointed audit commission pursuant to Art. 40 ORF-G.

Mention should be especially made of the ongoing monitoring that was also carried out in 2013, involving 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' compliance with advertising regulations. A focus of highly intensive activity in this area in 2013 was monitoring of the total annual time dedicated to advertising by the ORF eins channel.

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 in the area of infrastructure, as specified by 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 2013, KommAustria completed its ongoing market analysis procedures with regard to the three markets specific to broadcasting.

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.

A number of examples to illustrate the activities of the regulatory authority in 2013 are presented below. Additional, more detailed information on each topic can be found in the relevant sections of the report.

Market definition and analysis

The market definition and market analysis procedures as specified in Art. 36 Telecommunications Act 2003 (TKG 2003) serves the purpose of identifying the relevant markets subject to sector-specific regulation and to determine whether one or more undertakings have significant market power, or whether effective competition prevails on those markets. Depending on the outcome, it may be necessary to decide whether to withdraw, maintain, amend or impose specific obligations. In this context, the regulatory authority is responsible for identifying the relevant markets subject to sector-specific regulation according to national circumstances and in accordance with the principles of general competition law, with due attention to any special geographical circumstances regarding the competitive situation and to the requirements of sector-specific regulation. This undertaking is aligned with the provisions of EU law.

Physical access to network infrastructure

In the wake of a landmark Telekom-Control-Kommission (TKK) decision, since confirmed by the Constitutional Court, concerning the expansion of broadband service in Austria, the TKK issued a decision on 16 December 2013 in the M 1.1/12 procedure that defines a new adapted set of rules, which also includes in the scope of regulation the fibre optics network downstream to end users (FTTH) and additionally encompasses terms under competition law to regulate the deployment of VDSL2 vectoring technology.

In-depth discussions on the subject of the price controls to be prescribed took place with the European Commission and with the Body of European Regulators for Electronic Communications (BEREC) during the latter half of 2013. During these discussions the European Commission recommended that the TKK undertake fundamental revisions of the envisaged price controls – even though the expert committee instated by BEREC fully supported the TKK's position. Following a careful review, the TKK finally decided to remain with the original decision and included detailed justification, and did not follow the Commission's recommendation.

Wholesale broadband market for business customers

The wholesale broadband market for providing products to business customers encompasses all bitstream access via DSL and fibre optics provided internally and externally and sold to end users as business customer products, as well as services provided among affiliated companies. The market analysis revealed in this context that A1 Telekom Austria AG (A1 Telekom) held a high degree of market power. The European Commission expressed serious doubts about the measures proposed by the TKK in this regard as well. As in the case of physical access to network infrastructure, BEREC fully supported the TKK's arguments on all points. After further discussion with the European Commission, the draft proposal was also finally maintained without modification.

Calls by non-residential customers via the public telephone network at a fixed location

A major development was the TKK decision of 30 September 2013 establishing that this market requires no further regulation.

Termination and origination in fixed networks

A distinction is initially required between retail markets and wholesale markets, based on the Commission Market Recommendation. Termination generally refers to connecting calls within an operator's own network and other networks.

A1 Telekom has significant market power in the market referred to as "call termination in the public telephone network at fixed A1 Telekom Austria AG locations". The TKK was accordingly required to demand measures to be taken. One was to order a termination fee based on the pure LRIC measure, effective as of 1 November 2013. A fee control and access obligation were also ordered.

Origination refers to routing a call from a network to a carrier network or service network operator. The TKK also identified significant market power on the part of A1 Telekom in this regard and thus imposed on the company requirements for direct and indirect interconnection, fee control, equal treatment and accounting separation. In response to increased pressure from competition by the mobile sector on downstream retail markets, it was possible to ease the fee control requirement to a less stringent level.

Termination in mobile networks

All mobile network operators have significant market power, each within their own individual markets. The measures ordered in response were requirements for interconnection (direct and indirect) and equal treatment, as well as the obligation to control charges. Fees were set on the basis of the LRIC standard, in accordance with the recommendation by the European Commission.

Access services for residential/non-residential customers to the public telephone network at a fixed location

As part of its official responsibilities, the TKK initiated a procedure for each of the markets on 9 January 2012 and established significant market power on the part of A1 Telekom in each case. The consultation on the proposed measures was completed, though the two procedures were pending as of year's end.


Leased lines

In January 2013, the TKK adopted draft measures in the procedures involving terminating leased line segments and the market for end user leased lines. Specifically, deregulation of the end user market has been proposed in view of the market's lack of relevance. In the case of the market for end user leased lines, in contrast, plans foresee broadening regulation to include leased lines and fibre optics that support high bit rates.

The European Commission expressed serious doubts concerning the market for terminating leased line segments. An in-depth investigation was held, in which BEREC supported the position taken by the European Commission. The TKK later requested a supplementary evaluation report. In early 2014, the TKK will continue the procedure by proposing a new set of measures.

Network access

Network access refers to the provision of facilities or services to another company for the purpose of providing electronic communications services.



The Austrian Administrative Court handed down two rulings that overturned decisions that had been issued by the TKK, on the one hand between (the former) Hutchison 3G Austria and A1 Telekom, and between Verizon Austria GmbH and A1 Telekom on the other; the decisions were ruled to be unlawful since they were inextricably related to two other decisions concerning market analysis that had been lifted.

Wayleave rights and rights of joint use

Since the 2011 amendment to the TKG, Federal Law Gazette I No. 102/2011, the responsibilities of the TKK have been extended beyond procedures concerning the rights of joint use involving existing infrastructure to include procedures involving the granting of wayleave rights on private property as well as legal issues relating to the modification or termination of rights of wayleave and joint use. Wayleave rights can also be claimed solely for equipment associated with a communications line. To claim such rights, however, a close material and temporal relationship must exist. It is worth noting here that the Administrative Court handed down rulings in 2013 on complaints filed against TKK decisions concerning rights of joint use. The outcome of the cases is to be interpreted as meaning that the provisions of the TKG 2003 governing joint use are also applicable to infrastructure not belonging to the traditional telecommunications sector (e.g. railway infrastructure). Owners of infrastructure are required to allow and to facilitate joint use.

Supervisory procedures by the TKK

In a case concerning the wholesale product referred to as 'virtual unbundling', UPC Austria GmbH and Tele2 Telecommunication GmbH presented objections to A1 Telekom's plans, which, it was claimed, would make it impossible to meet agreed performance specifications for existing products once migrated to virtual unbundling. No such impairment could, however, be sufficiently substantiated in a specific case. Consequently, while no supervisory procedure was launched in the matter, a more stringent obligation to provide information was imposed on A1 Telekom, which A1 Telekom regularly met.

General terms and conditions and tariffs

A recent change is that the TKK is now entitled to raise objections not only to terms of business but also to tariff conditions (yet not to tariff levels).

The TKK conducted a total of 200 procedures in 2013, while it was necessary in one case to issue a decision in objection to contract terms.

Universal service

In 2013, the Federal Ministry of Transport, Innovation and Technology (BMVIT) requested RTR to perform a detailed review of the competition in the market for subscriber directory services covering all operators. RTR completed the review and submitted the results to the BMVIT.

During the first quarter of the year, RTR was also involved in a BEREC working group on universal service that prepared a statement in response to a draft recommendation which the European Commission had submitted to BEREC in early 2013.

Frequencies

The multiband auction for the 800 MHz, 900 MHz and the 1800 MHz frequency bands was completed in October 2013. After submitting a total of 4,000 bids, all three mobile network operators successfully obtained frequency blocks. Auction revenues totalled just over EUR 2 billion.

Electronic signatures

The TKK is the supervisory body responsible for the electronic signature, which to a certain extent is the electronic equivalent of a personal handwritten signature. Four procedures pursuant to the Signatures Act (SigG) were conducted in 2013 and largely completed. Modifications to the Certification Practice Statement as well as new services offered by A-Trust Gesellschaft für Sicherheitssysteme im elektronischen Datenverkehr GmbH (A-Trust) were also addressed. In addition, the certification services provided by A-Trust were reviewed according to the regular schedule every two years.

End-user conciliation procedures (Telecommunications and Postal Services Division)

Conciliation procedures pursuant to Art. 122 TKG 2003 are among RTR's key tasks. The number of cases dropped by 4,370 from the previous year to total 2,859. This was due to the Cost Limitation Ordinance (KostbeV), which also showed significant impact in 2013 after entering into force in May 2012. The issues most frequently observed were contract disputes, followed by content services (payments via mobile phone, WAP billing etc.) and data services.

The postal conciliation body, which has only been established since 2011, recorded 66 cases, most of which concerned delivery issues or damaged or lost parcels.

Supervisory procedures by RTR

In addition to the supervisory procedures carried out by the TKK (refer to Section 7.4), seven cases in the year under review fell within RTR's scope of competence. These cases mainly involved breaches of the KostbeV. Other subjects were the customer's entitlement to a paper bill and infringements of the notification obligation set forth in Art. 25 TKG 2003.

Unfair practices in providing value-added services

The report on unfair practices in value-added services, specified in Art. 24 Par. 2 TKG 2003, lists 141 complaints relating to value-added voice telephony and 114 concerning value-added text messaging, which account for a 9% share of all conciliation procedures in 2013. It should be noted that, for the first time in 2013, the TKK made use of its powers to block value-added numbers in response to abuse; in two cases erotic services were being provided through short phone numbers, in this way circumventing the customers' option of having erotic hotlines blocked. The numbers concerned were blocked with immediate effect, averting any financial harm.

International roaming in the European Union

In July of 2013, the EU Roaming Regulation further lowered the rates charged in the wholesale and end-user markets for voice calls and text message (SMS) services. In addition, Croatia joined the European Union as of 1 July 2013, broadening the applicability of EU roaming tariffs to include that country.

As part of exercising its supervisory responsibilities, the TKK introduced a procedure pursuant to Art. 16 (5) of the Roaming Regulation; in the case of one company, automatic blocking of data roaming services, which is set on reaching the EUR 60 limit, could be cancelled without any authentication mechanism.

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 2013, a total of 734 operators had given notification of 1,568 active services.

Communications parameters

The fourth amendment to the Communications Parameters, Fees and Value-Added Services Ordinance 2009 (KEM-V 2009) took effect on 15 November 2013, with RTR introducing a new number range for the provision of toll-free services and in this way meeting a need expressed by the industry for 'short public numbers with an asterisk'. Such numbers are also suitable for 'vanity numbers', for example. A consultation was also launched in July 2013 to prepare a re-organisation of the design of phone numbers used in number porting in order to facilitate the market entry of new companies.

RTR ordinances

The purpose of the KostbeV, introduced on 1 May 2012, is to protect subscribers against excessive and, most importantly, uncontrollable charging for telecommunications services. This ordinance has had its greatest impact in the critical sector of mobile data services. To respond to any possible subscriber need for enhanced cost transparency in these sectors, an evaluation of the complaint statistics in related cases was performed by RTR, with support provided by the Austrian Federal Chamber of Labour and by the Federal Ministry of Labour, Social Affairs and Consumer Protection, and with the mobile operators also assisting. The results reveal how effective this ordinance has been in greatly reducing the number of requests for conciliation in the mobile data service sector. Considering that the majority of disputed invoices were for amounts exceeding EUR 100, the introduction of costly real-time billing systems was recognised as the only potentially effective means of tackling the problem, yet this solution did not appear warranted.

Focus on NGN/NGA


The migration to next generation access (NGA) and next generation networks (NGNs) continued in 2013. On the regulatory side, the TKK has created a new framework with the wholesale product referred to as 'virtual unbundling'. With regard to the rollout of NGA, as of the end of 2013 the regulatory authority was aware of migration projects in a total of 194 areas, most of which meet the FTTC (fibre to the curb) or FTTB (fibre to the building) standards. In addition, the auction of frequencies in the 800 MHz range in October 2013 laid the groundwork for mobile access networks utilising those bands.

International activities

In view of the growing significance of efforts at European and international level and of international cooperation, activities in this area were stepped up. RTR held the position of BEREC's 'outgoing chair' in 2013, thereby contributing in a decisive way towards ongoing efforts on the key issues of net neutrality, international roaming, measures aimed at enhancing transparency to the benefit of users, and NGN. Under RTR, cooperation among the highest number of experts in preparing opinions for procedures under Art. 7 and 7a of the Framework Directive was achieved. RTR is also a member of almost every committee of experts or working groups involved in the European Commission's initiative towards restructuring the regulatory framework of the EU (referred to as the Digital Single Market), thereby ensuring that the specifications for this new initiative are detailed in a manner that also responds to the requirements of the Austrian market.

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. In 2013 RTR received two notifications of security violations or impaired integrity of electronic communications networks or services.



A significant feature in this context is cooperation at international level with other regulatory authorities and with the European Network and Information Security Agency (ENISA), which allows RTR to contribute to shaping ENISA's technical guidelines and to benefit from the experience of other regulatory authorities.

Competence centre

Under Art. 9 of the KommAustria Act (KOG), RTR is also responsible for maintaining a competence centre for media and telecommunications industry affairs.

Along with the management of the RTR Telecommunications and Postal Services Division, RTR's Department of International Affairs and ICT (information and communication technologies) provides administrative support as the operative arm of the Internet Society Competence Centre (Kompetenzzentrum Internetgesellschaft, or KIG) and belongs to the KIG's management. RTR is additionally concerned with ICT-related topics that impact the development of the telecommunications markets and are influenced by these markets.

In its capacity as the KIG's operative arm, already back in 2012 RTR collected numerous contributions from a consultation process dedicated to ICT strategy and subsequently prepared a consultation paper that was recently published on the KIG website. The paper has served as a basis for defining the pillars of a future ICT strategy and is available to the federal government as a resource in planning and implementing specific projects.

To enhance users' options and in compliance with Art. 17 TKG 2003, the RTR-NetTest was put into service in May 2003. It allows users to test the performance of their internet connection. In addition to a browser application, the test is supplied free of charge as an Android and iOS app, providing direct information on performance parameters. The various test results can optionally be displayed on a map.


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, thus fully liberalising the postal market. The essence of the act is to abolish the 'postal letter monopoly' position held by the Austrian postal service (Österreichische Post AG) and to allow other businesses to provide postal services.

As has been reported in past years, the provisions of the PMG can be clearly seen to focus on ensuring the availability of universal service. The PMG accordingly contains a large number of regulations governing postal service points as well as their hours of operation, delivery, handling times and mailboxes.

Consequently, in 2013 as in the previous years, the activities of the Post-Control-Kommission (PCK) and of RTR focused predominantly on various matters related to universal service. Among the cases that stand out in this context are proceedings to investigate the admissibility of post office closures and investigations into the discontinuation of facilities referred to as 'third party-operated postal service points' (e.g. Post.Partner). Such investigations sometimes reveal cases where, for example, a postal service point (PSP) has been relocated to a place where it is too far away to provide the service coverage required by law. When a PSP is closed down, the PCK especially ensures that the deployment of rural delivery personnel in isolated cases does not become a permanent yet unsatisfactory solution for the customers affected.

The PMG contains only a few specific provisions regarding competition, so that the regulatory authority's activities in the way of establishing and ensuring competition were limited to individual cases. Yet there are several reasons for mentioning in this regard the migration from the former building mailbox installations to the new, generally accessible model. While it was of itself remarkable that the PMG had allowed until the end of 2012 for the changeover to building mailbox installations that "encourage competition" – even though postal services were fully liberalised



as of 1 January 2011 – and the Post AG did not finally complete the process until the summer of 2013, it appears that the expected stimulus to competition has not materialised. Any postal service provider may, granted, deliver postal items to a customer’s mailbox (even without a key or similar access), this option is pointless, however, if that provider has no practical means of gaining access to the interior of buildings, where most mailboxes are installed.

The conclusion from the previous year can therefore be reiterated, as follows. 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. On the other hand, the fact that little competition in the postal sector has developed can be mostly 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

To implement the EU framework legislation in 1997, the Austrian Telecommunications Act 1997 (TKG 1997) established two regulatory authorities for telecommunications: the Telekom-Control-Kommission (TKK) and the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR; formerly known as Telekom-Control GmbH). The Austrian Communications Authority (KommAustria) was later set up in 2001 as the regulatory authority for the broadcasting markets on the basis of the KommAustria Act (KOG). Effective 1 January 2008, the TKK was finally expanded to include a second committee for matters related to postal services, with RTR serving as its operative arm. 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), the Postal Market Act (PMG) and the KOG.

Examples of the main regulatory objectives defined in the TKG 2003 include creating a modern electronic communications infrastructure, ensuring equal opportunities and functional competition, and promoting and protecting the interests of users.

The main objectives of the KOG include: to promote market access for new providers as well as to create and maintain a communications infrastructure that meets high quality standards in order to enhance the quality of Austria as a business location; to ensure the diversity of opinions and encourage quality in broadcasting programmes; to develop technical and economic plans for a dual broadcasting market in Austria; and to provide expert knowledge on the convergence between audiovisual media and telecommunications.

The PMG, which became effective on 1 January 2011, is essentially aimed at regulating universal service.

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 2013, 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 provide operational support to KommAustria, the Post-Control-Kommission (PCK) and the TKK;
2. to fulfil specific official duties in the Telecommunications and Postal Services Division (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 take care of issues concerning the Post Office Advisory Board;
4. to fulfil the tasks specified in the Signatures Act (SigG);
5. 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);
6. to manage a competence centre (both divisions);
7. to serve as the operative arm of the Internet Society Competence Centre (Kompetenzzentrum Internetgesellschaft, or KIG);
8. to maintain the list pursuant to Art. 7 of the Austrian E-Commerce Act (ECG).

2.1.2 Telekom-Control-Kommission (TKK)

The TKK has been constituted as a panel authority with judicial powers. It is not bound by instructions and is thus independent, and makes its own major decisions relating to telecommunications regulation. The commission also acts as the supervisory authority for electronic signatures. Each member of the commission is appointed by the federal government for a term of five years.

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

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

Alternate members:

- 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 also been constituted as an independent panel authority with judicial powers, passes its own major decisions relating to the regulation of postal services. Each member of the commission is appointed by the federal government for a term of five years.

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

- 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 who are 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 2013, the authority comprised the following members:

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



In addition to duties related to broadcasting and media regulation under the KOG, the Audiovisual Media Services Act (AMD-G), the Private Radio Act (PrR-G), the Competition Act (WettbG), the TKG 2003, the Act on Transparency in Media Cooperation and Funding (MedKF-TG) and the Exclusive Television Rights Act (FERG), as well as the administration of press and journalism subsidies, KommAustria is also responsible pursuant to the ORF Act (ORF-G) for the legal supervision of the Austrian Broadcasting Corporation (ORF) and its subsidiaries. The authority relies on RTR's business organisation for administrative support.

Federal Communications Board (BKS)

Until 31 December 2013 the BKS had served as the authority for appealing decisions handed down by KommAustria. Pursuant to Art. 37 Par. 1 KOG, the five members of the BKS, at least three of whom had to be appointed judges in Austria, were 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 were nominated by the Austrian federal government and appointed by the Austrian president for a term of six years. The offices of the BKS were situated at the Austrian Federal Chancellery (BKA).

In 2013 the BKS included the following members:

- Wolfgang Pöschl (Chairperson)
- Dorit Primus (Deputy Chairperson)
- Edwin Gitschthaler
- Barbara Leitl-Staudinger
- Georg Karasek

Alternate members:

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

As of 1 January 2014, decisions issued by the TKK, PCK, KommAustria and RTR can be contested in court and reviewed by the Federal Administrative Court (BVwG).


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.

Until 31 December 2013, appeals against KommAustria decisions could be submitted to the BKS in the second instance. Further appeals against BKS rulings on appeals could be submitted to Austria's high courts.

In carrying out its activities for KommAustria, the Austrian Regulatory Authority for Broadcasting and Telecommunications is bound only by assignments and instructions issued by the chairperson and other members of KommAustria.

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



The Federal Chancellor is responsible for supervising the performance of RTR's independent duties in the Media Division. The chairperson of KommAustria and the Federal Chancellor are authorised to issue instructions to RTR for matters subject to supervision by the Federal Chancellor. Such instructions must be in writing and substantiated.

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 in writing and substantiated.

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. Excepted herefrom are 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.

Until 31 December 2013, TKK and PCK decisions could only be contested by filing complaints with Austria's high courts, namely the Austrian Administrative Court (VwGH) and/or the Austrian Constitutional Court (VfGH). RTR also handed down decisions (in matters pertaining to the Telecommunications and Postal Services Division) as the last-instance authority until 31 December 2013, i.e. complaints could be submitted to the VwGH and/or the VfGH yet there was no right of appeal against RTR's official decision. The right to lodge complaints with the BVwG against the two above-mentioned authorities was introduced on 1 January 2014.

2.3 National regulatory environment

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

Federal Chancellery (BKA)


The BKA provides operational support for all activities of the Federal Chancellor in connection with RTR and KommAustria (refer to Section 2.2 above). Within the federal government, the Federal Chancellor was responsible for defining the general framework for broadcasting and media markets.

In line with the Art. 77 Par. 3 of the Federal Constitutional Act (B-VG), the decision by the Federal President of 16 December 2013, published in the Federal Law Gazette II no. 454, resulted in the transfer of material responsibility for all matters relating to radio and television broadcasting and other media-related matters, with the exception of judicial media law, to the Federal Minister in the Federal Chancellery, as far as such responsibility does not fall under the competence of the Federal Minister of Transport, Innovation and Technology.

Up until 31 December 2013, the BKA was also the operative arm of the Federal Communications Board (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 day-to-day implementation experience (e.g. at 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 telecommunications 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 in assigning frequencies that are not in short supply as well as their function as the first-instance administrative penal authority. 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 main role of the first-instance postal service authority is that of an 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, and in particular before it passes decisions concerning postal service points. The PCK may take 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:


- Bernhard Haubenberger (Austrian Association of Municipalities; Chairperson)
- Paul Trippel (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 work group was established by the Austrian Federal Chancellor under Art. 21 AMD-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. The digitisation of terrestrial



television was completed in mid-2011 and that of satellite broadcasting in mid-2012. The main focus of Digital Platform Austria's efforts is now in the area of digitisation of radio broadcasting and of cable networks. 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 ORF, as part of the procedure for prior evaluation (Auftragsvorprüfung) specified in Art. 6a. 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 required 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

Before subsidies are allocated, KommAustria is required to obtain an opinion from this commission on the fulfilment of subsidy requirements, as specified in Art. 4 of the Press Subsidies Act 2004 (PresseFG 2004).

The Austrian Federal Chancellor, the Association of Austrian Newspapers (VÖZ), and the labour union responsible for journalists employed by daily and weekly newspapers each have the right to appoint two members. These six members are required to elect an additional, outside person for the chair. 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 appointed new members; all other members were reappointed. The six members elected Gerhard Benn-Ibler to the chair.

The commission included the following members in 2013:

- 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 public life as specified in Art. 9 PubFG.

Matthias Karmasin was elected to the chair and Gabriele Ambros as his deputy for the period of office from 1 January 2012 to 31 December 2014.

These members belonged to the Advisory Board in 2013 (nominating body in brackets):

- 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)
- Felix Lamezan-Salins, BA (Austrian Federal Ministry of Science and Research, BMWF)
- Hanspeter Huber (Austrian Federal Ministry for Education, Arts and Culture, BMUKK)
- Andreas Csar (VÖZ)
- Annemarie Kramser (Presseclub Concordia)
- Leopold Wundsam (Chamber of Professional Accountants and Tax Advisors)

Alternate members:

- Martina Thiele
- Thomas Zembacher
- Merja Biedermann
- Andreas Kratschmar
- Gerfried Nachtmann
- Markus Fauland
- Judith Schwentner
- Nani Kauer
- Arno Miller
- Herbert Matis
- Hubert Petrasch
- Paul Wuthe
- Andreas Ulrich
- Dieter Böhm
- Gerhard Pfeisinger
- Julia Kopetzky

- Matthias Hranyai
- Elisabeth Horvath
- Helmut Puffer

Broadcasting Fund Review Board

The review board pursuant to Art. 32 Par. 3 KOG comprised the following members in 2013:

- 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 2013:

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

Federal Competition Authority (BWB)


In Austria, due to the partial parallelism of the substantive sectors and general legislation governing competition – taking into account basic impartiality of mutual competences – it is necessary that the regulation authorities cooperate intensively with the BWB on the basis of statutory comments and petitions in matters affecting general competition law. Austrian law and Community law provide for differing forms of cooperation between the general competition authority and sector-specific competition authorities.

Other organisations and work groups at national level

In addition to the bodies mentioned above, RTR also cooperates with other relevant institutions and organisations, such as the Austrian Federal Economic Chamber, Austrian Chamber of Labour, Consumer Information Association, universities and 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

As communications do not stop at international borders, the international regulatory environment plays a key role in electronic communications. Austria is not alone, and accordingly RTR is embedded in international structures that extend far beyond the country's limits. The Body of European Regulators for Electronic Communications (BEREC), founded in 2011, plays a pivotal role in this context. BEREC was set up in order to ensure standardisation and consistency on the European telecommunications market and replaces its precursor, the European Regulators Group (ERG). BEREC's mandate includes providing the best possible assistance to the European Commission and national regulatory authorities (NRAs) in the implementation of the European regulatory framework in the field of telecommunications. Moreover, one of BEREC's most important tasks is to advise the European Parliament and the European Council. After serving as chair in 2012, RTR was entrusted with the office of outgoing chair in 2013 and in this capacity was responsible for taking care of BEREC's external agenda. In this context it was possible to extend the existing scope of international cooperation among European regulators beyond Europe's borders. This resulted,



among other things, in the signing of a Memorandum of Understanding with the US Federal Communications Commission (FCC). The memorandum provides for a mutual exchange of information and best-practice experience between the parties. At the end of 2013, Austria completed its term of service as chair or vice-chair of BEREC. Göran Marby (Sweden) has taken over the chair of BEREC in 2014 and succeeds Leonidas Kanellos (Greece).

In addition to BEREC, RTR is a member of the Independent Regulators Group (IRG). 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 within 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, and representatives from EU candidate countries and from Switzerland. This provides a broader platform and also allows for discussions with parties outside the EU and consequently expands access to benchmark results and provides additional options to make comparisons.

In the area of postal regulation, RTR is a member of the European Regulators Group for Postal Services (ERGP), in which it represents Austria's interests. The ERGP, founded in 2011, serves as a forum to coordinate issues relating to postal regulation that arise in the course of harmonisation of the European framework, in a manner similar to BEREC in telecommunications.




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)

The official decisions handed down by the Austrian Communications Authority (KommAustria) regarding broadcasting regulation issues can be contested by means of appeals, which are decided on by the BKS. The BKS issues decisions on the cases themselves and can amend official first-instance decisions in either direction. In administrative penal cases, this competence is assigned to the UVS in Vienna.

In the reporting period, the BKS issued numerous decisions in response to appeals, several of which involved complaints against the Austrian Broadcasting Corporation (ORF). In seven cases, the BKS – like KommAustria, and contrary to the complaints - did not identify any violations of regulations or principles resulting from the content of various ORF broadcasts, thereby confirming in each case KommAustria's legal interpretation. In one case, the BKS upheld the ORF's appeal and modified KommAustria's first-instance decision, which the BKS had originally confirmed, due to a prior ruling that had been handed down by the Constitutional Court (VfGH), thus subsequently rejecting the complaint against the ORF as unjustified. In two other cases the BKS confirmed KommAustria's decisions to reject the petitions filed by two persons for recognition of their declarations in support of a specifically designated complaint against the ORF. In addition to examining possible violations of content principles, as part of numerous appeal rulings the BKS reviewed alleged breaches of other provisions of the ORF Act (ORF-G). In one specific case, the BKS confirmed a decision issued by KommAustria as part of an official procedure, in which web content published by the ORF on the occasion of the Skiing World Championships in Schladming was identified as inadmissible because it violated the ORF-G. On the other hand, another official decision by KommAustria that ruled web content published by the ORF on Facebook as violating the ORF-G was overturned by the BKS; after it had originally confirmed the first-instance decision, the BKS lifted it in light of a VfGH ruling (see below for details) and prohibited the service on grounds of unlawfully hosting web forums on a permanent basis. Moreover, the BKS upheld an appeal filed by the ORF against a KommAustria decision that had granted conditional approval of the ORF's request to modify the service plans for two ORF web services; the first-instance decision issued in this case was partially amended. In another appeal decision, the BKS confirmed KommAustria's legal opinion, ruling that, during the period from 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; however, the BKS granted the ORF's appeal on the remaining points of the case and amended KommAustria's decision. In two further cases the BKS confirmed the first-instance rejection of complaints against the ORF on the grounds that the complaints lacked legitimacy or did not comply with the mandate for improvement. In another appeal case, the BKS differed from KommAustria's legal opinion, ruling that live broadcasts of certain Davis Cup tennis events in 2011 by the ORF SPORT + channel constituted a breach of the provision prohibiting the channel from broadcasting premium sports competitions, and thereby upholding the complainant's appeal. The BKS confirmed KommAustria's legal opinion in another case, however, in which KommAustria had found that live broadcasts of certain matches of the 2011 IIHF Ice Hockey World Championship via ORF SPORT + constituted a transgression of the ORF's public mandate and that the revenues accruing from the programme fees as a result of the matches in dispute, or equivalent funds, should be confiscated



from the ORF. The BKS also rejected two petitions filed against KommAustria on grounds of violating its obligation to pass decisions, ruling that it could identify no failure to meet a deadline on KommAustria's part. In this context, the BKS subsequently rejected as unjustified three appeals filed against the rejection of complaints that KommAustria had lodged against personnel decisions taken by the ORF. Finally, the BKS handed down a decision on an appeal in a case involving a complaint against the ORF by competing broadcasters on grounds of breaching the provisions applying to the lists of fees for commercial communication; the BKS upheld KommAustria's legal opinion and found that no violation had occurred.

During the period under review, the BKS also issued rulings on KommAustria decisions in three cases related to KommAustria's official advertising monitoring duties, where violations had been identified on the part of the ORF and two private broadcasters. In the case involving the ORF, the BKS concurred with KommAustria's legal opinion and rejected the ORF's appeal. On the other hand, the BKS upheld the appeals filed by the private television broadcaster and the private radio broadcaster against the KommAustria decisions. In the one case, the BKS unconditionally lifted the first-instance decision, and in the other case it granted the appeal while referring the matter back to KommAustria.

In radio broadcasting, two KommAustria licensing decisions were confirmed in their entirety, as was a frequency allocation decision in favour of expanding an existing coverage area. The BKS followed the legal opinion expressed by KommAustria in one case, ruling that the change in programming made by a radio broadcaster was a non-approved fundamental programming change. Finally, in a procedure under the Exclusive Television Rights Act (FERG) that KommAustria had initiated on request, the BKS essentially followed KommAustria's legal opinion and rejected as unjustified the appeals lodged by the two parties.

In 2013 the Independent Administrative Tribunal (UVS) of Vienna handed down rulings on two appeals against penal decisions that KommAustria had issued in response to violations of the ORF-G. In one of the cases the UVS confirmed KommAustria's penal decision concerning two administrative offences committed through a breach of advertising provisions specified in the ORF-G. In the other case KommAustria's penal decision was lifted and the case closed. The UVS in Vienna furthermore issued four appeal rulings related to reporting requirements pursuant to the Act on Transparency in Media Cooperation and Funding (MedKF-TG); KommAustria's penal decisions were lifted in three cases and in one case the KommAustria decision was confirmed in principle.

3.1.2 Proceedings before the Constitutional Court (VfGH)

A complaint can be filed with the VfGH against appeal decisions handed down by the BKS. In response to a complaint against a BKS decision, the VfGH initiated proceedings to review a provision of the ORF-G. The VfGH ruling, which was issued during the period of this report, subsequently lifted, on grounds of violating the right to freedom of expression and broadcasting freedom, the provisions of the ORF-G that prohibit links to and other forms of cooperation with social networks (referred to as the 'Facebook ban'). On the other hand, the VfGH ruled that the provision prohibiting the ORF from providing a social network (of its own) was justified on material grounds, considering the intention to protect the interests of private broadcasters competing with the ORF in the market. The VfGH subsequently lifted the BKS decision that had led to the introduction of legal review proceedings, on grounds of violation of rights arising from the application of an unconstitutional law.

In another case decided during the period under review, the VfGH lifted a BKS decision on grounds of violating the right to freedom of expression and broadcasting freedom. The decision had identified a violation of the freedom accorded to journalists to practise their profession, as specified in the ORF-G, through an editor-in-chief sending an e-mail to staff journalists, calling on them to avoid referring to the perpetrator of the Oslo terror attack as a 'Christian fundamentalist'.

3.1.3 Proceedings before the Administrative Court (VwGH)

BKS decisions are also subject to review by the VwGH. During the period of this report, the VwGH handed down rulings on five BKS decisions concerning complaints filed against ORF programmes or services. The VwGH rejected the complaints as unjustified in three cases and refused to hear the complaint in one case where the disputed decision by the BKS had not deviated from previous VwGH rulings. In one complaint case filed against the ORF by several competing broadcasters, the VwGH overturned the decision handed down in the second instance, which had found the ORF to have violated laws by failing to clearly label product placement.

During the period under review, the VwGH also handed down rulings in six complaint cases relating to radio broadcasting. In two of these cases the court refused to hear the complaints, since the BKS had not deviated from earlier VwGH rulings, for example concerning the selection of qualified applicants. In one case, which concerned a non-approved fundamental change in programming on the part of an existing radio broadcaster, the VwGH rejected the complaint against the BKS decision, thereby concurring with the legal view held by the two lower instances. Another complaint that was rejected concerned the identification of a violation of advertising regulations. In a further case, the VwGH ruled to terminate proceedings because the complainant had withdrawn the complaint. Finally, in still another case, the VwGH declared invalid a party's petition to reinstate proceedings involving a licensing procedure. The proceedings were terminated.

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 frequency allocation pursuant to Art. 55 of the Telecommunications Act 2003 (TKG 2003) and one procedure concerning rights of joint use as specified in Art. 8 TKG 2003. The VfGH issued decisions in three cases in 2013, in each case refusing to hear the complaints. As of 31 December 2013, a total of two cases were pending.

3.2.2 Proceedings before the Administrative Court (VwGH) regarding telecommunications

During the period under review, a total of eight complaints regarding TKK decisions were filed with the VwGH. The complaints related to four procedures in which a company was identified as possessing significant market power and subjected to obligations pursuant to Articles 38 to 47 TKG 2003, three procedures concerning frequencies and one procedure relating to interconnection.

The VwGH handed down a total of 35 rulings in the period under review. Decisions were overturned in 27 cases due to unlawful content; in three cases the complaints were rejected as unjustified; in three other cases the complaints were declared invalid and proceedings were terminated; one complaint was rejected; and in one case the VwGH refused to hear the complaint. As of 31 December 2013, a total of 13 complaints before the VwGH were pending.

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

In the year under review, no complaints regarding official decisions issued by the Post-Control-Kommission (PCK) were submitted to the VfGH, and no proceedings were pending as of 31 December 2013.



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

In the year under review, two complaints were filed with the VwGH against decisions to prohibit the closure of postal service points and one complaint was lodged against the financing contribution. The VwGH handed down five rulings in 2013. Two decisions concerning the closure of postal service points were overturned due to unlawful content, while two other complaints were rejected as inadmissible and one procedure was discontinued after the complainant failed to correct the complaint. Two cases were pending with the VwGH as of 31 December 2013.





4 Regulatory activities of KommAustria

The Austrian Communications Authority (KommAustria) was established under the KommAustria Act (KOG) for the purpose of performing administrative and regulatory duties in the 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 statutory provisions, 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 suppliers (broadcasters, media service providers, communications network operators) as well as the Austrian Broadcasting Corporation (ORF) and its subsidiaries.

In addition, the KOG mandates 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

KommAustria's main regulatory activities in the area of private radio broadcasting during the period under review once again included licensing procedures that were introduced as part of official duties based on previously granted licences expiring at the end of the legal term (some already dating back to 2012). In addition, significant effort in the area of terrestrial radio was required not only on the part of the authority, but also of the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) as its operative arm as result of the expansion of the technical range of KRONEHIT, a nationwide radio broadcaster; numerous applications by local and regional broadcasters (for both establishing new coverage areas and expanding existing ones); and a large number of applications for temporary radio event licences.

The end of the reporting period was marked by the invitation to tender for the nationwide licence that was set to expire in 2014 and by several invitations to tender for frequencies that licensees had been put aside in 2013.

Nationwide radio broadcasting

Since December 2004, KRONEHIT Radio BetriebsgmbH is the owner of a nationwide licence for private terrestrial radio broadcasting in Austria. The station broadcasts its adult contemporary radio content in vast parts of the country under the KRONEHIT label.



In 2013, the licensee was allocated a total of 19 frequencies to expand its coverage throughout Austria, and its licence was amended accordingly. As a result, KRONEHIT Radio BetriebsgmbH was again able to increase its coverage level in 2013. KRONEHIT Radio BetriebsgmbH had consequently been assigned a total of 148 frequencies as of the end of this reporting period. In addition, eleven changes to radio equipment were approved at the broadcaster's request during the period under review.

The current licence held by KRONEHIT Radio BetriebsgmbH for nationwide private radio broadcasting will expire in December 2014. On 9 December 2013 KommAustria consequently issued a call for (new) tenders for the nationwide licence including the 148 frequencies mentioned above.

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

Regional and local radio broadcasting

In this area of activity, a total of 36 procedures were carried out in 2013, while 14 of these were pending at the end of the reporting period.

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

An application for the creation of a new coverage area is to be rejected in cases where the technical range amounts to less than 50,000 people and the applicant fails to provide evidence that an independent radio station in the coverage area would make a special contribution to the diversity of opinions and that the radio station would be financially viable in the long term despite its low range.

Applications are also to be rejected in cases where 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 will be financially viable in the long term within the requested coverage area.

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 allows other interested parties to submit applications within a time period of at least two months as specified by KommAustria. If this results in the submission of applications for the improvement or expansion of an existing coverage area, the creation of a new coverage area or the expansion of a nationwide licence, these applications must be reviewed according to a legally defined sequence so as to ensure a dual broadcasting system.

- Allocating frequencies to the ORF has top priority; however, it must always be assured that these frequencies are actually required to allow the ORF to meet coverage obligations as specified in the ORF Act (ORF-G).
- The secondary priority is the allocation of frequencies to improve the coverage provided by previously licensed radio broadcasters. However, in this case an allocation of frequencies primarily for the purpose of expanding the geographical area covered by the licensee is excluded.
- If this is not done, any broadcasting capacities may – on application – be allocated for the expansion of the nationwide licence.

If there is then a choice between more than one equally ranking applications, 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 interests of ensuring a greater diversity of opinions, independent programming with regard to the interests of the coverage area and a larger share of originally produced content. Special-interest channels must contribute in a specific way to the diversity of opinions.

In 2013, ten licensing procedures were carried out in response to applications received by the authority in the area of local or regional terrestrial radio broadcasting. Four licences were issued, specifically for the new coverage areas: Vienna Inner City, Bregenz and Dornbirn, Innsbruck and Parts of the Inn Valley, and Steyr 94.2 MHz. The Bad Radkersburg (Thermenarena) 107.0 MHz coverage area was subsequently allocated to KRONEHIT Radio BetriebsgmbH for the purpose of expanding the nationwide licence in line with the criteria described above. The five procedures still pending as of the end of the period under review concern coverage areas in Vienna, Salzburg, Vorarlberg and Styria.

Another twelve licensing procedures were conducted on the basis of official invitations to tender during the period under review. These procedures concerned seven licences that were due to expire in 2013 and therefore had to be reissued. In four cases, transmission capacities were allocated to expand existing coverage areas, while three of the procedures were for reissuing a separate radio licence. In five other cases, all of which were pending by the end of the reporting period, official invitations to tender were held because licensees relinquished an existing licence.

Alongside the cases mentioned above, where frequencies were allocated for the first time to expand existing coverage areas, KommAustria carried out 14 procedures to review applications for the allocation of transmission capacity for the purpose of expanding existing coverage areas. Of these cases, eight were completed with the issue of a decision, two applications were withdrawn and four procedures were pending at the end of the period under review.

One procedure concerning the improvement of coverage in an existing area was completed in 2013.

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 , which are used locally during and around the time of an independent public event in the surrounding area.

In 2013, licences were granted for a total of eleven event radio broadcasts. The following events were or are being covered by radio broadcasts:

- Die Nacht der 1000 PS, 9 January 2013 to 16 January 2013 in Vienna (LoungeFM)
- Wiener Eistraum 2013, 17 January 2013 to 17 March 2013 in Vienna (LoungeFM)
- Sand in the City, 21 April 2013 to 21 July 2013 in Vienna (LoungeFM)
- 2013 GTI Meeting, 29 April 2013 to 12 May 2013 in the Wörthersee area (GTI-FM)
- Fest der Jugend (youth festival), 4 May 2013 to 2 June 2013 in Salzburg (Radio Maria)
- Sommer im Museumsquartier 2013, 22 July 2013 to 7 October 2013 in Vienna (LoungeFM at 103.2 MHz)
- Sommer im Museumsquartier 2013, 18 September 2013 to 7 October 2013 in Vienna (LoungeFM at 99.5 MHz)
- Blickfang Internationale Designmesse 2013, 8 October 2013 to 27 October 2013 in Vienna (LoungeFM)
- Winter im Museumsquartier 2013, 28 October 2013 to 30 December 2013 in Vienna (LoungeFM)

- Wiener Silvesterpfad 2013/2014 (New Year's broadcasts), 31 December 2013 to 9 January 2014 in Vienna (LoungeFM)
- 2014 Formula 1 Grand Prix of Austria, 19 June 2014 to 22 June 2014 in Spielberg (a radio broadcast covering the event, providing an audio description for fans with visual impairments)

A further application to grant a radio event broadcasting licence to cover the 2013 GTI Meeting was withdrawn after oral negotiations.

In the case of the licences issued to LoungeFM for broadcasting events, an exceptional situation arose when the licence for the frequency of 103.2 MHz expired; the frequency, originally allocated to cover the Sommer im Museumsquartier event, was allocated for use with the regular radio broadcasting licence issued to Mein Kinderradio. Subsequent application was made, and approved, for another radio event licence using the frequency of 99.5 MHz.

Pursuant to Art. 3 Par. 5 No. 2 PrR-G, an educational radio licence refers to a licence granted to an institution of education or training for the purpose of radio broadcasting within the vicinity of the institution, if the programmes have a functional relationship to the duties to be fulfilled by that institution. Such licences can be granted for a maximum of one year.

Seven educational radio licences were granted in 2013:

- Radio SOL in Bad Vöslau
- RADIUS 106.6 in Freistadt
- Campus Radio in St. Pölten
- NJOY 91.3 in Vienna
- Radio Gymnasium in Oberpullendorf
- NJOY 88.2 in Deutschlandsberg

The procedure to review a renewed application for a licence by Radio SOL in Bad Vöslau was not yet completed by the end of the period under review.

Satellite radio broadcasting

Under Art. 3 PrR-G, KommAustria is also responsible for issuing satellite radio broadcasting licences. However, no cases in this category were recorded in the 2013 reporting year.


Procedures under telecommunications law

For the sake of simplifying administration (i.e. to enable one-stop-service), pursuant to the Telecommunications Act 2003 (TKG 2003), KommAustria is responsible for issuing both broadcasting licences as well as the permits under telecommunications law that are required for the radio equipment used in broadcasting.

Applications under telecommunications law without a direct reference to broadcasting law pertain mainly to technical changes planned for radio equipment, such as the use of new transmitter antennae, the relocation of transmission sites or increased transmission power.

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, which requires obtaining the consent of the neighbouring countries affected. The planned modifications to radio equipment can then be approved for a change application.

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



In addition to the changes to radio equipment included in the nationwide radio broadcasting licence mentioned above, KommAustria approved eleven changes to radio equipment and two applications for radio equipment to allow private radio broadcasters to conduct test transmissions in 2013. One application for changes to radio equipment was withdrawn. Four other applications were pending at the end of the year. In addition, KommAustria issued approvals in 14 cases for radio equipment to be used within broadcasting frequency bands for purposes other than broadcasting (e.g. to cover drive-in cinemas, conferences etc.).

Finally, as part of its responsibilities for issuing telecommunications permits, KommAustria is also active in cases involving the radio transmission equipment used by the ORF.

In this area of activity, a total of eight procedures were carried out in 2013. In three procedures, telecommunications permits for operating radio equipment, legally limited to ten years and now expired, were reissued to the ORF and the corresponding frequencies simultaneously allocated. One procedure concerned the modification of radio equipment and three others involved telecommunications approval of tunnel radio equipment. One procedure for the renewal of the telecommunications permit for radio equipment used by the ORF was pending at the end of the period under review.

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

4.1.2 Approvals and notifications relating to audio-visual media services and multiplex platforms

Nationwide television

There was no further expansion to the multiplex platform MUX A. As in 2012, MUX A provided coverage for approximately 98% of Austria's population.

The MUX B platform was also not expanded further in 2013. MUX B continues to provide coverage for approximately 91% of Austria's population.

The licences to operate the nationwide multiplex platforms for digital terrestrial broadcasting in DVB-T2 (MUX D, MUX E and MUX F) were issued during the reporting period. These three multiplex platforms provided coverage to about 86% of the population during the period under review.

Regional and local television broadcasting

No additional licences for the operation of MUX C platforms were issued during the period under review. As of the end of the period under review, there were 18 valid licences to operate local multiplex platforms which collectively supply a total of 64% of the Austrian population with various regional channels.

In addition, four licences were issued during the period under review for broadcasting digital terrestrial channels on regional platforms.

Event television licences

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

Satellite television broadcasting

KommAustria issued licences for seven television channels in 2013.

Media services subject to notification requirements

A total of 17 cable television channels, five (linear) television channels broadcast via the internet, and 38 on-demand media services were registered with KommAustria in 2013.

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 October 2010, in the course of implementing EU state aid rules that 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 towards the fulfilment of social, democratic and cultural needs (as specified in the Amsterdam Protocol). It is also necessary to consider if there could be a negative impact of the new service on the competitive situation, and on the diversity of media content and whether this is disproportionate in relation to the effect of the public service value added.


As part of this process, the specifically established Public Value Advisory Board has the task of assessing from a media standpoint any new service plan submitted by the ORF with regard to the expected impact on content diversity, and of submitting a statement. The Federal Competition Authority (BWB), in turn, represents the interests of competitors and 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; it is also accorded the role of an official party.

One prior evaluation procedure was carried out and completed in 2013.

In this case, prior to the end of 2012 the ORF had applied for approval of various modifications to its existing TVthek.ORF.at service, i.e. the web portal through which it has offered its programmes both in real-time and on-demand for later viewing since November 2009. The requested service plan changes were essentially aimed at gaining approval for the commercial marketing of the currently commercial-free TVthek. Apart from this, the modifications of the TVthek under review included additions to both the content and the schedule, such as providing third-party productions, an extension of the period specified by law for making individual programmes or series available, and the inclusion of the religion archive previously offered elsewhere.

On reviewing whether the conditions for a prior evaluation had been met, KommAustria identified, firstly, a considerable change in the options for using the existing service as a result of extending the current seven-day period of availability for one part of the service. KommAustria judged that, secondly, expanding the content of the programmes offered to include third-party productions, and thus beyond the scope specified in the ORF-G (the ORF's own productions, co-productions and productions contracted to third parties), would be a considerable change compared with the existing service. In regard to the commercial marketing of the currently commercial-free TVthek.ORF.at service, which represented the key item applied for, KommAustria concluded that integrating commercial forms of communication, and in particular in-stream video ads, would in any event result in a considerable difference in the form of technical usability and of access when compared with the service in its existing form. It was furthermore assumed that the fundamental migration of a currently commercial-free service to a mixed funding form consisting of programme fees and commercial revenues was also a change that would most likely affect the 'nature' of the service.

The modified service plan requested by the ORF was approved in essence with certain conditions attached. Yet, in its decision KommAustria also cited two aspects of the planned commercial marketing activities as not being eligible for approval. The resulting partial rejection on the one hand affected the ORF's request to be allowed to substitute television ads as part of in-stream video ads in the form of mid-roll spots, during live-stream broadcasts; however,



this would have violated an express legal prohibition. On the other hand, KommAustria rejected that part of the ORF application to allow advertising time to be specifically reserved in proximity to news or current affairs programmes. KommAustria viewed such an option as irreconcilable with legislation prohibiting any sponsoring of news and current affairs programmes.

Otherwise, in its decision after weighing the various interests, KommAustria concluded that a disproportionately negative impact had to be expected on the competition situation to the extent that additional advertising offerings on TVthek.ORF.at could result in an enlargement of the target group for all of the on-line advertising offered by the ORF. KommAustria furthermore anticipated that the commercial marketing of TVthek.ORF.at would have a significant negative impact on the variety of services for viewers, listeners and users, especially when compared with existing on-demand services provided by the public broadcaster. These negative consequences would also not be offset against the effected contribution based on the changed offer to fulfil the public core mandate and – measured by the range of services of other media service providers – the positive effect on the (external) variety of services, and were accordingly regarded as disproportionate.


After weighing all arguments, KommAustria consequently approved the modifications to the TVthek.ORF.at service plan, nonetheless specifying a number of conditions to mitigate the anticipated disproportionate impact; the conditions are aimed mainly at limiting the use of commercial communication and thus at ensuring the journalistic value contributed by TVthek.ORF.at and the variety of its online services. The imposed conditions include the proviso that news and current affairs programmes, along with parts of such programmes, must not contain any commercial communication in the form of in-stream video ads; other provisos limit the total number of in-stream video ads and define extensive limitations for the use of mid-roll spots. Other conditions were laid down in order to ensure the ORF's compliance with the commitments applying to content that were made in the service plan, examples include maintaining children's programmes and the archive free of commercial communication, the intervals in which in-stream video ads are broadcast, and the technical design of commercial communication in light of user-friendliness requirements.

In closing, it should be mentioned that the ORF filed an appeal with the Federal Communications Board (BKS), the subject of which was, however, limited to the item of the ruling that prohibited the option of specifically reserving advertising time in proximity to news or current affairs programmes. In a decision passed on 11 November 2013, the BKS granted the ORF's appeal to the extent that the disputed item of the ruling was modified: while the booking of commercial communication may be offered specifically for times when news and current affairs programmes are provided, all possibility of establishing any relationship whatsoever between the content of the commercial communication and that of the programmes must be ruled out.

4.1.3.2 Review procedures for service plans submitted by ORF

As a supplement to the areas which require a prior evaluation procedure, , Austrian legislators have introduced rules for cases where the ORF plans to make changes to existing services that, while being more than just minor, are not subject to prior evaluation because the changes are not of an essential nature. Art. 5a Par. 2 ORF-G specifies that the regulatory authority must be notified of any such "modification which is not simply a minor modification" of existing services prior to providing the service. The ORF is specifically required to make corresponding additions to the service plan and submit the planned changes in detail to allow the regulatory authority to verify legal compliance.

The procedure serves the purpose of examining any, more than just minor change to services provided so as to determine whether such change might breach mandatory statutory provisions or whether, where meeting the conditions specified in Art. 6 ORF-G, it should be submitted to the set of procedures envisaged for prior evaluation; in such a case, the regulatory authority is required to prohibit the implementation or provision of the 'modified' service plan within eight weeks from the date of its full submission. If there are no objections to the notified changes (because the service plan continues to comply with legal specifications), the regulatory authority issues no further statement. Once the eight-week period has expired, the ORF is required to publish the modified service concept on its website and may then make the offer available in the non-prohibited form.



In 2013 the ORF proposed changes to the services of oe1.ORF.at. The modifications related to making an archive available with content relating to modern and cultural history, the radio-play sub-service referred to as 'oe1.ORF.at/hoerspiel', and providing an app to allow mobile devices to stream service offerings. A detailed examination by KommAustria came to the conclusion that all three changes complied with applicable legal provisions and were not of an essential nature, and thus did not require prior evaluation. The authority subsequently refrained from issuing any prohibition.

During the reporting year, the ORF also proposed changes to the special-interest television channels ORF III Kultur und Information and ORF Sport +. The proposed changes related to making extensive portions of the ORF's web content, for example the TVthek, available on the special-interest channels via the auxiliary HbbTV service. The ORF was first requested to clarify its plans and provide further details. KommAustria subsequently concluded that there were no inadmissible changes. Rather, it was assumed that access should be made available to extensive portions of the web content via a web portal open to the general public.

Based on Art. 5a ORF-G, the changes were interpreted in line with No. 6 of that article, i.e. as a supplement to the complementary or exclusive relationships to other ORF channels or services, while at the same time ruling out any essential change of the service plan that might require prior evaluation. No prohibition was issued in the end.

4.2 Legal supervision

4.2.1 Supervision of private broadcasters, the ORF and its subsidiaries

4.2.1.1 Commercial communication

The Austrian Communications Authority (KommAustria) has been responsible for taking decisions to enforce the advertising regulations specified in the ORF Act (ORF-G), the Private Radio Act (PrR-G) -G and the Audiovisual Media Services Act (AMD-G); the cases involve ORF channels as well as those of private broadcasters and media service providers as from 1 October 2010. In determining the frequency of evaluations and selecting the sample reviewed, KommAustria considers 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.).


Channels and stations monitored

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

One focus of reviews during the reporting period was the annual average advertising time broadcast by the TV channel ORF eins.

In the case of ORF broadcasts, monitoring activities were also carried out in 2013 for the regional radio stations in Burgenland, Styria, Upper Austria and Vienna, as well as for the nationwide radio station Ö3 and the television channels ORF eins (on nine occasions), ORF 2 (once), ORF III Kultur und Information and ORF Sport +. Two legal violations were identified. Two procedures have not yet been completed.

The following private radio broadcasters' programmes were evaluated or requested: Radio Stephansdom, Radio Orange and 88.6 Der Supermix für Wien (Vienna); Radio Maria Österreich (Lower Austria); Radio Grün Weiß (Styria); Radio Gymnasium (Burgenland); Antenne Tirol, Freirad and Klassik Radio (Tyrol); and Radio Uno and Antenne Kärnten (Carinthia). In these monitoring activities, KommAustria did not identify any violations of advertising regulations. One procedure has not yet been completed.



Programmes broadcast by ATV Privat TV GmbH & Co KG and by Community TV-GmbH were sampled from among private television broadcasters. KommAustria did not identify a violation of advertising regulations in either of these cases.

In the case of media service providers, LAOLA1 GmbH was evaluated, with no breach of advertising rules identified.

4.2.1.2 Programming principles

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

Similar principles are stipulated in the ORF-G whereby the ORF, in its overall service policy, is required to strive for quality, innovation, integration, equal rights and mutual understanding. The information must be comprehensive, independent, impartial and objective, and help freely form public opinion and so contribute to democratic discourse.

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

During the period under review, eleven complaints were filed against the ORF involving violations of programming principles. The complaints objected in particular to violations of the principles of objectivity and impartiality in reporting. While no legal violations could be identified in seven instances, one case still does not yet have the force of law as an appeal has been filed. At the end of the year a total of four procedures were pending.

4.2.1.3 Other legal violations

KommAustria rules on violations of the PrR-G, the AMD-G and the ORF-G (refer to Section 4.2.2.1) 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.

One complaint was put forward against private broadcasters during the period under review. The complaint was related to fundamental changes to the programming format. KommAustria concurred with the reasoning presented in the complaint and identified a legal violation owing to fundamental changes to the programming format.


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

In addition, within the context of its legal supervision, KommAustria initiated four procedures against broadcasters based on suspected violations of youth protection laws. In two of the cases, examinations of the recordings and relevant facts revealed no breach of applicable law, and the cases were closed. In the two other cases KommAustria found that broadcasting the programmes had violated youth protection laws.

As part of its legal supervision, KommAustria initiated eight procedures involving the failure to notify an audiovisual media service. In eight other cases, broadcasters and media service providers were found to have violated requirements for notifying changes in ownership. Three other infringement procedures involving a failure to notify changes in ownership have not yet been completed.

KommAustria carried out procedures in two other cases involving a radio broadcaster suspected of having fundamentally changed the programming format; both cases were completed with final legal effect during the period under review.

The authority conducted another procedure against a satellite television broadcaster that used another satellite to broadcast its programme without the required approval. Another procedure concerning suspected broadcasting without a licence was completed with final legal effect.



In the year under review, KommAustria conducted twelve administrative penal procedures in response to identified legal violations, three of which were concluded with a legally effective penal order. Nine procedures currently await completion.

4.2.1.4 Conciliation activities related to media

RTR GmbH can also act as a conciliation body for complaints pertaining 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 informs the participants of its position on the case in question.

In the period under review, RTR conciliation body received 13 complaints. Compared to the number of conciliation cases handled in the Telecommunications Division (2,859 in total), this figure accounts for a very small percentage of all conciliation cases filed in 2013. 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


In this area of activity, a total of 17 complaints were filed against the ORF during the period under review. These concerned highly varying subjects or issues, examples include: the requirement for the ORF to observe a non-discrimination policy when cooperating under contract with other organisations; the adequate consideration of the languages of ethnic groups by certain ORF radio stations; the balanced character of ORF radio station broadcasts; compliance with legal limitations applying to web services and to apps provided to allow mobile access to such services; due observance to legal procedures when advertising and filling open staff positions; and special legal issues associated with replacing ORF DIGITAL-SAT cards.

KommAustria concluded and issued a decision on seven complaints during the reporting period; two complaints were referred to the relevant office responsible for decisions; procedures were discontinued in accordance with official requirements in four cases and continued in one; and three complaint cases were pending as of the close of the period under review. It should be additionally mentioned in this context that during the period under review five objections were filed with KommAustria against the list of journalists eligible to vote for editors' spokespersons. The related procedures were subsequently deemed invalid and discontinued in all cases.

In the year under review, monitoring activities that KommAustria conducted as part of official duties largely focused on reviewing compliance with advertising regulations (see Section 4.2.1.1) as well as on the related procedures involving legal violations. KommAustria also conducted an official procedure during the reporting period against the ORF to ascertain legal violations related to a web service that was considered inadmissible pursuant to Art. 4f Par. 2 No. 28 ORF-G; the case was completed and a decision issued during the period under review.

Finally, verification for 2011 and 2012 regarding the compliance with Art. 4a ORF-G, which specifies the procedure for defining and revising the quality assurance system, was requested for the first time during the reporting period; activities in this regard were still in progress by the end of 2013.

In addition, a procedure pursuant to Art. 38a ORF-G for recovering revenues was initiated in the year under review due to a transgression of the ORF's public mandate. The procedure was pending at the end of 2013.



In compliance with Art. 31 Par. 19 ORF-G, the ORF notified the lists of fees for commercial communication and continued to supplement the list in several cases. The lists can be found on the website www.enterprise.orf.at (in German).

4.2.2.2 Supervision of business activities

With the quarterly reports on regional advertising submitted in 2013, the ORF fulfilled its reporting obligations pursuant to Art. 14 Par. 5b ORF-G and also disclosed its agreements on broadcasts of regional advertising.

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 2012 as specified in the service agreement with KommAustria. The main findings of the audit reports, submitted in mid-June 2013, are presented below.

All annual financial statements were confirmed with an unqualified audit certificate. The consolidated account level showed a gross loss of EUR 3.537 million for activities included in the public mandate in 2012.

In the previous annual report, mention was made of an administrative penal procedure pursuant to Art. 38 Par. 2 in conjunction with Art. 40 Par. 5 ORF-G against a member of the ORF's Foundation Council who 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 this case the Independent Administrative Tribunal (UVS) of Vienna ruled in favour of the appeal filed against the penal order issued by KommAustria. Yet the outcome of this penal procedure does not affect the correctness of annual financial statements.


Between July and November of 2013 the audit commission also conducted an audit of the ORF's business activities (2012 business audit) in accordance with the service agreement. The following these areas of the ORF's activities were examined during this audit:

- Tapeless workflow: project implementation in the context of a sports production and of news reporting
- Consultant contracts and other consulting agreements
- Follow-up evaluation – regional studios: implementation of the new systems of organisation and coordination
- Trimedial working from the viewpoint of the technical division
- Travel expenses, business entertainment expenses
- Responsibilities of central controlling in the ORF's own productions, commissioned productions and co-productions
- Personal assistance in the divisions
- Additional activities of ORF staff as exemplified by 'ORF Stars'.

The corresponding audit reports were forwarded to all ORF governing bodies at the end of the year under review (2013) and subsequently to KommAustria.

4.2.2.2.1 EUR 160 million refunded to the ORF for programme fee exemptions – positive audit outcome

Under the somewhat awkward title "Compensation to the ORF for the programme fees lost due to exemptions", the 2010 amendment to the ORF Act (ORF-G) specified an additional financial grant by the federal government towards the Austrian Broadcasting Corporation's (ORF) programme fees for a limited period of four years. The total amount of this compensation was EUR 160 million, with the Federal Minister of Finance disbursing EUR 50 million to the ORF in both 2010 and 2011 and EUR 30 million in 2012 and 2013. However, payment of compensation was attached to a number of conditions which not only related to meeting certain requirements but also obligated the ORF to undertake sustained restructuring measures.



On completion of the most recent annual audit by the Austrian Communications Authority (KommAustria) in May 2014, it was confirmed that the ORF had met each and every prerequisite for collecting the EUR 160 million between 2010 and 2013. A detailed summary of the verifications carried out, including the indicators in each case, is provided below.

Compensation of programme fees lost through exemptions as audited by KommAustria

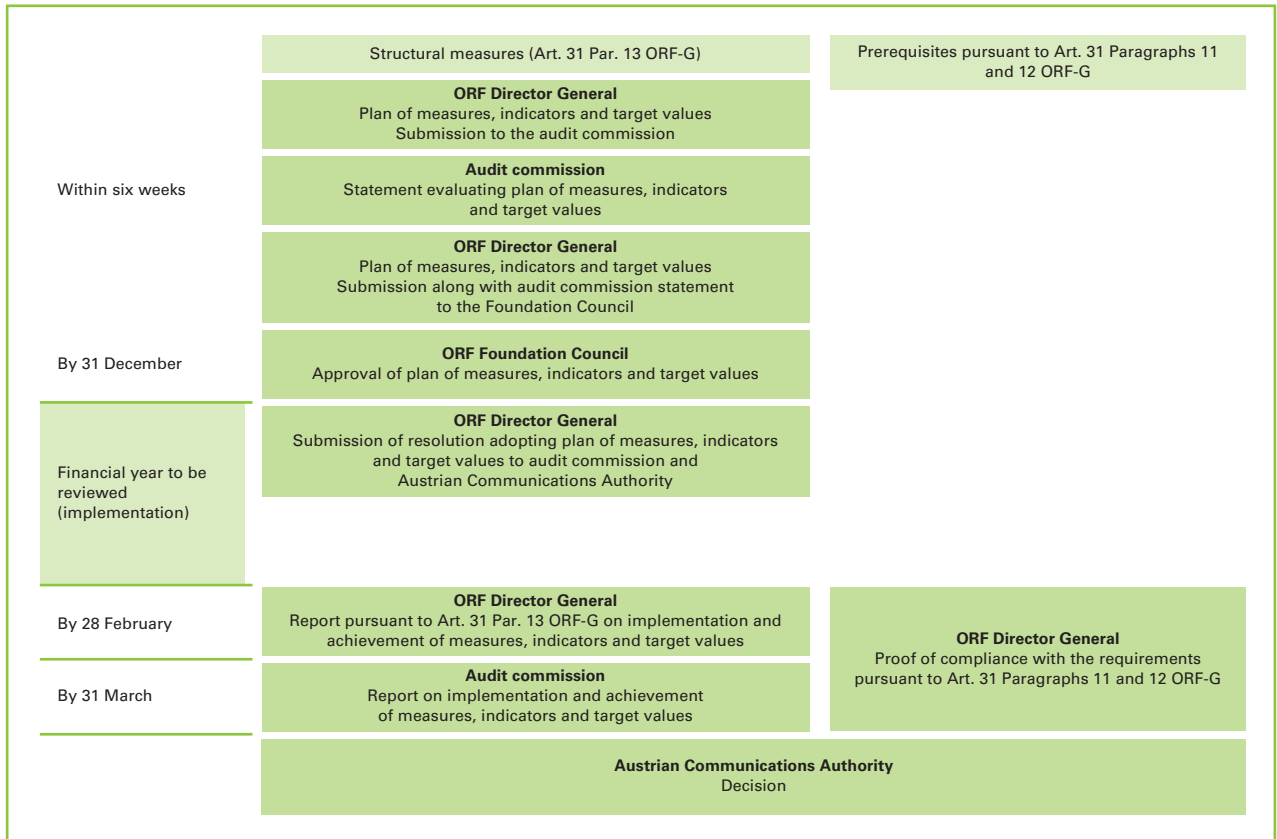
For the financial years 2010 up to and including 2013, KommAustria was required to verify whether the ORF had met all prerequisites to settle most of the fee revenues lost as a result of the statutory exemption of fee contributors from the broadcasting fee. In 2013, for example, the ORF lost EUR 56 million net due to exemptions, while EUR 30 million was refunded.

The provisions primarily require the Director General to take structural measures to substantially reduce the personnel and material cost base, with the goal of ensuring that the ORF group achieves balanced results from ordinary business activities in the medium term. Further, the provisions stipulate a broad catalogue of specific obligations to be performed, namely continuation of the Film/Television Agreement and of the Radio Symphony Orchestra, an increased proportion of Austria-specific television films, series and documentaries and children's programmes in overall programme offerings, an increase of the proportion of barrier-free programmes, as well as maintaining broadcasting operations for the special-interest sport channel (ORF SPORT +) and the special-interest channel for information and culture (ORF III Kultur und Information).

Procedure

The procedure for reviewing the structural measures and the requirements related to the scope of services (requirements pursuant to Art. 31 Par. 11 and 12 ORF-G) is specified in detail in the ORF-G. The act specifies inclusion of the ORF Director General and the Foundation Council in the procedure; the former is responsible for planning and implementing the measures, target values and other requirements, while the latter, as supervisory body, plays a role in structural measures. The reports on each of the areas relevant for meeting the requirements are submitted to the audit commission and to KommAustria, which is subsequently required to issue an assessment decision. In the event that the requirements had not been met, KommAustria would have had to rule that a total annual amount (i.e. EUR 30 million or EUR 50 million) be paid back. The diagram below shows how the procedure is conducted:

Figure 1: Steps in the annual procedure for the years 2011 to 2013



Source: RTR

Conditions

The ORF-G specifies the conditions for compensation. KommAustria is required to carry out an annual review to verify compliance with these requirements. The relevant results – in addition to the proof provided – are presented in simplified form in the table below.

Table 1: Conditions for the refund and proof required

Condition	Legal basis	Proof
The actual loss of income from programme fees incurred due to the exemptions exceeds the statutory maximum (EUR 50 or 30 million).	Art. 31 Par. 11 No. 1 ORF-G	<ul style="list-style-type: none"> ■ Report of the income from programme fees lost due to exemptions, according to tariff category and total amount, provided by Gebühren Info Service GmbH (GIS)
Structural measures to substantially reduce the cost base		
Structural measures to be taken to substantially reduce the cost base (measures, indicators and target values)	Art. 31 Par. 13 ORF-G	<ul style="list-style-type: none"> ■ Plans by the Director General for measures, indicators and target values ■ Statements by the audit commission on the plans by the Director General for measures, indicators and target values ■ Foundation Council resolutions concerning measures, indicators and target values ■ Report by the audit commission on implementation of the measures, indicators and target values
Scope of services		
Continuation of the Film/ Television Agreement	Art. 31 Par. 11 No. 2 lit. a ORF-G	<ul style="list-style-type: none"> ■ 2006 Film/Television Agreement ■ 2011 Film/Television Agreement ■ List of the productions approved for each year (each including title, production number, grant amount and production status)
Continuation of the Radio Symphony Orchestra	Art. 31 Par. 11 No. 2 lit. b ORF-G	<ul style="list-style-type: none"> ■ Concert programme booklets of the Radio Symphony Orchestra ■ Details of staff size (employed staff and fee recipients) ■ Details of costs ■ Lists of players by musical instrument
Increase of the proportion of Austria-specific television films, series and documentaries and children's programmes in overall programme	Art. 31 Par. 11 No. 2 lit. c ORF-G	<ul style="list-style-type: none"> ■ Lists of programmes broadcast by the channels relevant in this context, i.e. ORF eins, ORF 2, ORF SPORT +, ORF III Kultur und Information and ORF radio stations ■ Instructions with criteria for classifying programmes as Austria-specific or as children's programmes ■ Complete lists of all Austria-specific and children's programmes broadcast during the period compared by title, channel, programme type, broadcasting period, number of sequels and broadcasting time
Increase of the proportion of barrier-free programmes	Art. 31 Par. 11 No. 2 lit. d ORF-G	<ul style="list-style-type: none"> ■ Lists of programmes (summary and detailed) for the channels ORF eins, ORF 2, ORF SPORT +, ORF III Kultur und Information, and for the services made available for viewing on the web ■ Barrier-free programmes were listed by number of programmes per department responsible, by length of broadcast in each case and as a percentage of relevant content offered, as well as broken down by method for ensuring accessibility (i.e. subtitling, audio description, sign language, programme transcript), for each programme
Special-interest sports channel („ORF SPORT +“) <ul style="list-style-type: none"> ■ Maintenance of broadcasting operation (2011 to 2013) 	Art. 31 Par. 12 No. 1 ORF-G	<ul style="list-style-type: none"> ■ Number of hours programmes were broadcast ■ ORF annual reports
Special-interest culture and information channel (ORF III Kultur und Information) <ul style="list-style-type: none"> ■ Application for prior evaluation (2010) ■ Launch and maintenance of regular broadcasting operation (2011) ■ Maintenance of broadcasting operation (2012 and 2013) 	Art. 31 Par. 12 No. 2 ORF-G Art. 31 Par. 12 No. 3 ORF-G Art. 31 Par. 12 No. 4 ORF-G	<ul style="list-style-type: none"> ■ Decision by KommAustria (KOA 11.240/11-024) ■ Number of hours programmes were broadcast ■ ORF annual reports

Source: RTR

Results of the audits

The table below provides a summary of the results of the audits performed by KommAustria for the years 2010 to 2013. Complete compliance with legal requirements was ascertained for each year.

Table 2: Results of the audits

Condition	2010	2011	2012	2013
The actual loss of income from programme fees incurred due to the exemptions exceeded the maximum amount specified by law.	Fulfilled	Fulfilled	Fulfilled	Fulfilled
Structural measures to substantially reduce the cost base				
Structural measures to be taken to substantially reduce the cost base (measures, indicators and target values)	Not to be verified	Fulfilled	Fulfilled	Fulfilled
Scope of services				
Continuation of the Film/Television Agreement	Not to be verified	Fulfilled	Fulfilled	Fulfilled
Continuation of the Radio Symphony Orchestra	Not to be verified	Fulfilled	Fulfilled	Fulfilled
Increase of the proportion of Austria-specific television films, series and documentaries and children's programmes in overall programme	Not to be verified	Fulfilled	Fulfilled	Fulfilled
Increase of the proportion of barrier-free programmes	Not to be verified	Fulfilled	Fulfilled	Fulfilled
Special-interest sports channel (ORF SPORT +)	Not to be verified	Fulfilled	Fulfilled	Fulfilled
Special-interest culture and information channel (ORF III Kultur und Information)	Not to be verified	Fulfilled	Fulfilled	Fulfilled

Source: RTR

Implementation of structural plans to substantially reduce the cost base

In line with the specification given in Art. 31 Par. 13 ORF-G, the ORF's structural plans for reducing the cost base in the medium term stipulated measures, indicators and target values that were divided into the following three sub-areas:

1. The structural reduction of personnel costs, including a reduction of capacities and a reduction of costs per capita
2. The sustainable reduction of the cost of materials that are not directly connected to investments in channels
3. Optimising technology and infrastructure modernisation (hereafter: plan for optimising technology and infrastructure modernisation)

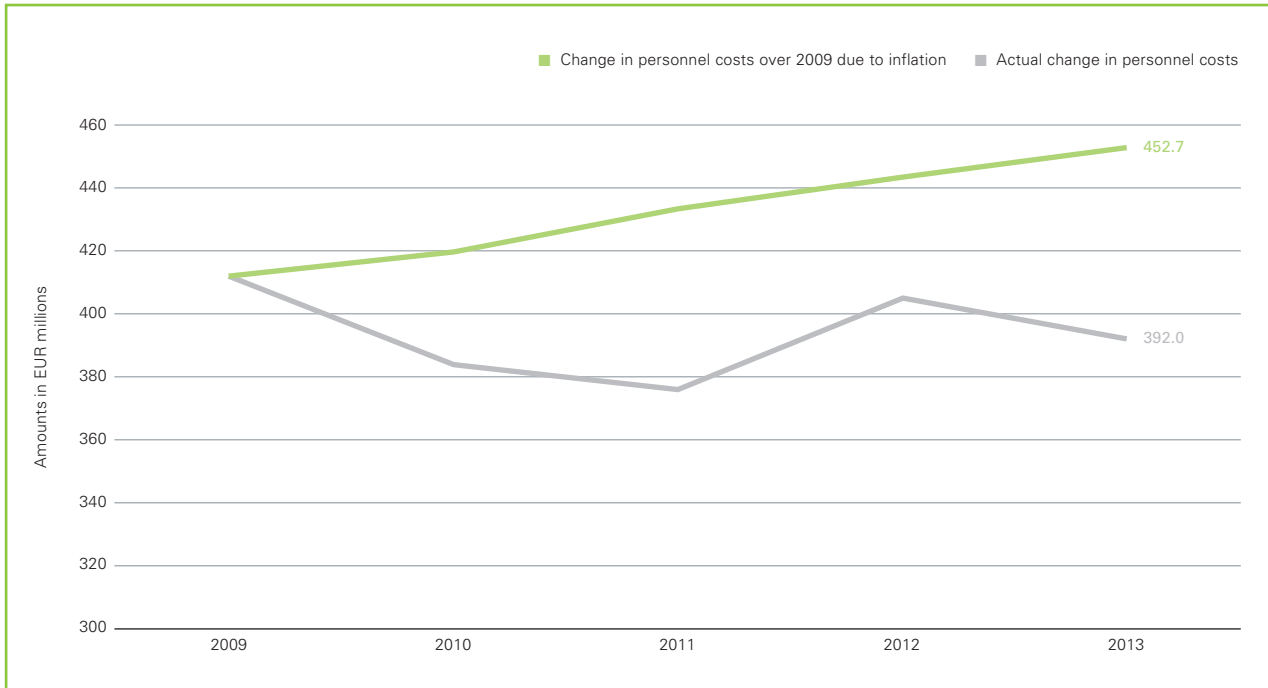
Initially it was necessary to isolate those generally relevant material and personnel costs incurred within the ORF group in terms of Art. 31 Par. 13 ORF-G. This was mainly due to the fact that some costs do not fall under the statute, a specific example being the (substantial) portion of material costs not directly connected to investments in channels. Exceptions arose in other cases as well (for instance new commercial activities and similar items). Consequently, those figures for personnel and material costs identified on the basis of Art. 31 Par. 13 ORF-G do not correspond to the figures given in the consolidated financial statements.

Specification of the target values forecast for the following year hinged on certain statistical assumptions (e.g. concerning inflation rate changes). The target values were adjusted according to their effect on the relevant planning parameter as reflected in the actual values obtained at the end of the previous financial year.

During the financial years under scrutiny, there were deviations from the schedule for implementing the planned measures, so that not all of the measure could be realised as planned. In such cases, the ORF defined plausible substitute measures, the effects of which at least compensated for the originally planned measures.

Reduction of personnel expenses and full-time equivalents (FTEs): In the baseline year (2009), personnel expenses incurred within the ORF group, as specified in Art. 31 Par. 13 No. 1 ORF-G, originally totalled EUR 411.7 million. By the final year (2013), savings of EUR 60.7 million had been achieved, compared to a cost development in the absence of any measures (EUR 452.7 million in 2013). The amount of personnel costs relevant for Art. 31 Par. 13 ORF-G was thus sustainably reduced to EUR 392 million by 2013.

Figure 2: Changes in relevant personnel expenses pursuant to Art. 31 Par. 13 ORF-G

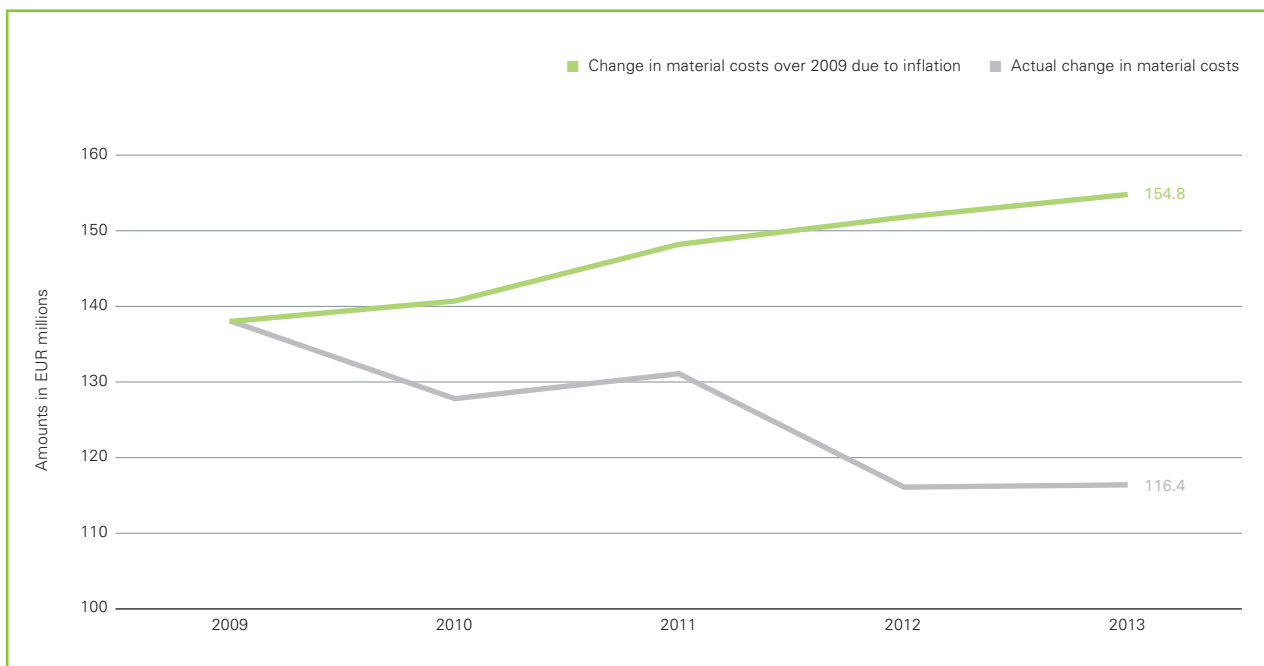


Source: RTR

In the baseline year (2009), the number of ORF group staff members relevant for Art. 31 Par. 13 ORF-G was 4,170 FTEs. The actual number in 2013 was 3,892. The average personnel expense per FTE was EUR 100,740 in 2013.

Reduction of material expenses: Between 2009 and 2013, the total savings in material expenses not related to channels, as specified in Art. 31 Par. 13 ORF-G, was roughly EUR 38.4 million in relation to the costs that would have been incurred in the absence of measures (EUR 154.8 million). In this way, costs in this area sustainably decreased to EUR 116.4 million in 2013.

Figure 3: Changes in relevant material costs pursuant to Art. 31 Par. 13 ORF-G



Source: RTR

Optimising technology and infrastructure modernisation: Within the last three years, the ORF has defined more than 100 individual actions aimed at optimising technology. Examples include the introduction of a tapeless digital workflow, the archiving of tape to files, automation in the control room and visual production, development and implementation of new databases, replacement of cutting systems, and various adaptations to technical systems at the ORF’s external facilities. The audit verified that the ORF had implemented the planned measures.

Implementation of conditions relating to the ORF’s scope of services

Continuation of the Film/Television Agreement: The Film/Television Agreement contains rules governing the cooperation between film and television in the interests of promoting the production of Austrian cinema films. In contrast, films that appear specifically and typically suited for broadcasting on television, and not for marketing through the cinema, do not constitute objects of co-financing within the Film/Television Agreement. The agreement specifies details relating to items such as production funding, eligibility of applicants as well as the usage rights and the share of the profits derived from the films produced under the agreement. The agreement requires the ORF to contribute EUR 8 million each year to this area, most of which is invested during the scheduled year. Remaining funds are carried forward as financing from one calendar year to the next. Taking into account the funds carried forward from one calendar year to another, the following amounts were earmarked for cinema film productions in the ORF’s budget: EUR 8.15 million in 2010, EUR 8.03 million in 2011 and EUR 8.01 million in 2012.

Continuation of the Radio Symphony Orchestra: The fact that the Radio Symphony has been continued is evident from several statistics. In 2012 the orchestra performed publicly on 71 occasions and had a staff of 92.5 FTEs. Total costs were EUR 8.715 million in that year.

Table 3: Statistics on the Radio Symphony Orchestra

Year	Number of performances	Staff size (FTEs)	Total costs (EUR millions)
2009	68	92.7	
2010	74	91.3	8.715
2011	61	89.4	9.179
2012	71	92.5	8.715

Source: RTR


Continuous increase of Austria-specific content: The proportion of Austria-specific television films, series, documentaries and children’s programmes in the overall programme (all radio programmes and all television programmes) was 2.88% in 2012. The statutory reference value is based on an overall programme that differs from that offered in 2012 (e.g. the overall programme did not include a special-interest information and culture channel in 2009), which necessitated a recalculation of the values for 2010 to 2012 to reflect a comparable overall programme. Based on this recalculation, the proportion of Austria-specific television films, series, documentaries and children’s programmes in the overall programme increased continuously, from 1.36% in 2009 to 1.56% in 2010 and 2.87% in 2011. Expressed in absolute figures, this type of content increased by 2,432 hours between 2009 and 2012.

Increase of barrier-free accessibility: The proportion of broadcasting time accounted for by barrier-free ORF television programmes was 23.9% in 2009, when the programme hours broadcast by ORF 2, ORF SPORT + and ORF III are adjusted by recalculation as explained above. By 2012 the ORF had expanded this proportion of television programmes qualifying as barrier-free to 34.9%. The number of hours in the category of programmes made available on the internet for viewing rose from 1,890.2 in 2009 to 6,022.7 hours in 2012. The amount of barrier-free programmes offered in this way also increased to 2,730.3 hours (from 282 hours in 2009), representing growth in the proportion of barrier-free programmes from 14.9% to 45.3%.

Expansion of the special-interest channels: The hours broadcast by the special-interest sports channel (ORF SPORT +) increased from roughly 2,520 hours in 2009 and 2010 to 3,890.4 in 2011 and to as much as 8,784 hours in 2012; the reason was the expansion to a 24-hour broadcasting schedule as of 26 October 2011. Broadcasting of the special-interest information and culture channel (ORF III Kultur und Information) was launched on 26 October 2011, with already about 1,608 hours being broadcast in that year. The total amount of programmes broadcast by ORF III reached 8,784 hours by 2012.

Conclusion: structural measures permanently effective – limits to official audit procedure

According to the regulatory authority, no unequivocal conclusion can be drawn after the phase that was finally terminated in May 2014, involving a monitoring review of the ORF’s compliance with requirements. On the one hand, it can be concluded that the structural measures taken in the area of personnel and material costs are sustainably reflected in quantifiable terms by the corresponding business indicators. The goal specified in legislation, i.e. to allow the ORF to achieve balanced results from ordinary business activities in the medium term, appears to have been achieved, inasmuch as no structural deficit can be identified for the ORF group overall and thus – provided that the ORF continues to hold spending in check – the essential prerequisites are given for stable business development. On the other hand, the terms for refunding related to providing public services are due to expire in 2014 and will thus, for the most part, once again become matters lying within the ORF’s discretion. Consequently, in contrast to the structural measures, no sustainable effect is to be expected here.



From a procedural standpoint, it must be recognised that the four-year reporting and review phase tied up considerable resources among all parties involved (i.e. ORF, audit commission and the regulatory authority). In 2014 alone, the reports prepared by the ORF and the audit commission encompassed some 660 printed pages including supplements, while the assessment decision by KommAustria was 108 pages long.

Moreover, the official procedure involved applying the relevant regulations for audits of business indicators as specified in legislation governing administrative procedures. It also became apparent over time that such a procedure is pushed to its natural limits. In practice, the management of a conglomerate with revenues of just short of EUR 1 billion is based on other – in some cases more short-term – requirements and decision cycles than those specified in Art. 31 Paragraphs 13 et seq. ORF-G, with its cycle lasting more than 18 months (i.e. preparation of structural measures – implementation – verification). As a consequence, much of the review and continuous monitoring of this process by the audit commission and KommAustria was related to the possibility and necessity of deviations, which led to handling the requirements so as to fulfil the objective intended by legislators while fully utilising the discretion accorded by administrative rules. In the case of any comparable arrangements in the future, therefore, an adaptation of the review methods should be considered which reflects the situation in practice but does not automatically impair legal certainty.

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 even 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 prohibiting broadcasts.

In order to enable the regulatory authority to monitor compliance with these legal prerequisites, the PrR-G requires that 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, an official assessment must be obtained from KommAustria prior to the transfer of shares 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; this did not result in any objections on the part of the authority. In one case during the period under review, an ownership change that involved shares amounting to more than the 50% threshold was approved by official decision as specified in the PrR-G.

The AMD-G likewise requires media service providers to notify the regulatory authority of any and all changes in their ownership or membership shares. If the transfer of shares of a television broadcaster to a third party exceeds 50%, this is subject to the applicable provisions of the AMD-G which are similar to those of the PrR-G in that they also require an official assessment to be obtained from KommAustria prior to the transfer of shares. This assessment serves to confirm 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. KommAustria issued two decisions during the period under review and approved 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 must determine whether compliance with the provisions specified in the applicable federal statute is being maintained under the changed conditions. After conducting a public oral negotiation, KommAustria must revoke the corresponding licence if the multiplex operator has transferred the shares despite 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 actually represents 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. No official approval is necessary for implementing the programming change in cases where KommAustria's assessment decision does not conclude that there is a fundamental change of the programme format.


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 have a severe detrimental impact on the competitive situation, the economic efficiency of existing radio broadcasters in the coverage area or the diversity of content offered to listeners. In this context, it is necessary to consider to what extent the circumstances relating to the radio broadcaster's activities have changed – without any action on his part – 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 this opinion. One radio broadcaster applied for approval of a fundamental change in programming, which KommAustria granted by issuing a legally effective decision. Also during the reporting period, three Styrian radio broadcasters withdrew the applications for approval of fundamental changes in programming that they had submitted in 2012.

Under the AMD-G, holders of broadcasting licences for satellite and digital terrestrial television channels also have the option of applying for approval of major changes to their satellite or digital television programmes. As these licences are not issued by way of a competitive selection procedure there are fewer restrictions 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 content targeted at Austrian viewers.

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 via a different 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 such changes are made without advance regulatory approval, an administrative penal procedure is to be initiated.



During the period under review, one major change in programming was notified by a satellite television channel and approved by KommAustria. Approval was also issued for the additional broadcasting of two satellite television channels via each of the nationwide multiplex platforms MUX E and MUX F.

4.3 Procedures concerning must-carry requirements for cable networks

Art. 20 Par. 1 of the Audiovisual Media Services Act (AMD-G) specifies the requirement for cable network operators to carry both the radio and television channels of the Austrian Broadcasting Corporation (ORF), on condition that this is possible without unreasonable effort or expense. Par. 2 additionally requires cable network operators to carry, on request and under the conditions applying to the majority of programmes carried by the cable network, television programmes that make a special contribution to the diversity of opinions within the coverage area.

Pursuant to Art. 20 Par. 4, cable network operators and television broadcasters may appeal to KommAustria if they are unable to reach an agreement on broadcasting or re-broadcasting a television programme within a period specified by the statute. Barring an amicable agreement between the parties, KommAustria must subsequently rule on whether a special contribution to the 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, an Upper Austrian television broadcaster submitted an application to KommAustria requesting them to issue a must-carry requirement in LIWEST Kabelmedien GmbH's cable network. The case is currently pending.


4.4 Broadcasting market analysis

Under the Austrian Telecommunications Act 2003 (TKG 2003), KommAustria is required to carry out regular reviews and analyses of those broadcasting markets specifically concerned with providing communications networks and services (broadcasting transmission services). The currently valid Broadcasting Market Definition Ordinance 2009 (RFMVO 2009), issued by KommAustria on 30 April 2009, has defined 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 for access to and for the digital terrestrial transmission of television signals to end users via the MUX A and MUX B multiplex platforms
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.

After carrying out extensive market analysis procedures under modified conditions (i.e. multi-party procedure), KommAustria passed draft proposals for enforcement measures applying to each of the three relevant wholesale markets at the beginning of 2013. In regard to the wholesale market for analogue terrestrial transmission of FM radio broadcasting signals to end users, KommAustria determined that Österreichische Rundfunksender GmbH & Co KG and ORS comm GmbH & Co KG (summarily referred to as ORS) jointly held significant market power, and thus imposed a number of requirements. In the case of the wholesale market for access to and for the digital terrestrial transmission of television signals to end users via the MUX A and MUX B multiplex platforms, KommAustria concluded that no company held significant market power. After analysing the wholesale market for access to transmission systems and the digital terrestrial transmission of television signals to end users, KommAustria again identified ORS as holding significant market power and in this case also imposed a number of requirements. Examples



of the requirements imposed on ORS include the obligation to provide non-discriminatory, unbundled access to the firm's transmitter infrastructure, limiting the fees allowed to be charged for this access to the costs incurred when services are provided efficiently, and separate accounting for ORS.

The draft decisions were then submitted to a national consultation procedure as specified in Art. 128 TKG 2003 and then to a European coordination procedure as set forth in Art. 129 TKG 2003.

The European Commission informed KommAustria on 13 June 2013 that they had no objections to the draft decisions. All of the remaining parties to the coordination procedure were notified of the outcome and the specific decisions were formally adopted on 12 July 2013. ORS subsequently filed an appeal with the Federal Communications Board (BKS) against the two decisions that imposed special requirements on ORS due to its significant market power. Yet, as a result of the applicable provision in this case, namely Art. 39 Par. 1 of the KommAustria Act (KOG), no suspensive effect is recognised for any appeal filed in the procedures in question, so that the disputed KommAustria decisions, and the imposed obligations they contain, became effective on the date they were served. Review of compliance with the imposed obligations was still in progress by the end of 2013, and represents an ongoing process to be monitored by the authority and by the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR).

Moreover, by the end of the period under review, the BKS had not ruled on the appeals that had been lodged with it, and the responsibility for handing down a decision was passed on to the newly established Federal Administrative Court (BVwG) at the end of the year.

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 broadcasting by means of radio networks and cable networks, whereas separate notification is required for the start-up, 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, 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 of 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 the 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 <https://www.rtr.at/en/m/RFAGGVerzeichnis>.

Seven new communications networks were notified during the period under review. A procedure had to be conducted against one network operator on account of failing to notify a communications network. Six network operators have discontinued services or transferred the network.

4.6 Act on Transparency in Media Cooperation and Funding

The Act on Transparency in Media Cooperation and Funding (MedKF-TG) entered into force on 1 July 2012. The main objective of this statute is to ensure comprehensive transparency when awarding 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 that are subject to business auditing 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 incurred for advertising placed in periodical media and grants awarded to media owners. KommAustria serves as the independent recipient of the reports and has the mandate to verify compliance with reporting requirements. The responsibility of completing these tasks is assigned to a single member.

The following specific bodies are required to provide reports: federal ministries, the Austrian Länder, municipalities with at least 10,000 residents and associations founded by municipalities. Others subject to the requirement include bodies belonging to the legal entities named above, such as foundations, funds, institutions, companies as well as the statutory professional representation bodies (e.g. chambers of economics, chambers of labour). Any funds paid within a given quarter for payable advertising in periodical media (print media, radio and television, and websites) must be reported, including the names of the periodical media and the total amount of fees paid to each media entity. Grants paid out to owners of periodical media must also be disclosed. In this case the name of the grant recipient and the total grant amount must be provided. A zero report has to be filed in cases where the total during the quarter does not exceed EUR 5,000 for a given media product or grant recipient. This applies equally to legal entities that do not place any advertising orders or award any grants in a given quarter.

Every legal entity subject to reporting requirements must, therefore, submit two reports (advertising orders and grants) via the web interface by the legal deadline, in which case each report either contains data or is a zero report. Such reports are to be submitted for each quarter within 15 days of the end of the quarter by means of a specially designated web interface. If a legal entity fails to file both reports (advertising orders and grants) within the two-week period, KommAustria will grant a four-week extension. If a legal entity still does not submit a report, KommAustria is to initiate an administrative penal procedure. Such a procedure is also required in cases of visibly incorrect or incomplete reports.

A list of the disclosed data ('disclosed data list') is compiled after the end of the reporting stage – or more specifically after the end of the four-week extension period. This list directly reflects the entries submitted by the legal entities. The list is published on the RTR website on 15 March, 15 June, 15 September and 15 December and can be viewed by the general public. In order to facilitate further processing of the data by the interested public, the lists are made available on the RTR website both as PDF documents and in an open format usable as open government data. KommAustria is not responsible for any subsequent evaluation, processing or visual representation of the data.

A total of five quarterly reports have taken place since the MedKF-TG entered into force on 1 July 2012. During this period, there has been a clear trend towards increased reporting discipline. Whereas in the third quarter of 2012 about 14% of all legal entities did not fully meet reporting requirements by the normal deadline, by the third quarter of 2013 this same figure had fallen to 2.3%. The change was equally positive for those legal entities that failed to report even by the end of the extension period. While in the third quarter of 2012 KommAustria still had to initiate administrative penal procedures due to neglected reports in 57 cases, in the third quarter of 2013 the reporting rate was 100% for the first time. Evaluations of the reports submitted during the stage covering the fourth quarter of 2013 were not yet available at the time this Communications Report was prepared.

As already mentioned, any legal entity whose advertising spend in a periodical media product exceeds EUR 5,000 per quarter is required to indicate the name of the product (specific publication, radio programme, website), in addition to the amount. Previous reporting stages have, however, revealed this legal requirement is not complied with in all instances. Specifically, instead of disclosing the media product some reports indicated media owners, publishers, advertising or media agencies, production companies, programmes, events, types of advertising, marketing companies or terms referring collectively to more than one media product. In this context, KommAustria initiated administrative penal procedures in 70 cases that concerned the first and second quarters of 2013. The initiated procedures represent 3.8% of the data sets reported in the first two quarters of 2013.



As media transparency has only recently become a subject of law, numerous interpretation issues surrounding the new legal requirements have arisen in the last year and a half. In response, a separate FAQ page providing assistance on details related to media transparency was published on the RTR website already back in 2012. Through collaboration with Manz'sche Verlags- und Universitätsbuchhandlung GmbH and the Association of Austrian Newspapers (VÖZ) it additionally became possible in 2013 to make a list containing a vast number of Austrian media products available on the RTR website. The list, based on the 2013 Austrian Press Handbook (Pressehandbuch), provides the legal entities required to file reports with orientation when making their entries.

An analysis of recent quarters revealed that about 80% of the legal entities examined regularly submitted zero reports. The majority of these cases involve associations founded by municipalities (sewage treatment associations, water supply associations, district social and healthcare bodies, citizenship associations, civil registrar's associations, and planning associations). Municipal associations account for roughly 2,000 of the 5,700 legal entities currently required to file. More than 99% of all municipal associations have submitted zero reports for every quarter.

In summary, it can be observed that last year the vast majority of legal entities complied with the requirements imposed by the MedKF-TG. In view of the reporting discipline, which in the meantime has reached outstanding levels of as much as 100%, and an increasing familiarity with the legal subject matter, there will be a declining need for administrative penal procedures (as a final recourse) in future.

4.7 Administration and coordination of broadcasting frequencies

In the area of broadcasting frequency management, a total of more than 700 broadcasting frequencies were coordinated with telecommunications administrative authorities in neighbouring countries during 2013 (refer to Table 4). The cases involving analogue Austrian (FM) radio transmitters relate mainly to private broadcasting systems, including plans for new systems as well as modifications to existing ones. In addition, the Austrian Broadcasting Corporation (ORF) applied for modifications to several radio transmitters in order to improve coverage of a number of regions in Austria with public programming (e.g. Grünburg in Upper Austria).

International coordination was initiated for digital television transmitters (DVB-T/T2), which mainly involves DVB-T2 transmitters belonging to the multiplexes D, E and F. Several improvements were also made to the DVB-T broadcasting networks of the multiplexes A and B.

Austria has initiated coordination activities for digital radio transmitters (T-DAB+), which continue to be the subject of still fictitious planning required in order to secure for Austria the future usage rights of VHF III band frequencies.

As Germany and Switzerland have already begun to implement DAB+ broadcasting networks, they have obviously initiated the majority of international coordination procedures that also affect Austria. Intensive planning and coordination activities for T-DAB+ also took place in the Czech Republic and Hungary during the reporting year, where Austria also took part in the international coordination.

Activities in international working groups and bodies were primarily centred on discussions of the 'digital dividend II'. This specifically related to the question of whether an additional frequency band (700 MHz) in Europe could in future be transferred from digital terrestrial television so as to be made available for mobile telecommunications services. Another item is the general discussion that has arisen surrounding the entire UHF band, with the aim of determining whether this frequency spectrum might not be used jointly by broadcasting services and mobile telecommunications in the event of underlying advanced technical standards and matching technologies.

4.7.1 Participation in licensing and allocation procedures

As in previous years, in numerous cases during the year under review, plans for new FM radio transmitters or for modifying existing ones were subject to expert evaluations of frequency use. Hereby, measurements were taken in some cases with the primary goal to enhance the technical coverage provided by Austrian radio transmitters. Several of the focuses during the reporting year are described below.

The further expansion of the nationwide KRONEHIT chain, including a large number of new transmitters, which were related to frequency implementation, international coordination and the preparation of frequency evaluation reports, was a main focus of reviews during the reporting year.

New coverage areas were created in regions such as Vorarlberg and Innsbruck, where new frequencies were planned and coordinated with neighbouring countries.

During the reporting year, an allocation procedure was also conducted for Wien Innere Stadt 103.2 MHz, which required several frequency evaluation reports. This was the first time that a frequency was requested for providing quality coverage to only certain areas of Vienna.

The organisation Verein Freies Radio Innsbruck applied for approval of a power increase for the Innsbruck 6 105.9 MHz transmitter. The plan has already been implemented, resulting in improved reception of the Freirad radio station in the Innsbruck region.

In 2013, evaluation reports were also prepared for the reallocation of frequencies in the coverage areas of Wels, eastern Styria and Freistadt.

The MUX A and MUX B DVB-T transmitter networks were further enhanced in 2013 as a result of modifications to about a dozen existing sets of facilities. Examples of such improvements include adjustments of the transmission power and antenna radiation pattern of certain transmitters to enable better audience coverage, or an additional decoupling was implemented to improve reception of the retransmitted signal.

Several changes were also introduced to optimise the MUX C regional and local multiplex, in this way further improving technical coverage of the population. This mainly entailed defining 'better' locations, so that coverage was improved by relocating transmitters. However, the licence approved for the local multiplex to serve the region around the city of Salzburg was relinquished.

The DVB-T2 platform was launched in April 2013 when 26 multiplex D, E and F transmitters began operating. No modifications have been made to the broadcasting network since transmissions began. The broadcasting network in its current form enables stationary coverage with a technical range that takes in about 86% of Austria's population. The associated coordination activities at international level were successfully completed during the year under review.

4.7.2 Frequency coordination procedures and frequency usage

In the reporting year, broadcasting frequency management initiated a total of 119 coordination procedures for radio and television transmitters. The table below also indicates the number of coordination procedures, initiated by the telecommunications administrative authorities of other countries, in which Austria was affected as a neighbouring country.

Table 4: Number of coordination procedures in 2013

Country	Analogue radio	Digital radio	Digital television
Austria	63	5	51
Germany	30	61	0
Croatia	11	0	1
Poland	10	2	0
Switzerland	72	42	85
Slovakia	15	0	13
Slovenia	12	0	9
Czech Republic	34	26	43
Hungary	24	33	88
TOTAL	271	169	290

Source: RTR

The frequency negotiations at the ADSL meeting in 2013 primarily concerned the impact of Germany’s second nationwide T-DAB+ coverage network on Switzerland, Liechtenstein and Austria as its neighbours; another focus was further steps to optimise the GE06 plan with regard to Band III. Frequency management experts from Austria, Germany, Liechtenstein and Switzerland participate in these regular meetings.

Hungary’s frequency administration authority invited Austria to a bilateral meeting that was held in May 2013. For Hungary, the main topics of specific frequency planning were new local DVB-T transmitters, while Austria focused on modifications of the GE06 plan affecting the area of eastern Lower Austria and northern Burgenland. Hungary has submitted a large number of requests for coordinating T-DAB+ frequencies. To comply with national licensing requirements, Hungarian broadcasting network operators will have to expand their networks towards the Austrian border in the coming years. Temporary agreements for at least up to 2020 could be reached for the use of certain frequencies in several critical technical frequency situations.


The Hungarian frequency administration authority invited the neighbouring country administrations of Austria, Croatia and Slovenia to a multilateral working meeting in April 2013.

As in already 2012, the main topic at the event concerned optimising and restructuring the GE06 frequency plan after elimination of DVB-T channels 61 to 69 (digital dividend I).

The amicable discussions with the neighbouring countries revealed a certain potential for optimising frequency use. However, in view of the critical situation predominating within the frequency usage area shared by these countries, no simple solutions are possible. Especially as – due to the topography of the area – the existing frequency spectrum must be divided among the four countries. Further negotiations on this topic will be needed in 2014.

A trilateral meeting was held in Linz, where representatives of Austria, the Czech Republic and Germany met for frequency negotiations.

Negotiations were mainly centred on the VHF band. A trilateral agreement was signed, specifying the restructuring of existing entries in the GE06 frequency plan that relate to border areas. The modifications were necessary in view of Germany’s plans to realise a second nationwide T-DAB+ broadcasting network using suitable frequencies.



Information was also shared relating to potential scenarios for the 700 MHz band and the impact to be expected on existing DVB-T/T2 broadcasting networks. Specifically, as a next step, Germany is considering a move from DVB-T to DVB-T2, which would result in additional frequency resource requirements for any simulcast service, and this need would at least initially have to be filled by the 700 MHz band.

4.7.3 Measurement activities

As part of preparing expert opinions and international coordination, numerous measurement projects were carried out in the reporting year, in which radio frequencies were investigated using measurement equipment to identify the effectiveness of coverage and any interference effects.

The main measurement projects commissioned in the year under review were as follows: coverage of the 97.5 MHz frequency in Hütteldorf; the FM frequency 106.6 MHz in the Nussdorf-Michaelbeuern region; DVB-T scan in Salzburg; FM planning for Salzburg; 107.0 MHz and 92.6 MHz in Bad Radkersburg; the FM frequency 89.6 MHz in the Graz area; DVB-T scan of Hungarian transmitters in Burgenland; field strength measurements of the Sopron FM transmitter around Vienna; frequency trials at 91.1 MHz in Hornsburg; measurements of FM coverage in St. Georgen and Unterach (Attersee); measurement of the 90.4 MHz frequency in the Steyr area; the influence of the Geresce transmitter in Hungary on the Seewinkel region in Burgenland; the influence of T-DAB/DVB-T transmissions from Germany and Switzerland in Lustenau; measurement of the 90.0 MHz frequency in Lustenau; FM coverage in Judenburg; interference from Italian transmitters in Neumarkt; measurement of the 94.2 MHz frequency in Graz; technical measurements to investigate the influence of LTE on DVB-T in St. Pölten; coverage of the Hornsburg area by FM transmitters in Vienna; influence of DVB-T transmitters in the Czech Republic on Lower Austria; measurement of the 102.2 MHz frequency in eastern Styria; FM coverage in Admont; measurement of the 100.4 MHz frequency in the Bad Gleichenberg area; influence of the FM transmitter at Varazdin, Croatia in southern Styria; influence of the 99.5 MHz frequency in the Tulln area.

4.7.4 Frequency register

At present, the frequency register of the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) lists for the FM band about 1,280 radio transmitters, ranging in power from a few watts to as much as 100 kW. The ORF holds almost 840 of those frequencies. The other roughly 440 radio broadcasting frequencies are used by private radio broadcasters. Austria has a total of 32 high-power transmitters, 26 of which are used by the ORF and six by private radio broadcasters.

With regard to the television frequency band within the UHF range, the currently approved DVB-T transmitters and the new additional DVB-T2 transmitters in the frequency register were distributed among the individual MUX platforms as follows at the end of 2013:

Table 5: Number of approved DVB-T/T2 transmitters (as of 31 December 2013)

DVB-T Multiplex A (ORS multiplex)	328 transmitters
DVB-T Multiplex B (ORS multiplex)	36 transmitters
DVB-T Multiplex C (regional/local multiplex platforms)	36 transmitters
DVB-T2 Multiplex D (ORS multiplex)	26 transmitters
DVB-T2 Multiplex E (ORS multiplex)	26 transmitters
DVB-T2 Multiplex F (ORS multiplex)	26 transmitters

Source: RTR

As of 31 December 2013, permits had been issued for a total of 478 DVB-T/T2 transmitters. 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.

4.7.5 Participation in international working groups

Joint Task Group 4, 5, 6, 7 (JTG 4, 5, 6, 7)

JTG 4, 5, 6, 7 is a technical regulatory work group of the International Telecommunication Union (ITU) with the task of completing preparations for WRC-15 (World Radio Conference). Two meetings were held in Geneva during the reporting year. One of the major topics discussed in this work group is the technical compatibility of broadcasting and mobile telecommunications. After two further sessions in 2014, a report of the results will need to be presented.

Study Group 6 (SG 6)

This group's main task is to develop technical standards (ITU-R Recommendations and Reports) as a prerequisite to ensure optimum, interference-free broadcasting. The 6A working party, a sub-group of SG 6, deals with topics related to terrestrial broadcasting.

As in previous years, many studies were conducted to investigate issues surrounding the technical compatibility of DVB-T/T2 and LTE.

Project Team D (PTD)

To help European countries prepare for the coming WRC-15, the work group CPG PTD (Conference Preparatory Group Project Team D) of the CEPT (Conférence Européenne des Administrations des Postes et des Télécommunications) met on three occasions. A smaller sub-work group also met three times to discuss the topic of compatibility of mobile telecommunications and transmissions in the 700 MHz UHF band range.

Another three meetings are planned for 2014. A joint European position paper on the subject of the digital dividend II has been proposed for the WRC-15.

Task Group 6 (TG 6)

The TG 6 work group was established within the CEPT for the purpose of long-term, flexible frequency planning of the 470 to 694 MHz band. This new work group, which met twice during the year period under review, has the task of defining various scenarios for the long-term future of terrestrial broadcasting. The report on the results is expected to be published mid-2014.



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

The activities of the EU's SEE Digi.TV project were focused in 2013 on completing the technical and administrative aspects of the project.

The final, second part of the technical report was successfully completed in April 2013. The main focus of the report concerned, firstly, a discussion and analysis of current issues related to digital terrestrial television and, secondly, a concise summary on the status of technical developments in digital television among the partner countries participating in the project.

Reimbursement of costs for the final period (85% is co-financed by the EU) is expected in early 2014.

Information on the project 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

The nationwide launch of TV service based on the DVB-T2 transmission standard in mid-April 2013 was a significant advance in digital broadcasting. Along with other EU countries such as Denmark, Finland, Sweden and the UK, Austria has taken a leading role in implementing this transmission standard for digital terrestrial television, which is much more powerful and makes more efficient use of frequencies than DVB-T.

Cable television is the only remaining means of reception for households with analogue TV receivers. The rate at which households migrated from analogue cable to digital TV reception slowed down slightly in 2013. Yet a significant milestone was also reached in this regard: for the first time: well over half of all cable households (57%) were watching digital television. That figure had still been 47% at the end of 2012.

Austria in eighth place in the EU

By the end of 2013, digitisation had reached 3.577 million television households¹, a rise of four percentage points since the end of 2012 to a level of 81%². Now that both the satellite and the terrestrial reception platforms have become fully digitised, the rate of digitisation among households depends solely on the progress of the digitisation of cable households.

The Satellite Monitor study, published every year in March by the satellite operating company SES (ASTRA), provides a good overview that allows for a comparison between the degree at which Austrian television households are digitised in relation to the European context. The last survey published in March 2013 reflects the situation at the turn of the year from 2012 to 2013. As the result of using a different survey methodology³, Austrian television households were already reported as having achieved a somewhat higher level of digitisation at slightly over 83%. This difference is not, however, decisive in the overall picture of the situation. According to the Satellite Monitor, in the meantime 83% of all television households in the EU Member States⁴ with the addition of Switzerland have become digitised. In the previous year that figure was 79%, with Austria, when viewed separately, above average at 81%.

There was an increase in the level of digitisation among households in the EU which was especially attributed to the shutdown of analogue terrestrial broadcasts in Italy, Slovakia and the UK in 2012. Italy and the UK are now on par with Finland, all of which are 100% digitised. While Italy has no cable television market, analogue cable TV was shut down in the UK in 2012, where the service was eventually only being used by a mere 50,000 households. By shutting down its analogue terrestrial broadcasting system, Slovakia improved its level of digitisation by six percentage points to reach 86% of all television households.

¹ 2012: 3.552 million. Unless otherwise specified, all data are derived from the TELETEST Working Group / GfK Austria (2012).

² Digital reception on the only or most-watched receiver.

³ Households are also counted as having switched to digital even if the digital device is not the primary means of reception.

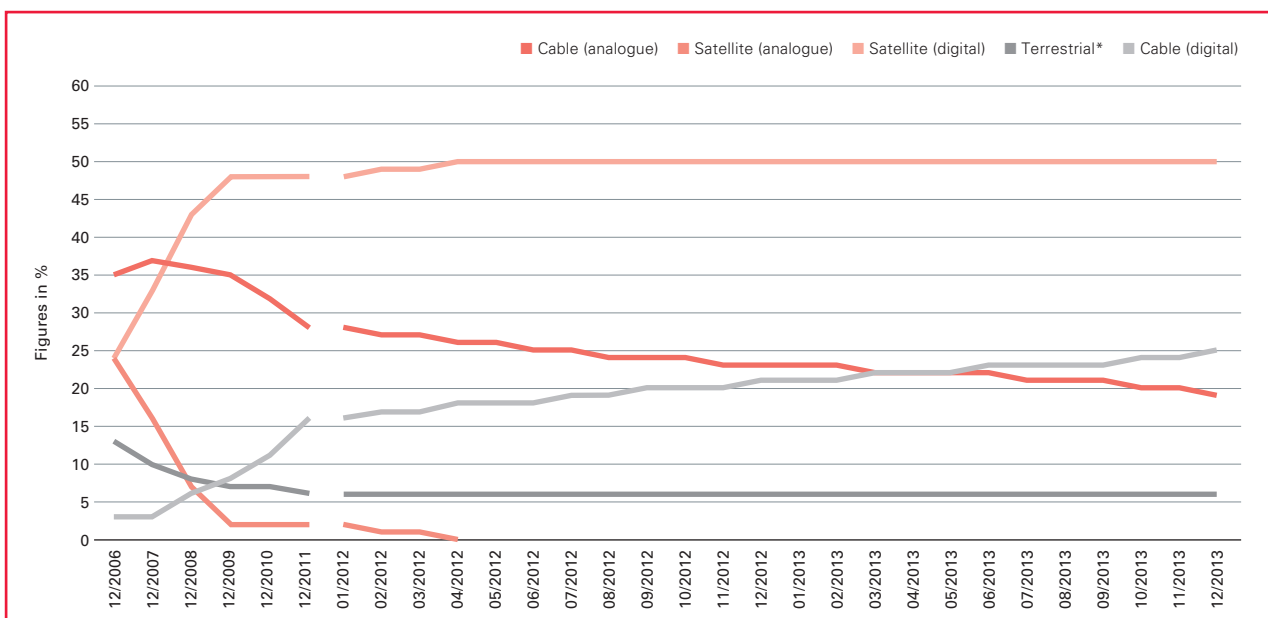
⁴ Excluding Cyprus and Malta.

Among EU Member States, Austria moved up two positions from the previous year to share eighth place with Belgium and the Czech Republic. Germany and the Netherlands came in ninth, each with 80% digitisation. Besides Finland, Italy and the UK, the other leaders include Spain (99%), France (98%) and Croatia (96%). The countries at the bottom of the list are Romania (50%), Greece (49%) and Lithuania (39%).

Number of cable households still increasing

There was no change in the relative amounts in which Austrian households use the three reception platforms, i.e. satellite, cable and terrestrial. As has been seen for many years, in 2013 roughly 50% of television households had satellite reception. Cable, meanwhile, is the preferred means of reception in 44% of households, while about 6% of television households continue to rely on terrestrial reception.

Figure 4: Distribution of reception modes among Austrian television households




* The cable households with basic coverage now represent one sixth of the terrestrial television figure, i.e. being able to receive around eight channels.

Source: AGTT / GfK Austria

The share of digital cable households grew to 25% of all television households. While this figure corresponds to an increase of four percentage points over 2012, growth was weaker on the whole than in 2012 or 2011. Since 2008 the digitisation of cable households had been growing at a linear rate, yet already in 2012 there were signs of this trend slowing down, despite the European Championship in football and the Olympics held that year. The year 2014, with the Winter Olympic games and with the football World Cup in Brazil, will reveal how many of the remaining analogue cable customers can still be motivated to switch to digital reception to enjoy major sports events in HD quality.

In 2013 talks were launched between cable network operators, the Association of Telecommunications and Broadcasting Companies (FTR, which represents the operators as part of the Austrian Federal Economic Chamber) and the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR), with the aim of defining strategies to promote the digitisation of analogue cable households, possibly by tapping into the Digitisation Fund instituted by RTR; these discussions will continue in 2014.



It would in any case be premature to interpret the unchanged market share of digital terrestrial television as an indication of the success of DVB-T2, the new terrestrial transmission standard. On the one hand, by the end of the year this type of service had only been on the market for less than nine months and was still relatively unfamiliar to the public; but also, because it is naturally a lot easier to convince consumers to upgrade to a better level of service offered within the same reception platform. It will really only be possible to tell whether cable customers (or even satellite TV viewers) can be won over to the terrestrial service that offers 40 TV channels, including 10 in HD quality by the end of 2014 – or more reliably in the course of 2015.

In terms of individuals, there were 7.211 million viewers aged twelve and over living in Austrian television households in 2013. Of this number, digitised television households' account for 83% or 5.939 million viewers. This represents a 1.4 % increase over December 2012. The percentage of TV viewers in digitised television households had still grown by almost eight percentage points between 2011 and 2012. This could, however, partly be attributed to the shutdown of the analogue satellite transmission of German television channels early in 2012.

Convergent television

There is a continuous rise in sale in the number of television sets with internet access, enabling non-linear viewing of TV programmes and other additional services. In the first three quarters of 2013, 53% of the roughly 519,000 flat screen televisions sold were such 'smart TVs'.⁵ The share had still only been about 48% in the same period of the previous year and 30% in 2011.

'Smart TV' originally refers to television sets that allow access to select web content as permitted by the TV manufacturer via an app portal. Meanwhile, however, the large majority of smart TVs additionally support HbbTV, an open standard in Europe that allows television sets with an internet connection to directly access media libraries and other extra services provided by television broadcasters. HbbTV was implemented in 86% of television sets sold between January and September 2013. The share of smart TVs also supporting HbbTV was 57% in 2012 against a mere 6% in 2011.

As of mid-November 2013, the Austrian Broadcasting Corporation (ORF) has been simultaneously transmitting an internet address along with the television signals in DVB-T/T2 and DVB-S (for satellite and indirectly for cable as well). HbbTV-compatible television receivers connected to the internet are redirected via this URL to a special HbbTV version of the ORF TVthek. Development of this service was funded from the Digitisation Fund, established with RTR. In this way the ORF has become the second Austrian television broadcaster, after PULS 4, to support HbbTV.

No studies have yet been completed on the actual use of smart TVs or sets compatible with HbbTV in Austria. The digitisation report presented by the German media authorities⁶ in September 2013 does, however, offer an indication. According to the report, while 53% of the smart TVs in German households are in fact connected to the internet, only 12.3% of those individuals with such a connected smart TV actually view video content provided through the set manufacturer's app portal at least once a week. HbbTV, in contrast, is tremendously popular. Where a smart TV has an internet connection as well as the additional HbbTV feature (54% of smart TVs), almost 50% of the owners directly access, at least occasionally, the web content from linear television programmes provided by broadcasters via HbbTV.

⁵ GfK panel market, sales figures from January to September 2013.

⁶ die medienanstalten – Digitalisierungsbericht 13, VISTAS Verlag.

Market for television sets

The decline in sales of flat screen television sets, observed in many European countries in 2013, was also noticeable in Austria. Whereas an average of roughly 590,000 televisions had been sold by the end of the third quarter between 2010 and 2012, Austrian retailers recorded sales of 519,000 sets for the same period in 2013. This represents a drop in average sales of more than 12% compared with the three previous years.

Yet, the trend towards ever larger screen continues. While smaller screens with diagonal sizes of up to 37 inches still make up the largest group, their share in total sales fell to 41.5% in 2013 (after 47% in 2012 and 52% in 2011). Conversely, the share represented by 42-inch and larger screens grew to 26.5% (2012: 20%, 2011: 15%, 2010: 9%). Thus, retailer and consumer trends can be expected to result in new screens that feature much higher resolutions (i.e. 4K or Ultra HD resolution) becoming a significant factor in the near future. Such television sets provide images consisting of four-times as many pixels compared with Full HD displays (1920 x 1080 pixels). Granted, during the first three quarters of 2013, a mere 165 4K televisions were sold at an average price of EUR 5,500 each, although the price of such models fell by almost 60% compared with the fourth quarter of 2012, when the first two such television sets were sold in Austria.

Cautious growing interest in digital radio

In the area of digital radio broadcasting, slight progress was made particularly in the fourth quarter of 2013. In particular, the Austrian Association for Digital Radio (Verein Digitalradio Österreich), founded in late 2012, informed RTR's Media Division that specific plans to carry out trial broadcasts using the DAB+ standard in the Vienna area during the second quarter of 2014 were in progress. An application for funding from the Digitisation Fund, established with RTR, was also announced.

The association succeeded in recruiting several operators of private radio stations in other regions of Austria as members, gaining their willingness to participate in the trials. Yet, neither the ORF nor the nationwide broadcaster KRONEHIT Radio were to take part as of the end of 2013.

5.1 2013 Digitisation Plan

The 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, referred to as the 2013 Digitisation Plan, entered into effect on 1 May 2013.

In regard to digital terrestrial television, the invitation to tender for the renewed allocation of the nationwide MUX A and B multiplex platforms was specified to take place in August 2014. As part of renewing the licences, transmission technology is to be migrated from DVB-T to its compatible successor standard DVB-T2, which is already implemented in the MUX D, E and F platforms.

Furthermore, options have been defined for an expansion of the current digital terrestrial television multiplex platforms by including new coverage areas.

Preparatory work started in the area of digital terrestrial radio with the 2011 Digitisation Plan to prepare the legislative framework and frequency basis for introduction of digital radio was continued thus creating the option of putting the multiplex platforms for digital terrestrial radio out to tender. A tender is possible if a potential multiplex operator submits a tender application in which corresponding demand could prove the project's probable economic feasibility.

5.2 Digitisation of television broadcasting

5.2.1 Terrestrial

In April 2013, Österreichische Rundfunksender GmbH & Co KG (ORS), under the brand name of 'simpliTV' a DVB-T2, launched a service that delivers a total of 30 television programmes, nine of which are broadcast in HD quality and the remainder in SD resolution.

The Austrian Communications Authority (KommAustria) had previously invited tenders for three nationwide multiplex coverage networks (MUX D, E and F) for which ORS remained the only bidder.

With the stage of expansion completed by ORS by the end of 2013, the platforms MUX D, E and F have a range that takes in about 86% of the population.

With the simpliTV package, each channel is encoded and can be received and decoded using an ORS-certified DVB-T2 receiver or a DVB-T2-compatible television equipped with a CI module for inserting the smartcard. Customers simply need to register to active reception for these three programmes: ORF eins HD, ORF 2 HD and ServusTV HD. To be able to view the entire programme package, which comprises popular German-language channels offering entertainment, sports and news, customers have to pay a monthly fee of EUR 10 (or a slightly reduced annual fee of EUR 110).

With simpliTV, ORS intends to attract both previous DVB-T viewers as well as new customers, and so further expand the share of terrestrial television in the reception mode market. As of the end of 2013, however, there had not yet been any signs of the latter taking place. Nor had ORS disclosed any customer statistics for simpliTV as of that time.


DVB-T2 receivers are designed to be downwards compatible with the previous standard, so that they can also be used to view every television channel broadcast under DVB-T within the particular coverage area. In this way terrestrial reception of up to 40 TV channels is available, depending on the location.

DVB-T MUX A (carrying ORF eins, ORF 2, and ATV) had a range of 98% of the population in 2013, the same reach as in 2012. MUX B (broadcasting PULS 4, ServusTV, 3sat, ORF III Kultur und Information, ORF Sport + and, only in Vienna, Schau TV) continued to reach 91% of the population, as in the previous year.

In 2013, just as in 2012, roughly 64% of the population resided in areas allowing reception of various regional DVB-T programmes, classified by KommAustria and RTR collectively under the category of MUX C.

In regard to the percentage of those using digital terrestrial receivers as a primary reception mode, the distribution of reception modes shows no change from the previous year. The share of Austrian television households that exclusively viewed digital terrestrial television on their primary or only television set remained at 6%. However, there was a slight decrease in the absolute number of such households. In contrast to 214,000 terrestrial households in January 2013, market research at GfK Austria GmbH (GfK Austria) recorded only 208,000 in December 2013. In all probability, the now missing 6,000 households had not previously been 'truly' terrestrial households, i.e. with antenna reception, but rather former 'cable households with basic coverage' that migrated to full digital service during 2013.

The term 'cable households with basic coverage' refers to cable customers living in multi-family housing that does not allow antenna reception but has cabling for television. Some such residential buildings offer special arrangements for households that are not interested in signing an agreement with the cable operator and prefer terrestrial reception. Such households receive cable access to a highly reduced channel package (normally eight channels) at no charge or a small fee. The package largely corresponds to the selection of programmes that could be viewed using a DVB-T receiver connected to a building antenna. GfK Austria consequently classifies such



households under the category of terrestrial television reception. The number of satellite households remained practically the same in 2013, whereas the quantity of digital cable households increased somewhat more sharply than the decrease in the number of analogue cable households. It may, therefore, be concluded that the 6,000 'lost' terrestrial households had, for the most part, been cable households with basic coverage that later upgraded to full cable service.

In December 2013, a total of 398,000 television viewers aged twelve and over were living in terrestrial television households, including cable households with basic coverage. After adjusting for the roughly 30,000 cable households with basic coverage, there remain about 335,000 'true' viewers of digital terrestrial television that use this as the primary reception platform.

Yet cable and satellite households often additionally use digital terrestrial television as the reception mode with second television sets, hence the true relevance of this mode can be appreciated only when such households are considered. In 2013, about 470,000 viewers twelve and above resided in Austrian cable or satellite households that additionally used DVB-T receivers. Thus, 805,000 television viewers⁷ twelve years of age and older resided in a television household using DVB-T in 2013. This was in fact 20,000 individuals more than in the previous year. The total number of television viewers with DVB-T access thus account for 11% of the 7.211 million Austrian viewers aged twelve and over.

Almost without exception, today's flat screen television sets have a built-in DVB-T receiver. Consequently, sales of set-top boxes for viewing digital terrestrial television continue to drop drastically. Specifically, retailers sold only about 19,000 DVB-T receivers in the first three quarters of 2013.⁸ That is a 21% drop from the same period in 2012 (almost 23,000 units; 2011: 27,000 units; 2010: 41,000 units). Nevertheless, set-top boxes that support the more recent DVB-T2 transmission standard meanwhile account for a market share of 34%. About 98% of the 6,400 units sold were ORS set-top boxes marketed by retailers. These units are equipped to view the simpliTV package that has only been on the market since April 2013.

Although not yet commonplace, DVB-T2 as a built-in feature of TV sets is becoming more popular. Almost 5% of the just under 520,000 flat screen televisions sold between January and September 2013 were equipped with a DVB-T2 receiver module. In all of 2012 the percentage of such televisions had still been around 2.5%.

5.2.2 Satellite

In 2013 as well, 50% of Austrian television households used satellite transmission as their sole or primary television reception mode. This figure has remained constant for about seven years.

Between the end of 2012 and December 2013, the number of satellite households rose slightly by 11,000 to reach 1.795 million. Nonetheless, the residents of such households aged twelve and above decreased by 15,000 to 3.908 million. This even impacted the percentage of the Austrian television population residing in satellite households, which dropped by one percentage point to 54%. This indicates the trend towards increasingly smaller numbers of individuals living together, and a larger share of single households.

⁷ AGTT/GfK TELETTEST.

⁸ GfK panel market, sales figures from January to September 2013.

5.2.3 Cable and IPTV

In a year-on-year comparison, it is somewhat disappointing to note the sluggish growth in digital cable households and the fact that the interest of analogue cable customers in migrating to digital reception waned again somewhat in 2013.

Whereas the number of digital cable households grew by just under five percentage points in 2012, representing at least a repeat of the gains in 2011, the growth curve declined in 2013 for the first time since 2007, resulting in an increase of just under four percentage points. Furthermore, the fourth percentage point was only barely achieved, once the results for the last month of the year were rounded off.

Even if some momentum was lost, the number of digital cable households continued to grow, with the share well clearing the 50% threshold relative to all cable reception modes in 2013. Now accounting for 57% of all cable users, digital cable households have a solid lead over analogue cable households at 43%. With a 53% share in 2012, analogue cable households had still led by a narrow but clear margin.

The results of the 2012/2013 SES Satellite Monitor⁹ study allow comparisons with the other EU Member States that have a cable market¹⁰ as well as with Switzerland. At 57% of cable households, the level of digitisation shown for Austria is slightly higher than the EU average of 55%. According to the study, 54% of cable households in Austria's neighbour Germany are digitised.

In addition to 'traditional' cable television customers, digital cable households include IPTV households, which account for about one quarter of cable households and almost exclusively use A1 TV, a product supplied by A1 Telekom Austria AG.

Growth in the number of A1 TV customers has slowed down significantly in recent years. The Telekom Austria Group nonetheless recorded 229,800 A1 TV customers as of 30 September 2013, representing a 7.8% increase over September 2012. Yet at that time A1 still recorded a 10% growth over the previous year. And, when comparing 2010 and 2011, A1 TV was able to win 65,000 new customers or 33% more within a year.

Viewed as a separate category, IPTV households account for 6.5% of all television households in Austria and so represent a slightly larger share of the reception mode distribution than the 208,000 households with terrestrial reception.

Expressed in absolute numbers, Austria has a total of 1.575 million cable television households, made up of 880,000 digital and 694,000 analogue television households.

In 2013, for the first time ever, the percentage of individuals aged twelve and over residing in either an analogue or a digital cable household in a given year equalled the percentage of analogue and digital households in each case. Specifically, just under 43% of cable users resided in the 43% of households with analogue cable in 2013, and just over 57% of cable television viewers made up the 57% of those households with digital cable TV. Previously, there was a larger percentage of television viewers in digital cable households than the percentage of viewers living in analogue cable households. Thus, mostly households with only very few residents or with children under twelve migrated from analogue to digital cable television in 2013.

According to GfK Austria GmbH, at 31 December 2013 1.235 million viewers aged twelve and over resided in analogue cable households, while 1.670 million lived in digital cable households.

⁹ Excluding Cyprus and Malta.

¹⁰ All countries except for Italy and Greece.

5.3 Digitisation of radio broadcasting

Several Austrian radio broadcasters are cautiously looking into the subject of digital radio. Impetus has been provided by the growing number of EU Member States in which digital radio has gone live based on the DAB+ transmission standard (most recently Italy in December 2012 and the Netherlands in September 2013) as well as by the decrease in listening times observed among the target group of young consumers relevant for advertising and by concerns about the future attractiveness of FM radio for the advertising industry.

In December 2013, the Austrian Association for Digital Radio announced that several radio broadcasters had joined the association, in addition to the founding members Radio Arabella and LoungeFM, including: Vorarlberger Regionalradio GmbH, Antenne "Österreich" und Medieninnovationen GmbH, Antenne Steiermark Regionalradio GmbH & Co KG, Life Radio GmbH & Co. KG and the Radio Stephansdom foundation. It was also disclosed that preparations for trial digital radio broadcasts in Vienna using the DAB+ transmission standard were all but complete, with the launch planned for the second quarter of 2014. Technical services were to be provided by Österreichische Rundfunksender GmbH & Co KG (ORS) and by the Germany-based Media Broadcast GmbH.

The purpose of the trial operation is to establish suitable broadcasting settings to ensure optimum penetration of Vienna's historic buildings and to try out several new added services. An application for funding from the Digitisation Fund, established with RTR, was also announced.

So far, the hope that the nationwide broadcaster KRONHEIT Radio will become a member has been in vain. The Austrian Broadcasting Corporation (ORF) still maintained reservations about digital radio, at least at the end of 2013.

On 11 November 2013, RTR held a joint conference with the German media authorities on the topic of digital radio at the Austrian Embassy in Berlin. Thereby RTR Managing Director Alfred Grinschgl announced RTR's willingness to support the launch of digital radio in Austria whilst at the same time pointing out the prerequisites that, in his view, would need to be met to ensure the project's success. These included, he stated, a joint affirmation and targeted action on the part of all relevant radio broadcasters, including the ORF, as well as a dedicated commitment to developing new programmes and additional services as a means of convincing listeners of the added value offered by digital radio. In order to avoid costly, parallel analogue and digital broadcasting for an indefinite period, he also proposed a schedule for a rapid withdrawal from analogue radio once DAB+ was launched.

The Digital Radio Interest Group, founded in 2009 on the initiative of RTR and the Austrian Communications Authority (KommAustria), met on 4 December 2013. Here, RTR's Media Division presented the amended guidelines for awarding grants from the Digitisation Fund.¹¹ While not essentially aligned with any particular broadcasting platform, the guidelines were adapted to especially consider grants that might be awarded when digital radio is introduced. Specifically, applications can now be made for grants in support of general consumer education activities informing of the new digital radio services. Prior to revising the guidelines, consultations were held in the summer of 2013 between Austrian radio broadcasters and their interest group representatives.

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 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 an advisory capacity. The group observes the development of digital radio in Europe, with the aim of identifying a suitable time for its introduction in Austria, based on the DAB+ transmission standard.

¹¹ Refer to Section 6.1 Digitisation Fund.





6 Management of funds and grants

6.1 Austrian Digitisation Fund

6.1.1 Digitisation Fund activity report

In 2013, the Austrian Digitisation Fund received an endowment of EUR 0.5 million. The purpose of the fund is to promote digital transmission technologies and digital applications based on European standards relating to broadcasting. The fund is augmented from those broadcasting fees that are collected jointly with ORF programme fees but are primarily allocated to the federal budget.

The guidelines for funding projects from the Digitisation Fund, originally issued in 2009, were revised in 2013. The main concern of the amendments was to more specifically include the digitisation of radio broadcasting within the scope of the funding guidelines. Previous grants for measures aimed at creating financial incentives for consumers to migrate to digital reception of broadcasts at an early stage ('early adopters') were eliminated from the guidelines. Instead, a new item was included that specifies funding for the purpose of public information activities on the subject of digital transmission of broadcasts.

The MUX C grants are a form of de minimis state aid. Grants can be awarded for expenses incurred through the planning, acquisition and establishment of a MUX C platform. In 2013, one application for a MUX C grant was received and is currently being processed.

The Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) signed a grant agreement with the Austrian Broadcasting Corporation (ORF) in 2011, regarding the development of an HbbTV-based additional service to combine multiple digital data sources into a single overview of content offerings on the television screen. This project adopted a new technical approach that differed from the projects already realised in other markets at the time of the grant decision. Within the additional service, the broadcasting technology functions as a means of access for all television viewers in the coverage area, thus allowing for additional content to be retrieved individually via an internet connection. In April 2013, the grant recipient began broadcasting the HbbTV-based additional service via cable network, and by September broadcasting was also taking place via terrestrial and satellite transmission.

Similarly, in 2012 a grant agreement was concluded with another grant recipient for the development of an additional digital service. This took the form of an HbbTV-based platform for that recipient's channels which links television channels and web services. The project aims to further develop an additional digital service based on the open HbbTV standard, which the grant recipient has already implemented in Germany. The grant agreement was revised in 2013 to extend the project term. The grant recipient plans to air the HbbTV-based additional service by April 2014 at the latest.

6.1.2 Notes on the 2013 annual accounts

In 2013, the Digitisation Fund received an endowment of EUR 500,000. The funds allocated by the Federal Ministry of Finance (BMF) as at 30 January 2013 and the existing amount in the Digitisation Fund (trustee account balance as of 31 December 2012: EUR 3,445,792.19) generated interest revenues in the amount of EUR 14,186.32 during the reporting period (including interest on the repayment of unused grants in the amount of EUR 1,205.66). Including the repayment of unused grants in the amount of EUR 75,400.93 and the repayment of administrative expenses from 2012 (EUR 66,443.39), total credits to the fund came to EUR 656,030.64 in 2013.

Of the total amount available in the Digitisation Fund in 2013, EUR 59,811.21 was paid out in grants and EUR 2,035,000 in press/distribution subsidies (Art. 33 Par. 3a KommAustria Act, KOG), while administrative expenses and RTR's participation in projects were EUR 101,900, amounting to a total of EUR 2,196,711.21.

The remaining amount of EUR 1,935,847.81 (including the EUR 30,736.19 not required for administrative activities and RTR's participation in projects that was returned to the fund) was carried forward to 2014.

Table 6: Digitisation Fund – excerpt from 2013 financial statements

Statement of revenue and expenditure	EUR	
Balance in trustee account as at 31 December 2012		3,445,792.19
Credits		
Revenues received in 2013	500,000.00	
Repayment of administrative expenses from 2012	66,443.39	
Grant repayments	75,400.93	
Interest	14,186.32	656,030.64
Debits		
Administrative expenses and RTR's participation in projects in 2013	-101,900.00	
Grant payments in 2013	-59,811.21	
Payment of press/distribution subsidies in 2013 (Art. 33 Par. 3a KOG)	-2,035,000.00	-2,196,711.21
Balance of initial funds, debits and credits in 2013		1,905,111.62
= Balance in trustee account as at 31 December 2013		
Administrative expenses from 2013 to be repaid to the fund in 2014 and RTR's participation in projects in 2013	30,736.19	30,736.19
Balance of trustee obligations as at 31 December 2013		1,935,847.81
Approved grants pending payment	-31,265.09	-31,265.09
Funds available in 2013		1,904,582.72

Source: RTR

6.2 Austrian Television Fund

6.2.1 Grant guidelines

Founded in 2004, the objective of the Austrian Television Fund (FERNSEHFONDS AUSTRIA) is to strengthen the Austrian film industry by providing grants for television film productions. Articles 26 and 28 in conjunction with Articles 23 to 25 KOG form the legal basis for the activities of the Austrian Television Fund.

Each year, the Austrian Television Fund has an amount of EUR 13.5 million at its disposal. 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.

The guidelines for the fund specify in detail the purpose of grants, eligible expenses as well as personal qualifications and material requirements. In effect since 1 January 2012, the guidelines as approved by the European Commission are valid until 31 December 2015.

An amendment to the guidelines specifies potential funding of more than 20% of total production costs for submitted television projects that distinguish themselves through innovative ideas or demonstrate an exceptionally significant employment effect involving creative and technical staff from Austria.

The guidelines will also enable even more television projects to be produced and commercially utilised in Austria. In view of the fact that secondary utilisation via pay TV, VoD (video on demand), streaming and other channels is increasing, it should be noted that the guidelines will need to be supplemented with additional measures to protect the interests of grant recipients.

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

6.2.2 Funded projects

In 2013, the Austrian Television Fund supported 49 projects with grants totalling EUR 13,147,986. The projects included 13 television films, four series and 32 documentaries.

Grants totalling EUR 96,902.29 were distributed among 13 projects for the purpose of utilisation.

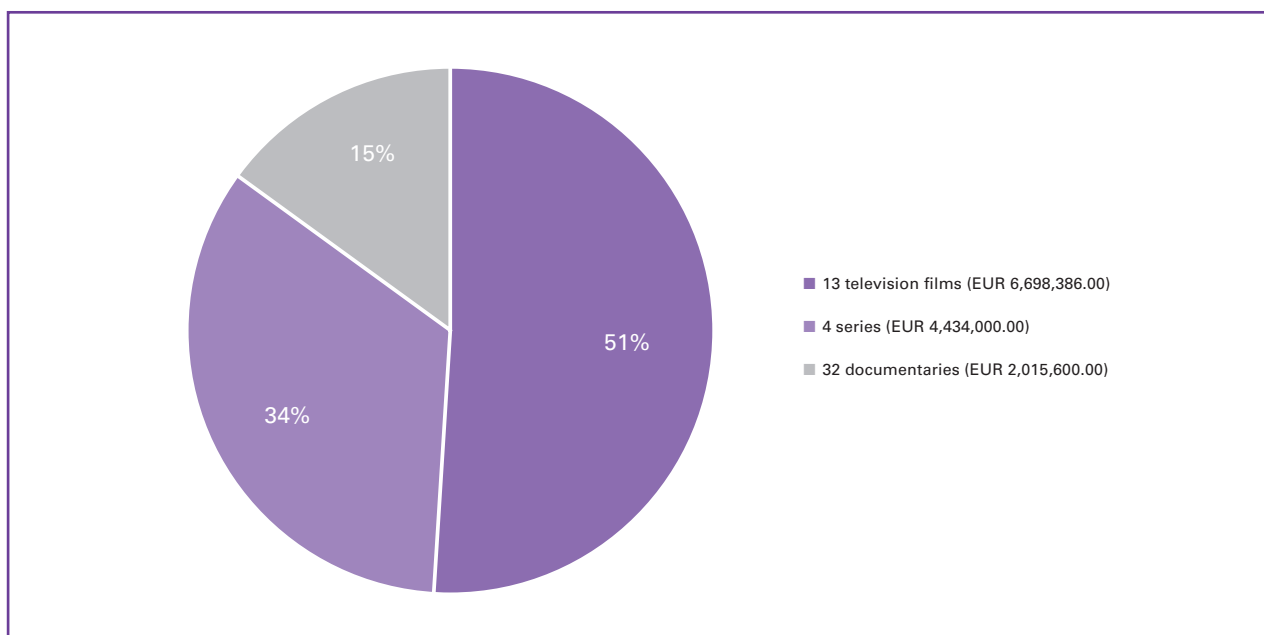
Production grants

A total of 91 projects were submitted as of the four application dates in the year under review. Of those projects, 29 were rejected and four were withdrawn before a decision was reached. Three producers decided not to accept their grants after approval had been given. Six applications were incomplete and could therefore not be considered.

The total planned production costs of those projects amounted to some EUR 75 million, of which some EUR 39.9 million was expected to be spent in Austria. The latter figure amounts to three times the sum of the grants awarded by the Austrian Television Fund.

Eleven projects (seven films and four documentaries) met the requirements for a grant exceeding 20% of the total production costs.

Figure 5: Austrian Television Fund – grants awarded in 2013



Source: RTR

65% of the approvals were for documentaries, which received 15% of the funding. Television films accounted for 27% of the grants and were awarded 51% of the funding. Television series projects constituted 8% of the funded projects, receiving 34% of the funding.

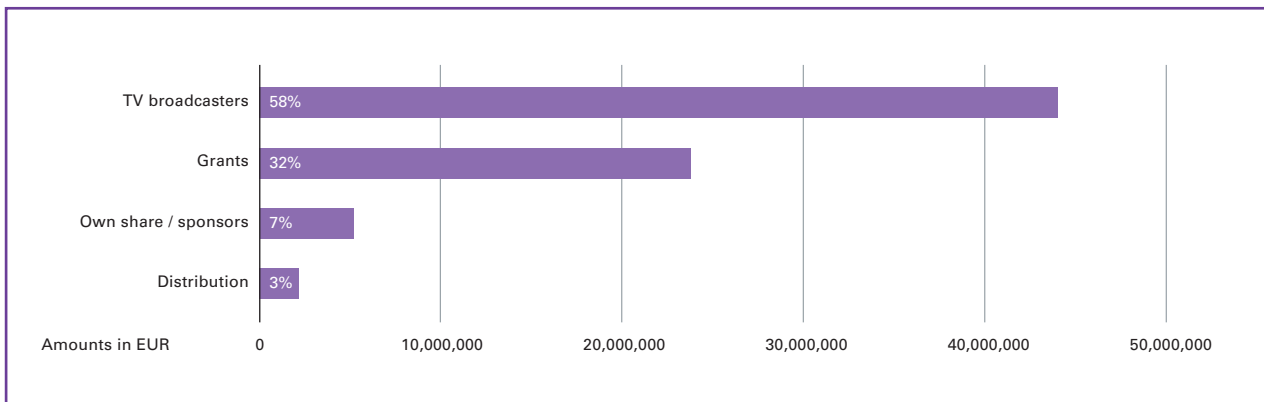
Table 7: Austrian Television Fund – television films, series and documentaries in alphabetical order

13 television films		EUR
Alles Fleisch ist Gras	ALLEGRO Filmproduktionsges.m.b.H.	500,515.00
Blutsschwestern	Lotus-Film Gesellschaft m.b.H.	400,000.00
Clara Immerwahr	MR-Film Kurt Mrkwicka Gesellschaft m.b.H.	800,000.00
Der Clan – Die Geschichte der Familie Wagner	MONA Film Produktion GmbH	500,000.00
Die Fremde und das Dorf (AT: Rosaria)	FILM27 Multimedia Produktions GmbH	358,992.00
Die Toten vom Bodensee	Graf Filmproduktion GmbH	315,000.00
Die Frau mit einem Schuh	Lotus-Film Gesellschaft m.b.H.	505,749.00
Die Seelen im Feuer	Eclipse Filmpartner Film- und Fernsehproduktions GmbH	600,000.00
Die verbotene Frau	Aichholzer Filmproduktion GmbH	200,000.00
Luis Trenker – Der schmale Grat der Wahrheit	EPO-Filmproduktionsgesellschaft m.b.H.	627,130.00
Polt 5	EPO-Filmproduktionsgesellschaft m.b.H.	588,000.00
Sarajevo	DOR FILM Produktionsgesellschaft m.b.H.	850,000.00
Spuren des Bösen IV – Schande	Aichholzer Filmproduktion GmbH	453,000.00
Subtotal		6,698,386.00

4 series		EUR
Die Detektive (10 episodes)	MR-Film Kurt Mrkwicka Gesellschaft m.b.H.	1,258,000.00
Phänomania – Geheimnisvolle Welten (12 episodes)	EPO-Filmproduktionsgesellschaft m.b.H.	599,000.00
Soko Donau / Season 9 (16 episodes)	Satel Film GmbH	2,077,000.00
The Team (8 episodes)	SUPERFILM Filmproduktions GmbH	500,000.00
Subtotal		4,434,000.00
32 documentaries		EUR
24 Stunden Polizei – Leben auf der Autobahn (6 episodes)	HANN Filmproduktionsgesellschaft m.b.H.	39,000.00
900 Jahre Klosterneuburg	Felix Breisach Medienwerkstatt GmbH	35,479.00
Adolf Hitler – mein Großvater?	pre tv Gesellschaft für Film- und Videoproduktion m.b.H.	75,000.00
Auf den Schienen des Doppeladlers (2 episodes)	Gernot Stadler	39,900.00
Aufgetischt / Season 5 (9 episodes)	Satel Film GmbH	152,000.00
Carnuntum – das Comeback	Interspot Film-Gesellschaft m.b.H.	80,000.00
Der taumelnde Kontinent (2 episodes)	DOR FILM Produktionsgesellschaft m.b.H.	142,000.00
Der Weg in den Untergang	Metafilm GmbH	104,500.00
Die Mätressen des Wiener Kongresses	MAKIDO Filmproduktion GmbH	72,024.00
Die Notaufnahme V – Babystation (6 episodes)	ON-MEDIA TV- und Filmproduktion GmbH	41,000.00
Die Weltreise der Familie Zid	Nikolaus Geyrhalter Filmproduktion GmbH	57,000.00
Die wirklich wichtigsten Österreicher (6 episodes)	ON-MEDIA TV- und Filmproduktion GmbH	40,000.00
Engadin	Kurt Mayer	70,000.00
Erika Pluhar – Die Stimme	EPO-Filmproduktionsgesellschaft m.b.H.	32,000.00
Erlebnis Österreich – Unbekannte Unterwelt	PAMMER FILM e.U.	9,300.00
Eros, Tod und die Musik – Das Phänomen der Berührung durch Musik	VERMEER-FILM e.U.	29,954.00
For My Sisters	PLAESION Film + Vision e.U.	52,000.00
Hoch Hinaus	EPO-Filmproduktionsgesellschaft m.b.H.	19,793.00
Joschi und die Stars – die Serie (2 episodes)	FISCHER FILM GmbH	28,000.00
Oberst Redl – Spion aus Leidenschaft	Metafilm GmbH	37,268.00
Österreichs Grenze	Interspot Film-Gesellschaft m.b.H.	121,000.00
Peter Roseggers Waldheimat	EPO-Filmproduktionsgesellschaft m.b.H.	70,000.00
Pfusch am Bau VI (8 episodes)	ON-MEDIA TV- und Filmproduktion GmbH	56,000.00
Pfusch am Bau VII (10 episodes)	ON-MEDIA TV- und Filmproduktion GmbH	70,000.00
Reiseckers Reisen / Season 3 (10 episodes)	Nikolaus Geyrhalter Filmproduktion GmbH	97,060.00
Rund um den Ötscher – Wildes Land am Rand der Alpen	Interspot Film-Gesellschaft m.b.H.	80,000.00
Snow Business	NAVIGATOR FILM PRODUCTION - Verein & Co KG	30,000.00
Stonehenge – The true Story at last (2 episodes)	Interspot Film-Gesellschaft m.b.H.	129,772.00
Streifzüge durch Wien (3 episodes)	RILK FILM e.U.	72,000.00
Sturm auf die Berge – 150 Jahre Alpengeschichte mit Reinhold Messner (3 episodes)	MAKIDO Filmproduktion GmbH	100,000.00
Wie Heiler heilen	Langbein & Partner Media GmbH & Co KG	18,550.00
Wie wir wurden. Was wir sind. Generation Österreich (episodes 5 + 6)	PAMMER FILM e.U.	15,000.00
Subtotal		2,015,600.00
TOTAL		13.147.986,00

Source: RTR

Figure 6: Austrian Television Fund – share contributed to projects funded in 2013



Source: RTR

In summary, the supported projects received 58% of funding from television broadcasters, 32% from grants, 7% from the producer’s own contribution and sponsors’ contributions as well as 3% from distribution agreements. The producers’ own share of funding could be reduced, from 13% in the previous year to 6% last year. Consequently, television broadcasters provided 4 percentage points more in the way of funding; grants contributed 2 percentage points more than in the previous year.

The number of international co-productions involving television producers was down in 2013, from 23 in the previous year to twelve (five films, two series and five documentaries). Two projects represented national co-productions.

One conspicuous feature is that the films are exclusively German co-productions, i.e. where both the television broadcaster and the co-production partner are from Germany. Series and documentaries involved international co-productions with other countries.

No Austrian television broadcaster was involved in three of the 49 funded projects.

The table below is a breakdown showing the share contributed by the television broadcasters, who jointly accounted for 58% of the total production costs (refer to Figure 6); it should additionally be noted that one project can be listed for more than one television broadcaster.

Table 8: Austrian Television Fund – funding contributions according to television broadcaster 2013

Television broadcaster	Percentage	Projects
ZDF	39.6	14
ORF	36.2	36
ServusTV	4.8	3
SWR	3.6	1
SAT.1	2.9	1
BR	2.4	2
ATV	1.7	5
British TV	1.5	2
Swedish TV	1.5	1
Arte Deutschland	0.9	3
Swiss TV	0.9	2
Danish TV	0.9	1
French TV	0.7	3
Belgian TV	0.6	2
Hessischer Rundfunk	0.5	2
PULS 4	0.5	2
Canadian TV	0.3	1
NDR	0.2	1
Australian TV	0.1	1
Finnish TV	0.0	2
Autentic	0.0	1
Italian TV	0.0	1
Planet TV	0.0	1

Source: RTR

German television broadcasters participated in 24 projects, while television broadcasters based in Belgium, Denmark, Finland, France, Italy, Sweden, Switzerland and the UK participated in six projects. An Australian and a Canadian broadcaster were involved in one project each.

The table below shows the percentages of funding contributed by television broadcasters in 2012 and 2013.

Table 9: Austrian Television Fund – comparison of funding shares 2012-2013

Television broadcaster	2012	2013
ZDF	17.1%	39.6%
ORF	21.1%	36.2%
ServusTV	1.7%	4.8%
ARD	9.8%	0.0%

Source: RTR

Utilisation grants

Compared to the previous year, the number of applications for utilisation grants more than tripled. Of the projects applied for, 13 received utilisation grants totalling EUR 96,902.29. In nine cases, the producers received grants to produce versions for viewers with visual and hearing impairments. Another four applied for grants for foreign-language versions or for festival screenings.

Table 10: Austrian Television Fund – utilisation grants 2013

		Type of utilisation	Genre*	EUR
Schladminger Bergwelten (2 parts)	Interspot Film-Gesellschaft m.b.H.	Version for people with hearing and/or visual impairment	D	7,200.00
Trau niemals deiner Frau	MONA Film Produktion GmbH	Version for people with hearing and/or visual impairment	F	5,440.00
Lilly Schönauer XI	Graf Filmproduktion GmbH	Version for people with hearing and/or visual impairment	F	5,440.00
Lilly Schönauer XII	Graf Filmproduktion GmbH	Version for people with hearing and/or visual impairment	F	5,440.00
Lilly Schönauer XIII	Graf Filmproduktion GmbH	Version for people with hearing and/or visual impairment	F	5,440.00
Die Holzbaronin Part 1	Graf Filmproduktion GmbH	Version for people with hearing and/or visual impairment	F	5,440.00
Die Holzbaronin Part 2	Graf Filmproduktion GmbH	Version for people with hearing and/or visual impairment	F	5,440.00
Lilly Schönauer XIV	Graf Filmproduktion GmbH	Version for people with hearing and/or visual impairment	F	5,440.00
Medcrimes	MONA Film Produktion GmbH	Version for people with hearing and/or visual impairment	F	5,440.00
Das Geheimnis MONA LISA	EPO-Filmproduktionsgesellschaft m.b.H.	Foreign language version	D	8,985.53
Grenzfälle	Langbein & Partner Media GmbH & Co KG	Foreign language version	D	5,588.76
Die Akte Aluminium	Langbein & Partner Media GmbH & Co KG	Foreign language version, festival	D	17,321.00
MICHAEL H. – profession : director	Vincent Lucassen	Foreign language version, festival	D	14,287.00
TOTAL				96,902.29

* D = documentary, F = television film

Source: RTR

6.2.3 Notes on the 2013 annual accounts

Art. 23 Par. 4 of the KommAustria Act (KOG) specifies that a report on the allocation of funds and the annual accounts must 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 13,555,942.67 available to the Austrian Television Fund in 2013 comprised the endowment of EUR 13,500,000 allocated by the Federal Ministry of Finance (BMF), plus the credit from administrative expenses in the amount of EUR 37,190.34 carried over from 2012 and interest revenues of EUR 18,752.33 in 2013.

The trustee account balance as at 31 December 2012 was EUR 8,688,850.01. A trustee account is an account maintained in the trustee's name on behalf of a third party.

Of the total money available in 2013, EUR 704,600 (representing 5.2% of the annual budget of EUR 13.5 million) was paid out for administrative expenses, and EUR 16,499,817.84 was paid out in grants. Thus, the total payments flowing out of the fund was EUR 17,204,417.84.

The balance in the trustee account as at 31 December 2013 was therefore EUR 5,040,374.84. With the repayment of administrative expenses (EUR 34,315.81) for 2013, the balance of trustee obligations amounted to EUR 5,074,690.65 as at 31 December 2013.

Based on concluded agreements, EUR 4,452,127.83 was reserved for grants that had been awarded but not yet paid out as at the end of 2013. Therefore, as a result of the economical and expedient use of resources, additional funds in the amount of EUR 622,562.82 will be available for 2014.

A separate statement of income and expenditure for 2013 is presented below, ensuring transparency with regard to the amounts required and the available funds.

Table 11: Austrian Television Fund – excerpt from 2013 financial statements

Statement of revenue and expenditure	EUR	
Balance in trustee account as at 31 December 2012		8,688,850.01
Credits		
Revenues received in 2013	13,500,000.00	
Surplus from administrative expenses from 2012	37,190.34	
Interest	18,752.33	13,555,942.67
Debits		
Administrative expenses in 2013	-704,600.00	
Grant payments	-16,499,817.84	-17,204,417.84
Balance of initial funds, debits and credits in 2013		5,040,374.84
= Balance in trustee account as at 31 December 2013		
Administrative expenses from 2013 to be paid out in 2014	34,315.81	34,315.81
Balance of trustee obligations as at 31 December 2013		5,074,690.65
Approved grants pending payment		
Appropriated amounts from 2011	-191,666.66	
Appropriated amounts from 2012	-636,358.16	
Appropriated amounts from 2013	-3,624,103.01	-4,452,127.83
Funds available in 2014		622,562.82

Source: RTR

6.3 Broadcasting funds

6.3.1 Non-Commercial Broadcasting Fund

Preparation for the first round of applications for 2014 included migrating the application process for both broadcasting funds to the web. To submit an electronic application, parties must have both a user ID for the eRTR portal as well as an electronic signature. Correspondence by regular mail is no longer required, as the process is now replaced by online applications carrying an electronic signature and confirmation by e-mail. The process is therefore speeded up and the administrative effort reduced.

6.3.1.1 Revision of guidelines

On 23 October 2012, pre-notification was sent to the European Commission of a draft amendment to the funding guidelines for the Non-Commercial Broadcasting Fund. The revised guidelines became effective as of 1 July 2013, in time for the first round of applications submitted for 2014.

The most significant changes:

1. 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.
3. In addition, a legal framework has been created to submit applications using a web form.

6.3.1.2 Application dates in 2013

First application date (2013)

In 2013, a total of around EUR 3 million was available in the Non-Commercial Broadcasting Fund. In the first round of applications (due by 31 October 2012), the fund awarded grants to a total of 14 non-commercial radio stations, three community television stations, and two education and training initiatives in radio broadcasting. In total, EUR 2,666,061 was awarded. Of the funding, 31.89% went to television, while 68.11% was allocated to radio. In this round, grants in the amount of EUR 2,348,864 were awarded for content creation, EUR 271,987 for educational measures and EUR 45,210 for reach surveys and quality studies.

The total award to television amounted to EUR 850,280. Of this, EUR 374,000 was granted to the community television station OKTO, EUR 261,720 to the Linz-based DORF TV and EUR 214,560 to the Salzburg-based FS1.

EUR 1,815,781 in funding was awarded to radio broadcasters and to radio broadcasting training institutions. The grant amounts ranged from EUR 72,560 to EUR 220,125. Broadcasters that cover a broader area or an urban area, consequently offering a wider range of programmes, received stronger support.

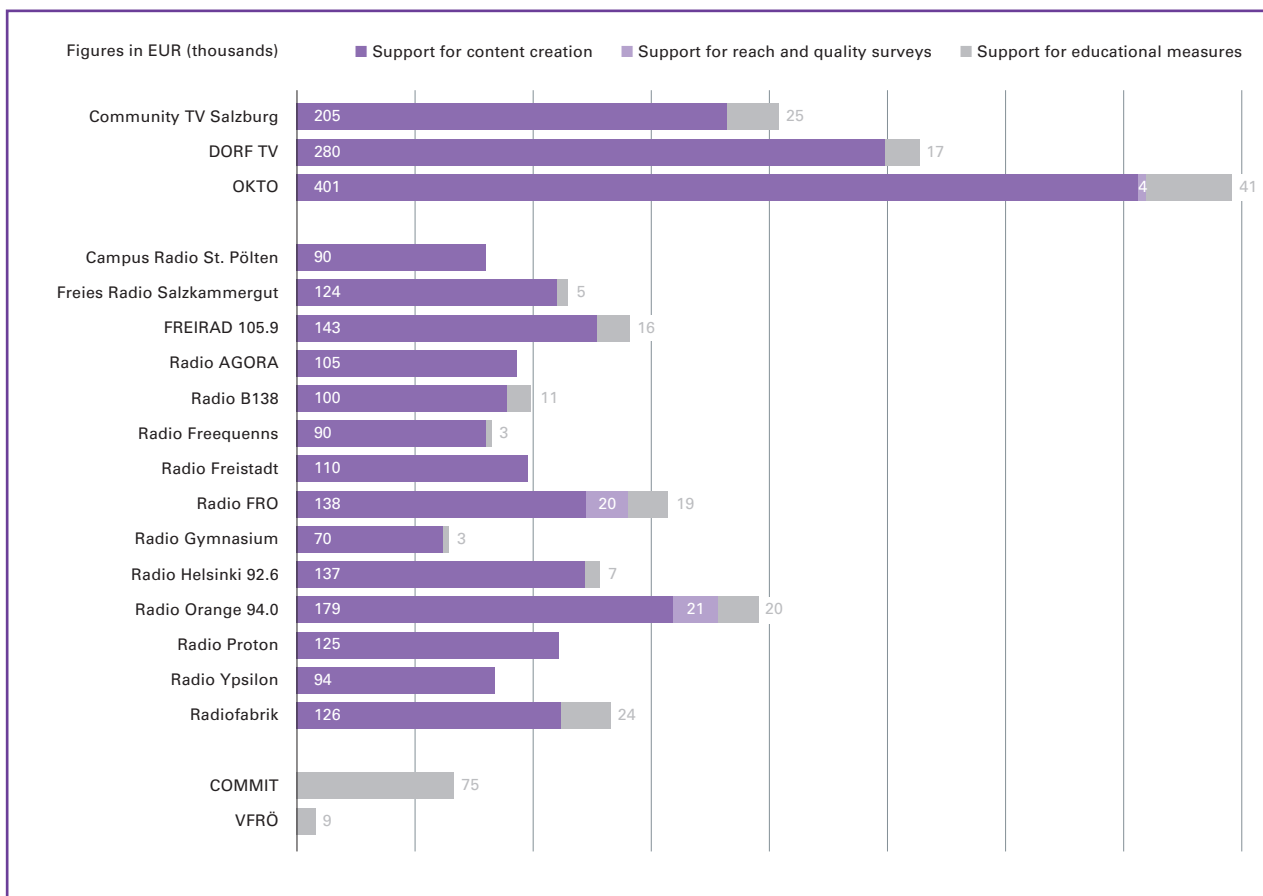
Second application date (2013)

The second round of applications closed on 3 May 2013. Remaining funds amounting to EUR 170,651 were awarded.

EUR 49,291 was allocated to radio broadcasting. Grants were awarded for content and training offered by eight radio stations. EUR 121,360 was awarded to television broadcasting. OKTO received EUR 71,360, DORF TV EUR 35,000 and FS1 EUR 15,000.

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

Figure 7: Non-Commercial Broadcasting Fund – total grants for 2013 application dates



Source: RTR

6.3.1.3 Notes on the 2013 annual accounts

The Non-Commercial Broadcasting Fund received an endowment of EUR 3 million in 2013. The EUR 3 million allocated by the BMF and the existing amount in the fund (trustee account balance as of 31 December 2012: EUR 527,083.88) generated interest revenue amounting to EUR 371.50 during the reporting period (including interest on the repayment of unused grants in the amount of EUR 27.45). Including the repayment of unused grants in the amount of EUR 2,830.42, total credits to the fund came to EUR 3,003,201.92 in 2013.

Of the total amount available in the Non-Commercial Broadcasting Fund in 2013, EUR 2,706,027.46 was paid out in grants in 2013. EUR 132,700 was paid out for the 2013 administrative expenses, plus EUR 2,195.13 for additional administrative expenses carried over from 2012. Total payments flowing out of the fund thus came to EUR 2,840,922.59.

The balance in the trustee account as at 31 December 2013 was EUR 689,363.21. After the payment of outstanding administrative expenses for 2013 of EUR 15,705.56, the trustee obligations amounted to EUR 705,068.77 as at 31 December 2013.

As of the end of 2013, EUR 674.881.86 is tied up for grant agreements signed and grants approved but not yet paid out. Therefore, as a result of the economical and expedient use of resources, additional funds in the amount of EUR 30,186.91 will be available for 2014.

Table 12: Non-Commercial Broadcasting Fund – excerpt from 2013 financial statements

Statement of revenue and expenditure	EUR	
Balance in trustee account as at 31 December 2012		527,083.88
Credits		
Revenues received in 2013	3,000,000.00	
Grant repayments	2,830.42	
Interest	371.50	3,003,201.92
Debits		
Administrative expenses in 2013	-132,700.00	
Administrative expenses carried over from 2012	-2,195.13	
Grant payments in 2013	-2,706,027.46	-2,840,922.59
Balance of initial funds, debits and credits in 2013 = Balance in trustee account as at 31 December 2013		689,363.21
Administrative expenses from 2013 to be paid out in 2014	15,705.56	15,705.56
Balance of trustee obligations as at 31 December 2013		705,068.77
Approved grants pending payment	-674,881.86	-674,881.86
Funds available in 2014		30,186.91

Source: RTR

6.3.2 Private Broadcasting Fund

6.3.2.1 Revision of guidelines

The amendment to the fund guidelines submitted to the European Commission on 23 October 2012 was approved in a decision issued by the Commission on 27 February 2013. The revised guidelines became effective as of 1 July 2013, in time for the first round of applications submitted for 2014.

The most significant changes:

1. 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.
2. More attention will be devoted to training journalists, and it is now possible to use more than 10% of the total funding amount for training measures.
3. The distribution ratio 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 additional flexibility was needed in order to respond to increased needs in the television segment.
4. A legal framework has been created for the submission of applications using a web form.

6.3.2.2 Application dates in 2013

First application date (2013)

In 2013, approximately EUR 13 million was available overall in the Private Broadcasting Fund. In the first round of applications (due by 17 October 2012), a total of 158 applications for grants in the field of television and 257 applications in radio broadcasting had been submitted.

In total, EUR 11,954,658 was awarded to 43 private television broadcasters and 43 private radio broadcasters. Of those funds, EUR 7,815,073 went to television broadcasters, EUR 3,914,098 went to radio broadcasters, and EUR 225,487 went to the Privatsenderpraxis association, a joint training initiative of several broadcasters.

A breakdown of the grants according to the three categories specified in the guidelines reveals that 90.49% of the EUR 11,954,658 total awarded in the first round of applications went to content and project grants, 6.80% to education and training, and 2.71% to reach surveys and quality studies.

Second application date (2013)

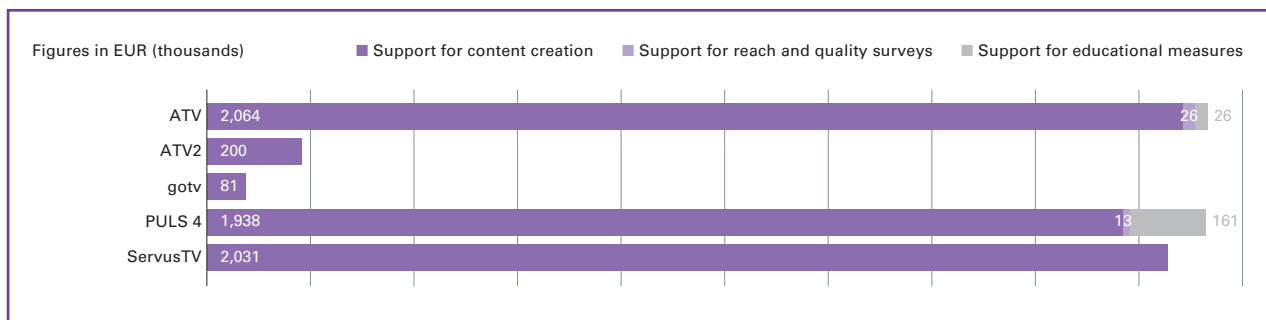
A total of 256 applications were received in the second round of applications (due by 15 May 2013). Of those applications, 94 related to television broadcasting and 162 to radio broadcasting. In the second round, EUR 2,752,385 was awarded to 24 private television operators and 28 private radio operators, as well as to the Verein Forum Journalismus TV/Radio training association.

EUR 1,804,889 was awarded to television broadcasters and EUR 947,496 to radio broadcasters. A breakdown of the grants according to the three grant categories reveals that 83.35% of the EUR 2,752,385 total awarded in the second round of applications went to content and project grants, 12.21% to education and training, and 4.45% to reach surveys and quality studies.

When allocating the 2013 grants, 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.

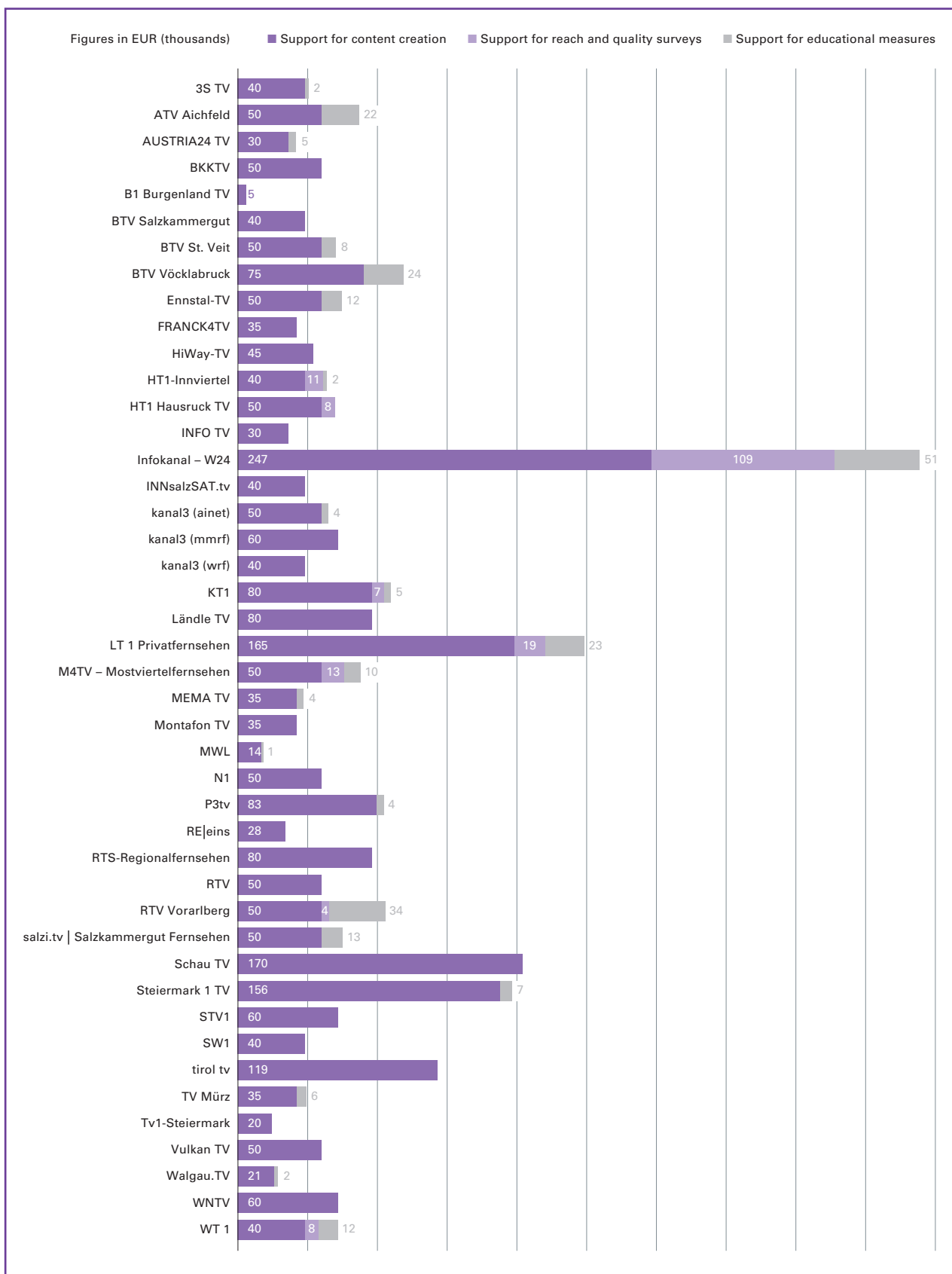
The distribution of grants for television broadcasters was rather different. Here smaller, local and regional broadcasters, that generally offer a new information programme once or several times a week mostly, received a smaller grant than that specified in their submission. Nationwide television broadcasters,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

Figure 8: Private Broadcasting Fund – total grants for 2013 application dates (nationwide TV broadcasters)



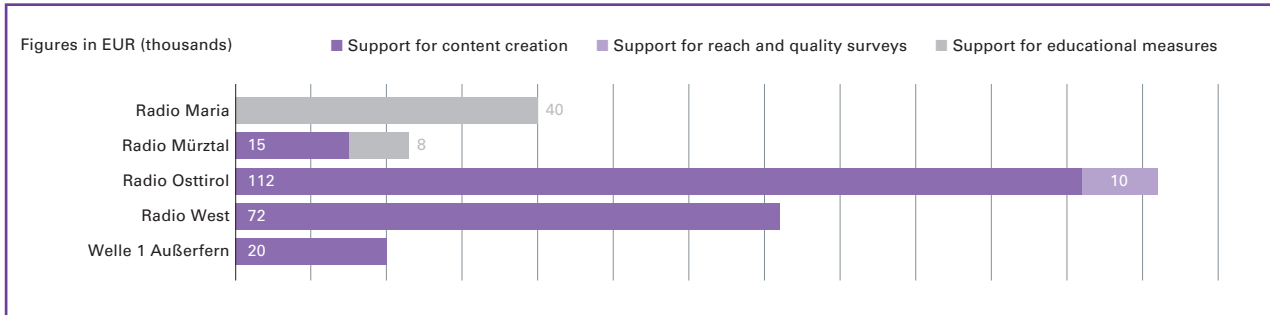
Source: RTR

Figure 9: Private Broadcasting Fund – total grants for 2013 application dates (regional TV broadcasters)



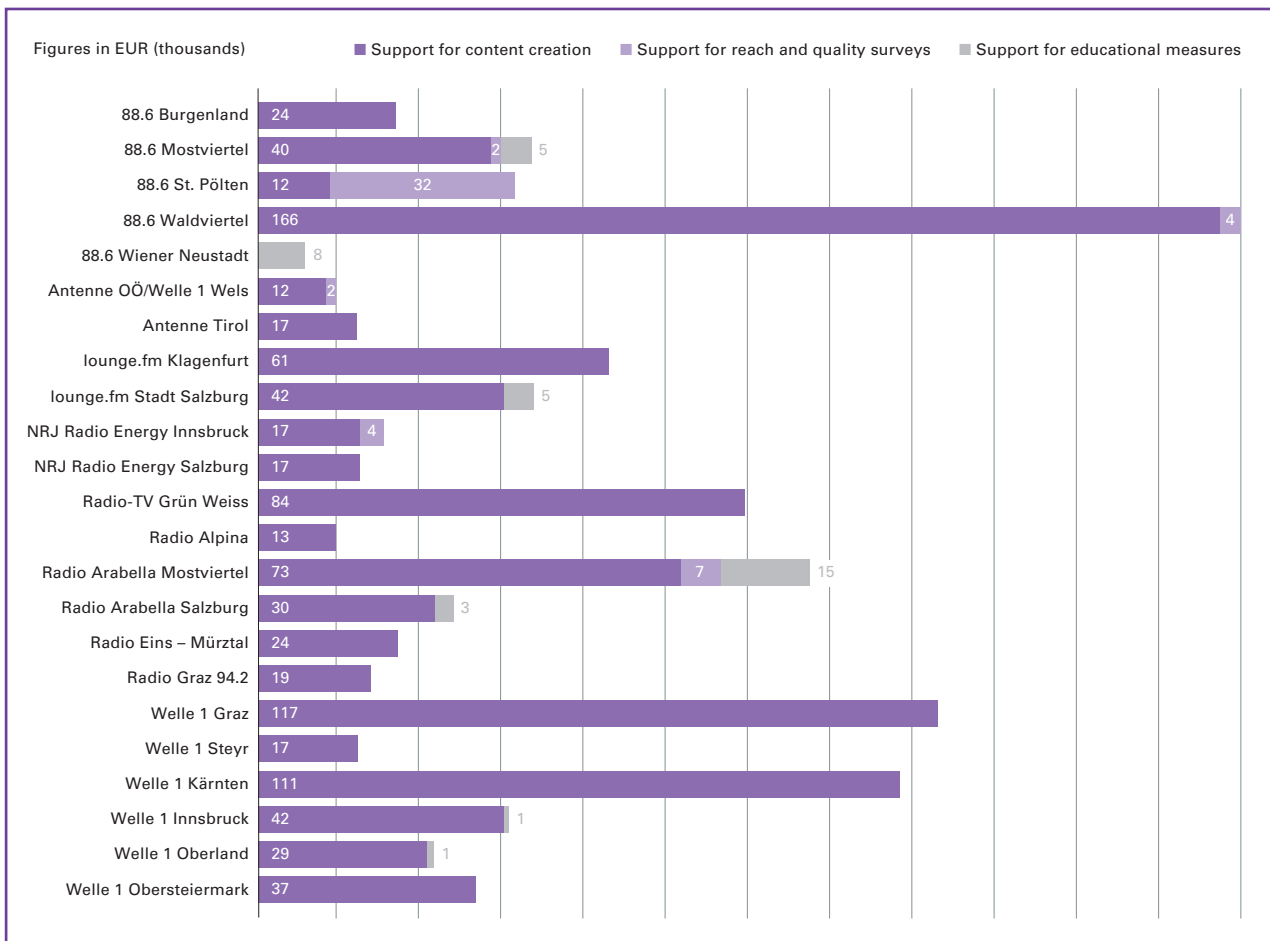
Source: RTR

Figure 10: Private Broadcasting Fund – total grants for 2013 application dates (radio broadcasters, technical range < 100,000)



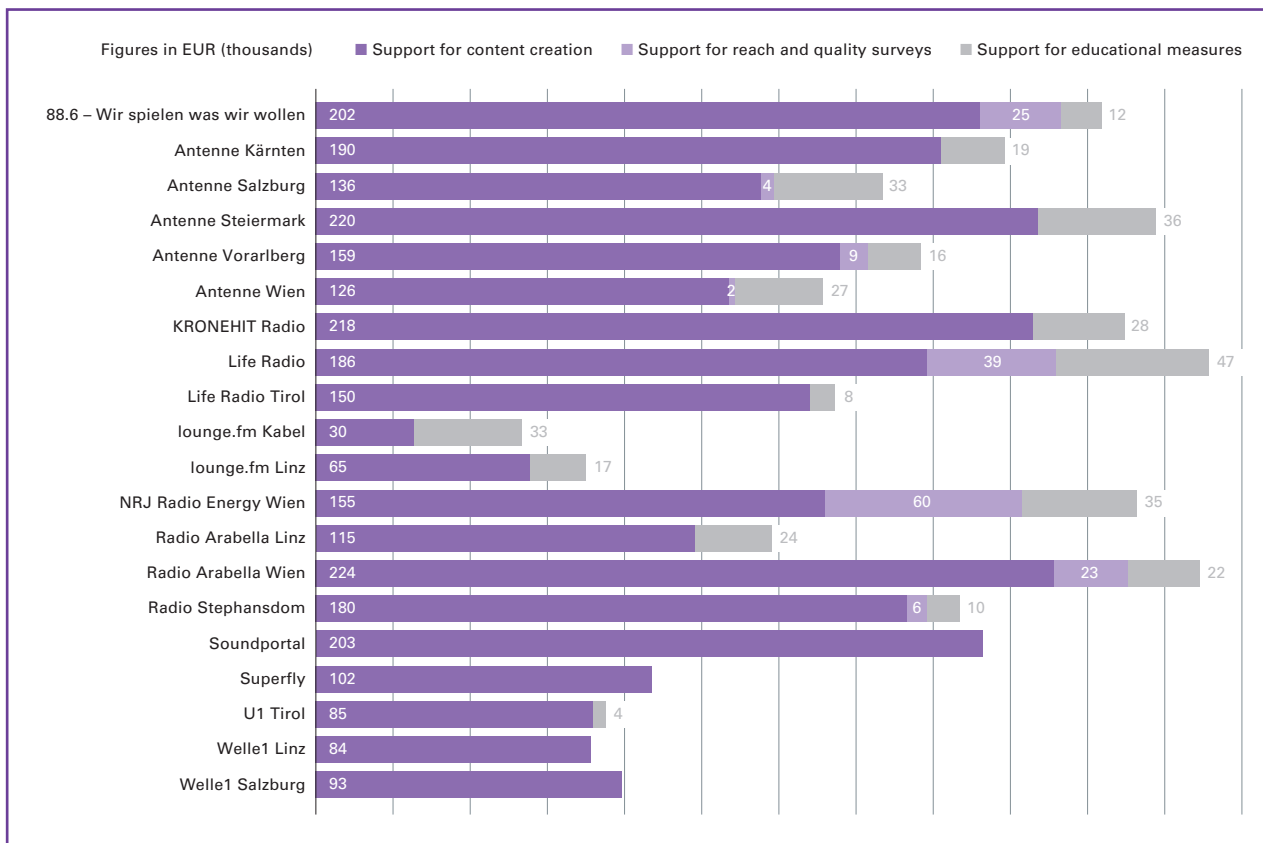
Source: RTR

Figure 11: Private Broadcasting Fund – total grants for 2013 application dates (radio broadcasters, technical range < 300,000)



Source: RTR

Figure 12: Private Broadcasting Fund – total grants for 2013 application dates (radio broadcasters, technical range > 300,000)



Source: RTR

6.3.2.3 Notes on the 2013 annual accounts

The Private Broadcasting Fund received an endowment of EUR 15 million in 2013. The EUR 15 million allocated by the BMF and the existing amount in the fund (trustee account balance as of 31 December 2012: EUR 6,524,604.93) generated interest revenue of EUR 6,414.74 during the reporting period (including interest on the repayment of unused grants in the amount of EUR 695.66). Including the repayment of unused grants in the amount of EUR 60,852.39 and the administrative expenses in the amount of EUR 15,660.44 carried over from 2012, total credits to the fund came to EUR 15,082,927.57 in 2013.

Of the total amount available in the Private Broadcasting Fund in 2013, EUR 13,001,126.89 was paid out in grants and EUR 392,000 for administrative expenses in 2013. Total payments flowing out of the fund thus came to EUR 13,393,126.89.

The balance in the trustee account as at 31 December 2013 was EUR 8,214,405.61. After the payment of outstanding administrative expenses for 2013 of EUR 30,778.73, the trustee obligations as at 31 December 2013 was EUR 8,245,184.34.

An amount of EUR 7,324,552.60 at the end of 2013 is tied up for grant agreements signed and grants approved but not yet paid out. Therefore, as a result of the economical and expedient use of resources, additional funds in the amount of EUR 920,631.74 will be available for 2014.

Table 13: Private Broadcasting Fund – excerpt from 2013 financial statements

Statement of revenue and expenditure	EUR	
	Balance in trustee account as at 31 December 2012	
Credits		
Revenues received in 2013	15,000,000.00	
Grant repayments	60,852.39	
Surplus from administrative expenses from 2012	15,660.44	
Interest	6,414.74	15,082,927.57
Debits		
Administrative expenses in 2013	-392,000.00	
Grant payments in 2013	-13,001,126.89	-13,393,126.89
Balance of initial funds, debits and credits in 2013 = Balance in trustee account as at 31 December 2013		8,214,405.61
Administrative expenses from 2013 to be paid out in 2014	30,778.73	30,778.73
Balance of trustee obligations as at 31 December 2013		8,245,184.34
Approved grants pending payment	-7,324,552.60	-7,324,552.60
Funds available in 2014		920,631.74

Source: RTR

6.4 Press and journalism subsidies

The federal press and journalism subsidies administered by RTR are direct support measures in the form of financial contributions. Decisions on the allocation of subsidies are made by the Austrian Communications Authority (KommAustria), and the administration of grants is assigned to one member of the authority. The Press Subsidies Commission and the Journalism Subsidies Advisory Board have been set up as advisory bodies for these subsidies. 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 2013, KommAustria received 128 applications for subsidies under the PresseFG 2004. The authority granted subsidies in 124 cases, while five applications had to be rejected because they did not fulfil the legal requirements for funding.

Table 14: Press subsidies – changes in grant amounts, applications and approval rates 2009 to 2013

Year	Grant amount (EUR)	Applications	Approvals	Approval rate in %
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
2013*	10,839,000.00	128	124	96.9

* 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, EUR 160,000 in 2012, and EUR 152,000 in 2013.

Source: RTR

In 2013, 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 2013 in accordance with Section II PresseFG 2004

In 2013 as in previous years, 14 applications for subsidies were received from daily newspapers in accordance with Section II PresseFG 2004 (distribution subsidies). All requests for subsidies were granted.

A total of EUR 2,097,900 was paid out in distribution subsidies to daily newspapers.

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

Table 15: Distribution subsidies to daily newspapers in 2013

Name of daily newspaper	Subsidy amount in 2013 (in EUR)
Kleine Zeitung (Styria and Carinthia)	161,376.90
Kurier	129,101.60
Neue Kärntner Tageszeitung	161,376.90
Neue Kronenzeitung	161,376.90
Neue Vorarlberger Tageszeitung	129,101.60
Neues Volksblatt	161,376.90
OÖ Nachrichten	161,376.90
Die Presse	129,101.60
Salzburger Nachrichten	161,376.90
Der Standard	161,376.90
SVZ – Salzburger Volkszeitung	161,376.90
Tiroler Tageszeitung	161,376.90
Vorarlberger Nachrichten	161,376.90
WirtschaftsBlatt	96,826.20
TOTAL	2,097,900.00

Source: RTR

6.4.1.2 Special subsidies to maintain regional diversity in daily newspapers in accordance with Section III PresseFG 2004 in 2013

In 2013, seven applications for subsidies were received in accordance with Section III PresseFG 2004. All requests for subsidies were granted.

A total of EUR 5,242,000 in special subsidies was paid out in the year under review.

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

Table 16: Special subsidies paid to daily newspapers in 2013

Name of daily newspaper	Subsidy amount in 2013 (in EUR)
Neue Kärntner Tageszeitung	821,847.60
Neue Vorarlberger Tageszeitung	672,289.80
Neues Volksblatt	695,540.40
Die Presse	948,391.50
Der Standard	881,259.50
SVZ – Salzburger Volkszeitung	649,612.00
WirtschaftsBlatt	573,059.20
TOTAL	5,242,000.00

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

Two applications for subsidies under Art. 12a PresseFG 2004 were submitted in 2013: one by the Austrian Press Council and the other by the Austrian Media Council of the Austrian Journalists Club.

6.4.2.1 Press Council

KommAustria allocated a subsidy of EUR 152,000 to the Austrian Press Council for 2013. The grant comes from a fund that was endowed with revenues from the broadcasting fees.

The Austrian Press Council became operative with the opening of its offices on 2 November 2010. The 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 safeguard the freedom of the press. Of Austria's dailies, only Krone Zeitung, Österreich and Heute have failed to recognise the Press Council's status as arbitrator (as of January 2014).

The Press Council handled a total of 155 cases in 2013. Hereby, 146 were submitted to the council from the outside, while in nine cases the body's senates reviewed cases resulting from their own observations. Arbitration proceedings were initiated in ten cases, four of which were successfully resolved. By way of comparison, the Austrian Press Council dealt with a total of 145 cases in 2012 (and 80 in 2011).

The Press Council also co-organised and conducted a variety of events, including: "Crash course: understanding balance sheets", a specialised workshop conducted jointly with the Vienna Journalism and Media Forum and the Financial Market Authority; and a discussion event on the issue of compliance, addressing the question of whether media entities require an internal code of conduct to supplement the self-regulation from the outside as provided by the Press Council (in cooperation with the Austrian Journalism Training Association).

Two of the events focused on the topic of investigative journalism and one was devoted to the shutdown of Greece's public broadcaster ERT (held jointly with the Vienna Journalism and Media Forum).


Further advances were made on the code of honour and the rules of procedure. Specifics include the substitution of the term "race" with "ethnic group" and the express mention of age, gender and world-view as other possible grounds for discrimination.

The daily newspaper Österreich was not successful in its legal dispute with the Press Council before the Vienna Commercial Court. The petition filed to prohibit the Press Council from evaluating the newspaper's articles in the light of media-ethical principles was rejected by the first-instance court at the end of 2013.

6.4.2.2 Austrian Media Council

As in 2012, KommAustria rejected the application submitted by the Austrian Media Council of the Austrian Journalists Club, as it failed to meet the statutory funding criteria of being representative. The reason given was that the Austrian Media Council is a body in which journalists' associations but not associations of Austrian newspapers are members. Self-regulation in this instance is exclusively conducted by journalists.

Pursuant to the funding guidelines issued by KommAustria, a self-regulatory body for 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 the 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.



The appeal lodged by the Austrian Media Council against the rejection of the application in 2012 was dismissed in a first instance ruling handed down by the Vienna Regional Civil Court on 30 April 2013, confirming the consistency of the negative grant decision with the guidelines and the statutory conformity of the guidelines. It was established that the interpretation of the term “representative”, as the consideration of various (interest) groups in relation to their distinctiveness and typical composition, and the term “press”, as the sum of all newspapers and magazines and including their institutions and staff, was congruent with the meaning of these terms as used in general language and was thus not arbitrary.

The ruling noted that the first-instance court was not competent to address any objections based on the principle of constitutionality. Specific mention was made in this context of the “dual membership” in the Press Subsidies Commission and with a member of the Press Council, and of the intention pursued by legislators to support only the re-established Press Council. The Media Council filed an appeal against this decision.

6.4.3 Austrian Advertising Council

Since 2009, it has also been possible to grant subsidies for a recognised self-regulatory 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 previous years, the Austrian Advertising Council was again the only applicant for a subsidy in 2013 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 Federal Act on Subsidies for Political Education and Journalism 1984 (PubFG). These subsidies are provided for periodicals which address issues related to politics, culture and world views at a high level.

Subsidies can be allocated to publishers in cases where the print periodicals fulfil the requirements specified in Art. 7 Par. 1 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 to 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 specified for this purpose under the Federal Finance Act (BFG).

The BFG 2013 designated the amount of EUR 340,000 for these subsidies. In 2013, KommAustria received 87 applications, of which 79 were accepted and eight rejected because they did not meet the statutory funding requirements.

The subsidy amounts ranged from EUR 1,360 to EUR 10,504. 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 relating to 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 17: Journalism subsidies – changes in grant amounts, applications and approval rates 2009 to 2013

Year	Grant amount (EUR)	Applications	Approvals	Approval rate in %
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
2013	340,000.00	87	79	90.8

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, market analysis and specific duties

On 9 January 2012 a market analysis procedure pursuant to Articles 36 et seq. of the Telecommunications Act 2003 (TKG 2003) was initiated by the Telekom-Control-Kommission (TKK) for M 1/12 as part of its official duties; the procedure was later continued with separate subjects according to the markets that had been verified.

The regulatory authority has the duty to carry out market analyses pursuant to Articles 36 et seq. TKG 2003 at regular intervals. 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.


Final decisions have previously been handed down in market analysis procedures concerning physical access (M 1.1/12), the wholesale broadband market (M 1.2/12), calls by non-residential customers via the public telephone network at a fixed location (M 1.7/12), fixed network termination (M 1.8/12), fixed network origination (M 1.9/12) and mobile termination (M 1.10/12).

7.1.1 Specific market analysis procedures

Market for physical access to network infrastructures

In the market analysis procedure M 3/09 in September 2010, the TKK defined the most important general terms regulating projects for the expansion of broadband service in Austria. The decision covered items that included the approval of the VDSL2 transmission system for unbundled lines, the introduction of the new wholesale product 'virtual unbundling' (v-ULL), and details concerning funding for planning and cooperative efforts in expansion projects (i.e. planning rounds, transparency regulations, compensation for stranded investments). This 'landmark decision' on expansion of broadband services was confirmed by the Austrian Administrative Court (VwGH) in a ruling handed down on 28 November 2013.

The TKK issued decision M 1.1/12 on 16 December 2013, which continued the practice proven effective in regulating the framework conditions for NGA expansion, while taking into account changing market conditions and in particular the practical experience gained in implementing the previous decision. Specifically, the TKK additionally included FTTH (fibre to the home, i.e. fibre optics downstream to end users) in the scope of regulation, adapted the rules applying to planning rounds and compensation payments, and defined terms under competition law to regulate the deployment of VDSL2 vectoring. This addition to the VDSL2 transmission system enables more efficient utilisation of the physical capabilities afforded by the copper access network, in this way providing end users with higher bandwidths in the near future – even without major investments for excavation work. This technology requires exclusive use of the copper network, however, so that, when VDSL2 vectoring is deployed, (partial) unbundling – i.e. leasing of copper lines belonging to A1 Telekom Austria AG (A1 Telekom) – is no longer feasible to the previous extent. To prevent any weaknesses in competition that might subsequently result, VDSL2 vectoring has been brought under a detailed regulation scheme.



New items that have been added since the previous decision include rules concerning replications of A1 Telekom's end user products by A1's competitors and the obligation for A1 Telekom to publish information referred to as key performance indicators (KPIs), which allow the regulatory authority to monitor A1 Telekom's compliance with requirements. Both of these regulations (and others) were in response to the European Commission's most recent recommendation "on consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment", which entered into effect on 11 September 2013.

During the latter half of 2013, in-depth discussions also took place with the European Commission and with the Body of European Regulators for Electronic Communications (BEREC) on the subject of the price controls to be prescribed. Even though BEREC published a statement in September 2013 that fully supported the TKK's position, the European Commission recommended that the TKK undertake fundamental revisions of the envisaged price controls. Yet close scrutiny of the arguments presented by the European Commission revealed that, while addressing the TKK's price control plan in detail, they did not sufficiently consider essential aspects of Austria's specific market and competition situation, such as the issue of potential advantages of scale and affiliation raised by unbundling. The TKK finally decided therefore not to follow the European Commission's recommendations, while providing detailed justification.


Decision M 1.1/12 is published on the RTR website at: www.rtr.at/de/tk/M1_1_12 (in German).

Wholesale broadband market for business customers

In the course of market analysis procedure M 1/12, initiated by the TKK in January 2012, the part of the procedure that concerned the wholesale market for providing products to business customers was separated from the main procedure and continued under M 1.2/12 as a result of the decision of 26 March 2013. Official experts at RTR also prepared an economic evaluation report in March 2012. On 22 March 2013, the TKK adopted a set of draft measures, which was subsequently put to a consultation procedure. Another factor prolonging the procedure was the in-depth discussions that took place with the European Commission and with BEREC between June and November of 2013 on the subject of the price controls to be prescribed. The market analysis procedure concerning the wholesale market for providing products to business customers was concluded with a decision issued on 16 December 2012.

The wholesale broadband market for providing products to business customers encompasses all bitstream access via DSL and fibre optics provided internally and externally and sold to end users as business customer products. Services provided among affiliated companies are also included in this market. Access provided internally to residential and business customers through infrastructures other than DSL (such as cable broadband, mobile broadband or radio) exerts insufficient competition pressure at the retail level, because no significant number of business customers would switch to another infrastructure even if retail prices for DSL products were to increase by 10%. In contrast, in the retail broadband market for residential customers, and hence in the segment of the wholesale broadband market concerned with providing products to residential customers, common mobile broadband products and cable broadband products can be viewed as substitutes for DSL subscriptions; such mobile products include mobile data services for residential customers provided at a set monthly rate and including a monthly data volume of at least 250 MB, pre-paid data products, pre-paid products that bundle voice calls and data services, and data service schemes without a set monthly charge.

The market analysis reveals that A1 Telekom has market power (in an economic sense) in the wholesale broadband market for providing products to business customers. In the wholesale broadband market for providing products to business customers, A1 Telekom has an increasingly large 75% share. There are high and permanent barriers to market access. For about 30% of businesses, A1 Telekom is the only provider and as such controls infrastructure not easily substituted. ISPs that require DSL bitstream products do not have sufficiently strong demand-side power to offset the market power exercised by A1 Telekom. Even if existing regulation of the market for physical network infrastructure were to be used to lower the entry barriers to this particular wholesale market, this would not alter the fact that market power exists. In the event that no counter measures are taken, various challenges to competition were identified in the wholesale broadband market for business customer products.



During coordination talks with the European Commission concerning the draft measures that were the subject of consultations in April 2013, in June 2013 the Commission expressed serious doubts as to whether fee control according to the 'retail minus' approach, as proposed in the draft, could be reconciled with relevant provisions of Union law, and hence the procedure was halted. In-depth discussions with the European Commission and with BEREC ensued in the summer and autumn of 2013 concerning the price controls to be prescribed, and in September 2013 BEREC presented a statement supporting the TKK position on all accounts; nonetheless, on 25 November 2013 the European Commission recommended that TKK undertake a fundamental revision of the price controls envisaged in the two market analysis procedures. Yet close scrutiny of the arguments presented by the European Commission revealed that, while addressing the TKK's plan for controlling charges in detail, they did not sufficiently consider essential aspects of Austria's specific market and competition situation. For that reason, the TKK finally decided, providing detailed justification, not to follow the European Commission's recommendations.

The market analysis procedure concerning the wholesale market for providing products to business customers was concluded with a decision issued on 16 December 2013, which established that A1 Telekom held significant market power in the wholesale broadband market for business customer products.

The obligations imposed on A1 Telekom in previous decisions were maintained, namely to allow broadband bitstream access at nine regional exchange points (and at a national exchange point if requested), to make available naked DSL and a voice-over-broadband (VoB) option (the latter with additional bandwidths and integrated data volumes), to control charges according to the retail minus approach (including regular margin squeeze tests), as well as to publish a reference offer and to maintain separate accounts. Other, new requirements include the option of transferring traffic at an additional exchange point on request, the establishment of the connection between the exchange point and the wholesale customer's point of presence by a third party or by wholesale customers themselves using in-house cabling, and the publication of KPIs. In addition to terms of service level agreements to define the period for providing service, availability and problem handling as well as terms defining penalties, the reference offer must also include comprehensive terms that regulate the extension of wholesale customers' remote access to parameters of the standard modems used to provide bitstream products.

Calls by non-residential customers via the public telephone network at a fixed location


In a decision issued on 30 September 2013, the TKK ascertained that the market for "calls by non-residential customers via the public telephone network at a fixed location (end user market)" as defined in Art. 1 No. 10 of the Telecommunications Markets Ordinance 2008 (TKMV 2008) is no longer relevant.

The requirements pertaining to the market for calls by non-residential customers that were imposed on A1 Telekom through decision M 1.10/09-95 of 29 November 2010 as part of the most recent market analysis procedure were lifted. The existing specific obligations concerning the voice call market for residential customers had already been lifted in 2009.

Decision M 1.7/12 is published on the RTR website at: www.rtr.at/de/tk/M_1_7_12 (in German).

Fixed network termination and origination

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 on individual public telephone networks provided at a fixed location” (fixed network termination)¹² and for “call origination on the public telephone network provided at a fixed location” (fixed network origination)¹³ are materially relevant markets in the fixed network sector.

Firstly, it was established that A1 Telekom had significant market power in the market referred to as “call termination on 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, obligations for direct and indirect interconnection, fee control, non-discrimination 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, are 0.137 EUR cents (per minute peak time) and 0.085 EUR cents (per minute off-peak time), effective as of 1 November 2013.

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 33 subscriber network operators provide fixed network termination). 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 and effective as of 1 November 2013.


Access obligation was also ordered. An access obligation is also necessary for alternative network operators, who are also susceptible to competition issues, even if only in weaker form; examples include the delay of product delivery and the bundling of products under unreasonable conditions that impair competition, as well as the provision of poorer quality of service. Underlying this obligation are the misgivings expressed by the European Commission at the original plan, contained in the draft measures under consultation, not to order access obligation.

The decisions are published on the RTR website at: www.rtr.at/de/tk/M_1_8_12 (in German).

It was ascertained that A1 Telekom has significant market power in the fixed network origination market. It was ascertained that, if not regulated, potential challenges to competition existed through transfer of market power to adjacent markets (i.e. expanding market power to include the downstream call markets) and through exercising market power over customers (especially through price-setting). In order to counter existing challenges to competition effectively, requirements for direct and indirect interconnection, fee control, non-discrimination and accounting separation were imposed. As part of fee control measures, the origination fees allowed to be charged by A1 Telekom were limited, based on full costs in the past, to 2.135 EUR cents (per minute peak time) and 1.321 EUR cents (per minute off-peak time), effective as of 1 November 2013.

¹² Call termination in mobile networks serves the purpose of ensuring that subscribers can reach one another within their own network and beyond.

¹³ Call origination involves routing a call from a network to a carrier network operator or a service network operator.



Compared with the previous strictly cost-related pricing approach (FL-LRAIC), the fee control requirement was eased, in particular due to the strong, consistent pressure exercised by the mobile sector on competition in (fixed network) retail markets; it has been subsequently possible to deregulate every carrier market. This pressure on competition from the mobile services sector has resulted in the regulated company making efficient investments, so that there is no further need for the regulatory authority to provide additional incentives.

The decision is published on the RTR website at: www.rtr.at/de/tk/M_1_9_12 (in German).

Mobile termination

With regard to the individual operator markets for mobile termination, it was determined that each of the mobile operators has significant power over their own markets. Potential challenges to competition were identified in the market analysis procedure, including the risk of allocative distortions of the market due to excessive termination fees. In order to counter the competition challenges, requirements have been imposed, including the obligation for (direct and indirect) interconnection, non-discrimination and for fee control. A fee was also determined for the service of mobile termination, based on the pure LRIC approach as set forth in the European Commission's termination recommendation; a mobile termination fee of 0.8049 EUR cents per minute was subsequently imposed on the mobile network operators A1 Telekom Austria AG (A1 Telekom), T-Mobile Austria GmbH (T-Mobile), Hutchison Drei Austria GmbH (Hutchison) and MVNO Mundio mobile (Austria) Limited, effective as of 1 November 2013.

The decisions are published on the RTR website at: www.rtr.at/de/tk/M_1_10_12 (in German).

Access services for residential/non-residential customers to the public telephone network at a fixed location

On 9 January 2012, the TTK resolved to initiate a procedure pursuant to Art. 36 TKG 2003 as part of official duties.

As a result of the decision of 26 March 2012, procedure M 1/12 has been continued separately under two reference numbers and with the subject matter limited to the market identified in each case: M 1.3/12 concerns "access services for residential customers to the public telephone network at a fixed location (end user market)" and M 1.4/12 relates to "access services for non-residential customers to the public telephone network at a fixed location (end user market)".

The TTK adopted a proposal for enforcement action on 15 April 2013. A related consultation as specified in Art. 128 TKG 2003 was held from 17 April to 16 May 2013.

The proposals for enforcement action state that A1 Telekom has significant market power as defined in Art. 35 Par. 1 TKG 2003 in the nationwide markets of "access services for residential customers to the public telephone network at a fixed location (end user market)" and "access services for non-residential customers to the public telephone network at a fixed location (end user market)".

The proposed measures would impose the following specific obligations:

- Obligation to grant access to a wholesale stand-alone voice-over-broadband (VoB) product (Art. 41 TKG 2003)
- Fee regulation pursuant to Art. 42 TKG 2003 for the wholesale stand-alone VoB product
- Fee regulation for the end user products of the relevant market: Price cap regulation of end user fees for the relevant market (Art. 43 TKG 2003)
- Requirement for non-discrimination and for publishing a reference offer (Art. 38 TKG 2003)
- Obligation to maintain separate accounts (Art. 40 in conjunction with Art. 43 TKG 2003)

The consultation proposals as well as the statements received can be viewed (in German) at www.rtr.at/de/komp/Kons_M_1_3_12 and at www.rtr.at/de/komp/Kons_M_1_4_12.



The market analysis procedures were pending with the TKK as of the end of the year under review.

Leased lines

On 9 January 2012 a market analysis procedure for M 1/12 was initiated by the TKK as part of its official duties. Individual procedures were continued, each with a separate subject. In the area of leased lines, the procedures concerning the market for terminating leased line segments and concerning the market for end user leased lines had already been continued separately back in 2012.

Proposed measures for each of the markets were adopted in January 2013. Deregulation of the end user market for leased lines has been envisaged, since the market no longer appears a relevant subject of sector-specific regulation. In regard to the market for end user leased lines, plans were made to broaden regulation to include leased lines and dark fibre that support high bit rates. On completion of a consultation in Austria, the European Commission was notified of the proposed measures. While the Commission only submitted a statement on the market for end user leased lines, in May it voiced serious doubts as to whether the measures proposed for the market for terminating segments were compatible with Union law and subsequently initiated a two-month in-depth investigation (Phase II). BEREC also submitted a statement on the draft measures during the procedure. In a decision dated 2 July 2013, the European Commission later requested the TKK to withdraw the draft measures (i.e. a veto decision) because there was insufficient data on which to base both the market delineation and the identification of considerable market power on the part of A1 Telekom.

In response to the objections voiced by the European Commission, the TKK commissioned a supplementary evaluation report for which additional data was collected between July and late September. Once the evaluation report was completed, the parties to the procedure were given the opportunity to submit statements, which will be incorporated in a new set of draft measures to be published by early 2014. The procedure is scheduled to be completed by mid-2014.

7.2 Network access

Network access means 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.

Only when it is not possible to reach a private law agreement, in the form of a network access and interconnection agreement, does the regulatory authority have subsidiary competence to issue official decisions in lieu of such an agreement.

In this context, reference is also made to the general obligation to provide interconnection services as stipulated in Art. 48 of the Telecommunications Act 2003 (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.

Application by the (former) Hutchison 3G Austria GmbH for the issue of an interconnection order to A1 Telekom Austria AG (A1 Telekom) concerning the interconnection fees to be charged for the fixed network

In an application pursuant to Articles 48 and 50 TKG 2003 dated 22 January 2010, Hutchison requested an interconnection order to be issued to A1 Telekom concerning the interconnection fees to be charged (fixed network termination and origination).

After the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) had carried out the prior mandatory conciliation procedure pursuant to Art. 121 Paragraphs 2 and 3 TKG 2003, on 23 August 2010 the Telekom-Control-Kommission (TKK) issued a decision in lieu of an agreement in the case under reference number Z 1/10, setting the fixed network interconnection fees that A1 Telekom may charge to Hutchison. Hutchison filed a complaint against that decision with the Administrative Court (VwGH). Finding the complaint justified, the VwGH handed down a ruling dated 24 April 2013 that lifted TKK decision Z 1/10-47 due to unlawful content, stating that the decision was inextricably related to market analysis decisions M 4/09 (concerning fixed network origination) and M 5/09 (on fixed network termination), which the VwGH had overturned.

Pursuant to Art. 42 Par. 3 of the Austrian Administrative Court Act 1985 (VwGG), the procedure thereby reverts to the previous state prior to the issuing of the disputed decision, and the procedure had to be continued.

Application by Verizon Austria GmbH for the issue of an interconnection order to A1 Telekom concerning the interconnection fees to be charged for the fixed network

In application pursuant to Articles 48 and 50 TKG 2003 dated 11 March 2010, Verizon Austria GmbH (Verizon) requested an interconnection order to be issued to A1 Telekom concerning the fixed network interconnection fees to be charged (termination and origination).

After RTR had carried out a prior mandatory conciliation procedure, on 18 October 2010 the TKK issued a decision in lieu of an agreement in the case under reference number Z 2/10, setting the fixed network interconnection fees that A1 Telekom may charge to Verizon; Verizon subsequently filed a complaint with the VwGH.

In a ruling dated 23 August 2013, the VwGH overturned the TKK decision on procedure Z 2/10-50 due to unlawful content. The reason given was that, similar to decision Z 1/10, the interconnection decision was inextricably related to market analysis decisions M 4/09 and M 5/09 and thus no longer had legal basis, while the justification given for the cost model used to calculate the fees was termed flawed.


As already mentioned above, the procedure thereby reverts to the previous state prior to the issuing of the decision, and the procedure had to be continued.

Both procedures were pending by the end of the reporting period.

7.3 Wayleave rights and rights of joint use

Since the 2011 amendment to the Telecommunications Act TKG 2003 (TKG 2003), Federal Law Gazette I No. 102/2011, the responsibilities of the TKK have been extended beyond procedures concerning the rights of joint use involving existing infrastructure to include procedures involving the granting of wayleave rights on private property as well as legal issues relating to the modification or termination of rights of wayleave and joint use. Following the amendment to the TKG 2003 that was published in the summer of 2009 (Federal Law Gazette I No. 65/2009), a number of procedures were conducted that concerned the joint use of existing infrastructure for telecommunications purposes; afterwards the focus of the applications that were made to the TKK on the basis of the above-mentioned major amendment to the TKG 2003 in 2011 shifted to wayleave rights, i.e. a party's right to lay their own communications lines on private property. Nine applications of this kind were submitted in 2013. The main issues arising from the procedures and the ensuing TKK decisions are discussed in the following.

In the meantime, responsibility for wayleave rights and rights of joint use, including changes to and termination of such rights, rests largely with the TKK. The only matter excluded from the TKK competence is requests to have existing infrastructure removed that is not based on a valid wayleave right. Such petitions, based on property law, must instead be addressed to the ordinary courts (www.rtr.at/de/tk/D_3_12; in German, as all other references below unless otherwise specified).



Wayleave rights can exceptionally be granted for existing communications lines as well, yet only if the legal relationship between the parties is the subject of an ongoing dispute – and the prerequisites for the procedure are met. Examples from cases already decided include instances where the lines were laid based on an agreement that was later contested or where the legal basis for laying the lines (i.e. the agreement) was no longer able to be found and the contents later disputed after the business had been sold. Intentional modifications of existing agreements, in contrast, cannot be enforced in the procedure with the TKK due to the subsidiary nature of orders in lieu of an agreement (www.rtr.at/de/tk/D5_12/D_5_12_web.pdf; www.rtr.at/de/tk/D_8_13).

Since the 2011 amendment to the TKG, wayleave rights can also be claimed solely for equipment associated with a communications line. Examples of equipment in this sense include empty cable ducts or, as in the decided cases, power lines used to operate a communications line. The TKK does, however, verify that there is a close temporal or material relationship between such equipment and an existing or new, planned communications line (www.rtr.at/de/tk/D5_12).

When wayleave rights are claimed for private property, the property owner must be suitably compensated for the reduced property value. Previous TKK decisions set the level of such compensation at about 10% of the market value of the property (i.e. sales price per square metre) per running metre of communications line laid underground. A higher level of compensation was set for communications line components installed above ground (e.g. distribution cabinets).

The owners of lines or systems safeguarded by rights are also entitled to use these rights to erect communications lines. In such cases as well, the property owner must be paid appropriate compensation for the use of the property for communications purposes. This rule entails a special aspect: an ordinance by the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR; Federal Law Gazette II No. 238/2009) set the current reference rate for such compensation at EUR 2.30 per running metre, so that “property use is ... not limited” when this amount is offered. Consequently, the owner of the line or system can in this case operate the communications line even without settlement by agreement or prior decision by the TKK. Since the 2011 TKG amendment, the property owner can, however, (subsequently) petition the TKK for a decision on the specific scope of usage rights or compensation. In the procedures conducted during the period under review, the TKK was required to take decisions on the conditions applying to and the compensation for the use of a railway power line, owned by ÖBB-Infrastruktur AG, for communications purposes (earth cable with optical conductor; www.rtr.at/de/tk/D_4_13).

A summary of previous rulings handed down by the high courts on the subject of wayleave rights and rights of joint use follows.

According to a ruling by the Constitutional Court (VfGH), pursuant to the TKG 2003, wayleave rights and rights of joint use are in the public interest. The party entitled to erect the line, and not the property owner, consequently bears the risk entailed in laying the line immediately in the event that the decision is later overturned. Thus, the obligation of the property owner to tolerate the line being laid represents no disproportionate disadvantage, particularly considering the explicit requirement to take utmost care of the property. The VfGH subsequently did not grant the appeal for suspensive effect of the decision. The court ultimately refused to hear the complaint in the same procedure, stating that “no specific consideration need be given to constitutional law” in order to rule on the alleged violations of law – i.e. the rights to property, equal treatment and fair proceedings. The VfGH also judged the relevant statutory provisions of the TKG 2003 as raising no concerns based on constitutional law, since, firstly, full coverage with telecommunications lines must be ensured and, secondly, certain requirements must be met: (i) review of any restrictions to the dedicated use of the property; (ii) setting of compensation appropriate to the loss in value; (iii) re-establishment of an unobjectionable state following completion of the work. The court found that the statute thus adequately ensures that any intervention in property rights is proportionate within the meaning of the rulings consistently handed down by the VfGH.

During the period under review, the Administrative Court (VwGH) also ruled on complaints filed against TKK decisions concerning rights of joint use. The court subsequently clarified the fact that the provisions of the TKG 2003 governing joint use that were introduced through the 2009 amendment are also applicable to infrastructure not belonging to the traditional telecommunications sector; railway infrastructure was disputed in the specific case. The VwGH also deduced from the relevant provisions an obligation of infrastructure owners to endeavour to reach agreement with parties requesting joint use. Owners are required to allow and to facilitate joint use. Thus, a property owner not responding to or generally refusing a request for joint use may in the subsequent proceedings not claim that the requested infrastructure does not exist but that no request concerning existing infrastructure has been received. In the procedure with the TKK, the infrastructure owner is additionally subject to the general obligation to cooperate in procedures as set forth in administrative law, particularly where the supply of (cost) data that is essential for making a decision is concerned and that only the owner has access to and the authority thus cannot procure by any other means. Where parties fail to comply with this administrative requirement to cooperate, the authority may alternatively consult the results (e.g. cost information) of procedures conducted previously between other parties. The VwGH does not view a specific need for the requested joint use as a prerequisite for use. It suffices "if the ... party demonstrates – beyond doubt – the intention to erect a communications line".


From the standpoint of procedural law, it is worth mentioning that, for the first time in any procedure conducted by a regulatory authority, the VwGH modified decisions (one minor item of each). In addition to its power to lift decisions, since the amendment issued in Federal Law Gazette I No. 51/2012 the VwGH has the option of modifying decisions where this is in the interests of simplicity, expedience and cost reduction; the amendment was introduced as part of restructuring the administrative justice system.

7.4 Supervisory procedures

Where the regulatory authority within the scope of its responsibility has suspicions that a company is in breach of the TKG 2003 or of one of the provisions issued on the basis 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. Even in cases where the deficiencies giving occasion to a procedure do not in fact exist or are corrected within the set period, the regulatory authority is to issue a decision ascertaining the fact.

Limited-term monitoring requirement for A1 Telekom in response to the alleged risk for existing ANO customers caused by upstream DSLAMs without shaping

In the two procedures cited above, UPC Austria GmbH (UPC) and Tele2 Telecommunication GmbH (Tele2) wrote to the Telekom-Control-Kommission (TKK) in July and August of 2011, expressing concerns at the announcement by A1 Telekom that upstream DSLAMs without PSD shaping were to be put into operation in certain NGA rollout areas. Citing the impairment of services provided to the affected access areas up to now on the basis of physical unbundling downstream from the main distribution frame (MDF), the two alternative network operators (ANOs) expressed fears that performance specifications agreed for these existing services could no longer be met once they were migrated to the wholesale product referred to as 'virtual unbundling'. Since the suspicion of an acute impairment could not be sufficiently substantiated in concrete cases, UPC was informed in August 2011 that no supervisory procedure would be initiated against A1 Telekom; yet, at the same time, A1 Telekom was required to provide monthly reports of certain items of information for several access areas (geographic coordinates, dates when installation and



operation of the upstream DLAMS begins, and number of local loops with limited service for each alternative network operator, ARU and access area etc.). In the procedure involving Tele2, the TTK decided in September 2011 not to initially take any further measures in the face of the bilateral discussions being conducted between A1 Telekom and Tele2.

In the course of 2012, A1 Telekom began provisional operation of upstream units with (and not without) PSD shaping in other access areas, so that there was no impairment of the services previously provided downstream from MDFs by UPC and Tele2. The migration of the ANO customers from unbundled lines to virtual unbundling in NGA rollout areas without PSD shaping was still in progress when this report was compiled.

A1 Telekom met on schedule the obligation, valid until 30 June 2013, to provide information, supplementing the list with additional access areas as 2013 progressed. The reports submitted did not indicate any unusual developments. As a result of the information requirements, imposed by the market analysis decision, which relate to planning rounds for the wholesale market for physical access to network infrastructure, A1 Telekom will additionally have to make information on network expansion projects available to ANOs and the regulatory authority. It was, therefore, no longer necessary to prolong the information requirements imposed in this particular procedure.

Discrimination in granting access service

The VwGH published ruling 2010/03/0175 on 23 October 2013 that overturned the market analysis decisions issued for the procedures M 1/09 and M 2/09 concerning the end user markets for fixed network lines of residential and non-residential customers at a fixed location; as a consequence, the VwGH also published on the same day ruling 2010/03/0185, thereby lifting TTK decision W 2/02-274 of 4 October 2010, which was based on the two overturned market analysis decisions. The overturned decision W 2/02-274 had essentially rejected the petition by Tele2 to order A1 Telekom to refrain from abusing its position of significant market power by not granting access service under non-discriminating conditions; the grounds given for the rejection had been that the market analysis decisions relevant for the end user markets for fixed networks lines, namely the decisions issued in procedures M 1/09 and M 2/09, no longer specified the requirement on which Tele2's petition had been based, specifically to provide a product referred to as 'wholesale line rental' (WLR). Yet in its rulings overturning the market analysis decisions, the VwGH deemed it to have been an error of law on the part of the TTK not to have adequately addressed the statement submitted by the European Commission in the coordination procedure at that time. As of result of the VwGH lifting the decisions, procedure W 2/02 had to be continued and was pending as of the end of the reporting period.


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

For further information on the notification requirement pursuant to Art. 25 Par. 1 and 2 of the Telecommunications Act 2003 (TKG 2003), please refer to the relevant section of the 2011 Communications Report.

Since 21 February 2012, the Telekom-Control-Kommission (TKK) may dispute not only published general terms and conditions (including service specifications), but also conditions regarding charges, although, in accordance with Art. 25 Par. 6 TKG 2003, it may not dispute the latter on the basis of the amount of charges.

The TTK received a total of 200 notifications pursuant to Art. 25 TKG 2003 in 2012. In one case, involving a provider's contract terms notified pursuant to Art. 25 TKG 2003 and specifically the registration form, it was necessary to issue an objection, as specified in Art. 25 Par. 6 TKG 2003.

Ruling 2012/03/0067, handed down by the Administrative Court (VwGH) on 22 October 2012, limited the scope of the review specified in Art. 25 Par. 6 TKG 2003. Since that ruling, when notified of changes to contract terms, the TTK reviews "only the changes as well as any parts of the contract terms inextricably linked in content with the changes", but not the entirety of the contract terms.



It should be mentioned in connection with this court decision that only one objection decision was issued in 2013 and that the contract terms published on the RTR website may contain isolated clauses that are no longer congruent with current legal requirements. Yet despite operators' failure to revise such clauses, the TKK is not entitled to object to them pursuant to Art. 25 Par. 6 TKG 2003.

Following final consideration the notified contract terms were published by the TKK on the regulatory authority's website and can be viewed there. The objection decision can be viewed (in German) at www.rtr.at/de/tk/EntscheidungenGesamt.

7.6 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;¹⁴
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.


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

Prior to the 2011 amendment to the TKG, universal service had been limited to "access to a publicly available telephone service via a connection at a fixed location", whereas the amendment lifted the limitation concerning fixed locations. In this way, connections can also be established using mobile telecommunications.

Under Art. 31 Par. 1 TKG 2003, the provider of universal service is to be compensated for the verifiable costs incurred in the provision of universal service which cannot be recovered despite efficient management where those costs constitute an unreasonable burden. As in previous years, the universal service provider A1 Telekom Austria AG (A1 Telekom) was once again able to reach private-law agreements with each of the alternative telecommunications operators regarding the amount of compensation to be paid (for 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 2012 report did not give rise to any objections to key parameters. The UDV, which defines the basis for those measurements, can be viewed (in German) at <http://www.rtr.at/en/tk/UDVerordnung>.

¹⁴ 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 2012, RTR had submitted to the Federal Ministry of Transport, Innovation and Technology (BMVIT) a report verifying whether universal services were being provided competitively, and the BMVIT requested RTR in 2013 to perform a detailed review of the competition in the market for subscriber directory services covering all operators. RTR completed the review and submitted the results to the BMVIT.

During the first quarter of the year, RTR was also involved in a BEREC working group that prepared a statement in response to a draft recommendation which the European Commission had submitted to BEREC in early 2013.¹⁵ The recommendation concerned criteria a Member State should consider when planning to include broadband internet among the universal services as well as the names chosen for universal service operators, the calculation of the net costs of providing universal service and funding.

In the statement issued, while recognising the need for a certain amount of harmonisation in these areas, BEREC noted that several regulatory authorities had already passed relevant decisions that were aligned with the Universal Service Directive. Introducing principles later that contradicted those decisions would add to legal uncertainty, it was argued. BEREC also underscored the importance of the subsidiarity principle in the case of universal service. No final version of the European Commission's recommendation was published in 2013.

7.7 Frequencies

7.7.1 2013 multiband auction

The multiband auction of the 800 MHz, 900 MHz and 1800 MHz frequency bands, completed on 21 October 2013, represents an important step in the pursuit of the broader frequency strategy that the regulatory authority has defined in response to rapid growth of mobile broadband service in Austria. Preparations go back to 2009, when the regulatory authority first began to define a refarming strategy and to lay the groundwork for reallocating the digital dividend (800 MHz band), as well as to migrate, as part of allocating the 2.6 GHz band, to a new auction design, i.e. the combinatorial clock auction (CCA).

The auction had originally been scheduled for September 2012: the Telekom-Control-Kommission (TKK) had made all preparations and could have carried it out on schedule. However, because of the takeover of Orange Austria Telecommunication GmbH (Orange) by Hutchison Drei Austria GmbH (Hutchison), 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, and because of the risk of that operator consequently not having sufficient frequencies to continue their business activities in the event that the merger was not approved. It would have been necessary to exclude the operator because Hutchison and Orange, as merger candidates, could no longer have been regarded as independent competitors. 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 in close consultation with the European Commission to reserve spectrum in the multiband auction for a new entrant.

¹⁵ BoR (13) 27 of 4 March 2013, http://berec.europa.eu/eng/document_register/subject_matter/berec/download/0/1221-brief-note-on-the-european-commissions-d_0.pdf



The TKK began adapting the auction design immediately once the merger had been completed. The TKK published the tender documents, approved by the BMVIT, in the Official Gazette of the Wiener Zeitung on 19 March 2013. The deadline for tender submission was set as 10 June 2013. Applications from the three existing mobile network operators were received by that date. All three applicants were admitted to the auction. With no new entrant applying, the reserved spectrum was auctioned off along with the main frequencies. The bidders' training seminars were held in summer 2013. The auction commenced on 9 September and was completed on 21 October.

The bidders submitted about 4,400 bids during the auction. All three bidders succeeded in securing spectrum. A1 Telekom Austria AG (A1 Telekom) was awarded four frequency blocks in the 800 MHz range (including the block to which more stringent coverage requirements for rural areas are attached), three blocks in the 900 MHz range and seven blocks in the 1800 MHz range, at a total of about EUR 1.029 billion. T-Mobile Austria GmbH (T-Mobile) succeeded in securing a package that includes two blocks in the 800 MHz range, three blocks in the 900 MHz range and four blocks in the 1800 MHz range, at a total price of EUR 654 million, while Hutchison was awarded a package consisting of one block in the 900 MHz range and four 1800 MHz blocks at a total of about EUR 330 million. Auction revenues amounted to slightly over EUR 2 billion, which is very high compared with other recent LTE auctions in Europe.

Following the new allocations, the share held by each of the operators in the total paired spectrum currently allocated for mobile services roughly corresponds to the operators' market shares based on SIM cards. A1 Telekom, having long-term control of 43% of the paired spectrum, holds 44% of the market (measured in terms of SIM cards). T-Mobile, with a market share of 31%, will control about 30% of the spectrum in the long term, while Hutchison holds 25% of the market and 28% of frequencies (refer to the RTR Telecom Monitor 4/2013).

The allocation decision was issued to the parties on 19 November 2013. Hutchison and T-Mobile have filed complaints against the decision with both the Constitutional Court (VfGH) and the Administrative Court (VwGH). Neither the VfGH nor the VwGH granted the petitions, filed additionally, to have a suspensive effect recognised for the complaint. The high-court decisions on the complaints are expected for 2014.

7.7.2 Award of frequencies in the 450 MHz range

The invitation to tender for frequencies in the 450 MHz band was published in March 2013. The regulatory authority received two applications by the tender submission deadline in May 2013. The auction commenced on 24 June 2013. As with the auction for the 2.6 GHz frequencies in 2010, CCA was selected by the TKK as the auction design. Both applicants successfully bid for frequencies. Schrack Mediacom GmbH was awarded usage rights for twelve blocks each consisting of 2 x 200 kHz and a fringe block with 2 x 100 kHz. The frequency licence fee due was EUR 204,000. Kapsch CarrierCom AG successfully bid for the remaining frequency spectrum of nine blocks each consisting of 2 x 200 kHz and a fringe block of 2 x 140 kHz at a fee of EUR 153,000. Network expansion must be completed by mid-2016. The frequency band is planned for use with narrowband transmission. One specific example of use is to transmit the smart metering data used to control future smart power grids.

7.7.3 Award of frequencies in the 3.5 GHz range

A procedure was also initiated in the reporting year for awarding frequencies in the 3.5 GHz band. The invitation to tender was published in the Official Gazette of the Wiener Zeitung and the tender documentation was made available on the website of the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) on 18 September 2013. The only applicant, LinzNet Internet Service Provider GmbH, was awarded a frequency package comprising 28 MHz and 21 MHz as well as 2 x 21 MHz. Allocation is valid until 31 December 2019. The frequency licence fee was set in accordance with Art. 55 Par. 1 of the Telecommunications Act 2003 (TKG 2003) at EUR 16,000.

7.7.4 Outlook for 2014

Award of frequencies in the 3.5 GHz range

In the first quarter of 2014, it is planned to begin the tender submission period for frequencies in the 3.5 GHz band in the region of Carinthia. The allocation procedure pursuant to Art. 55 TKG 2003 is scheduled to be completed by mid-2014.

Level of coverage in the 2.6 GHz frequency range

Frequency usage rights in the 2.6 GHz band were assigned in 2010. The coverage requirements specify ensuring a 25% level of coverage by 31 December 2013. Level of coverage is defined as the percentage of the covered resident population relative to the entire resident population. A bearer service supporting a downlink data rate of at least 1 Mbps and an uplink rate of at least 256 kbps is required to be provided in the coverage areas. The allocation holders are required by February 2014 to provide evidence of complying with the coverage obligation imposed by the regulatory authority. Based on the information submitted, the TKK will subsequently decide whether to verify the reported level of coverage on the basis of appropriate measurements.

Level of coverage in the 3.5 GHz frequency range

In the 3.5 GHz frequency range as well, the level of coverage provided by several operators has to be reviewed. The companies concerned must also provide evidence of the current level of coverage to the regulatory authority. It may be necessary in this case as well to verify through measurements the data submitted.


7.8 Electronic signatures

Electronic signatures represent the digital equivalent of 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), which created the legal basis for the recognition of electronic signatures as equivalent to handwritten signatures, defines the technical and organisational requirements for this purpose. The supervisory authority's monitoring activities serve to ensure that those requirements are met. The SigG designated the TKK as Austria's supervisory authority for electronic signatures. The organisational structures and funding required by the TKK to fulfil its responsibilities under the SigG are separated from its activities under other federal acts. The authority's activities in this area are financed by fees as well as funding from the federal budget.

In 2013, the TKK initiated a total of four procedures pursuant to the SigG. All of the procedures were largely completed in 2013.

A-Trust Gesellschaft für Sicherheitssysteme im elektronischen Datenverkehr GmbH (A-Trust) continued to be the only Austrian-based CSP that issued qualified certificates in 2013. One procedure initiated in 2013 related to this CSP.

The Austrian Federal Office of Metrology and Surveying was likewise Austria's only provider of qualified time-stamp services in 2013. It was not, however, involved in procedures before the TKK.



In early 2013, A-Trust announced various changes to the Certification Practice Statement. In the case of a.sign Premium, a certification service offered by A-Trust, the change involves the launch of a new certificate class, referred to as a.sign Business F, which includes additional information in the certificate (company name, possible information on authorisation of representation, and any limitations of certificate scope). After reviewing the proposed change, the TKK terminated the procedure, not having identified any deviation from statutory signature requirements.

According to a provision of the Austrian Signatures Ordinance 2008 (SigV 2008), CSPs are to be audited at two-year intervals. Correspondingly, a review was carried out that involved all certification services provided by A-Trust for which qualified certificates are issued. The review specifically looked into whether A-Trust continued to comply with the provisions of the SigG and the SigV 2008, the requirements specified in the accreditation decision, and the procedures recorded in the Certification Practice Statement. The review revealed no inconsistencies.

In early 2013, A-Trust gave notice that additional hardware security modules (HSMs) would be deployed, submitting corresponding confirmation as issued by the confirmation body A-SIT (A-SIT Zentrum für sichere Informationstechnologie – Austria). The TKK commissioned A-SIT to prepare a report to evaluate how the HSMs are to be integrated into the A-Trust's systems. The report revealed no security issues.

In summer of 2013, A-Trust gave notice of a change to the Handy-Signatur signature service, which would allow batch signatures to be generated with the aid of a server located near the signatory. The TKK consulted Dr. Ingrid Schaumüller-Bichl on the issue, commissioning her to prepare an expert opinion. This report did not reveal any critical security issues either.





8 Activities of RTR's Telecommunications and Postal Services Division

8.1 End-user conciliation procedures

8.1.1 Telecommunications

Pursuant to Art. 122 of the Austrian Telecommunications Act 2003 (TKG 2003), the conciliation procedure is available as an additional instrument to ensure legal protection to all customers of an operator. In practice this involves all customer issues, including bills suspected of having errors, or quality issues related to phone service or internet access. Alongside the option of ordinary court proceedings, complaints can also be submitted to the regulatory authority which has the legal mandate to negotiate an amicable solution. Where such a solution is not possible, the regulatory authority, in its capacity as conciliation body, is called upon to thoroughly review the case and inform the parties involved of its legal opinion.

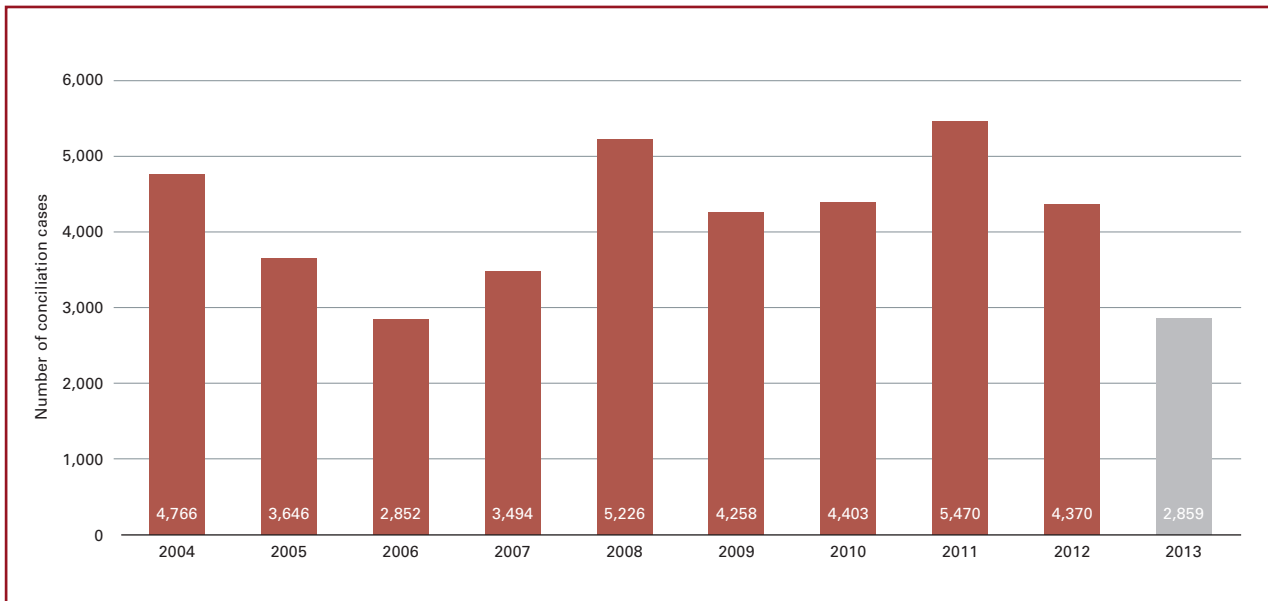
The procedure with the conciliation body is free of charge and, unlike court proceedings, there is no risk of incurring costs. Even if the outcome of the procedure is not advantageous, the subscriber concerned is not liable to pay the expenses of the other party (i.e. the operator involved).

The speed of the procedure represents another advantage. The conciliation body incorporates both technical and legal experts and thus eliminates the need to consult outside specialists. Any issues that arise can usually be resolved expediently within RTR itself without excessive red tape.

The details of the actual procedure are specified in separate conciliation guidelines, and the procedure can also be processed online via an e-government platform (www.rtr.at/schlichtungsstelle).

What stands out most of all in 2013 is the significant decrease in the number of conciliation requests. Compared with the previous year, this number dropped by 1,511 in absolute terms, or almost 35%.

Figure 13: Conciliation procedures filed 2004 to 2013



Source: RTR


This decline is all the more remarkable as the number of new conciliation requests had already fallen considerably between 2011 and 2012.

It is easy to identify the reason for this encouraging development, namely: the Cost Limitation Ordinance (KostbeV). After entering into force on 1 May 2012, the legislation could for the first time demonstrate its effectiveness over a full year period in 2013. The number of complaints in which use-based charges for data services was a major subject of dispute could be reduced to such an extent that these cases now play an insignificant role. The potential risk for consumers is now capped at EUR 60, and is thus now about 10% of the average amount in dispute of the corresponding cases in 2011. Further details on the KostbeV are found in Section 8.7.1. There are still conciliation cases concerning this subject, of course, but the issue is one like any other. The significant drop in this area was also not offset by a rise in cases involving other complaint issues, such as content billing.

The 'mobile first' tendency continued to prevail when viewed on the basis of operators involved in cases. The large majority of all conciliation cases involve mobile services. Disputes about fixed-network services are becoming a marginal phenomenon. The total of all fixed-network complaints against A1 Telekom Austria AG (A1 Telekom), UPC Austria GmbH (UPC) and Tele2 Telecommunication GmbH (Tele2) is now only 216 such cases. This corresponds to less than 10% of the total number of cases.

When viewed in terms of content, there is no longer any singly dominant complaint in 2013. A brief overview of the most important topics in 2013 is provided below.

1. Meanwhile, contract disputes represent the majority of cases. This category includes all cases where general issues governed by contract law need to be clarified, for instance questions surrounding contract termination or the legality of a minimum contract term. This is a category containing highly diverse issues, so that no once case resembles another.

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2. The conciliation body continues to be deeply involved with issues surrounding content services, also known as ‘payment by mobile phone’, ‘WAP billing’ and ‘web billing’. In the case of such services, resembling value-added services, content provided by a third party is charged to the mobile subscriber’s phone bill. In contrast to actual value-added services these are not addressed via a phone number but are instead accessible via separate (internet) portals. Such cases raise a variety of legal issues, most important of which include the possibility of use by third parties and compliance with legal provisions regulating distance selling. Content services are automatically activated for most mobile service contracts. In many cases it was revealed that subscribers were not even aware of this fact, which naturally impedes taking any appropriate precautions. It was also observed that, based on a lack of user-awareness, content services continued to be available although subscribers had in fact blocked their value-added services. Problematic consequences can particularly result in those cases where a third party (e.g. one’s own children) is allowed to use the device. Due to the current lack of a legal foundation, content services cannot be regulated in detail, and operators consequently have great freedom to decide how much transparency they wish to apply when providing services. This adds to the complexity of the issue. In some cases, the actual content provided through such services is also questionable. Examples include contests that are already designed in such a way as to make it impossible to achieve any real economic gain. On a positive note, mention should be made of the pragmatic approach shown by operators involved in content service cases. The large majority of cases can be settled through the operator’s goodwill.
 3. Finally, attention should be given to the data service cases mentioned at the outset. Although such cases represented only the ‘third most significant’ category in 2013, they were still among the more frequent subjects of dispute. Examples of such cases include businesses that have not actively opted for the protection offered by the KostbeV and can subsequently be confronted with astonishingly high bills for data volumes which they may or may not have been aware of having consumed.

The experience with the Information Requirements Ordinance (MitV), which entered into force as of 1 August 2012, continues to be highly positive. The complaints in this regard have all but ceased now that it is clearly specified how an operator is required to notify its customers of any unilateral and disadvantageous changes to its terms of business which affect the customer. It is also interesting to note that the number of unilateral changes introduced by operators has fallen since the ordinance took effect.


8.1.2 Postal services

As specified in Art. 53 of the Postal Market Act (PMG), users and interest groups may call upon the regulatory authority in the event of disputes or complaints concerning a postal service provider that are not able to be satisfactorily resolved. The authority is obliged to strive for an amicable solution and recommend action for settling the matter. The recommendation is not binding and may not be disputed. Postal service providers are obliged to participate in such a procedure and to provide all information necessary to assess the situation.

As of 1 January 2011, a postal conciliation body was established with the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR). The body received 66 requests for conciliation as well as numerous general enquiries in 2013. As in previous years, the subject of the majority of complaints concerned various delivery issues. Other repeated complaint issues included damaged or lost parcels, and issues involving mail forwarding orders.

8.1.3 Media

Conciliation procedures under Art. 122 Par. 1 No. 1 TKG 2003 are also available to customers of companies that operate facilities for broadcasting radio and television signals. Such cases typically involve cable network operators. The responsibility for conducting the appropriate procedures falls within the scope of competence of the Austrian Communications Authority (KommAustria), which has mandated RTR as its operative arm with the actual task. The procedure guidelines apply to both areas. Additional details can be found at www.rtr.at/schlichtungsstelle.



There are only isolated cases of this kind compared with conciliation activities in the area of telecommunications. Specifically, 13 requests for such procedures were filed in 2013. The majority concerned contract disputes, including contractual agreements, general terms of business, contract cancellations, scheduled or unscheduled termination of contracts, and television reception issues.

8.2 Supervisory procedures

Art. 91 TKG 2003 provides RTR with the legal mandate to take supervisory measures in cases where there is evidence of an operator violating any provision of the TKG 2003. The same applies accordingly where the suspected breach involves an ordinance issued on the basis of the TKG 2003. RTR can, however, only take action in such cases of suspected breach of law where the TKG 2003 has expressly empowered RTR to enforce the specific provision. Consequently, not every violation of a provision of the TKG 2003 can be addressed through a supervisory procedure. It should also be noted that, pursuant to Art. 91 TKG 2003, the Telekom-Control-Kommission (TKK) may also be responsible for the case, in addition to RTR. Refer to Section 7.4 for more detail.

RTR initiated seven procedures in 2013 and completed two of them. Moreover, two procedures already initiated in 2012 were also completed. Thus, four procedures in total were completed in 2013, and these are briefly described below.

A1 Telekom Austria AG (A1 Telekom) and T-Mobile Austria GmbH (T-Mobile) – compliance with the Cost Limitation Ordinance

The topic dealt with in both of these procedures concerned aspects related to implementing the Cost Limitation Ordinance (KostbeV). Specifically, in the case of both these operators, it came to light that certain groups of customers were not automatically subordinate to the protection provided by this ordinance. This affected individuals whose consumer contract was attached to a contract with a large business. This option is offered by many companies, which negotiate contract terms with one network operator. Staff members are then offered the possibility of signing consumer contracts under the same terms. The situation often becomes more complex because rights and obligations are specified as a three-party relationship, which makes an isolated examination of the legal relationship between the consumer (i.e. the employee) and the network operator impossible. Yet it is precisely this kind of contractual relationship that is relevant for determining whether the KostbeV is to be applied on an opt-out basis, which would automatically result in a charge limit of EUR 60, since the ordinance applies automatically only to contracts with consumers as defined in Art. 1 of the Consumer Protection Act (KSchG). Case incidents had shown that, according to both the affected operators, all corresponding customers had been treated as businesses.

However, RTR's legal opinion in this matter is unequivocal: network operators must ensure that there is a transparent means of distinguishing whether the "additional registration" represents a consumer transaction or a business transaction as defined in Art. 1 KSchG. Application of the KostbeV must be ensured where the contract is with a consumer. Both new and existing contractual relationships are equally subject to this requirement.

During the procedure, A1 Telekom concurred with this legal opinion and implemented the necessary measures.

T-Mobile, on the other hand, had to be ordered by official decision to establish appropriate legal compliance.

A1 Telekom and T-Mobile – customers’ right to a paper bill

In each of these two procedures there were indications that the companies were not offering paper bills to subscribers free of charge as required by Art. 100 TKG 2003.

Since the 2011 amendment to the TKG (Federal Law Gazette I No. 102/2011), Art. 100 TKG 2003 expressly specifies that subscribers have a choice between bills in electronic form and bills on paper when finalising a contract. Furthermore, the subscriber’s option to receive a printed invoice free of charge may not be precluded by the contract. This provision, while entering into force on 21 February 2012, has apparently not been appropriately implemented.

On its website, A1 Telekom informed subscribers to the operator’s bob brand as follows:

“Can I have a paper bill?

Bob does not supply any bills on paper. You can view your invoice from bob online at any time. If you require a paper bill for taxation purposes, you can order a copy from bob service at 0900 680 680 (EUR 1.09/Min. max.).”

T-Mobile informed a tele.ring subscriber in a (form) letter (with the subject “Direct debit failed”) on 31 October 2012 as follows: “Please note that we charge you a monthly environmental fee for printing your bill on paper.”

In both procedures the operators claimed that the information was obsolete and promised to change it immediately. They also stated that all subscribers would be provided with a paper bill free of charge.

Both A1 Telekom and T-Mobile have remedied the defects identified and RTR has received no further complaints to this effect. RTR consequently terminated the procedures without ordering any further supervisory measures.

All decisions can be viewed (in German) at www.rtr.at/de/tk/EntscheidungenGesamt.


Other procedures initiated in 2013

The remainder of the procedures that were pending as of the end of 2013 concern suspected breaches of notification requirements pursuant to Art. 25 TKG 2003 and of the Information Requirements Ordinance (MitV). The 2014 Communications Report will present these procedures in detail.

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

Art. 24 Par. 2 last sentence of the TKG 2003 requires the regulatory authority to provide information on unfair practices and the corresponding measures taken (against value-added services) as part of the yearly report pursuant to Art. 34 Par. 2 TKG 2003. Of particular significance in this context are 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.

In the year under review, 141 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 114 to value-added text messaging, which corresponds to roughly 5% and 4% respectively (9% in total). The corresponding percentages of conciliation procedures came to some 9% in 2010, to about 7% in 2011, and to roughly 8% in 2012.



Moreover, a web form for complaints about value-added services has been operational since April 2008. During the period under review, the number of complaints dropped to 205 compared to the previous year, when some 370 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.

The 2011 amendment to the TKG empowered the TTK to issue an administrative order pursuant to Art. 91a Par. 1 TKG TKG 2003, immediately blocking such services in certain cases of abuse; the authority made use of this power for the first time in 2013. Such a block can be imposed where grounds exist for assuming a breach of the provisions of the KEM-V 2009 concerning the information on charges to be provided immediately before or during use of the service and concerning the use of a phone number in accordance with its designated purpose, thereby giving rise to the threat of significant economic disadvantage to users. The underlying cases concerned two short public numbers for telephone directory services that were used to provide erotic services instead of directory assistance. As short public numbers for directory assistance services are not covered by value-added services blocks, and experience has shown that consumers meet services behind directory assistance numbers with less caution based on the clearly more positive image compared to value-added services, considerable economic disadvantages were feared by a use which was contrary to the intended purpose. The directory assistance numbers concerned were blocked with immediate effect, averting any such economic disadvantage.

8.4 International roaming in the European Union

The Roaming Regulation is designed to ensure that travellers who use public mobile telecommunications networks within the European Union are not overcharged for roaming services. The Regulation is also aimed to contribute to the smooth functioning of the internal market while achieving a high level of consumer protection, fostering competition and transparency in the market and offering both incentives for innovation and consumer choice.

Most of the provisions of the Regulation related to transparency have a scope of application that extends beyond the European Union (as well as Liechtenstein, Iceland and Norway), providing international safeguards for roaming customers (Art. 14 and 15 relating to transparency and safeguards).

Since Croatia joined the European Union on 1 July 2013, the EU Roaming Regulation fully applies in that country as well.

8.4.1 Roaming charges


Wholesale level

As of 1 July 2013, the maximum amounts of average wholesale charges applying between any two network operators are as follows (Articles 7, 9 and 12 Roaming Regulation):

- Roaming calls: max. EUR 0.10, initial minimum charging period of 30 seconds permitted, per-second charging
- SMS (text messaging): max. EUR 0.02 per SMS
- Data roaming: max. EUR 0.15 per megabyte (MB), charged per kilobyte

Retail level

Roaming providers are required to provide a euro-voice, euro-SMS and euro-data tariff that may be combined with any retail tariff to their customers within the European Union (as well as Liechtenstein, Iceland and Norway). The roaming provider must apply the euro-tariff automatically to all current roaming customers, with the exception of customers who select a special roaming tariff (e.g. a roaming package).



The maximum levels of the euro-tariff were reduced once again effective 1 July 2013. The current maximum rates are as follows (Articles 8, 10 and 13 Roaming Regulation):

- Active calls: max. EUR 0.288 (incl. VAT), initial minimum charging period of 30 seconds permitted, afterwards per-second charging
- Calls received: max. EUR 0.084 (incl. VAT), per-second charging
- SMS (text messaging): max. EUR 0.096 (incl. VAT) per SMS, SMS receipt at no charge
- Data roaming: max. EUR 0.54 (incl. VAT) per megabyte (MB), charged per kilobyte

Roaming providers are not allowed to charge for the receipt of a voicemail roaming message.

A further reduction of the roaming charges is planned for 1 July 2014.

8.4.2 Wholesale roaming access and separate sale of regulated retail roaming services

Wholesale roaming access

Art. 3 of the Roaming Regulation specifies the requirement for mobile network operators (MNOs) to meet all reasonable requests for wholesale roaming access (both for direct access and for reseller access).

Wholesale roaming access covers access to all network elements and associated facilities, relevant services, software and information systems that are necessary for the provision of regulated roaming services to customers.

As of 1 January 2013, MNOs are furthermore required to publish a sufficiently detailed reference offer for wholesale roaming access (taking into account the BEREC guidelines on Art. 3¹⁶).


Separate sale of retail roaming services (decoupling, Articles 4 and 5 Roaming Regulation)

These articles govern the separate sale of retail roaming services. As of 1 July 2014, domestic providers are required to enable their customers to access regulated roaming services provided by an alternative roaming provider. This means that roaming customers may choose two different providers, one for national telecommunications services and one for regulated roaming services, while keeping their own phone number.

In order to implement the separate sale of roaming services, firstly, Commission Implementing Regulation (EU) No 1203/2012 on the separate sale of regulated retail roaming services within the Union was issued (OJ L 347 of 15 December 2012) and, on the other hand, BEREC guidelines were published¹⁷ in July 2013 following a public consultation, with the aim of enabling harmonised implementation of Articles 4 and 5 of the Roaming Regulation.

¹⁶ http://berec.europa.eu/eng/document_register/subject_matter/berec/regulatory_best_practices/guidelines/1015-berec-guidelines-on-the-application-of-article-3-of-the-roaming-regulation-wholesale-roaming-access

¹⁷ http://berec.europa.eu/files/doc/BoR%20%2813%29%2082%20BEREC%20Guidelines%20on%20Roaming%20Regulation%20%28EC%29%20No%205312012%20%28Third%20Roaming%20Regulation%29_2013.07.05.pdf



As specified in the preamble of the Commission Implementing Regulation, a platform, open to all market participants, was established for the technical implementation of separate sale. The 'stakeholder forum' has prepared a related document that describes the technical requirements for implementing the separate sale of regulated roaming services; refer to Roaming Regulation III_High_Level_Technical_specifications_V1.1.doc (Docbox).¹⁸

8.4.3 Supervisory measures

Violation of the Roaming Regulation by A1 Telekom through failure to comply with safeguards for end users of roaming services

On 7 January 2013, the Telekom-Control-Kommission (TKK) initiated a procedure pursuant to Art. 16 (5) Roaming Regulation in response to information which suggested that A1 Telekom Austria AG (A1 Telekom) was not sufficiently ensuring that data roaming services are blocked once the cost limit of EUR 60 (incl. VAT) is reached and that it is in fact the roaming customer who opts for the unlimited provision of data roaming services and not an unauthorised third party who instructs the limited provision of data roaming services (as specified in Art. 15 Roaming Regulation).

Simply sending 'OK' as a text message to acknowledge cancellation of the data roaming block, as specified by A1 Telekom, does not adequately ensure that only the roaming customer, as defined by the Roaming Regulation (i.e. the contractual partner of A1 Telekom or an authorised third party), is able to opt for the unlimited provision of data roaming services.

On 2 April 2013, the TKK issued a decision to A1 Telekom ordering the operator to introduce an authentication mechanism capable of ensuring that no unauthorised third parties can cancel the data roaming block, thereby ensuring the consumer protection standard required by the Roaming Regulation.

In accordance with that decision, A1 Telekom implemented an authentication mechanism that now only allows both business customers and consumers to lift the set data roaming block by entering a password once the set cost limit has been reached.

8.5 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/or 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 2013, a total of 734 operators had notified 1,568 active services; 122 of those businesses were operators of call shops or internet cafés. Under a 2011 amendment to the TKG 2003, such 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).

¹⁸ http://docbox.etsi.org/Reference/Cooperation_Platform_Separate_Sale_of_Roaming_Services/

8.6 Communications parameters

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

The fourth amendment to the KEM-V 2009 took effect on 15 November 2013. This amendment introduced 'short public numbers with an asterisk' for the provision of toll-free services. By issuing this amendment, the regulatory authority responded to a need expressed especially by service providers, since short numbers have the special advantage of being easy to remember and consequently also easier to advertise.

Three, four or five-digit operator codes are assigned to follow the asterisk, and the minimum number of call minutes required is set at 2,500 per month averaged over the period of a year.

An example of such a short number would be '*287'. The asterisk is part of the number and is dialled as a digit.

The new number range is also suitable for phone numbers referred to as 'vanity numbers'. With such numbers, each digit is replaced by the letter shown on the phone keypad. The example mentioned above, '*287', could appear in advertising as '*BUS'. While this way of representing phone numbers is frequently used in the US, the market will decide on its acceptance in Austria.

From the standpoint of competitors and consumers, dialling a short public number with an asterisk is no different from dialling any other number. Yet the currently diverse network structures make it questionable whether such short numbers can be mapped in every network at this time. However, in order to overcome technical limitations and support or enable such innovative concepts, as required by statutory provisions (specifically concerning interoperability, Art. 22 TKG 2003), every service provider offering a short number of this kind must additionally register a matching 0800 number that connects to the same service. This 'corresponding phone number' is published on the website of the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR), making it also available to any callers whose networks do not support direct connections to short phone numbers with an asterisk. Nevertheless, it can be assumed that short public numbers with an asterisk can always be reached from every mobile phone network.

8.6.2 Routing number system for number portability

Routing numbers, which are invisible to users, are used by network operators to route calls to a particular network where the target network cannot be determined from the dialled number as is the case with ported numbers. Consequently, in the absence of routing numbers, a call made to a mobile phone registered with T-Mobile Austria GmbH (T-Mobile) and addressed with a ported number from A1 Telekom Austria AG (A1 Telekom) would always be routed to the A1 Telekom network, as the switching exchanges refer to the dialled national destination code (NDC) and generally route every call prefaced by '0664' to A1 Telekom. Routing numbers allow source networks to address such calls so as to allow the switching exchanges to route them directly to the target networks.

Two different routing number systems are currently used in Austria, one for mobile phone numbers and one for all other numbers (geographical numbers and service numbers).

The current system used for mobile phone numbers was implemented in 2004 as part of introducing mobile number portability and, during the course of proceedings, was agreed to among the operators by way of a contract under private law; however, from today's standpoint it has several fundamental limitations:

- Only mobile phone numbers with not more than a ten-digit NDC can be integrated in the system of number portability in Austria
- A maximum of nine mobile networks can be addressed

A more highly simplified system is currently in use for fixed network number porting, which, however, requires A1 Telekom to provide data to allow direct settlement of charges between source networks and target networks.

RTR consequently launched an industry-wide consultation¹⁹ in July 2013, with the aim of discussing a harmonised routing system for all national destinations.

The statements received²⁰ did not allow any industry consensus to be identified, yet the network operators evaluated and discussed alternative systems in detail within the framework of the Working Group for Technical Coordination of Public Communications Networks and Services (AK-TK), both during and after the consultation process.

While no agreement had been reached by the editorial deadline, one specific plan did appear generally acceptable.

Specifically in the area of mobile number portability, the regulatory authority sees the implementation of a new system as a prerequisite for potential new participants to enter the market. Here priority is given to reaching a private agreement among the market participants within the AK-TK or an industry working group on the topic of the routing number system that could be set up in 2014. It cannot currently be ruled out, however, that the authority will take additional action in the interim.

8.6.3 Statistical analyses of telephone number administration

Table 18 provides a quantitative overview of the telephone number allocation decisions issued over the last five years. The number of allocation decisions was down slightly from the previous two years. Overall there were 5% fewer allocation decisions issued in 2013. While the number of allocation decisions on non-geographical subscriber numbers has continued to fall (-10%), the number of decisions applying to geographical numbers was up again in 2013.

Table 18: Number of decisions on telephone number requests, 2009 to 2013

	2009	2010	2011	2012	2013
Number of affirmative decisions	786	710	707	525	503
Geographical numbers	239	187	237	235	243
Non-geographical numbers	547	523	470	290	260
Number of negative decisions	43	35	43	22	15
TOTAL	829	745	750	547	518

Source: RTR

¹⁹ Refer to www.rtr.at/de/komp/Konsult_Routingnummern (in German)

²⁰ Refer to www.rtr.at/de/komp/Konsult_Routingnummern_Stn (in German)

Within the framework of administrating special communications parameters, RTR issued a total of nine decisions (all affirmative) in 2013.

Under the TKG 2003, the regulatory authority is required to decide on telephone number requests within three weeks of receiving the complete application. As can be seen from Table 19, this requirement was met fully in 2013. Almost 50% of all decisions were issued within a single day. There was a slight increase in the average processing time (3.19 days) in 2013 as particularly usage rights attached to ported numbers had to be clarified and properly mapped in the wake of numerous company takeovers. Here it is important to note in general 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 19: Processing time for telephone number requests (days), 2009 to 2013

	2009	2010	2011	2012	2013
Average processing time	2.2	2.2	2.0	1.97	3.19
50% of all requests	1.2	1.2	0.96	1.01	1.17
90% of all requests	4.2	3.6	3.8	3.52	3.87

Source: RTR

Table 20 provides an overview of all telephone number ranges administered by RTR as of 31 December 2013, including allocated numbers and numbers in use. The total number of geographical numbers used in the market fell by 2% in 2013. The number of geographical subscriber numbers in use at A1 Telekom Austria AG (A1 Telekom) declined somewhat (by 6%) last year. Even the 12% increase in geographical numbers used among alternative operators could contribute towards an overall growth in usage. In some cases there were significant changes in the range of non-geographical numbers compared with 2012. The increase of usage in 2013 was limited to toll-free service numbers, at +2%, and to national destination codes (NDCs) for private networks, at 6%. For all other number ranges there were declines in usage, some of them drastic. On the one hand, the declines in usage are to be attributed to one ENUM registrar terminating services (yesss!), which caused the (0)780 number range to drop by 71%, as well as to a synchronisation of usage data by RTR. Data was compared on a broad basis with the data supplied by network operators to further improve the quality in particular of service numbers and of the directory of value-added service numbers, managed and published pursuant to Art. 24 Par. 3 TKG 2003. The comparison and the ensuing reorganisation resulted in major differences from the previous year with regard to the usage figures for certain number ranges.

The differences between the number of allocated and used phone numbers is firstly to be attributed to the fact that numbers are allocated in blocks while the usage figures relate to individual phone numbers used within one block and, secondly, to the 180-day period allotted to the allocation holders after allocation to set up the phone number or the block before the allocation is cancelled.

Table 20: Numbers allocated and in use in Austria as of 31 December 2013

	Range	Allocated	Use	
			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	24,418,000*	2,217,048	-6%
Geographical subscriber numbers: Alternative network operators	(0)1, (0)2xx, (0)3xx, (0)4xx, (0)5xx, (0)6xx, (0)7xx	3,100,100*	766,325	+12%
NDCs for private networks	(0)5	717	628	+6%
NDCs for mobile networks**	(0)6xx	12	9	0%
Dial-up internet access	(0)718	7,000	24	-8%
Location-independent fixed network numbers	(0)720	290,400	71,005	+4%
Convergent services	(0)780	551	551	-71%
Toll-free services	(0)800	80,587	16,262	+2%
Toll-free dial-up internet access	(0)804 00	124	17	-15%
Services with regulated maximum rates	(0)810, (0)820, (0)821	101,097	11,953	-54%
SMS services in the range of services with regulated maximum rates	(0)828 2	1,343	14	-88%
Value-added services	(0)900, (0)930	101,851	21,120	-27%
Services with event-based rates	(0)901, (0)931	36,507	1,638	-53%
Diallers (value-added services)	(0)939	6,600	45	-8%
Carrier selection prefixes (public carrier networks)	10	33	27	-13%
Telephone service hotlines	111	64	44	-28%
Telephone directory assistance services	118	39	30	-27%
Routing numbers for number portability	86	55	38	-16%
Routing numbers for number portability	87	14	12	0%
Routing numbers for services	89	34	27	-4%

* Figures represent unabbreviated geographical numbers, i.e. a telephone number shortened by one digit corresponds to ten unabbreviated numbers and by two digits to 100 numbers.

** As of the reporting date, subscriber numbers following the twelve NDCs listed here had been allocated: (0)650, (0)660, (0)661, (0)664, (0)670, (0)676, (0)677, (0)678, (0)680, (0)681, (0)688, (0)699. In some cases only sub-ranges within a mobile NDC are allocated.

Source: RTR

8.7 RTR ordinances

8.7.1 Evaluation of the Cost Limitation Ordinance

The Cost Limitation Ordinance (KostbeV), which was published in the Federal Law Gazette on 20 February 2012, was issued by the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) based on powers conferred by Art. 25a TKG 2003 (as amended by Federal Law Gazette I No. 102/2011) and in response to the results of research into the retail markets within the Austrian telecommunications sector and a representative survey. The ordinance was set to take effect as of 1 May 2012.

The principle aim of the ordinance is to implement effective, detailed cost protection measures for subscribers as a means of preventing overcharging for telecommunications services. Through the comprehensive study, 'mobile data services' and 'mobile voice/SMS services' were identified as segments of the respective retail markets that are relevant for the ordinance. The scope of application of the KostbeV accordingly includes the above-mentioned segments and extends to domestic mobile voice, SMS (text message) and data services that are charged based on use.

Prior to issuing the KostbeV, the mobile voice/SMS services segment presented a mixed picture: while on the one hand the numbers of complaints concerning this segment were statistically relevant to a certain extent, the level of significance here was considerably lower than that calculated for the mobile data services segment. The fact that the majority of complaints concerning the voice and SMS segment were attributed to value-added services also had to be considered.

In order to be able to draw on reliable data to respond to any need on the part of subscribers for enhanced cost transparency in the mobile voice and SMS services sector, a four-month evaluation study, covering April to August 2012, was carried out to look at specific complaints and objections in this sector; assistance was provided by the Federal Chamber of Labour and the Federal Ministry of Labour, Social Affairs and Consumer Protection (BMASK) as well as by the mobile network operators. In determining the number of disputed bills, the three-month deadline specified in Art. 71 Par. 1a TKG 2003 for submitting data had to be taken into account. Additionally, the initial impact of the KostbeV on the number of complaints related to mobile data services was examined.

Results of the evaluation

The evaluation was carried out and finally completed in January 2013. A clear trend was revealed, showing a reduction in the number of requests for conciliation once the KostbeV took effect. While 495 requests for conciliation had still been filed in February 2012, the number already dropped to 292 requests in September 2012 and to 204 requests in December 2012. The percentage of applications that concerned large bills for mobile data services shrunk from 35% in February 2012 to 12% by October of that year. The measures introduced through the KostbeV are thus obviously effective.

All invoices from the above-mentioned period that included charges of more than EUR 100 for voice and SMS services were compiled from the mobile network operators active in this market segment (four at that time). The results, including averages over all four operators, are given in the table below.

Table 21: Results of the evaluation of objections

Total for April to July 2012 (All network operators)	
No. of bills for postpaid voice and SMS products	18,776,962
No. of bills for more than EUR 100 including objections	70,550
No. of bills for more than EUR 100 as a percentage of all bills	0.38%
Total no. of objections to bills for more than EUR 100	376
Objection rate in the case of bills for more than EUR 100	0.53%

Source: RTR

The table above lists the aggregated statistics on the bills issued by all network operators in the period of April to July 2012 for contracts allowing the use of voice and SMS services. The number of objections is small: specifically, objections were filed for only 0.53% of bills over EUR 100 (0.38% of all bills). Since the three-month objection period was accounted for, it must be assumed that the users in each case knew how high the bills were because their accounts had already been debited with the corresponding amounts. While the total of 70,550 bills over EUR 100 appears rather high in comparison, the differing scales of granularity resulting from the query of the individual operators needs to be considered, since not all network operators were able to evaluate data to the same level of detail. Furthermore, the figures on the conciliation requests by subject matter of complaints for that particular period reveal that over half of all requests related to value-added voice services or value-added text messaging.

Conclusions

The substantial reduction in requests for conciliation in the mobile data services segment has proven the effectiveness of the measures defined in the KostbeV. Thus, viewed in retrospect, the introduction of warning and blocking mechanisms in this segment was necessary in response to the need for enhanced cost transparency and reliable protection against overcharging, while the measures ordered were proportionate.

While the evaluation revealed a lower significance for complaints concerning the voice and SMS segment than for those relating to the mobile data services segment, existing cost protection mechanisms nonetheless appear to be deficient, as seen by the absolute number of bills over EUR 100 (even though this figure is exaggerated due to statistical imprecision). This evaluation could not identify a significantly increased need for cost transparency for the voice and SMS segment, as was the case for mobile data services in 2011. Ordering additional measures for this segment would have required the operators to introduce costly real-time billing systems, but this was therefore not considered reasonable in light of the figures. Additional protective measures were consequently not ordered, whereas RTR is constantly monitoring the complaint situation as part of conciliation activities.

8.8 Focus on NGN/NGA

The migration to next generation access (NGA) and next generation networks (NGNs), i.e. to novel access and core network architectures, continued at a steady pace in 2013. With the associated developments taking place over an extended period and entailing radical economic, technological and regulatory transformations, the regulatory authority also continues to keep abreast with this process.

As part of the market analysis procedure M 1.1/12, the regulatory authority carried out a detailed investigation of the modified conditions applying to the expansion of access networks on the basis of fibre optics, staking out the regulatory framework for the next period by introducing measures such as the wholesale product referred to as 'virtual unbundling'. The draft decision only became effective at the end of 2013, after the European Commission (EC), fearing that the regulator's approach of ensuring that prices remained free of any margin squeeze would lead to insufficient investment incentives, introduced an Article 7a procedure, which did not, however, bring the two sides any closer on the price issue. It remains to be seen whether the EC will undertake further steps against a regulation of the access market and bitstream access (M 1.2/12), another market for which the EC presented similar arguments (refer to Section 7.1). As far as the actual NGA rollout is concerned, at the end of 2013 the regulatory authority was aware of (completed or currently progressing) installation projects in some 194 access areas throughout Austria. Hereby the majority of these projects involved FTTC and FTTB infrastructure.

A1 Telekom Austria AG (A1 Telekom) also progressed on schedule with plans for migrating from conventional public switched telephone networks (PSTNs) to packet-switched NGNs in 2013, whereas completion of the migration had been announced (and ordered) for the end of 2013. In addition to migrating to the new technology, it is planned to reduce the interconnection points between A1 Telekom and its interconnection partners to the geographical locations of former main switching exchanges, while an interconnection at a lower network level is no longer bindingly envisaged. This situation is also reflected by the market analysis decisions, handed down by the regulatory authority, on the wholesale markets for origination and termination.


Finally, mobile communications frequencies were also auctioned off during the multiband auction towards the end of the year; the auction served to establish the prerequisites for offering customers NGA bandwidths in the mobile access network as well (i.e. 800 MHz spectrum, suitably wide channels; refer also to Section 7.7).

8.9 International activities

In recent years, the significance of EU-level regulation and of international cooperation has increased substantially and has consequently been further intensified. The Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) plays a role in this development by actively participating in the various international bodies and working groups, depending on the particular focus topic. Consequently, due to the international environment, RTR was even more active in this area again in 2013.

The 2013 work programme of the Body of European Regulators for Electronic Communications (BEREC) continued work on the topics initiated in 2012, when Austria had served as chair of BEREC. The focus was specifically on net neutrality, international roaming, measures aimed at reinforcing transparency for the benefit of end users, as well as topics related to the expansion of next generation networks.

The European Commission also conducted a number of procedures pursuant to Art. 7/7a of the Framework Directive again in 2013. These cases involved decisions that were handed down by national regulatory authorities and to which the European Commission had raised objections. In such cases, BEREC is obligated to call in an expert group specifically to address the issues arising from the Commission's objections; the group subsequently submits a statement containing their expert opinion. In 2013, RTR submitted the greatest number of expert opinions within the entire European Union, providing clear evidence of the international recognition and regard given to Austria's expert opinion in such procedures.



As already briefly mentioned in Section 2.4 on international activities, the European Commission launched an initiative towards restructuring the regulatory framework of the EU. The initiative, referred to as the Digital Single Market, aims to put more emphasis on the non-localised provision and use of digital services and thus to reinforce the internal market concept. It is designed to allow companies specialised in providing digital communications services to give all users in the EU access to such services, regardless of the company's particular location within the Union. Additional changes have also been planned for international roaming, with the goal of strengthening competition. RTR is participating in several working groups on the Digital Single Market in order to ensure that the new initiative is formed so as to best suit the needs of the Austrian market. RTR also participates in practically every working group and expert group within BEREC, so as to actively contribute to shaping developments at European level.

The Greek regulatory authority EETT (under Leonidas Kanellos) held the BEREC chair in 2013. Serving as outgoing chair, RTR was thus among the vice-chairs and in this capacity looked after BEREC's external agenda. This proved to be of great advantage inasmuch as it allowed RTR to ensure that BEREC continued to put forth efforts in the areas initiated while Austria held the chair in 2012. As of January 2014, the BEREC chair passes to the Swedish regulatory authority PTS under the leadership of Göran Marby. An overview of the individual results and reports published by BEREC can be found on the official web site (berec.europa.eu), where the organisation's current work programme is also available.

With regard to cooperation with European institutions such as the Commission, the European Parliament and the Council, RTR continued to meet its obligations in 2013, both as a part of BEREC and on its own initiative. Just one example in this regard are the new competition rules in the context of European roaming regulations, in addition to the applicable maximum tariffs that become effective as of July 2014. Other activities within the framework of cooperation among European institutions included adding specifics regarding the issue of net neutrality as well as coordinating preparatory tasks related to the European Commission's new recommendation aimed at delineating competition markets.

The stakeholder dialogue campaign, which was initiated under Austria's term as BEREC chair and is aimed at intensifying the exchange of opinions with the market, was successfully continued and further expanded at European level. As part of the campaign, discussions were also held with market participants and users in 2013 to gather inspiration for BEREC's efforts.

As in previous years, RTR's international activities included 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), ERGP (BEREC's counterpart in postal regulation), and others. Furthermore, members of RTR's staff once again spoke as experts before these bodies, in this way contributing to Austria's international commitment. This was also the case within the framework of the EU's Technical Assistance and Information Exchange instrument (TAIEX). In this context, RTR uses its experience to support regulatory authorities from various countries in Southern and Eastern Europe as well as EU candidate countries. Specifically, in the past RTR repeatedly provided assistance to regulatory authorities in countries that are now EU Member States.

The EU's assistance programmes help such countries adapt their regulatory schemes for electronic communications to make them similar or – in the ideal case – identical to the legal framework applied within the EU. This in turn benefits Austrian and European businesses, for example by allowing them to provide services or establish branches in such countries.

The European Commission's Eastern Partnership (EaP) programme is designed to promote cooperation under the European neighbourhood policy with the countries of Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine; the programme was continued in 2013. RTR also supported this EU initiative, contributing competence to ensure the programme's success.

8.10 Security and integrity of networks and services

The amendment to the Telecommunications Act 2003 (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. In addition, according to a form specified by the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR), operators of public communications networks or services are required to report any security violation or loss of integrity that has had a 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.

New versions of the technical guidelines prepared by ENISA in cooperation with the national regulatory authorities appeared in 2013. Specifically, draft versions were available (to the public as well), which had not yet been finalised by the end of 2013 (Technical Guideline on Security Measures, Version 1.98, and Technical Guideline on Incident Reporting, Version 2.01).

The thresholds specified in the Technical Guideline on Incident Reporting for reports by RTR also serve as the basis for the thresholds published on the RTR website: when a threshold is exceeded, the operators of public communications networks or services are required to report the security violation or loss of integrity to RTR. The operators were informed of the updated thresholds at the end of 2013.

In 2013 RTR received two notifications of security violations or impaired integrity of electronic communications networks or services. Both notifications concerned a disruption of a fixed network operator's IP network; while the thresholds triggering the reporting requirement were not actually exceeded, about 480,000 subscribers in the operator's own network in addition to subscribers in other networks were not able to reach emergency telephone numbers for about 45 minutes.

By mid-2013, a working group of Internet Service Providers Austria (ISPA) prepared a sample security plan and information security guidelines that especially minor operators can use as sample templates. RTR advised the work group.

As part of the European Cyber Security Month 2013, a programme organised by ENISA, RTR held a workshop on network and service security and integrity in accordance with the 2011 amendment to the TKG. Focus topics at the workshop were data security issues and the sample template prepared by ISPA. Participants were also informed of modifications to ENISA's technical guidelines.

Within the scope of the tasks falling under RTR's competence in the area of security and integrity of networks and services, RTR was also involved in campaigns led by other public authorities, for example in creating the ICT security portal www.onlinesicherheit.gv.at, initiated by the Austrian Federal Chancellery (BKA), the Federal Ministry of Finance (BMF) and the A-SIT (Zentrum für sichere Informationstechnologie – Austria) association.

At European level, RTR actively participates in a series of workshops organised by ENISA on Art. 13a of the Framework Directive and in the IRG Working Group on Network and Information Security. In this working group, national regulatory authorities focus on network and information security. Once again, one of the main fields of activity in 2013 was harmonising the application of Articles 13a and 13b of the Framework Directive.

8.11 Electronic signatures

In analogy to its duties under the Telecommunications Act 2003 (TKG 2003), the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) also provides operational support for the Telekom-Control-Kommission (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. Meanwhile, 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 2013. On the basis of these directories, RTR also publishes the Trusted List of Supervised/Accredited Certification Service Providers in accordance with Union law (refer to www.signatur.rtr.at/en/directory/tsl.html).


The signature verification service, which is related to these directories, is made available free of charge by RTR at www.signaturpruefung.gv.at to allow anyone to verify electronic signatures, and in particular qualified signatures and official signatures. This service has been extensively used since 2013 to verify signatures on electronic invoices as well.

In 2013 RTR continued its work at European level in the Forum of European Supervisory Authorities for Electronic Signatures (FESA), a body in which the authorities responsible for the supervision and accreditation of CSPs cooperate. Again in the reporting year, FESA focused on current developments in EU legislation (drafts of a Regulation of the European Parliament and the Council on electronic identification and trust services for electronic transactions in the internal market) and the changes to be expected in this context for the supervision and accreditation of CSPs.

8.12 Net neutrality

The discussion on net neutrality has been taking place in Europe for several years with varying intensity. RTR has also been actively participating in this discussion from its inception. In Austria, RTR has been consulting with stakeholders and observing market developments. At European level, RTR's experts have been participating BERC working groups and attending specialist events on this topic. With heightened discussion of the subject in Europe during the past year and the European Commission announcing specific (legislative) action, the RTR Telecommunications and Postal Services Division published its position paper on net neutrality, thus contributing for the first time in detailed and written form to the discussion taking place in Austria and at European level. RTR specifically takes a position in favour of a harmonised European regulation of net neutrality. Varying national regulatory schemes are viewed as inadequate to deal with the transnational issue of net neutrality.

Net neutrality is termed an essential principle of the contemporary internet, namely: equal treatment of all data flows, regardless of sender, recipient, content, application and service. Based on this principle, every internet user can view and download content and applications of their choice as well as present original (business) ideas via the web to a wide audience. Any user can become active with only small investments and low barriers to market entry. Facebook, Google and Amazon are exemplary in this regard. Thanks to these features, the open internet has had substantial influence on promoting growth and boosting innovation in the economy as a whole.



The discussion surrounding net neutrality was triggered by the demand by internet service providers (ISPs) that content and applications providers (CAPs) pay a share of the cost of providing data and expanding net capacity. Here ISPs argue that CAPs are not paying fees for the use of the ISPs' infrastructure for accessing the internet. CAPs counter by pointing to facts such as that internet users are only willing to pay for their personal internet access because of the services and applications offered on the web, and hence payments, if any, should go in the other direction.

In this connection, some discussion has been given to introducing priority services that ISPs would provide on a paid basis and that would feature better (i.e. fast-track) service quality than standard best-effort services. Priority services have been used only to a very limited degree up to now. CAPs tend to be sceptical about such services, claiming that they could go in the direction of limiting the open internet and, as a consequence, the availability of CAPs' services for all internet users. The proposed regulation put forth by the European Commission in September 2013 envisages items such as introducing this type of specialised priority services.


The RTR position paper delves into precisely this issue: deviations from net neutrality and the consequences. The issue is a cross-sectional matter, which is related to very many fields and can be viewed from numerous standpoints. The Body of European Regulators for Electronic Communications (BEREC) has previously published several reports on specific aspects such as IP interconnection, competition issues related to violations of net neutrality, quality of service and transparency from an end-user perspective.²¹ None of the publications, however, has presented a position on the overall issue. This is the case with the RTR position paper, which in this way intends to enrich and contribute positive stimulus to the discussion taking place at European and national levels and within BEREC.

Owing to the fact that this is a current, dynamically developing issue, the position paper represents the present position of the regulatory authority. A rekindling of the discussion regarding net neutrality followed after the presentation by the European Commission's proposal on 11 September 2013 for a Connected Continent Regulation, which among others, also includes provisions relating to net neutrality. The European Commission proposes full harmonisation in this area, which rules out any provisions (of national law) that would deviate from those specified in the Regulation. Accordingly, the position paper would have to be adapted should the Regulation be adopted. On the same token, any new insights, market practices or developments could require a revision.

The content of the position paper addresses the interested public at large, beginning by introducing the issue and the current state of the related discussion as well as presenting the arguments by the various sides. A brief description of the markets involved in the internet value chain follows, with the intention of providing readers with an understanding of the markets in the focus of discussion. The most detailed section deals with the various potential deviations from net neutrality, distinguishing for each case of traffic differentiation the layer at which it is made and the party deciding on it. The impact of each of these cases is then evaluated, resulting in conclusions that serve as the basis of the net neutrality principles presented in the final section.

Practical legal enforceability was not a consideration in defining the principles. Rather, the regulatory authority's net neutrality principles are intended to have an impact along three axes: (1) as an aid in interpretation when applying any relevant legal basis that might exist; (2) as a source of orientation for any ordinance that may be issued pursuant to Art. 17 Par. 3 of the Telecommunications Act 2003 (TKG 2003) in order to impose minimum requirements for quality of service (a violation in practice of the principles stated in the position paper could be a factor triggering procedures leading to an ordinance); (3) as a guideline for other activities by the regulatory authority, especially those at the national and European level.

²¹ A list of all BEREC documents can be viewed at www.rtr.at/en/tk/NN_Referenzen.



The seven principles presented in the position paper are listed below:

Principle 1: Net neutrality as fundamental axiom

Principle 2: Deviations only when sufficiently justified

Principle 3: Transparency

Principle 4: No reduction in quality

Principle 5: Offers without differentiation as standard product

Principle 6: No blocking or degrading

Principle 7: No exclusive differentiation

In summary, RTR espouses an open and neutral internet, in which all end users may use the device and software of their choice to access the content, services and applications of their choice. Deviations are only permissible with sufficient justification, and they must be transparent and clearly intelligible and their effects verifiable. The quality of non-preferred services must not be impaired by any traffic differentiation. ISPs should offer a product without quality differentiation as their standard product. Blocking or degrading the quality of certain types of content or services should only be possible where required by law or as a means of ensuring network integrity. Preferred treatment of services should only be allowed for services not offered exclusively.

The position paper in German, along with additional literature on the topic, can be viewed at www.rtr.at/nn. The English version is available at: www.rtr.at/netneutrality.

8.13 Evaluation of the TKG 2003 by RTR

Introduction

Pursuant to Art. 113 Par. 6 of the Telecommunications Act 2003 (TKG 2003), the regulatory authority has the duty to periodically carry out an evaluation of legal provisions and, after consultation with the Federal Minister of Transport, Innovation and Technology, include the results of the evaluation with the Communications Report (Art. 19 of the KommAustria Act, KOG) every two years.


The explanatory comments on the government bill (annex 1389 to the shorthand verbatim records of the National Council, 24th legislative period) elucidate: "The separate reports that were previously required to be prepared by the Federal Minister of Transport, Innovation and Technology represented a duplication of the activity for the Communications Report (Art. 19 KOG). The new provision intends to eliminate this duplication. The fact that the authority has the most practical experience with enforcing this statute is reason enough to involve it in this activity."

The evaluation is correspondingly intended to concentrate on practical experience with enforcing the TKG 2003.

Evaluation

The amendment to the TKG published in Federal Law Gazette I No. 102/2011 introduced the most changes to the TKG 2003 thus far. Consequently, the specifically applicable directives 2009/136/EC and 2009/140/EC were transposed into national law, while adaptations to administrative procedures were made based on experience with enforcing Austrian telecommunications legislation.

The observations presented below are based on two years of practice in progressively enforcing the statute and have been gathered since the TKG amendment in Federal Law Gazette I No. 102/2011 entered into effect.



The comprehensive revision of the market analysis procedure (Articles 36 and 37a TKG 2003; elimination of the Telecommunications Markets Ordinance and migration to mostly electronic communications for conducting the procedure) has proven itself in enforcement practice and met the approval of the market participants concerned. This applies especially to the option made available to examine electronic files, at any time and from any location.

The TKG amendment published in Federal Law Gazette I No. 65/2009 had already adapted Section 2 of the TKG 2003 (wayleave rights and rights of joint use) to meet a number of requirements for rolling out fibre optics in the near future. Still, the infrastructure directory (Art. 13a TKG 2003) continues to lag far behind its potential, mainly because of the lack of any obligation to report existing communications lines. Especially a fully functioning infrastructure directory is an essential tool for promoting the expansion of broadband service.

Meanwhile, the responsibility for granting wayleave rights and rights of joint use has also been concentrated with the Telekom-Control-Kommission (TKK; refer to Art. 12a TKG 2003). The ordinary courts continue to have jurisdiction only in cases involving enforcing wayleave rights on public property (Art. 5 Par. 3 TKG 2003). As difficulties in enforcing such rights are frequently reported from practice, thought should be given to transferring competence to the TKK for this area as well. Such competence could also prove a boon for broadband expansion in Austria.


A ruling by the Austrian Administrative Court (VwGH, 2012/03/0067 of 22 October 2012) limited the duty of the regulatory authority to review general terms of business: in contrast to previous practice, when modifying any terms of business, only the revised portion can be subjected to a review pursuant to Art. 25 Par. 6 TKG 2003 (i.e. verifying compliance with the TKG 2003 as well as with certain articles of the General Civil Code and of the Consumer Protection Act). Based on applicable law, a review of the entire general terms of business is not permissible after a modification of the terms. This has proven detrimental specifically in cases where there has meanwhile been a change in the legal situation and results in previously legal business terms being rendered unlawful.

It is also remarkable that no provision of the TKG 2003 expressly protects the TKK's right to secret consultation. While the principle of official secrecy (Art. 20 Par. 3 of the Federal Constitutional Act, B-VG) does in fact apply, this is contradicted to a certain extent by the right to examine files (Art. 17 of the General Administrative Procedure Act, AVG). Accordingly, statutory exemptions from the right to examine files that contain the minutes of consultations are defined for other administrative collegial bodies and for the courts (examples include Art. 90 Par. 2 of the Federal Tax Code, Art. 12 of the Act on Agricultural Procedures for Agricultural Senates, Art. 219 Par. 1 of the Code of Civil Procedure and Art. 21 of the Administrative Court Procedure Act).

Outlook

The observations listed above represent sufficient grounds for RTR to propose specific amendments to the TKG 2003 as a means of alleviating identified regulatory deficits; such stand in opposition to the objectives of expanding broadband service ("to create a modern electronic communications infrastructure", Art. 1 Par. 2 No. 1 TKG 2003) and of promoting the interests of the population (Art. 1 Par. 2 No. 3 TKG 2003).

There are points to be considered, however. Proposed legislation by the European Commission is currently pending, some awaiting consultation (specifically the proposal for a Regulation on measures concerning the European single market for electronic communications and to achieve a Connected Continent, COM(2013) 627) and others awaiting adoption (e.g. the proposal for a Regulation on measures to reduce the cost of deploying high-speed electronic communications networks, COM(2013) 147). These proposals are part of the Digital Agenda for Europe. Whereas the proposed Regulation on the European single market is still meeting with considerable scepticism on the part of the Council, it would appear that the proposal for reducing the cost of deploying broadband will be adopted in the form of a Directive in 2014.



So as to avoid amending the TKG 2003 several times within a short period, RTR regards it as expedient to put the reform plans into one package.

Recommendation

RTR recommends implementation of the (anticipated) Directive on measures to reduce the cost of deploying high-speed electronic communications networks as soon as possible and, when making the necessary amendment to the TKG 2003, to consider the need for reforms as described above.





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 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), which entered into force on 1 January 2011.

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


1. Measures with regard to the universal service provider pursuant to Art. 12 Paragraphs 1 and 2
2. Measures with regard to the postal service points operated by Post AG pursuant to Art. 7 Par. 6
3. Definition of financing contributions to the compensation fund pursuant to Art. 14
4. Measures with regard to the universal service provider's general terms and conditions pursuant to Art. 20 Paragraphs 3 and 4
5. Measures related to tariff regulation pursuant to Art. 21 Paragraphs 4 to 6
6. Issue, transfer, amendment and revocation of licences pursuant to Articles 27, 28 and 29
7. Exercise of revocation rights pursuant to Art. 30 Paragraphs 3 and 4
8. Measures with regard to general terms and conditions pursuant to Art. 31 Par. 2
9. Definition of reimbursement amounts pursuant to Art. 34 Paragraphs 9 and 10 and Art. 35 Par. 1
10. Measures pursuant to Art. 35 Par. 4
11. 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 2013 was the review procedures under Art. 7 PMG pending closure of postal service points (PSPs) by Österreichische Post AG (Post AG), with a sharp decline in the number of such procedures being recorded relative to the previous year. Responsibility for reviewing whether the prerequisites for the closure of a PSP operated by Post AG are met has lain solely with the PCK since Art. 7 PMG entered into effect on 5 December 2009.

A PSP operated by Post AG may only be closed down where cost-effective management of the PSP is ruled out 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 Report for previous years.

Post AG notified the regulatory authority of the planned closure of 31 PSPs in 2013. Decisions to close 27 PSPs had been taken as of the date of this report. The PCK issued a total of eleven 'contingent' prohibitions in 2013, in which the closure was prohibited pending commencement of operations by the postal partner designated as a replacement. The prerequisites for closure had been met in the remaining cases, so that closure was not prohibited. In no cases in the reporting year was closure ultimately prohibited, in some instances 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 during the review procedure.

One supervisory procedure was closely related to the closure procedures pursuant to Art. 7 PMG: the issue was the inclusion of municipalities in cases of PSP closures by Post AG, as specified by the PMG. As a result of the procedure, Post AG modified procedures in such cases so that in future municipalities will be included at an earlier stage.

Another increasingly 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 insolvency on the part of postal service partners or the termination of contracts). In such cases as well, Post AG is 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 reviewed. In 2013, a total of 106 closures of third-party operated PSPs were dealt with through supervisory measures by the PCK, representing a sharp increase over the previous year, when 47 closures were the object of such measures. Consequently, a strong shift can be seen on the whole, from procedures to review closures of PSPs operated by Post AG to those involving third-party operated PSPs, which corresponds to the trend observed for a number of years: PSPs are being increasingly run by third parties and less frequently by Post AG.

The overall number of PSPs in Austria dropped during 2013, from 1,906 (as of 31 December 2012) to 1,882 (as of 31 December 2013).

Within the framework of supervisory procedures during the reporting year that concerned the loss of third-party operated PSPs, investigations increasingly centred on provision of universal service through rural delivery personnel. More detailed study was made of this issue; however, the relevant procedures had not been completed by the date of this report.

9.3 Other PCK and RTR procedures

9.3.1 Procedures before the PCK

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 Post-Control-Kommission (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).

Nine procedures concerning modifications of Post AG's terms and conditions were conducted in 2013. Six cases were completed in 2013. The modifications concerned the terms and conditions for domestic letters, international letters, domestic parcels, international parcels, official letters with advice of receipt, newspaper delivery, Sponsoring.Post, Info.Mail and forwarding orders. 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.

One review procedure, initiated back in 2012, concerning changes to the terms and conditions for domestic parcels and international parcels, including comprehensive tariff modifications, was completed in 2013. The review revealed that the modified tariffs met the criteria of being affordable, cost-oriented, transparent and non-discriminatory, and the PCK did not object to the general terms and conditions.

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


The provisions of the KommAustria Act (KOG) specify that expenses of the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) are to be covered in part by funds from the federal budget and in part by financing contributions from postal service providers. Art. 34a Par. 3 in conjunction with Art. 34 Paragraphs 9 to 13 KOG specify for the PCK to issue a decision demanding payment from postal service providers who fail to meet their obligation to pay financing contributions.

In a case pertaining to payment of financing contributions due for 2012, the PCK issued a decision to a company, dated 15 April 2013. The company filed a complaint against the decision with the Administrative Court (VwGH), but a ruling on the case by the VwGH was pending when this report was prepared. The PCK initiated procedures against five other companies in order to demand payment of the financing contribution for 2012, but the procedure involving one of those companies was terminated due to interim payment of the contribution. All other procedures were pending at the end of the period under review.

The PCK additionally initiated procedures against two companies in order to demand payment of the financing contribution for 2011. Those procedures were pending at the end of the period under review.

Issue of licences under Articles 26 et seq. PMG

The PMG specifies 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 requires the following information to be contained in the licence request: 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.



The PCK issued no licences in 2013 because there were no applications. Between the beginning of 2011 and the end of 2013, the PCK issued a licence to the following five companies: feibra GmbH, hurtigflink Zeitungs- und Werbemittel Verteilungsges.m.b.H., Klaus Hammer Botendienste, Medienvertrieb OÖ GmbH and RS Zustellservice Rudolf Sommer.

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 non-prorated cost of replacing, as specified in Art. 34 Par. 8 PMG, building mailbox installations 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 those costs.

In a decision issued on 30 September 2013, the PCK rejected the request submitted for 2012 in this regard by the universal service provider, Österreichische Post AG (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 years 2011 and 2012, it was determined that the cost accounting system complied with the criteria listed above. The procedures for this review were completed at the beginning and at the end of 2013.


Measurement of average transit times of letters and parcels

Art. 33 of the Postal Market Act (PMG) defines the remit of the regulatory authority to commission an institution independent of postal service providers to measure the average transit times of letters for all providers at least once per year on the basis of the method specified in ÖNORM EN 13850, and the average transit times of parcels for all providers on the basis of real-time data, in which case the commissioned institution is to apply the same or the most comparable methods of measurement. The postal service providers are required to bear the measurement expenses.

Articles 11 and 32 Par. 4 PMG require that postal service providers meet certain transit times when providing services as part of the universal service mandate.

Pursuant to Art. 32 Par. 6 PMG, postal service providers are required at least once per year to publish comparable, appropriate and current information on the quality of their services, in particular the transit times of conveyed postal items based on the methods stipulated by ÖNORM EN 13850 and to report this information to the regulatory authority on request. Consequently, postal service providers are obliged to measure services accordingly.

To minimise the expense for the companies concerned and considering that Art. 32 Par. 6 PMG and Art. 33 PMG are based on the same measurement method, the regulatory authority has reviewed the measurements taken by the companies and has not as yet commissioned any separate measurements.



Based on the review of the transit times for letters and parcels conveyed as part of universal services in 2011, the transit times met by the following postal service providers comply with the requirements set forth in Articles 11 and 32 Par. 4 PMG:

- Österreichische Post AG
- GLS General Logistics Systems Austria GmbH

The other postal service providers on account of whom the review procedure was initiated did not provide any services falling within the scope of universal services during the period reviewed, consequently the quality criteria for universal services were not relevant for those providers and corresponding measurements were not required.

The procedure involving the measurement of transit times in 2012 had not been completed by the date of this report.

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.

These six companies gave notice of provision of postal services pursuant to Art. 25 PMG in 2013: Federal Express GmbH, Flexlog Transport KG, General Overnight Express & Logistics (Austria) GmbH, Hermes Logistik GmbH, SPEDPACK Spedition- und VerpackungsgesmbH and X1 EXPRESS GmbH. One company reported that it did not (any longer) provide previously notified postal services, and was subsequently deleted from the list of postal service providers. As of the end of 2013, a total of 18 companies had notified 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. As refitting had not been fully completed by 31 December 2012, RTR initiated a supervisory procedure against Österreichische Post AG (Post AG) in February 2013.

RTR issued a decision on 7 August 2013 (www.rtr.at/de/post/PRAUF1_13, in German), ascertaining that 258,085 ordered mailboxes had still not been installed and thus not been replaced as of 31 December 2012, the date specified in legislation. A total of only 68.9% of installations had been replaced as of 31 December 2012 (not counting parties refusing replacement and unknown building owners).

Post AG notified that the replacement of building mailbox installations had been completed as of 28 October 2013.

Nonetheless, refitting of all building mailbox installations has not yet fully taken place. The owners of a total of 9,636 mailboxes have actively refused to allow Post AG to replace the installations, while the owners of 17,639 boxes did not cooperate in the refitting campaign. The owners of an additional 15,175 mailboxes were unknown or could not be identified by Post AG as of 31 December 2012. Following a final attempt by Post AG to contact owners in January 2013, a total of 34,018 building mailbox installations had not been replaced by Post AG (as of 20 June 2013).





10 The Austrian communications markets in 2013

10.1 The Austrian communications and advertising markets

At first glance, it would appear somewhat out of date to present an overview of the Austrian communications and advertising market without including the internet. Mention is made below of the loss of daily reach experienced by newspapers and recently once again by television, and of the trend towards decreasing radio listening time in the target group of young listeners; this needs to be seen in the context of steadily growing media usage via the internet, particularly among young consumers. However, in the case of reading newspaper and magazine content on the web, listening to radio webcasts or using the media libraries provided online by TV broadcasters, no suitable data are currently available that could simply be added to usage data for conventional media. That situation should change to a certain extent: with the launch of the Media Server usage study in Austria, scheduled for July 2014, market researchers intend in future to obtain a more complete picture of media usage, including media accessed via the internet. The first data surveyed through Media Server should become available in autumn 2015.

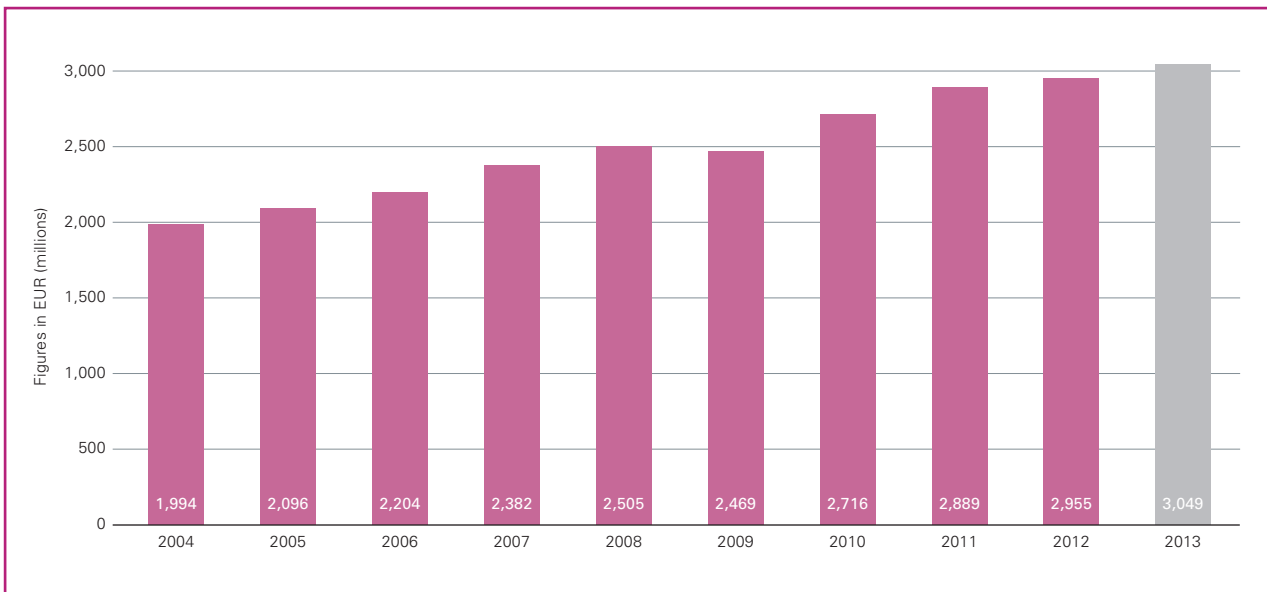
Yet how will Media Server affect the idea of 'watching TV' and the associated daily reach, to name an example? Will only live streams be counted as television via the internet? Hardly. Live streams with the addition of media libraries and online video libraries? Perhaps. But does not the new concept of watching television also include watching video clips on YouTube, Clipfish and other platforms, so that such activity also needs to be taken into the total reach figure for television? After all, according to the 2013 Media Analysis, 83% of 14 to 19-year-olds already use the internet for viewing video clips. The same figure is still 70% for the group aged 20 to 29. Around 31% of the young people in these two age groups use the internet to watch TV programmes and access media libraries. Conversely, the daily reach figures for conventional television among 14 to 39-year-olds have been falling at an above-average rate, as statistics provided by the market researchers AGF/GfK in Germany demonstrate. Slight growth has been recorded only for the 60 and over age group. The situation is very similar in the case of listening to music and listening to radio via the internet. Almost 88% of those aged 14 to 19 listen to music via the internet, while 29% of young people in this group listen to radio stations broadcasting via web stream. Already 45.5% of 20 to 29-year-olds and almost 44% of 30 to 39-year-olds access newspaper and magazine content on the web.

Obviously, this trend will increasingly impact the distribution of advertising funds between conventional media and web media. Yet in the meantime the overall predominance of conventional channels of distribution and transmission in media usage remains unaltered, and the internet's share of gross advertising revenues, at about EUR 370 million, continues to represent only roughly 12% of the amount channelled to conventional media. Therefore, on the premise that growing web media usage is at least partially impacting developments in the conventional media market, the following chapter of the RTR Communications Report describes as usual the extent to which conventional media were accepted and used as well as the gross advertising revenues taken in by these media during the last calendar year, while also evaluating trends in these areas based on data from previous years.

10.1.1 Development of the Austrian advertising market

The 2013 balance sheet shows an increase of about 3.2% in gross advertising revenues for conventional media. Thus gross turnover from advertising has now topped the EUR 3 billion mark, after just falling short of this level in 2012. Private businesses, political organisations and public institutions invested a total of EUR 3.049 billion, or EUR 94 million more than in 2012, in advertisements placed in print media, radio, television and outdoor advertising. The rise in gross advertising revenues was only 2.3% in 2012.

Figure 14: Change in total advertising expenditure in Austria, 2004 to 2013



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

The EUR 94 million increase in gross advertising income nonetheless represented the third poorest result within the decade since 2004. The only significant amount of growth was recorded in the category of television, with gross advertising revenues increasing by 9.5% or EUR 73.8 million over the previous year.

The gross advertising revenues statistics are calculated by Focus Media Research based on the price lists made officially available by the media and according to the number of ads published or broadcast by those media. It is not possible to collect data on discounts in the form of price reductions, free advertising minutes and similar offers. Conclusions concerning the gross revenues collected by individual media are thus possible only to a limited extent. On the other hand, this provides a good indication of the trends in income from advertising according to media category.

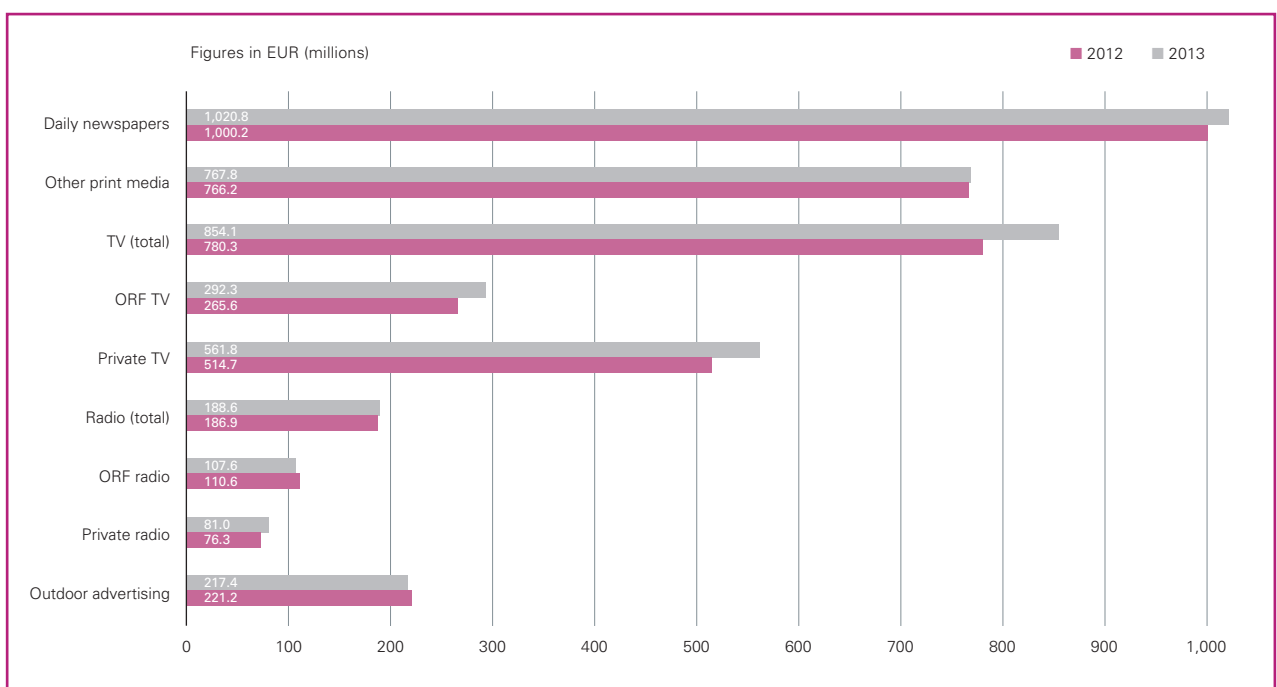
There was a 3.2% increase in gross income in 2013, for which the advertising media had the election year and the campaigning parties to thank for the most part. Election advertising equal to EUR 42.1 million²² was booked by the parties. Since about two thirds of that total was invested in daily newspapers, the gross advertising revenues taken

²² 2013 Advertising Balance (Werbebilanz 2013), Focus Media Research, February 2014.

in by such media were still 2% higher in 2013 than the year before. This is evidence of the trend towards considerably slower growth in income among daily newspapers, observed for the last three years. While they were still able to take in 17.6% more gross advertising revenues in 2010 over the year before, the increase was only 5% in 2011 and as low as 1.7% in 2012.

A study by Nielsen Media Research²³ revealed a renewed decline in advertising spending in Europe for 2013 up to and including Q3. Nielsen's figures indicated a 3.8% drop from the same period in 2012. With an increase of 3.2% for the year overall, Austria is faring better in comparison. Whereas advertising spending in Europe declined by 4.2% in 2012, gross advertising revenues in Austria increased in contrast, by 2.3%. Nonetheless, Austria's growth rate had still been around 6.4% in 2011.

Figure 15: Advertising expenditure in Austria by category, 2012 and 2013



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

The other print publications remained relatively unscathed. While gross revenues from advertising orders hardly changed over 2012 (+0.2%), the 2.3% decrease suffered in 2012 had been harder to absorb, particularly since 2010 and 2011 had still brought this category annual increases of 8%. Yet with gross advertising revenues of EUR 767.8 million in 2013, other print publications continue to lag behind their performance in 2011 (EUR 784.4 million).

The only true winner in 2013 was television, which, at EUR 854.1 million, took in 9.5% more than during the previous year. The performance seen in this category represents an improvement even over the good results in 2012, with a 7.2% increase. Topping their performance in 2012, both the Austrian Broadcasting Corporation (ORF) and private television broadcasters were able to profit to an almost equal extent from the increase. In this context, it is worth

²³ The Nielsen Company, Global AdView Pulse Quarter 3 2013.



noting that ORF television, at 10%, achieved substantial growth for the second year in a row (6.8% in 2012) after struggling against declining gross advertising revenues for several years up to 2011 and having taken second place to private broadcasters in 2009. And, for the first time in years, ORF television also showed better performance in percentage terms than the private broadcasters, whose gross advertising income increased by 9.2% (after 7.4% growth in 2012). Nonetheless, the growth rates approaching 20% that were still customarily seen by private television up to 2011 appear to be a thing of the past. On the other hand, this percentage change needs to be viewed relative to the large amount of more than EUR 560 million in gross advertising proceeds that private television is collecting in the meantime.

Within the category of private television, German channels broadcasting specific advertising for Austria are taking in by far the largest share of gross revenues. More than three quarters (or 76.8%) of the EUR 561.8 million entered into the books for advertising by private television in 2013 was paid to channels with Austria-specific content (including Nick, Comedy Central and Viva). This contrasts with the EUR 130.6 million in advertising income shared by the Austrian channels ATV, ATV2, gotv, PULS 4, including the latter's Austria-specific programme Café Puls (carried by SAT.1, ProSieben and kabel eins), as well as ServusTV and Sky Österreich.

Since 2012, when for the first time the television sector achieved higher gross advertising revenues than other print media, this segment has now clearly taken up pursuit of the daily newspapers and could overtake them by 2015, assuming constant trends in both categories.

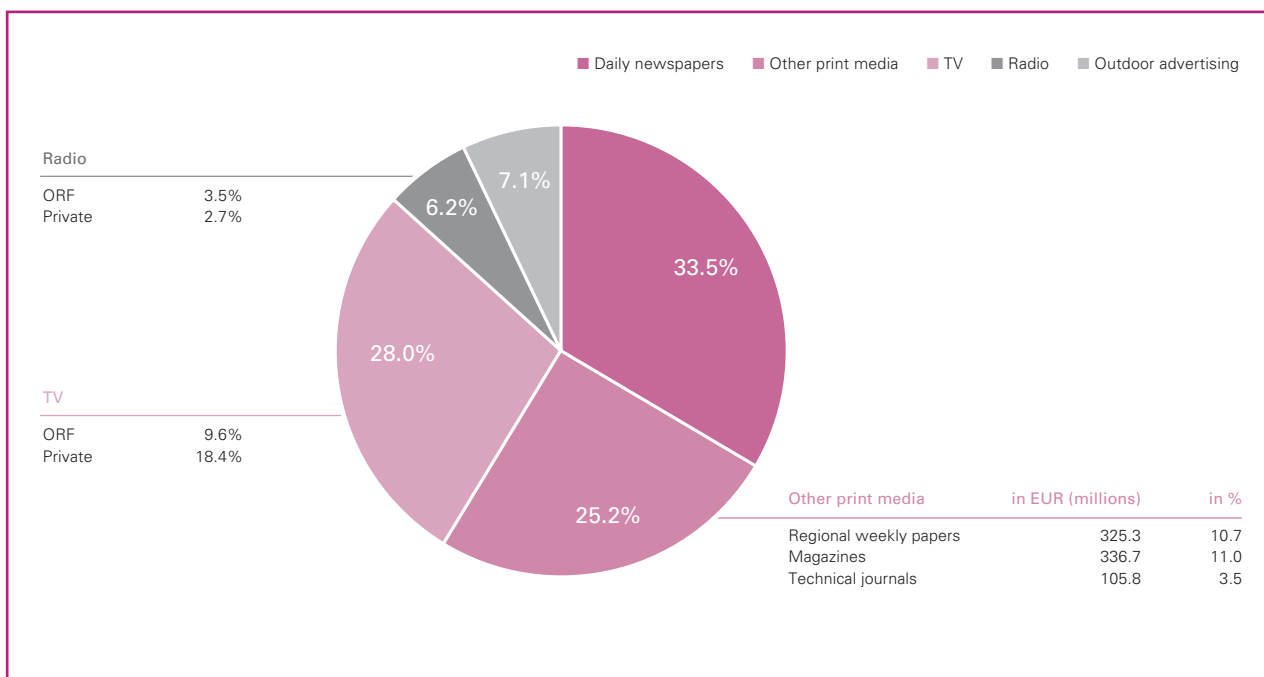
The radio sector, at 0.9%, barely succeeded in growing in 2013, a fact mostly to be attributed to decreasing demand for advertising time with ORF radio. Whereas the gross advertising revenues collected by ORF radio fell by 2.7% from 2012, private radio broadcasters achieved an overall gain of 6.2%. For ORF radio, this represents a continued negative tendency, which in 2012, at -1.1%, had nonetheless been considerably less drastic. After 2012, private radio achieved strong growth again in 2013, while falling short by almost 40% of the exceptionally good performance of the previous year, when 10.1% growth had been recorded.

Roughly 20% or over EUR 8 million of the amount spent on election advertising was targeted at billboards in 2013. While thus becoming the second largest beneficiary of investments by political parties, outdoor advertising nonetheless finished 2013 with a 1.7% or EUR 3.8 million decline in gross revenues. In 2012, outdoor advertising at 4.8% growth had still made a good showing but fallen well short of the 7.9% growth rate recorded in 2011. It is expected that this sector will counter this apparent trend by offering greater discounts in 2014, which should have positive impact on gross revenues. Yet on the whole it would appear to follow that outdoor advertising in particular is feeling the pinch resulting from increasing efforts by advertising investors to minimise any loss of effectiveness due to a lack of focus and to seek more direct avenues for addressing their target groups.

While the gross revenues achieved by television broadcasters for advertising have grown at a high rate, this tendency is not clearly evident from the chart showing the distribution of advertising expenditure among conventional media. The TV broadcasters' share of the advertising pie has nonetheless grown by 1.6 percentage points to the current 28% level. This clearly reveals how funds are being shifted to television, especially away from the print sector. While other print media had to surrender 0.7 percentage points compared with 2012, the figure for daily newspapers was only 0.4 percentage points.

Thus, with a total share of 58.7% of gross advertising revenues among conventional media, the print sector lost more than one percentage point compared with 2012 (59.8%). In 2010 and 2011, daily newspapers, magazines and other print publications were still able to take in 61.2% of the total amount spent on advertising.

Figure 16: Shares of gross advertising expenditure in 2013, conventional media



Basis: EUR 3.05 billion

Source: Focus Media Research

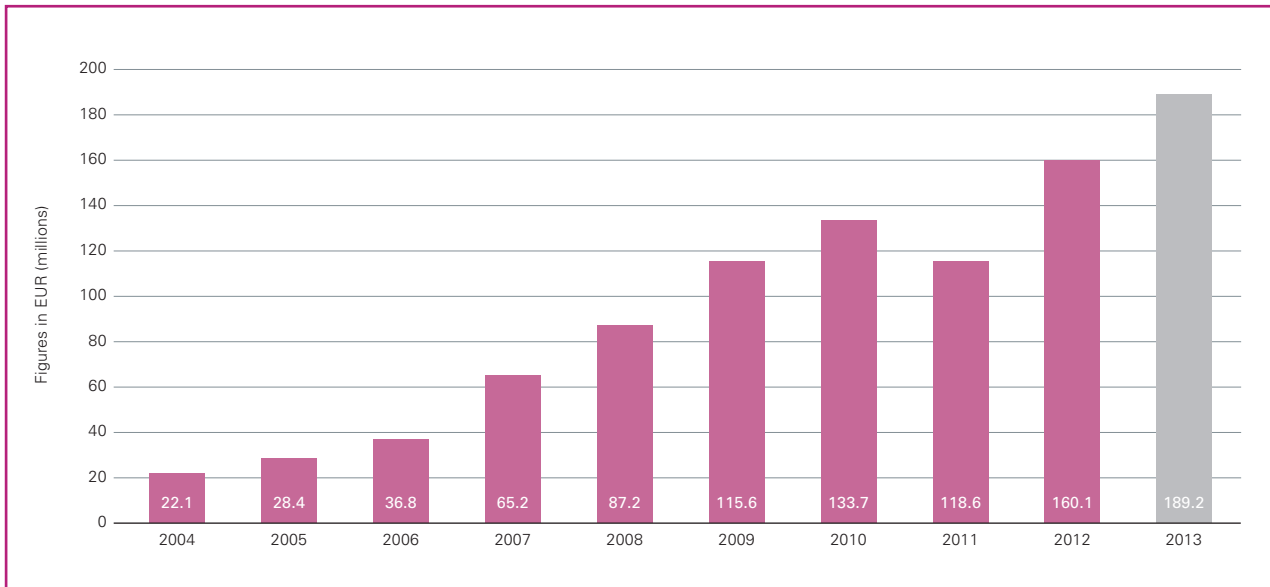
At a ratio of about one third (34.2%) for the ORF to two thirds for private broadcasters, the distribution of advertising expenditure within the category of television fairly accurately reflects the audience market situation in 2013. ORF channels achieved a total market share of 35.4%.

Even though radio’s total gross revenues increased by 0.9%, its share of the total gross advertising expenditures for conventional media nonetheless diminished slightly in comparison with 2012, shrinking from 6.3% to 6.2%. The decline was suffered exclusively by the ORF, however, whose portion deteriorated by 0.2 percentage points to equal 3.5%. Private broadcasters, meanwhile, gained 0.1 percentage points to reach 2.7%.

Similar to daily newspapers, outdoor advertising lost 0.4% of total gross advertising expenditure for conventional advertising, which hits this sector much harder, however, as its share of revenues is only one fifth of that accounted for by daily newspapers.

It continues to appear useful to distinguish between conventional media and online advertising in this report. In no other media sector as in online advertising does there continue to be such a large discrepancy between the list price for advertising and the price actually paid. While 60 to 70% discounts are not uncommon, especially conventional media with their own websites sometimes even provide online ad space at no charge to clients who reserve space in the main media product. Another factor is that, according to Focus Media Research, their survey of expenditures for web advertising still does not render 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 situation. The figure below is essentially based on expenditures for conventional display advertising such as banners, not including search engine ads. Yet a number of international studies have shown that roughly one in two euros is invested in search engine advertising; consequently, approximately doubling the figure of EUR 190 million given by Focus Media Research as the gross amount spent on advertising in 2013 could render a realistic impression of gross advertising revenues. Still, the gaping chasm between gross and net values cannot be overlooked.

Figure 17: Online advertising expenditure in Austria excluding search engines, 2004 to 2013



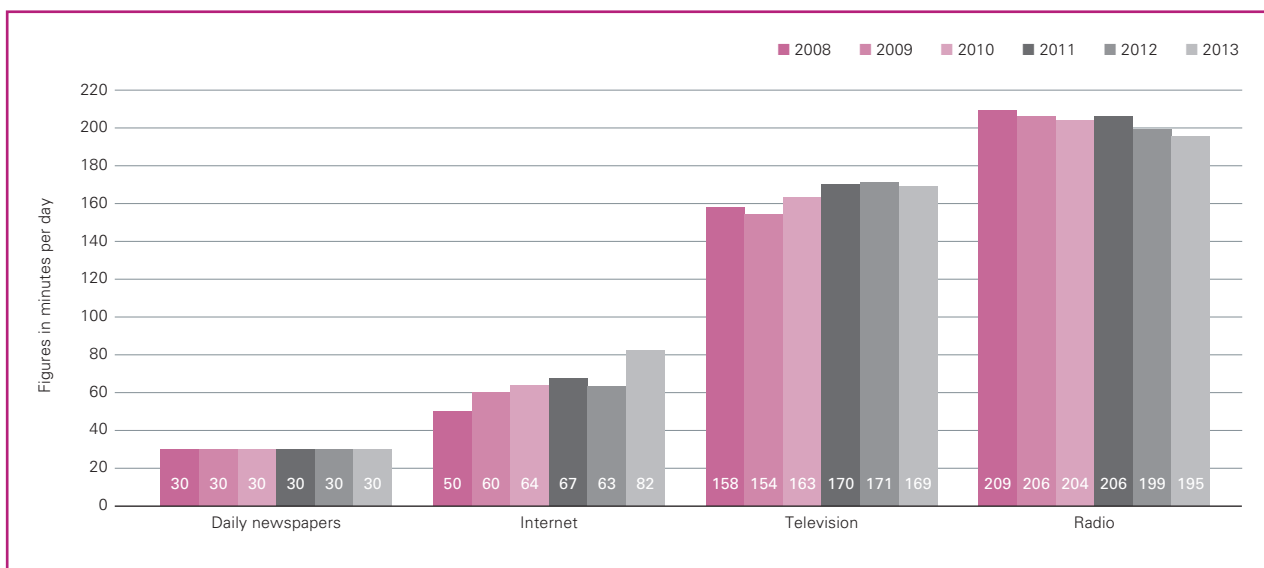
Due to frequent changes in survey methods, the figures shown above are not comparable from one year to the next. Search engine advertising is not included.

Source: Focus Media Research

Yet even just based on the gross revenues of EUR 189.2 million collected for conventional display advertising in 2013, the online sector topped by almost EUR 0.6 million the total gross amount sold by the radio sector. Even though the net revenues in the two categories are probably not comparable by any stretch of the imagination, the figures nonetheless give a striking indication of the significance that online advertising has in the meantime achieved: EUR 189.2 million represents the equivalent amount of advertising that in fact appeared in online media – regardless of what was actually paid or only exchanged in return. Disregarding the monition of Focus Media Research, a comparison with the previous year reveals that the spending on conventional online advertising grew by 18%. This figure might well come close to the truth it would seem, when compared with the data on web services published by the ORF. According to the 2013 annual report, the ORF achieved net revenues of EUR 11.4 million from online advertising, representing a 17.5% increase over 2012, when the net revenue from web ads had come to EUR 9.7 million.

Radio has a daily reach of 81% and is listened to an average of 195 minutes per day (in both cases among individuals aged 14 and over). It thus continues to be the most successful form of conventional (secondary) media, and radio time is correspondingly booked by advertisers – although without tremendous enthusiasm, as the sluggish growth of gross revenues from radio advertising indicates. After all, usage (or listening) time has been steadily eroded, seemingly inevitably, for years. The 195 minutes per day in 2013 represents four minutes less than the year before.

Figure 18: Daily media usage time, 2008 to 2013



Persons aged 14 and over

Source: MTUs, AIM, TELETTEST, Radiotest

Television, meanwhile, has also taken a tiny dent, following an initial striking increase in usage (or viewing) time during the past years against all predictions. Yet in 2013 the population aged 14 and over watched for two minutes less a day. This equalled a daily usage time of 169 minutes on average for the year. Television was also able to reach only 62% of individuals 14 and over on a daily basis in 2013. Daily reach had still been 64% at the end of 2012. It is possible that increasing web video usage is in fact starting to impact linear television viewing habits. It will in any case be interesting to observe the effect of the Winter Olympics and even more the football World Cup on television viewing time in 2014.

With respect to the amount of time used, the internet was the clear champion in 2013. Following a surprising four-minute drop in daily use to 63 minutes in 2012, average internet use jumped by 19 minutes to reach a level of 82 minutes of daily use in 2013. Daily reach also climbed by three percentage points to 57% of the population aged 14 and over. This trend will undoubtedly continue to overly impact the gross revenues from online advertising – with detrimental effects for conventional media.

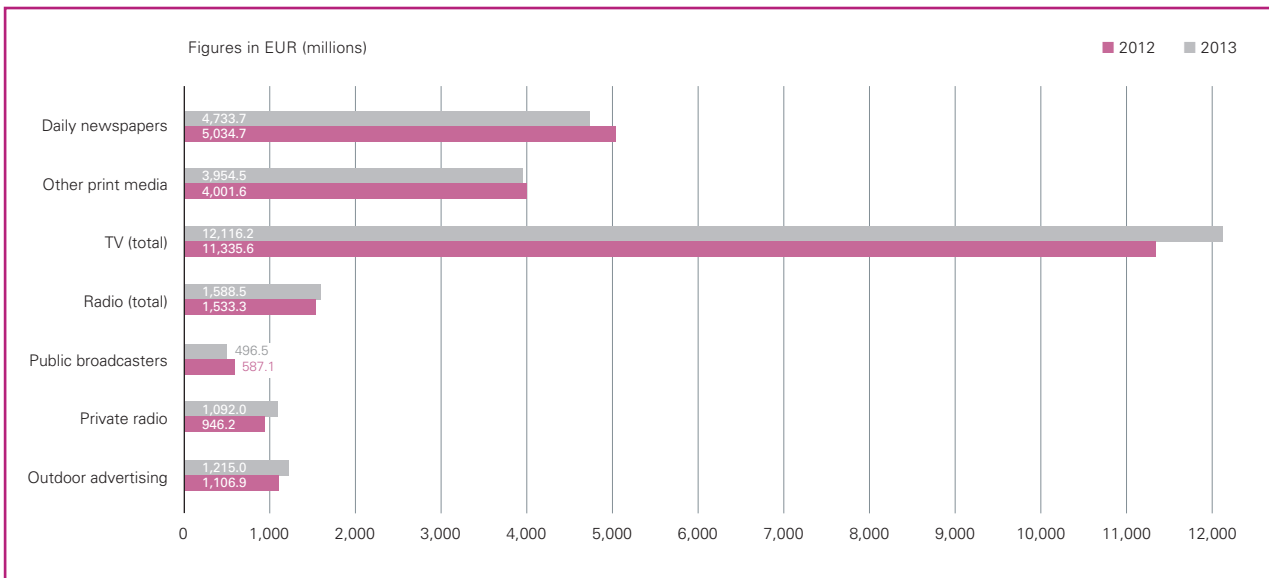
Newspapers also slightly lost some of their daily reach. Of individuals aged 14 and over, 72% read at least one newspaper a day in 2013, a drop of one percentage point from 2012. For daily newspapers, that is nonetheless a respectable performance, albeit owing to the success of free newspapers to a major degree. In terms of usage time, no change was observed for daily newspapers, which are read for 30 minutes a day.

10.1.1.1 Comparison with the German advertising market

Following a fall of 0.7 percentage points on the whole for 2012, expenditure for reserving advertising in conventional German media increased again in 2013. The gross advertising revenues earned by conventional media in Germany rose by 2.6% to equal around EUR 23.61 billion, in percentage terms somewhat less than in Austria (+3.2%). Of this amount, more than one in two euros was spent on television advertising.

While 2013, with the Bundestag election, was an important year for political advertising in Germany as well, the campaign budgets of the federal parties with the addition of the CDU in Bavaria totalled about EUR 65 million, which by no means had an impact on the total gross advertising expenditure anywhere comparable to the roughly EUR 42 million that Austria's parties spent on advertising for the National Council election. Outdoor advertising profited exceptionally from the German Bundestag election, finishing 2013 with an increase of 9.8% (2012: 0.3%) or EUR 108 million in additional revenues for a total of EUR 1.215 billion. That made outdoor advertising Germany's winner in percentage terms among conventional media in 2013.

Figure 19: Advertising expenditure in Germany by category, 2012 and 2013



Source: Nielsen Media Research

As in 2012, Germany's print media suffered the greatest losses for the year as a whole in 2013. Of these, daily newspapers were particularly hard hit, losing 6% of revenues. In 2012, dailies had had to absorb a percentage loss of virtually the same magnitude. Magazines, periodicals and weekly newspapers also suffered a loss again in 2013, but at -1.2% it was appreciably smaller than the setback of -3.5% recorded for the previous year. The fact that the overall performance of the German print market was not as disturbing as in 2012 is thus to be attributed to other print publications. In 2013, Germany's print media lost over 3.9% of their total gross advertising revenues compared with the previous year (down by EUR 348.1 million to total EUR 8.688 billion). The decrease in 2012 was by 5.3%. The print market's share in the total advertising revenues of conventional media consequently dropped from the previous level of 39.3% to only 37.9% (in 2013 print declined overall in Austria by 1.1 percentage points to 58.7%).

The categories of television and radio, in contrast, were able to make gains in Germany. Television improved its gross advertising income by 6.9% to reach EUR 12.116 billion. In this way the category of television passed the 'magic' mark of 50% of all advertising reserved in conventional media, achieving 51.3% (2012: 49.3%) of the total gross amount spent on the sector (Austria: 28%).

The conditions observed in Germany's radio market are similar to those in Austria: the losses suffered by public broadcasters are offset by private gains. Yet the gains and losses in Germany stand somewhat more in contrast. Specifically, the loss resulting for public broadcaster ARD was 15% (ORF: -2.7%) in the end or EUR 90.6 million. Private radio stations, on the other hand, generated 15% higher revenues (6.2% in Austria), increasing gross advertising income by almost EUR 146 million to reach EUR 1.092 billion. The overall result for the category of radio in Germany was an additional 3.6% (Austria: +0.9%).

It is particularly worth noting that a genuine reversal of trends seems to be emerging in the German radio market. In 2012, the German radio market increased gross advertising revenues by a total of 7.6%, 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 in this case is particularly worthy of note, considering that in the preceding years public radio stations had participated much more strongly in percentage revenue gains from radio advertising than the private competition. Back in 2011, for example, the ARD stations had increased advertising revenues by 6.7% and even by 9.2% in 2010. Private broadcasters, in contrast, had seen gains of only 2.2% in 2011 and 3.6% in 2010.

10.1.2 Television market

10.1.2.1 Television viewing

Seen generally, 2013 was not a good year for television. The main results revealed by the TELETEST evaluation are: shorter viewing times, an overall loss of reach and shrinking market shares for long-standing channels. Whereas the losses are by no means dramatic, within the highly sensitive television market they have unleashed fears that the often-predicted downhill trend in television viewing could kick in with some delay. Specifically, after consistent, slight increases in previous years, the daily reach for television among Austrian residents aged twelve and over who live in television households declined by two percentage points to 62%. Yet viewing time,²⁴ which had risen by a total of 16 minutes between 2009 and 2012, also diminished once again in 2013 by one minute, for a daily average of 168 minutes.


Figure 20: Viewing time, 2004 to 2013



Persons aged twelve and over in all of Austria

Source: TELETEST

²⁴ Average daily television viewing among persons aged twelve and over, including non-viewers.



However, for a year like 2013, without any major sports events such as the Olympics or international football championships, viewing time did not do badly and was comparable to the values observed in Germany, where viewing time among those 14 and over decreased from the previous year by two minutes to 234 minutes.

It was only in the category of time spent viewing (i.e. the usage time among active viewers) that TELETEST measured a new Austrian record: this indicator rose by six minutes to reach 267 minutes per day. There are two primary reasons for this increase. Firstly, this trend is an expression of demographic change. Older viewers aged 50 and over account for a disproportionate increase in viewing time, both in general and among active viewers. This group continues to increase in size relative to the overall population. Secondly, television is increasingly becoming a secondary medium, which remains switched on even when viewers do not give the medium their full attention.

ORF television was hardest hit by this development in 2013, losing 1.8 percentage points of its market share and falling to 35.4%, which is attributed primarily to the poor performance of ORF eins (losing 1.6 percentage points and dropping to 12.4%). The slight increase of 0.2 percentage points recorded in 2012 was thus only a minor temporary recovery that did not reverse the more long-term trend towards permanent loss of market share by ORF eins. Yet perhaps more significant in psychological terms is the fact that in 2013 the daily reach achieved by ORF television fell below the 50% mark for the second time ever (after 2009). While in 2009 daily reach at 49.8% at least remained just under 50%, the indicator dropped by a clearer margin to 49.3% in 2013 (after 51.6% in 2012). This means that not even one in two Austrian residents aged twelve and over who lives in a television household switches an ORF channel on. This change in the ORF's daily reach is also to be attributed mostly to ORF eins.

In addition, the German private channels offering specific Austrian advertising and, in some cases, programmes once again relinquished market shares (-0.6 percentage points for a total of 26.7%) and daily reach (-1.7 percentage points, 35.7% in total).

Yet, in contrast to this, the Austrian private channels and the ORF's special-interest channels have done well relative to past market shares and to reach levels and in some cases have shown above-average performance. PULS 4 succeeded in expanding its market share by 0.4 percentage points to total 3.5%, thereby pushing ATV back from first place among Austria's private and special-interest channels with a slender lead of 0.1 percentage points. ATV is also the only channel within this group that is struggling with a loss of reach: relative to the current 13.4% daily reach, the decrease of 1.1 percentage points is of considerable magnitude.

The German-language channels – i.e. including ZDF, ARD and their regional channels as well as ARTE and others – as well as the overall group of non-Austrian channels each lost 1.7 percentage points of their daily reach, dropping to the current levels of 49.7% and 50.2% respectively; this was, however, due exclusively to the German channels with Austria-specific content, which are found in both groups. In terms of market share, in contrast, both groups were in fact able to gain half a percentage point to total 51.6% and 53.5% respectively. Growing shares of ARD and ZDF in the Austrian market account for more than one third of these gains, while just under two thirds can be attributed to further specialisation of digital programme offerings, with increasingly more micro-channels and special-interest channels.

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. Prior to 2007, the ORF commissioned the TELETEST survey, and AGTT took on this role as of 1 January 2007.

In 2013, the Teletest panel consisted of 1,600 households in Austria, which represented a statistical population of 3,577,000 television households. The panel comprised a total of approximately 3,570 viewers, including some 3,250 persons aged twelve and over (representing the 7,211,000 Austrian adults living in households with television sets) and around 320 children aged three to eleven (representing the 716,000 Austrian children in television households).

10.1.2.2 Daily reach and market shares for television


With daily reach declining by two percentage points to 62%, television was able to attract around 94,000 fewer viewers per day in 2013 than in 2012, even though the statistical population aged twelve and over living in television households was 7.211 million in 2013, which amounts to about 40,000 individuals more than in 2012. Specifically, there was an average of 4.471 television viewers per day in 2013, whereas in 2012 the average had still been 4.565 Austrian residents aged twelve and older. Not only was that the end of a short succession of years, beginning in 2010, with consistently improving daily reach figures, this indicator dropped for television to just below the level recorded in 2010 (62.5%). The current figure still falls well short of the record of 70.2% in TV daily reach set in 2002. The daily reach figure is a daily count of all individuals in the TELETTEST panel who watch television for at least one minute on that day (definition of 'daily reach').

Figure 21: Daily reach of television, 2012 and 2013



Persons aged twelve and over in all of Austria

Source: TELETTEST



When viewed in detail, it can be recognised that only the 'smaller' or 'newer' TV channels in Austria have been able to resist the overall downward trend in television. With gains of about one percentage point each, ORF III, ServusTV and ATV2 were the most successful in this regard. ATV2 also improved the most in relative terms, increasing its reach by 50%. A factor also at play in this case is that these channels are still working on developing audience awareness and on drawing attention to themselves, so that an increasing reach against the general trend is not uncommon. Yet this stage appears to be all but over for PULS 4, which was only able to better its reach by 0.2 percentage points to achieve 10.4%. Already back in 2012, the channel improved its daily reach by half a percentage point to a level of 10.2% and was unable to continue the growth enjoyed 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. ATV, in contrast, launched five years earlier, lost over one percentage point in 2013, its tenth anniversary year, and dropped to a daily reach of 13.4%, thus fully hit by the negative reach trend affecting the established channels. ATV recorded a loss in daily reach for the first time in 2012 (-0.4 percentage points).

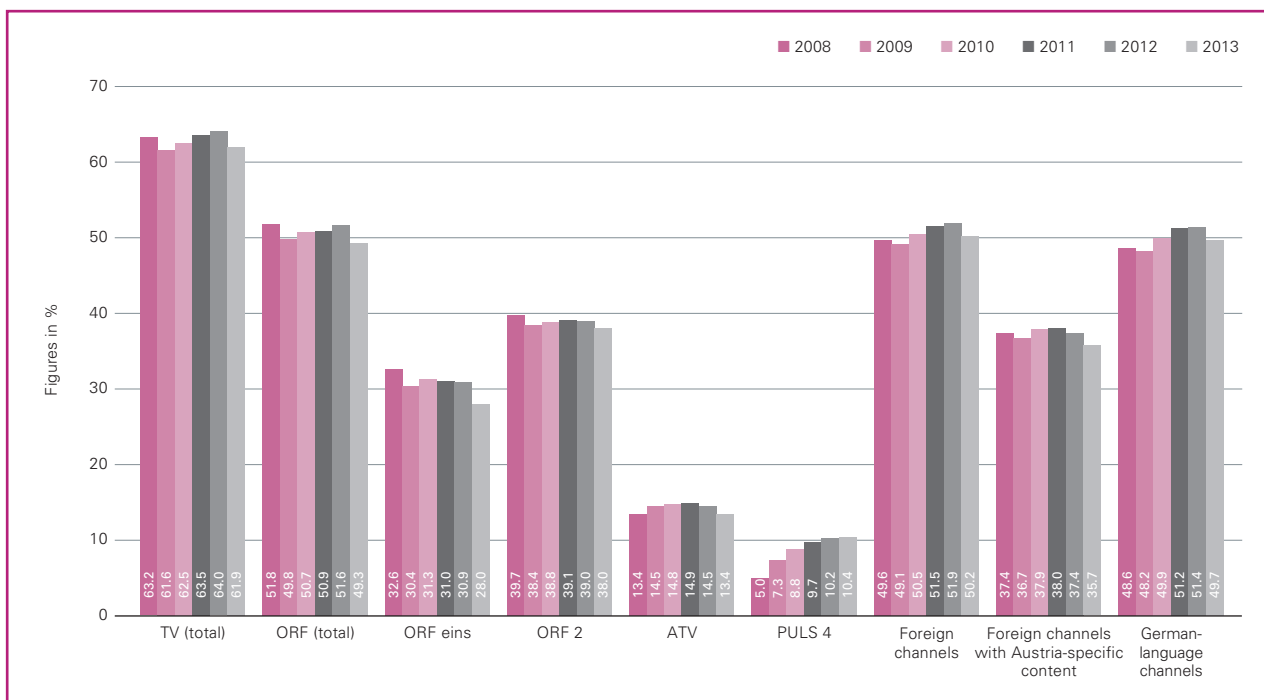
At a daily reach level of 7.3%, ServusTV held its lead of 1.5 percentage points over ORF III and again made considerable progress towards catching up with PULS 4. This represents a respectable gain in attention for ServusTV, which offers a higher quality programme than PULS 4, even though the market share evaluation reveals that ServusTV's viewers do not yet watch the channel for as many minutes a day as PULS 4's viewers.

The channel that clearly lost the most was ORF eins: relinquishing 2.9 percentage points of its daily reach, it was able to attract on average only 28% of TV viewers aged twelve and over in 2013. Whereas ORF 2 also lost one percentage point of its daily reach to land at 38%, this was probably due to viewers migrating to ORF III. The conclusion is also supported by the chart showing the distribution of market shares in 2013. The performance of ORF eins is any case largely responsible for the loss in daily reach of 2.3 percentage points shown for all ORF channels, which together achieved 49.3%.

The daily reach of gotv, a music and youth channel available free via satellite throughout Europe, is also declining in Austria, dropping by one tenth of a percentage point to 0.5% in 2013. Already between 2011 and 2012, gotv had relinquished a fifth of its daily reach in its home country. This shows that gotv has not benefited appreciably from additional terrestrial broadcasting (via DVB-T), along with ATV2, in the metropolitan areas of Vienna, Innsbruck and Bregenz since November 2012.

For the TV channels originating in other countries and for the group of German-language channels (excluding Austrian ones), the loss in daily reach of 1.7 percentage points each is a new development since 2010; until 2012, both categories had steadily and gradually expanded their reach. The German channels broadcasting Austria-specific advertising and programmes lost 1.7 percentage points in daily reach, retaining 35.7%; this represents the continuation of a trend that, starting back in 2011, was nonetheless particularly marked in 2013.

Figure 22: Change in daily reach of television, 2008 to 2013

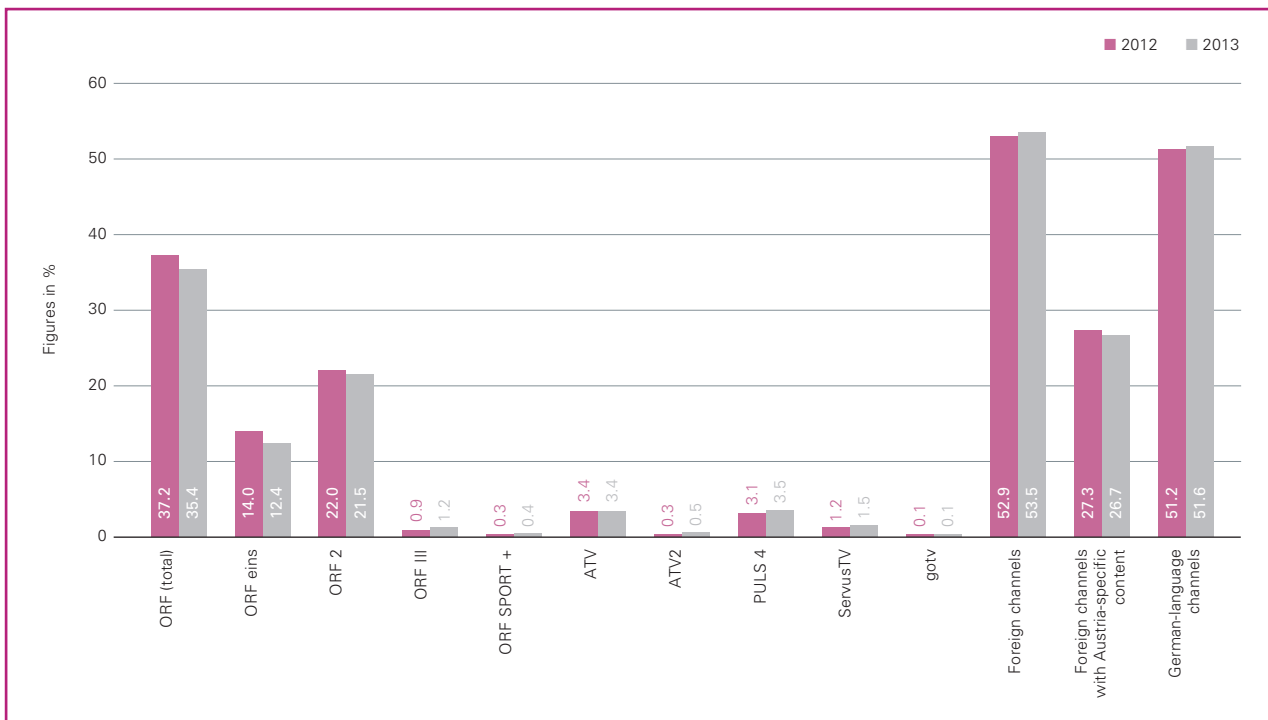


Persons aged twelve and over in all of Austria, all reception platforms; ORF overall in 2012 including for the first time ORF III and ORF SPORT +
 Source: TELETEST

Especially thanks to its new special-interest channels ORF III and ORF SPORT +, in 2012 all ORF television channels together had actually succeeded in slightly improving their total market share over the previous year by 0.8 percentage points; the ensuing loss of 1.8 percentage points suffered by the public TV group in 2013 was almost exclusively attributed to ORF eins, which alone surrendered 1.6 percentage points. The fact that in 2012 ORF eins was not only successful in maintaining its market share over the previous year but also managed to expand it by a slender two tenths of a percentage point was most likely due to the lift received through the European Football Championship and the Summer Olympics in London. The 2013 World Ski Championships in Schladming was apparently not able to provide a similar stimulus. Without exception, the three most widely viewed programmes in 2013 were shown on ORF 2: the special on the election of the Pope in March and the news broadcasts Zeit im Bild and Bundesland heute on national election day. Two events of the World Ski Championships in Schladming that were broadcast by ORF eins placed only fourth and tenth among the most widely viewed programmes. The loss of 0.5 percentage points in market share by ORF 2 was balanced almost completely by ORF III and ORF SPORT +. ORF television consequently achieved a market share of only 35.4% in 2013 (2012: 37.2%), with ORF eins falling from 14% to 12.4% and ORF 2 sliding from 22% to 21.5%.

Achieving a market share of 26.7%, the German channels with Austria-specific content also continued the downwards trend initiated in 2011, whereas the market share loss of 0.6 percentage points in 2013 was less painful than in 2012, when the decrease had been by 1.7 percentage points.

Figure 23: Television market shares, 2012 and 2013

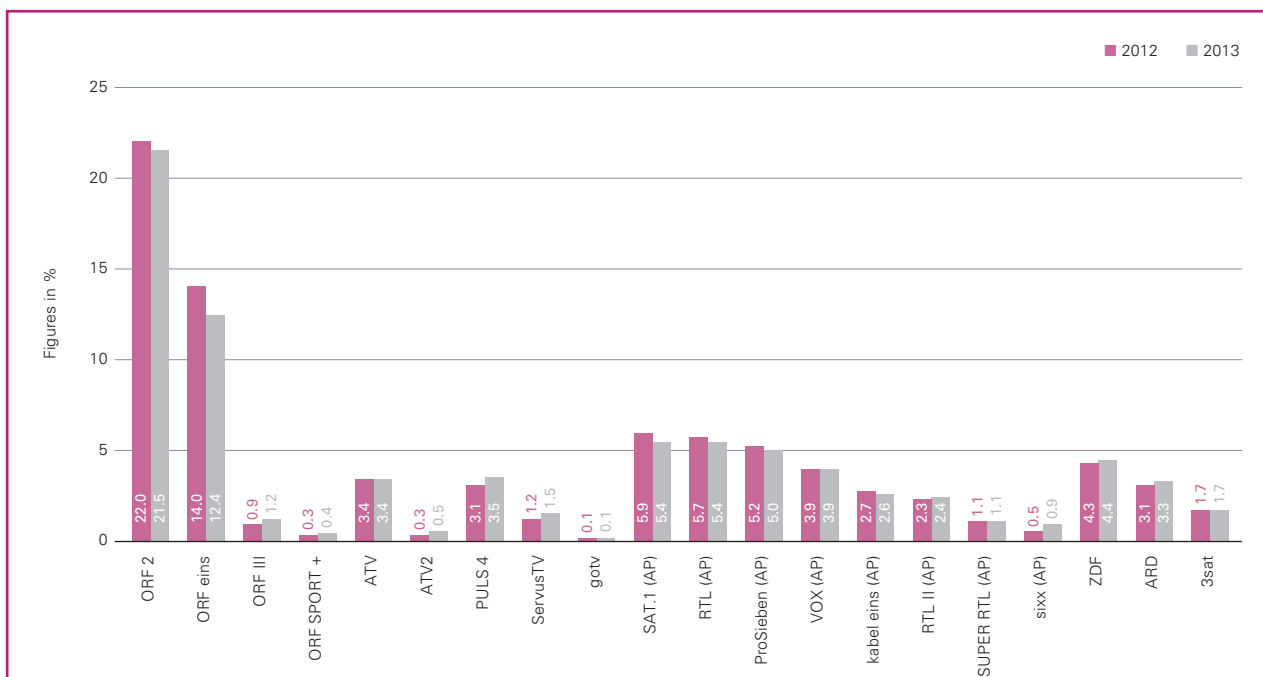


Persons aged twelve and over in all of Austria

Source: TELETEST

A more detailed look at the shifts in market share gains and losses reveals that the increasing variety of specialised and special-interest channels, arising in the wake of digitisation, constitutes only in part a keener competitive environment that would account for the ORF's loss of market share. In fact, a little less than one half of the 2.4 percentage points of the total market share jointly lost by the ORF and German channels with Austria-specific content relinquished remain in the Austrian market with the previously known channels. Specifically, just the three channels PULS 4, ServusTV and ATV2 together gained almost a half a percentage point in market share. ARD and ZDF are two other familiar competitors that substantially enlarged their share of the market; altogether, the two German public broadcasters improved their total share by 0.3 percentage points.

Figure 24: Television market shares in 2012 and 2013 (incl. Austria-specific programmes and German channels)



Persons aged twelve and over in all of Austria; (AP) = channel with Austria-specific programme

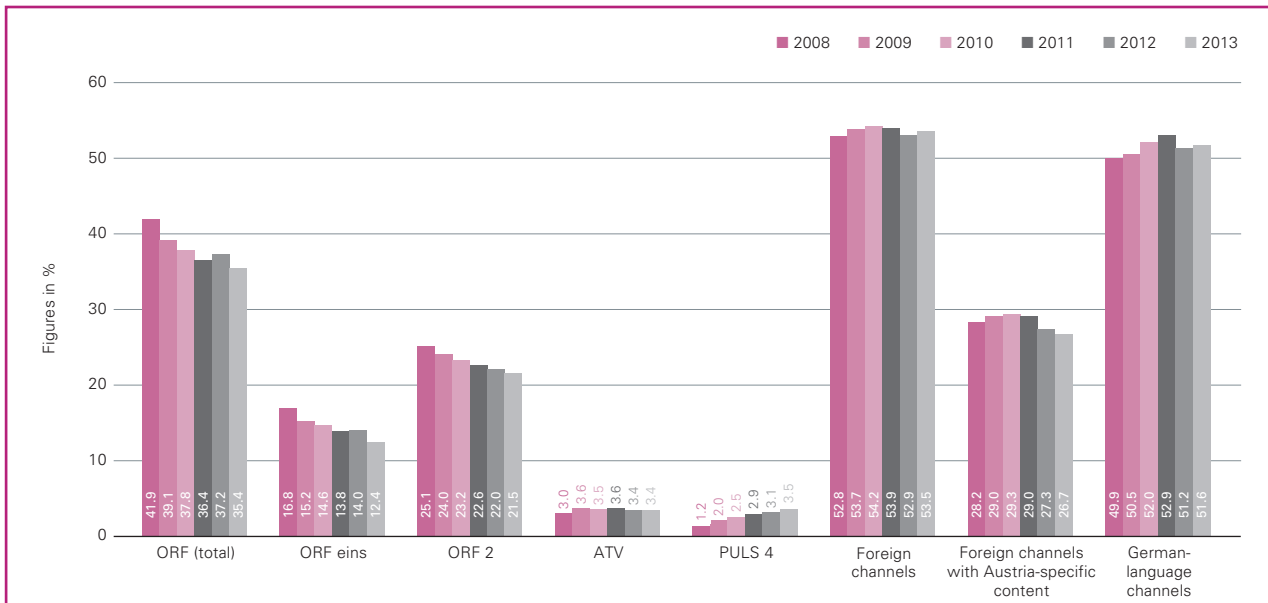
Source: TELETEST

Another comparison also shows that the growing selection of channels does not take market share away from all established channels to the same extent. Rather, ORF eins is disproportionately affected by the losses. Losing 1.6 percentage points in market share meant that ORF eins surrendered more than 11% of its market share compared with 2012. Among the other established channels, SAT.1 Österreich showed the greatest loss of market share at -0.5 percentage points in 2013. For SAT.1 that is nonetheless a relative loss of ‘only’ just over 8% from the previous year. RTL Austria, as the second largest loser, relinquished 0.3 percentage points, representing only some 5% of its market share.

In 2013, five years after launching broadcasts, PULS 4 succeeded in shaking up the standings in Austria’s private television market by overtaking ATV – a station with twice the number of years in the market – by a very slim margin of just one tenth of a percentage point. To this end PULS 4 not only invested in information programmes, but also to a significant extent in mass-appeal entertainment such as Austria’s Next Topmodel and, specifically in 2012, in the purchase of the Champions League rights up to the 2014/2015 season. In this way PULS 4 achieved a 3.5% market share in 2013 (an increase of 0.4 percentage points). Having absorbed a minor loss of two tenths of a percentage point in market share for the first time in 2012, while finishing with a total market share of 3.9% thanks to ATV2 (with +0.2 percentage points), ATV was at least able to maintain the previous year’s level in 2013. Launched in December 2011, ATV2 has a programme consisting partially of reruns of ATV’s shows.

ServusTV grew by 0.3 percentage points to claim a 1.5% market share which was, however, less than the 0.5 percentage points increase in 2012. gotv retained its 0.1% market share.

Figure 25: Change in television market share, 2008 to 2013



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

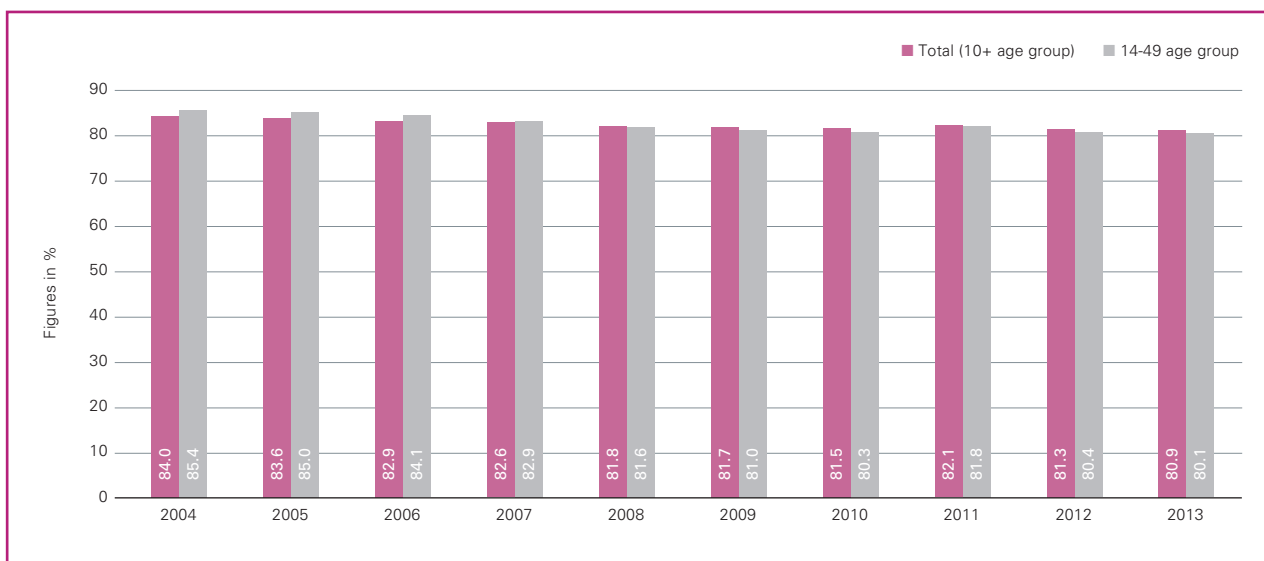
10.1.3 Radio market

10.1.3.1 Radio usage

The negative trend in listening time and daily reach that has been consistently observed in the radio sector for years continued in 2013 at the same, meanwhile customary, moderate rate. Radio achieved a daily reach²⁵ level of 80.9% among the population aged ten and over (-0.4 percentage points) and a level of 80.1% in the group of 14 to 49-year-olds (-0.3 percentage points). However, these values represent a new negative record, falling short of the lowest daily reach figures previously recorded in 2010.

²⁵ Definition of daily reach in the context of radio market research: respondent must have listened to the station for at least 15 minutes 'yesterday'.

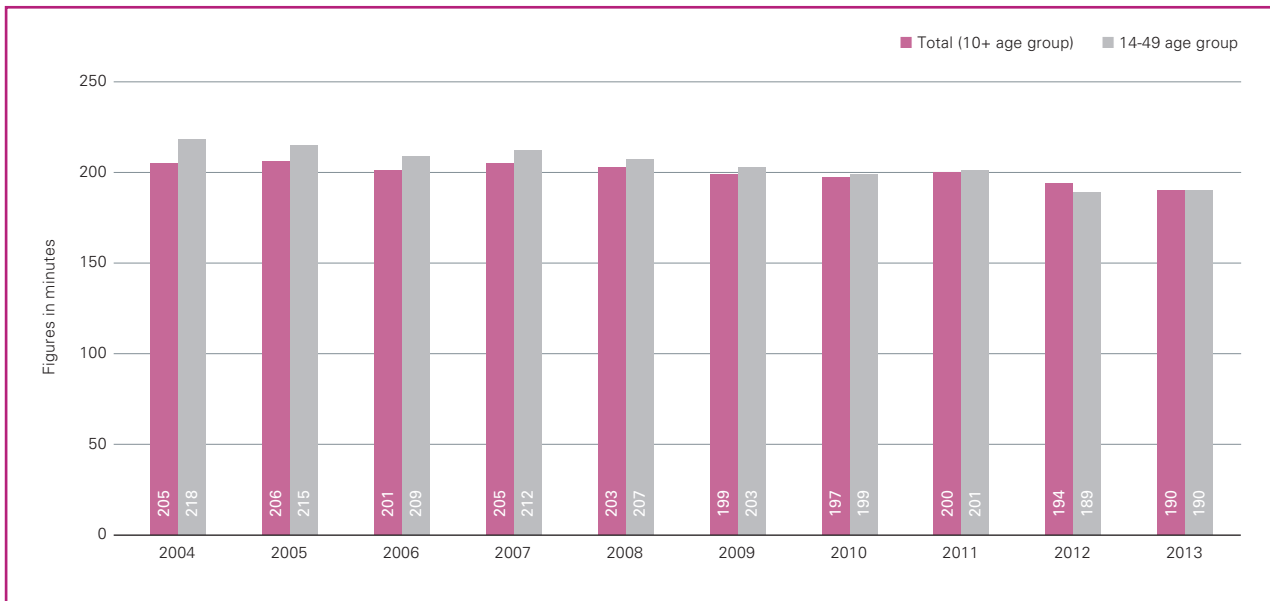
Figure 26: Daily reach of radio, 2004 to 2013



Source: Radiotest

The average usage (listening) time per day among listeners aged ten and over decreased by four minutes. Listening time among those aged 14 to 49, the target group relevant for advertising, actually increased by one minute per day over 2012 to total 190 minutes, which could give rise to some optimism. In response to the drastic drop in listening time recorded for this group last year, which totalled twelve minutes, many feared that the internet effect had set in, ushering in an accelerated loss of this listener segment. However, this scenario is still a matter of concern despite the result of the findings in 2013. It is in any case interesting to note that, since 2012, the group of 14 to 49-year-olds has not been listening to the radio for longer periods than all listeners aged ten and over. Back in 2000, individuals between 14 and 49 years of age had listened to the radio 22 minutes more a day than the overall 10+ group. Since then the two groups have consistently been drawing closer, with disproportionate decreases being recorded for the 14 to 49-year-olds, who are especially relevant for advertisers.

Figure 27: Listening time, 2004 to 2013



Source: Radiotest

The results of the 2013 Media Analysis reveal how listening to music via the web is becoming a serious competitor for radio. In detail, about 88% (2012: 84.8%) of internet users between 14 and 19 years of age generally used the web to listen to music in 2013. Yet, as in 2012, only 29% of these young people listen to the radio via web stream. The internet is mainly used to select specific music according to individual preferences. Within this group, the internet’s daily reach comes to 88.9%. While the internet reached 84.7% of the 20 to 29-year-olds daily, almost 70% listened to music via the web (2012: 64%). Yet only about 30% of such young adults listened to the radio via web stream, although this does in fact represent an increase of just under five percentage points over 2012. It can thus be concluded that younger users apparently prefer to select music independently, on a more individual basis according to their interests, and have discovered the internet to be an ideal medium for this purpose.

10.1.3.2 Daily reach and market shares for radio

When comparing ORF radio stations with private radio at national level, and taking into account the group of listeners between 14 and 49 years of age, who are particularly relevant for advertisers, the tendency observed in past years is once again confirmed for 2013. The ORF suffered renewed small losses of daily reach and market share, while the private radio stations made slight gains.

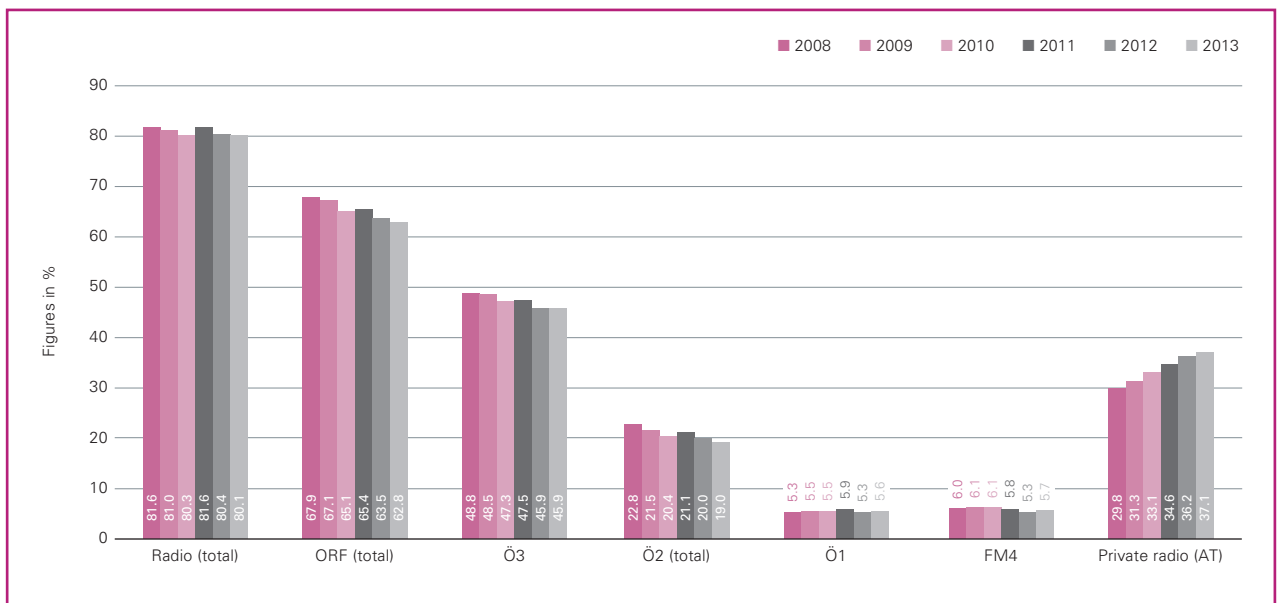
Radiotest, the survey of radio usage in Austria, is carried out by the GfK Austria opinion research institute under a mandate from the ORF and the majority of Austrian private radio broadcasters. Radiotest is basically a reach survey, which specifically investigates radio usage among the Austrian population aged ten 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.²⁶

²⁶ GfK Austria and ORF Media Research.

At a daily reach of 62.8% or 0.7 percentage points less than in 2012, ORF radio stations on the whole reached fewer listeners among the group aged 14 to 49. The ORF was thus able to curb the rate at which it was losing reach compared to 2012, when a decrease of 1.9 percentage points was observed on this measure, mostly accounted for by Ö3 with a loss of daily reach of 1.6 percentage points. In 2013, Ö3 was able to maintain its reach at the previous year's level of 45.9%, even though losses of one percentage point were recorded in Vienna and even two points in Styria. On the other hand, Ö3 increased its reach by 2.1 percentage points in Lower Austria and 1.5 percentage points in Vorarlberg.²⁷ The information and culture radio station Ö1 and the youth station FM4, while in fact able to improve their reach slightly – Ö1 by 0.3 percentage points to 5.6% and FM4 by 0.4 percentage points to 5.7% – was not quite able to recuperate the losses of 2012. Only the ORF regional broadcasts (Ö2) lost one percentage point of their reach, amounting to an annual average daily reach of 19% in 2013. With losses ranging between 1.5 and 2.4 percentage points, the Ö2 stations in Lower Austria, Burgenland, Upper Austria and Vorarlberg were affected the most by this development.

While Austria's private radio broadcasters in 2013 maintained the successful course of several years, they were able to improve their daily reach by only just under one percentage point on the whole. Increases of more than 1.5 percentage points had been common in previous years.

Figure 28: Daily reach of ORF and private radio, 2008 to 2013



Persons 14 to 49 years of age in all of Austria

Source: Radiotest

The nationwide private radio station KRONEHIT, Ö3's most direct competitor, improved its daily reach in all regions with a 1.3 percentage points increase within the country as a whole and achieving a daily reach totalling 17.8% of the Austrian population in 2013. KRONEHIT nonetheless fell short of the gains made in previous years by about one third (1.9 percentage points in 2012 and two in 2011), and did not achieve any significant success with regard to the reach in the important market of the Vienna region (an increase of one tenth of a percentage point to total 14.1%). In 2012,

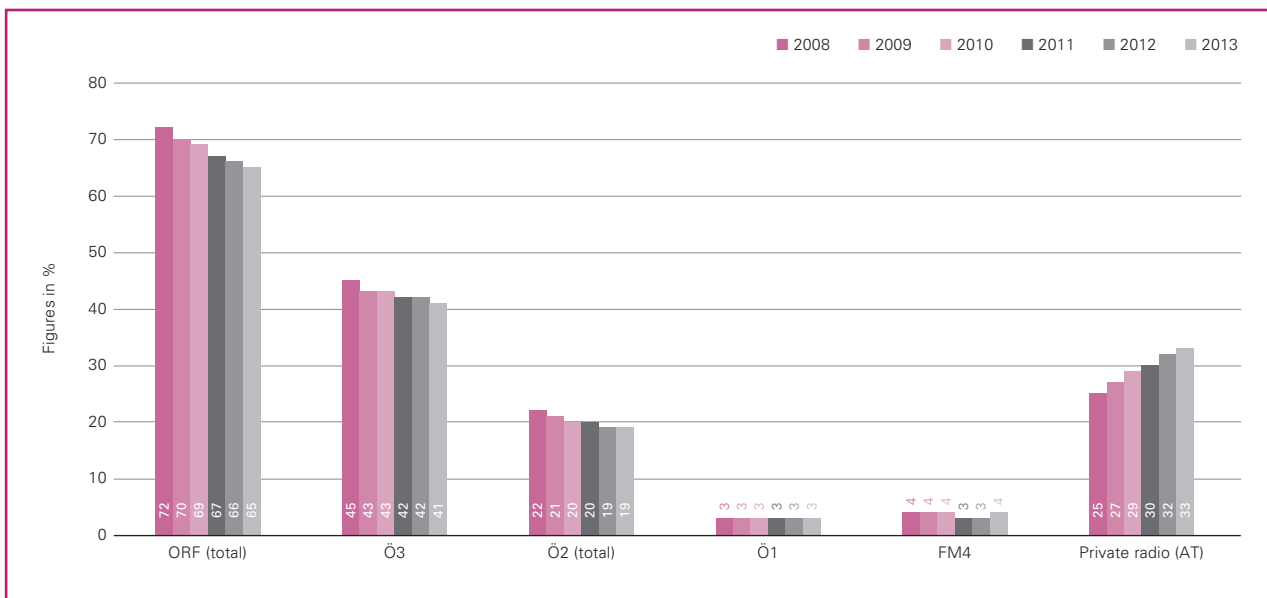
²⁷ Refer to Table 22: Daily reach of radio stations in Austria, 2013

it had been in Vienna in fact that KRONEHIT had managed a giant leap in daily reach, from 10.5% to 14%. KRONEHIT made especially good progress in Lower Austria, where the station is more successful than in any other Austrian region, climbing by three percentage points to achieve a daily reach of 25% in 2013. It was also very successful in Burgenland (+2.7 percentage points), Styria (+2.4 percentage points) and in Carinthia (+1.9 percentage points).

Among private broadcasters, striking gains in daily reach within Austrian regions were achieved especially by Antenne Vorarlberg (two percentage points to total 23.1%) and Life Radio Oberösterreich in Upper Austria (1.3 percentage points for 16.7%). Antenne Steiermark once again relinquished the gains made in the previous year, slipping by 0.8 percentage points to a daily reach of 24%. Yet, compared with the initial situation, Antenne Salzburg suffered worse, falling back by one percentage point to 13.2% daily reach. Another 'member of the family' changed its name from Antenne Wien to Radio Ö24 in September 2013, an experiment that to date has apparently had neither a detrimental nor a particularly beneficial effect on its popularity: Radio Ö24 improved its daily reach in Vienna from 2.9% to 3.0%, in Lower Austria from 1.1% to 1.3% and in Burgenland from 0.7% to 0.8%. The name change of the chain of stations in Lower Austria and Burgenland formerly known as HiT FM, which had taken place back in 2012, had a less positive impact. Under the new Vienna-based label of 88.6 Der Musiksender, daily reach in Lower Austria dropped from 9% to 7.4% in 2013, while in Burgenland the station made good a mere two tenths of a percentage point to reach 5.6%, only to relinquish a half a percentage point in Vienna, where it finished with 5.9% daily reach.

Even though it was able to maintain its daily reach among the 14 to 49-year-old age group, Ö3 could not keep its listeners tuned in as long each day. The market share held by Ö3 nationwide shrunk by one percentage point to 41% in 2013, although private radio, in contrast, gained a total of one percentage point. Yet growth had still been in the order of two percentage points in 2012. This too represents a constant but gradual process over many years that, assuming relative consistency, could lead to a tie situation between Ö3 and private broadcasters by 2018 or 2019. However, this depends largely on the further progress of the heavyweight among the private stations, KRONEHIT.

Figure 29: Radio market share, 2008 to 2013



Persons 14 to 49 years of age in all of Austria

Source: Radiotest

The market share of a radio station refers to its percentage of overall listening time.

Whereas, despite falling daily reach, the ORF's regional radio stations in 2013 were able to maintain the overall market share of 19% achieved in 2012, Ö1's small gain in daily reach was not enough to expand the station's market share. FM4 is a different case: the station's staff can be pleased at gaining one percentage point in market share to reach 4%. Yet on balance the ORF radio sector had to once again surrender one percentage point in total for a market share of 65%.

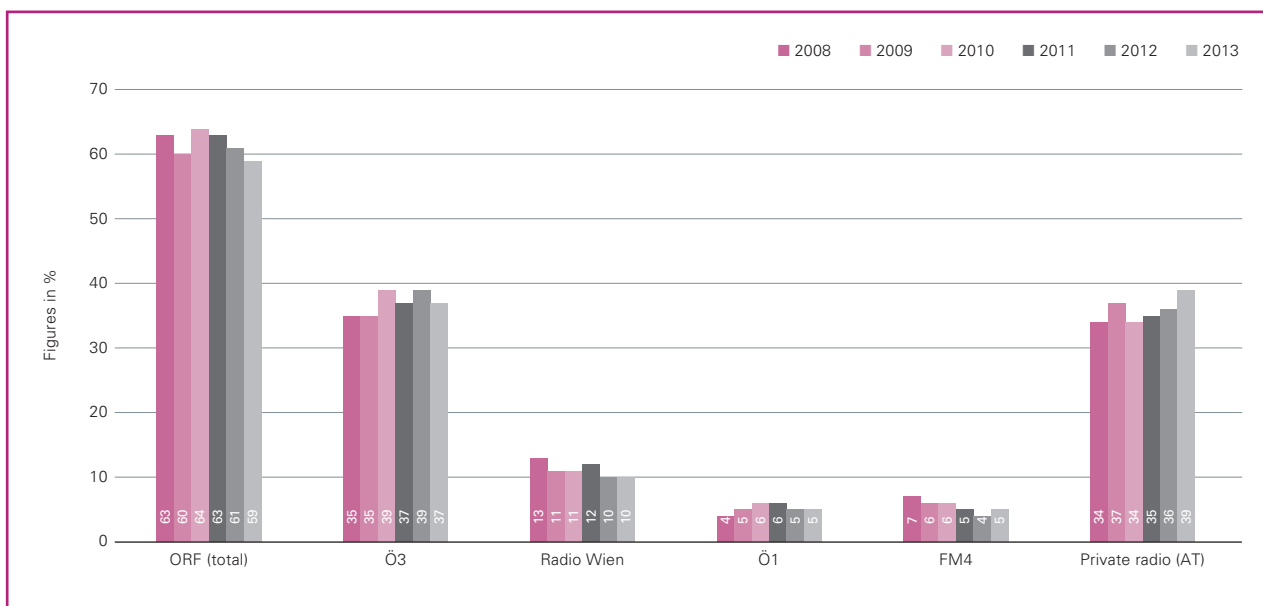
It is worth noting that Austria's private radio sector has been able to expand its nationwide market share from precisely one quarter to one third (in 2008 Austrian private radio's market share was 25%) within six years.

10.1.3.3 Radio market in Vienna

From the ORF's perspective, neither the changes in the Vienna radio market in 2013 nor the psychological impact they had were particularly favourable, for two reasons. Firstly, the market share held by ORF radio among the 14 to 49-year-olds fell for the first time below the 60% threshold, specifically to 59%. Secondly, also for the first time, that group of radio users listened to private radio longer than to the ORF station Ö3, which again surrendered the two percentage points picked up in 2012 to fall back to a 37% market share, the same as at the end of 2011. While Ö3 also lost some of its daily reach, at 0.9 percentage points less for an average reach figure of 32.4%, the loss was only half that recorded in 2012.

Private radio, in contrast, improved its market share in Vienna by an impressive three percentage points to reach the new record share of 39%. Up until then, their best level had been 37%, in 2009 – even though the increase in daily reach was only marginal, i.e. by four tenths of a percentage point to a level of 34.1%. Meanwhile, the market share increase among private stations is mainly thanks to KRONEHIT, with Radio Arabella contributing one third of the growth.

Figure 30: Radio market share in Vienna, 2008 to 2013



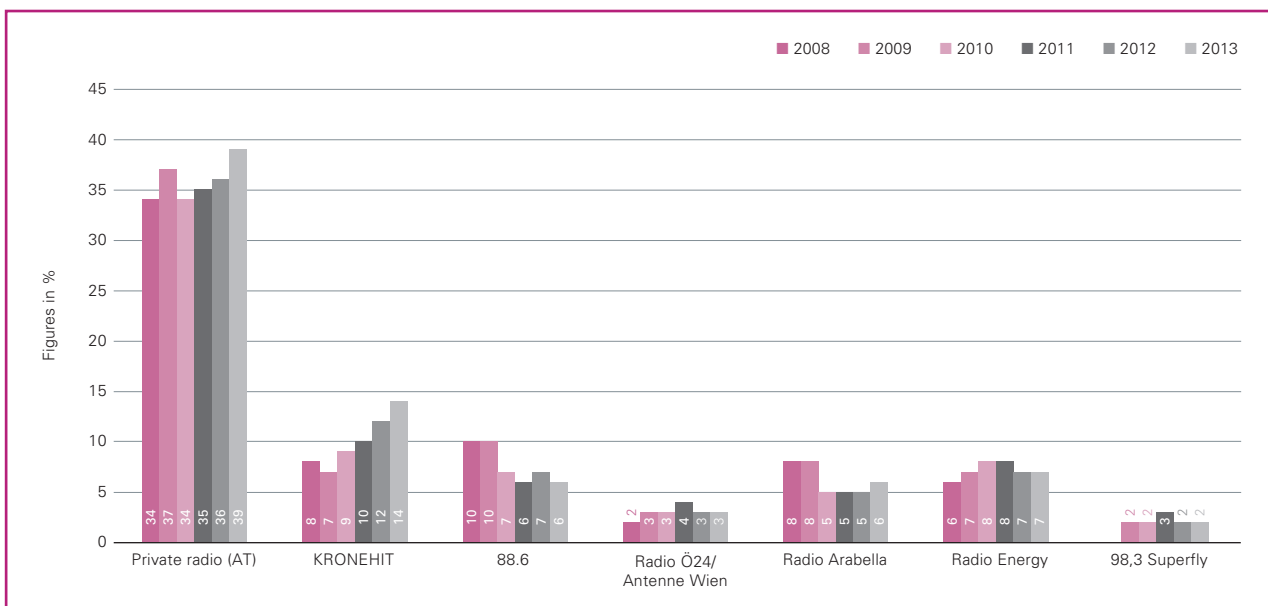
Listening audience 14 to 49 years of age in the Vienna region

Source: Radiotest

In the Vienna market, the ORF only had real cause to be pleased with the performance shown by its youth station FM4. After four consecutive years of losses, FM4 picked up one percentage point in 2013 to finish the year with a 5% market share. Radio Wien (with a 10% market share) and Ö1 (a 5% share), in contrast, while unable to make up the market shares lost the previous year, at least did not fall by any further percentage points. For both stations, a three-year growth period had ended with the loss of market shares in 2012. In the case of daily reach, however, Radio Wien continued on the slight downhill trend already observed in 2012, losing six tenths of a percentage point to finish 2013 at 9.3%. Thus, Radio Wien has lost about 30% of its daily reach among listeners between 14 and 49 since 2008 (at 13% daily reach). Ö1, meanwhile, slightly improved its daily reach by four tenths of a percentage point to a level of 7.7%, although that was no real reason to celebrate, considering the loss of 1.3 percentage points it had suffered in 2012. FM4 was a different case: not only did it win back surrendered market share, it again succeeded in attracting more listeners and in terms of daily reach and moved up from 6.1% to a notable 6.8%. The daily reach achieved by FM4 among 14 to 49-years-olds was thus surpassed only by the private radio stations KRONEHIT and Radio Energy.

The renewed growth trend that has been continuously observed for private radio in Vienna since 2011 has largely been driven by the success of KRONEHIT which enlarged its market share for the third year in a row by climbing two percentage points to 14% in 2013. Another factor responsible for this positive trend in private radio overall is the fact that only one station, namely 88.6 Der Musiksender, lost a percentage point, while Radio Ö24 (Antenne Wien in 2012), Radio Energy and 98,3 Superfly hung on to their market shares, and Radio Arabella, following three years of stagnation, even improved its share by one percentage point to reach 6%.

Figure 31: Private radio market share in Vienna, 2008 to 2013



Listening audience 14 to 49 years of age in the Vienna region; 98,3 Superfly first listed in 2009

Source: Radiotest



KRONEHIT's gain of two percentage points in market share was not, however, accompanied by any significant rise in the number of listeners in the Vienna market. Rather, the station apparently succeeded only in motivating existing listeners to tune in longer, since daily reach remained practically unaltered. This would suggest that since 2012 KRONEHIT has gained listeners from among the group between 14 and 49 years of age, and particularly within the upper end of this group, as listening time increases with listeners' age. In any case, KRONEHIT's daily reach of 14.1% means that it attracted a mere one tenth of a percentage point more listeners over 2012. This result is nonetheless noteworthy, considering that in 2013 KRONEHIT thus succeeded in maintaining the extraordinary increase in daily reach of 3.5 percentage points that it had achieved in 2012.

The most striking change in daily reach recorded among Vienna's private radio stations in 2013 was the 0.8 percentage points that Radio Energy surrendered, so that it reached a mere 10.5% of listeners between the ages of 14 and 49. 88.6 Der Musiksender also lost reach again, giving up one half of a percentage point to finish at 5.9%. Halfway through the year 88.6 merged with Hit FM and consequently gave up its previous philosophy of "we play what we want to". 88.6 Der Musiksender instead moved towards adhering to a clear format. The motto of "we play what we want to" had represented a unique selling point within the Vienna market, and giving it up has not yet brought about any appreciable returns.

No changes in daily reach worth mentioning were observed for Radio Arabella, 98,3 Superfly or Radio Ö24/Antenne Wien in 2013.

Table 22: Daily reach of radio stations in Austria, 2013

	14-49 age group	Vienna	Lower Austria	Burgenland	Styria	Carinthia	Upper Austria	Salzburg	Tyrol (including Eastern Tyrol)	Vorarlberg
Total daily reach										
Radio total	80.1	68.8	83.0	84.3	84.6	85.6	81.7	82.1	83.6	81.9
ORF total	62.8	49.8	68.9	74.8	63.8	69.0	63.4	67.5	66.3	65.3
Austrian private broadcasters total	37.1	34.1	36.5	30.5	42.0	39.5	40.8	32.1	36.8	35.2
Other stations total	39.4	35.4	38.0	32.5	42.7	40.7	44.0	36.7	40.6	42.1
Minor stations total	3.7	2.0	2.8	2.5	1.7	2.1	5.5	6.5	5.6	9.6
Other minor stations	2.4	2.0	2.7	2.3	1.5	2.0	2.4	2.6	2.9	4.1
ORF's daily reach										
Ö1	5.6	7.7	4.5	3.8	5.9	5.1	5.4	5.9	4.3	4.2
Ö3	45.9	32.4	54.3	55.1	46.4	47.5	48.6	47.8	49.2	45.4
FM4	5.7	6.8	5.6	3.8	4.0	5.7	6.0	7.2	4.7	5.9
ORF regional stations total	19.0	11.8	21.2	28.9	21.1	27.4	15.2	22.7	22.2	22.9
Radio Wien	3.0	9.3	4.9	2.8	0.1	-	0.1	-	-	-
Radio Niederösterreich	3.6	1.8	16.0	1.9	0.2	-	0.9	-	0.1	0.0
Radio Burgenland	1.2	1.1	0.5	25.0	0.6	-	-	-	-	-
Radio Steiermark	3.0	-	0.2	2.0	20.1	0.1	0.2	0.2	0.1	-
Radio Kärnten	1.8	0.1	0.0	0.1	0.4	26.6	-	0.0	0.3	-
Radio Oberösterreich	2.5	-	0.6	-	-	0.0	13.9	1.1	0.1	-
Radio Salzburg	1.7	-	0.0	0.1	0.3	0.5	1.2	21.9	0.4	-
Radio Tirol	2.0	-	-	-	-	0.5	-	0.5	21.5	0.2
Radio Vorarlberg	1.1	-	-	-	-	-	-	-	0.2	22.7
Daily reach of private radio stations										
RMS Top	36.9	33.2	36.3	30.5	41.9	39.0	40.7	32.1	36.7	35.1
KRONEHIT	17.8	14.1	25.0	22.2	18.2	16.4	19.3	10.1	14.7	15.1
Radio Ö24/Antenne Sbg./Tyrol (Antenne Österreich GmbH)	2.4	3.0	1.3	0.8	0.1	-	1.7	13.2	3.9	-
Radio Arabella (V/LA/B/UA/Sbg.)	2.7	4.9	4.7	1.2	0.3	0.1	3.9	0.1	-	-
Radio Arabella (LA/UA)	1.5	-	4.7	-	-	0.1	3.9	0.1	-	-
Radio Energy total	3.5	10.5	3.6	0.7	-	-	0.1	5.1	2.7	0.1
LoungeFM total	0.4	0.4	0.2	0.0	0.1	0.3	1.3	0.2	-	-
Welle 1 total (Sbg./UA/Styria/C)	1.8	-	0.2	0.0	0.6	1.3	6.8	7.4	-	-
Welle 1 (Sbg./UA)	1.6	-	0.2	-	-	-	6.8	7.4	-	-
88.6 Der Musiksender	2.9	5.9	7.4	5.6	0.7	-	0.1	-	0.0	0.0
Radio Ö24/Antenne Wien	0.9	2.8	1.2	0.8	0.0	-	-	-	-	-
Radio Arabella (V/LA/B)	2.0	4.9	4.7	1.2	0.3	-	-	-	-	-
Radio Energy (V/LA/B)	2.9	10.5	3.6	0.7	-	-	-	-	-	-
98,3 Superfly	0.6	2.2	0.6	0.1	-	-	0.0	-	-	-
Antenne Steiermark	3.7	0.0	0.4	4.5	24.0	0.7	0.4	0.1	0.1	-
Radio Grün-Weiß	0.1	-	-	-	0.9	-	-	-	-	-
Radio West	0.0	-	-	-	0.3	-	-	-	-	-
Soundportal	0.6	0.0	-	0.1	4.0	0.1	-	-	0.0	-
Welle 1 (Styria)	0.1	-	-	0.0	0.6	-	-	-	-	-
Antenne Kärnten	1.7	-	-	0.0	0.4	25.1	-	0.6	0.1	-
LoungeFM (C)	0.0	-	-	-	0.1	0.3	-	-	-	-
Welle 1 (C)	0.1	-	-	-	-	1.3	-	-	-	-
Life Radio (UA)	3.0	0.1	0.9	0.1	0.0	-	16.7	0.3	-	-
LoungeFM (UA)	0.3	-	0.2	0.0	-	-	1.3	0.2	-	-
Radio Arabella (UA)	0.7	-	-	-	-	0.1	3.9	0.1	-	-
Welle 1 (UA)	1.2	-	0.2	-	-	-	6.8	-	-	-
Antenne Salzburg	1.2	0.2	0.0	-	0.1	-	1.7	13.2	0.2	-
Radio Energy (Sbg.)	0.3	-	-	-	-	-	0.1	5.1	-	-
Welle 1 (Sbg.)	0.5	-	-	-	-	-	-	7.4	-	-
Life Radio (Tyrol)	0.9	-	-	-	-	0.3	-	-	10.3	0.1
Antenne Tirol	0.3	-	-	-	-	-	-	-	3.8	-
Radio Energy (Tyrol)	0.2	-	-	-	-	-	-	-	2.7	0.1
Radio Osttirol	0.2	-	-	-	-	0.4	-	-	1.4	-
Radio U1 Tirol	0.7	-	-	-	0.0	-	0.1	-	8.1	0.1
Welle 1 (Tyrol)	0.3	-	-	-	-	-	-	-	3.2	0.0
Antenne Vorarlberg	1.0	-	-	-	-	-	-	-	0.0	23.1

Vertical percentages, persons 14 to 49 years of age, % figures

Source: Radiotest

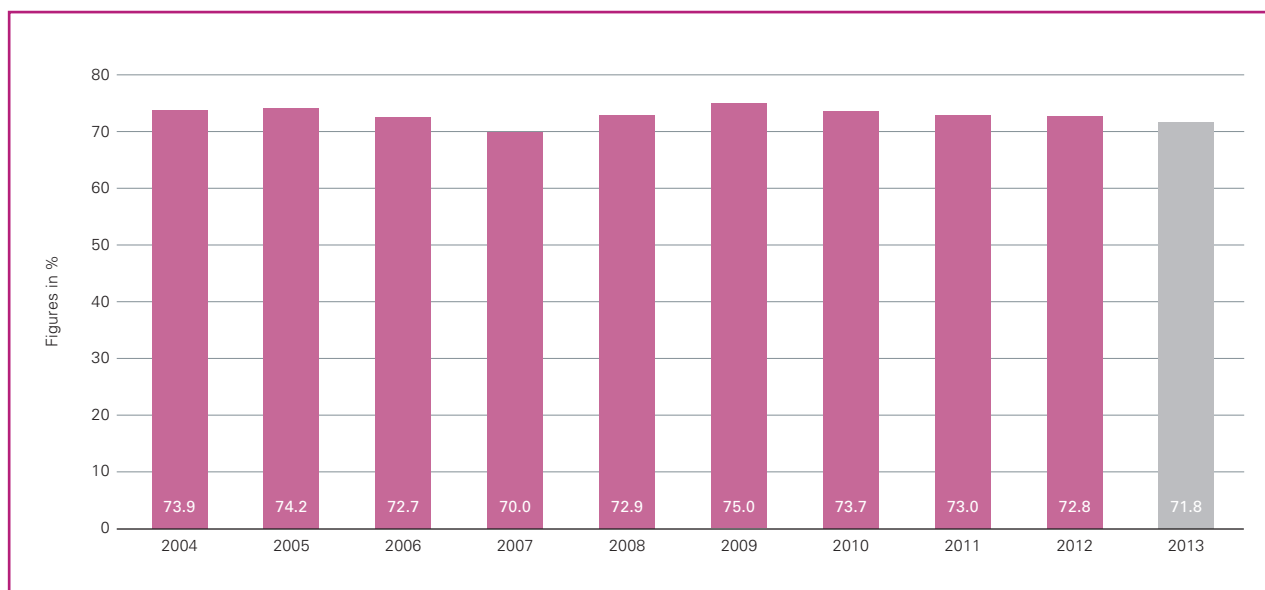
10.1.4 Print media market

10.1.4.1 Daily newspapers

Reading a daily newspaper continues to be a media culture asset in Austria. Austria's daily newspapers achieved a total average daily reach²⁸ of 71.8% in 2013. This represents one of the highest rates in Europe, as the Media Analysis researchers assure us. In Germany, to mention an example, newspapers achieved an average daily reach of 64.7% in 2013. But, as it is known, there are always two sides to a coin. Daily reach is decreasing steadily, while the rate of the drop increased slightly in 2013. In the end, the figure was an even one percentage point lower than in the previous year. The loss in 2012 was a mere two tenths of a percentage point, compared with seven tenths of a percentage point the year before. And the brief, erratic jump recorded in 2008 and 2009 was only because the free newspapers Österreich and Heute were included in the Media Analysis. Notwithstanding their success, the fact that for the last four years the daily reach curve has actually not been a curve but is again a line pointing downwards should not be taken lightly. While there may be some advantages in lagging behind the developments of other countries, this will not, however, ultimately bring about any different results. Here, time is the only advantage and one which must now be utilised to reconsider plans and business models. In fact, already 31.9% of individuals 14 and older use the internet on a daily basis to access online newspaper and magazine content.²⁹

The population segment of persons aged 14 and over grew by 47,000 between 2012 and 2013 to reach a total of 7.226 million. With the daily reach of newspapers falling by one percentage point, the absolute number of readers nonetheless decreased slightly by 41,000 to 5.185 million.

Figure 32: Daily reach of daily newspapers, 2004 to 2013



Persons aged 14 and over; including Österreich since 2008 and Heute since 2009

Source: Media Analysis

²⁸ Persons aged 14 and over

²⁹ Media Analysis 2013.

The Austrian Media Analysis is carried out on a yearly basis by the market research institutes GfK Austria, Gallup, IFES and H.T.S. GmbH. The survey examines media usage behaviour in the 14 and over age group in Austria. In 2013, the survey involved a total of 14,154 interviews among a sample population considered representative of Austria's 7.226 million residents (14 and over) in 3.678 million private households.

On the whole, stable performance was observed at national level for the individual daily newspapers in 2013. Kronen Zeitung and Kurier were the only ones to suffer from negative trends.

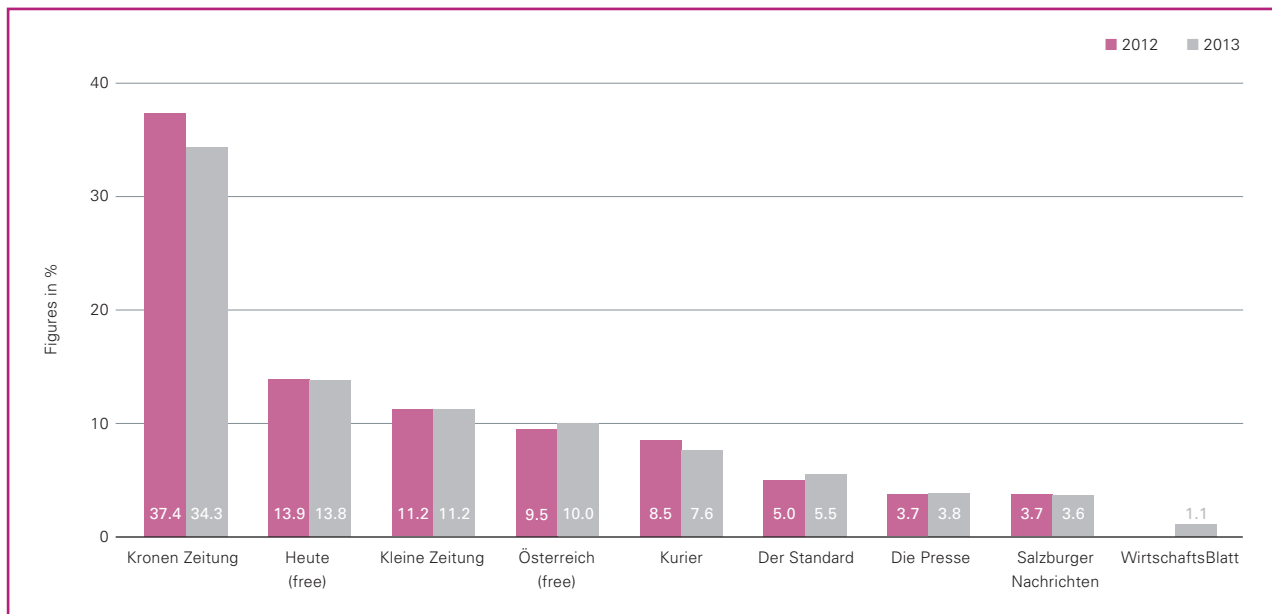
While Kronen Zeitung with its nationwide daily reach of 34.3% continues to safely lead the market, the newspaper nonetheless had to absorb another significant loss of reach of three percentage points in that year. This translates to an average loss of over 200,000 readers nationwide. Looking back over the past five years, Kronen Zeitung has lost almost eight percentage points of its daily reach since 2008, when the figure was 41.9%.

After being boosted by a minor increase in daily reach of 0.4 percentage points in 2012, Kurier relinquished just under one percentage point in 2013, and so lost an even 10% of the regular readers (i.e. 61,000) it had attracted in 2012.

For the first time since inclusion in the Media Analysis in 2009, the free newspaper Heute recorded no gain in daily reach in 2013 but at 13.8% nationwide remained stable within the margin of variation. On the other hand, its competitor Österreich, after losing reach in 2012, improved daily reach from 9.5% to 10% and climbed back to almost the same level recorded in 2011 (10.3%).

Significant gains were observed for Der Standard (rising by 0.5 percentage points to 5.5% nationwide) and for Oberösterreichische Nachrichten (climbing from 4.3% to 5.0% nationwide).

Figure 33: Daily reach of national daily newspapers, 2012 and 2013



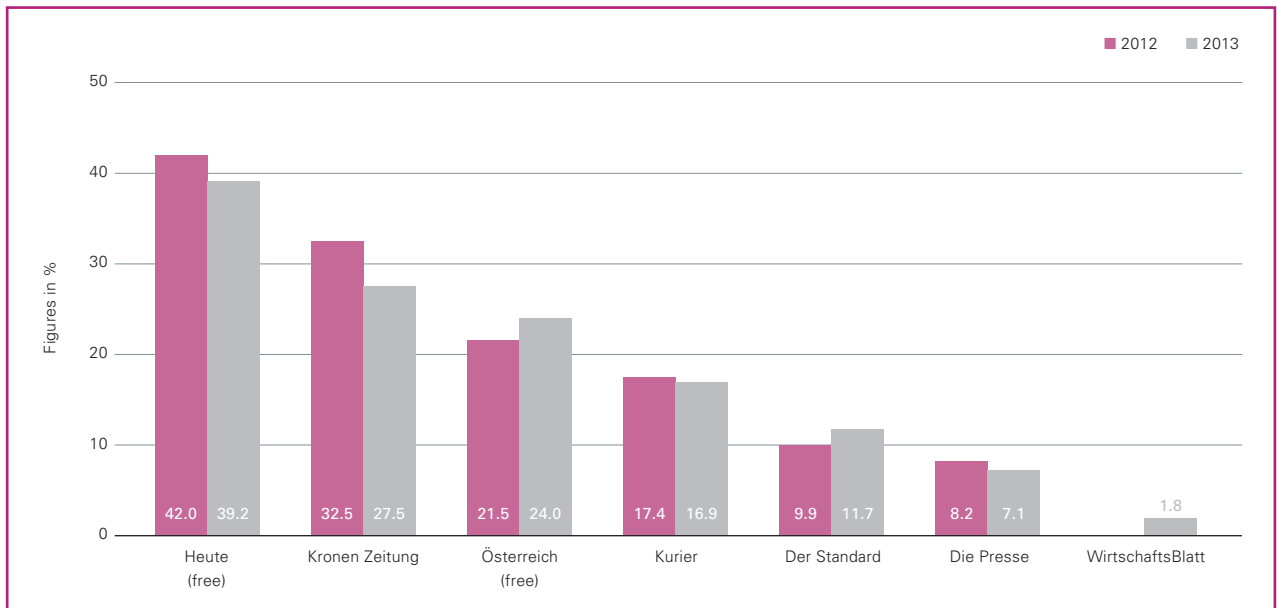
Persons aged 14 and over

Source: Media Analysis

10.1.4.2 Daily newspapers in Vienna

The struggle for supremacy between the free newspapers Österreich and Heute on the one hand and Kronen Zeitung on the other continued in particular within the regional market of Vienna, with two papers losing ground in 2013.

Figure 34: Daily reach of daily newspapers in Vienna, 2012 and 2013



Persons aged 14 and over in the Vienna region

Source: Media Analysis

Losses were especially heavy for Kronen Zeitung. Its daily reach in Vienna dropped by a full five percentage points, which put Kronen Zeitung well below the 30% threshold and, at the end of 2013, could only achieve an average daily reach of 27.5%. When Kronen Zeitung lost one percentage point in 2012, it still looked as if it could slow down its steep, long-term nose dive.

However, the plus of 0.5 percentage points in 2012 was an indication that the previously rapid daily reach increase (2011: 3.9 percentage points) had come to an end even for the free publication Heute which now, for the first time, had to accept a clear minus of 2.8 percentage points in Vienna resulting in a daily reach of 39.2%. Its loss was the competition's gain: Österreich increased its daily reach in the Vienna market by 2.5 percentage points to finish at 24%. Yet for Österreich this only meant recouping, almost to the decimal point, the losses suffered in 2012.

After significantly improving its daily reach by 1.5 percentage points to a level of 17.4% in 2012, Kurier lost half a percentage point or 5,000 readers in 2013, but was able to maintain its level in the national capital better than nationwide.

Within the quality newspaper segment, both in the nationwide market and especially in Vienna, Der Standard celebrated a comeback which, however, drew readers away from Die Presse. After two less successful years, Der Standard increased its daily reach by almost two percentage points to 11.7% and so regained its 2010 level. Die Presse, in contrast, having already lost half a percentage point in 2012, lost further daily reach in Vienna in 2013, dropping by a full percentage point to 7.1%.

10.1.4.3 Magazines and periodicals

For the majority of weekly and monthly periodicals, 2013 was characterised by only slight losses or gains in reach, with a mild downwards trend generally predominating. Only selected publications that experienced significant change are mentioned in the following.

Several significant losses affected the News publishing group. Among the weekly magazines with a focus on information content, NEWS was the one to lose a considerable amount of reach, dropping by 1.3 percentage points to 7.7%. While having dropped only marginally in 2012, namely three tenths of a percentage point, NEWS had lost a full percentage point of its reach in 2011. TV-MEDIA also continued its dive in 2013. Compared with 2012, it lost about 100,000 readers or 1.5 percentage points in terms of reach, which in the end averaged only 10.7%. In the years 2011 and 2012, TV-MEDIA had in total already relinquished 1.4 percentage points of the reach it had once enjoyed. E-MEDIA also lost almost 20% of its reach, which deteriorated from 3.2% to 2.6%.

Among the periodicals published by Styria Multi Media, it is especially significant that SPORTMAGAZIN once again lost more than the amount of reach it had gained in 2012, when the figure had increased by half a percentage point. After 4.6% in 2012, the magazine's reach fell by 0.8 percentage points to 3.8% in 2013. That is a loss of more than 60,000 readers to the current level of 271,000.

Red Bull Media House's print division continues to develop positively for the most part. Apparently there is a demand for country charm clothed in an elegant design. Responding fully to consumers' expectations, the monthly entitled Servus in Stadt & Land picked up 1.6 percentage points or about 120,000 readers to achieve 10.6% in reach or a total readership of 768,000. Servus in Stadt & Land was first included in the Media Analysis in 2012, achieving an initial reach of 9.0%. Moving from appearing weekly to every two weeks in 2013 was not at all detrimental for Seitenblicke, rather it brought the magazine an increase of 0.8 percentage points in reach for a total of 3.7% in the struggle for mostly female readers, representing the only significant rise among so-called women's magazines. Red Bull Media House's overall performance is marred only by the supplement entitled The Red Bulletin. The supplement lost 50,000 of its 955,000 readers or 0.8 percentage points of its reach to fall to 12.5%.

Among free magazines with nationwide circulation, Weekend was especially successful in 2013. It was actually able to attract 73,000 more readers than in the previous year. This equals an increase of almost one percentage point to total 15.9% in terms of reach or a readership of 1.147 million.

10.2 Development of the Austrian telecommunications markets

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 operator surveys carried out by RTR in the past as well as complementary data collected on a quarterly basis in line with the Communications Survey Ordinance (KEV).

10.2.1 General market development

Retail telecommunications revenues declined once again in 2013. Table 23 shows retail revenues in each segment (fixed network, mobile, broadband, leased lines). Whereas total revenues dropped by 1.7% between 2011 and 2012, the decline was sharper between 2012 and 2013 (4.3% less).

Mobile revenues, including mobile broadband, account for almost two thirds of retail revenues (61.9%). In 2013 such revenues fell by 5.1% from the previous year to total EUR 2.24 billion. The strong growth in broadband revenues and the decline in fixed network revenues recorded between 2011 and 2012 can be attributed to the restructuring of categories as specified in the amended KEV.

In total for 2013, fixed network and broadband revenues (excluding mobile broadband) accounted for 36.6% of total retail revenues. The wide prevalence of package subscriptions for end users that include several services (e.g. fixed network telephone, broadband, TV and mobile broadband) is making it increasingly difficult to break down revenues according to individual services. Leased lines accounted for the smallest portion of retail revenues (1.5% of total revenues); this share shrunk by 6.4% between 2012 and 2013 to total EUR 53 million.

Table 23: Retail revenues, 2011 to 2013

	2011 (EUR millions)	2012 (EUR millions)	2013 (EUR millions)	% change 2011-2012	% change 2012-2013	Percentage of total revenues 2011	Percentage of total revenues 2012	Percentage of total revenues 2013
Fixed network*	885	632	560	-28.5	-11.5	23.0	16.7	15.5
Mobile networks	2,481	2,361	2,240	-4.8	-5.1	64.5	62.5	61.9
Broadband**	427	728	764	70.5	5.0	11.1	19.3	21.1
Leased lines	52	57	53	9.0	-6.4	1.4	1.5	1.5
TOTAL	3,844	3,778	3,617	-1.7	-4.3	100.0	100.0	100.0

* Includes voice telephony revenues from the fixed network retail 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 fixed network retail revenues but under broadband.

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

Due to subsequent corrections based on data from RTR's operator survey, the values shown here differ slightly from those listed previously in the 2012 Communications Report.

Source: RTR

Table 24 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. Not counting call minutes to online services and service numbers, this figure came to 4.7 billion minutes in 2011 and had declined to 3.8 billion minutes two years later (or 8.3% less than in the previous year). The number of lines also continues to decrease each year. There were 2.64 million fixed network lines in 2013, a drop of 2.2% from 2012.

Table 24: Overall changes in traffic volumes and connections/subscribers, 2011 to 2013

	Unit	2011 (millions)	2012 (millions)	2013 (millions)	% change 2011-2012	% change 2012-2013
Fixed network	Call minutes*	4,729.93	4,122.42	3,778.38	-12.8	-8.3
	Lines	2.77	2.70	2.64	-2.6	-2.2
Mobile networks	Call minutes	22,184.80	22,831.97	22,513.68	2.9	-1.4
	Subscribers (contract and prepaid)**	13.00	13.60	13.27	4.3	-2.3
Broadband	Fixed network connections	2.09	2.12	2.23	1.6	4.8
	Mobile subscribers	2.07	2.21	2.20	6.8	-0.3
Leased lines	64 kbps equivalents	5.36	5.49	6.39	2.3	16.6

* Minutes including public phones, not including dial-up and 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 2012 Communications Report.

Source: RTR

For the first time ever in 2013, no increase in call minutes or SIM cards was recorded within the mobile networks. There was a 1.4% drop in voice call minutes, which totalled 22.5 billion. The number of SIM cards similarly decreased by 2.3%, resulting in 13.27 million SIM cards by the end of 2013. This is mainly attributed to operators removing inactive SIM cards from their databases.

The number of broadband connections continues to rise. Fixed broadband connections increased by 4.8% between 2012 and 2013 to a total of 2.23 million. The database clean-up mentioned above was also responsible for a first-ever decline in mobile broadband connections which fell by 0.3% to 2.20 million.

Within the category of leased lines, there was a shift towards such lines that support high bandwidths, totalling 6.39 million 64 kbps equivalents (a 16.6% increase).

10.2.2 Fixed network telecommunications

10.2.2.1 Introduction

A variety of business models can be observed within the fixed network sector, which differ in terms of the type and amount of network infrastructure used. As incumbent operator, A1 Telekom Austria AG (A1 Telekom) is the only one with nationwide network infrastructure, whereas alternative subscriber network operators only have a rather more restricted scope of access to infrastructure. Carrier network operators and resellers provide primary carrier services on a call-by-call (CbC) and carrier pre-selection (CPS) basis. The necessary investments depend on the chosen business model. For more details on the business models found in the fixed network sector, refer to the introduction to Section 10.2.2.1 in the 2011 Communications Report³⁰.

³⁰ www.rtr.at/en/komp/KBericht2011

10.2.2.2 Fixed network retail markets

Market participants

The shares of call minutes attributable to the five largest service providers in the fixed network retail market are shown in Table 25. Taken together, these providers cover more than 80% of the call minutes handled on the retail market.

Table 25: Largest providers in the fixed network retail market in 2013

Company	Share of call minutes
A1 Telekom	> 50%
Tele2	< 20%
UPC	> 5%
COLT	> 5%
FINAREA	< 5%

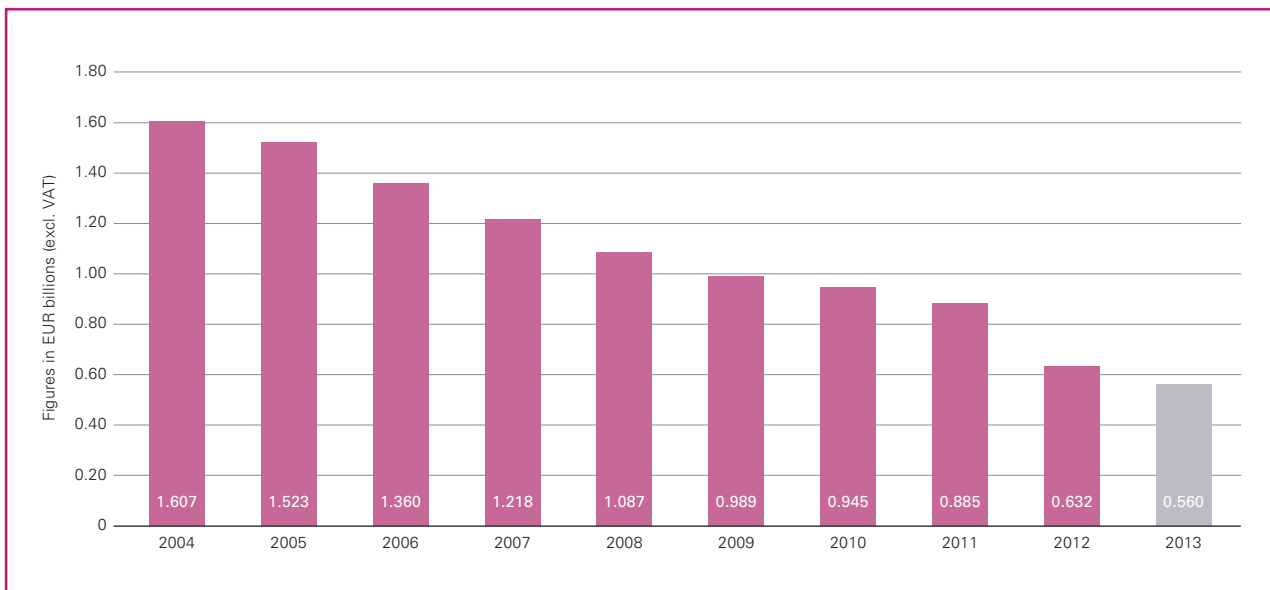
Source: RTR

Structural changes in the fixed network market

Revenues from the fixed network retail market (Figure 35) show a clear downward trend over time. The revenues shown here include carrier charges (domestic fixed network, domestic calls to mobile networks, international calls, public telephones and, up to 2011, 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.

A steady decline in revenues has been observed in fixed network telephony since 1999. Between 2012 and 2013, total revenues from this market dropped sharply by 11.4% to EUR 560 million. Revenues declined by about two thirds within the last ten years. The sharp deterioration in 2012 is largely due to the new calculation method for revenues that is specified in the amended KEV: fixed network revenues collected as part of broadband packages may no longer be included in the figure. The fact that the revised method explains the drop in revenues additionally highlights the growing significance of package products for the fixed network retail market. The decrease in fixed network line charges is mirrored by an increase in revenues from broadband packages. Figure 36 shows this trend in chart form.

Figure 35: Fixed network retail revenues 2004 to 2013

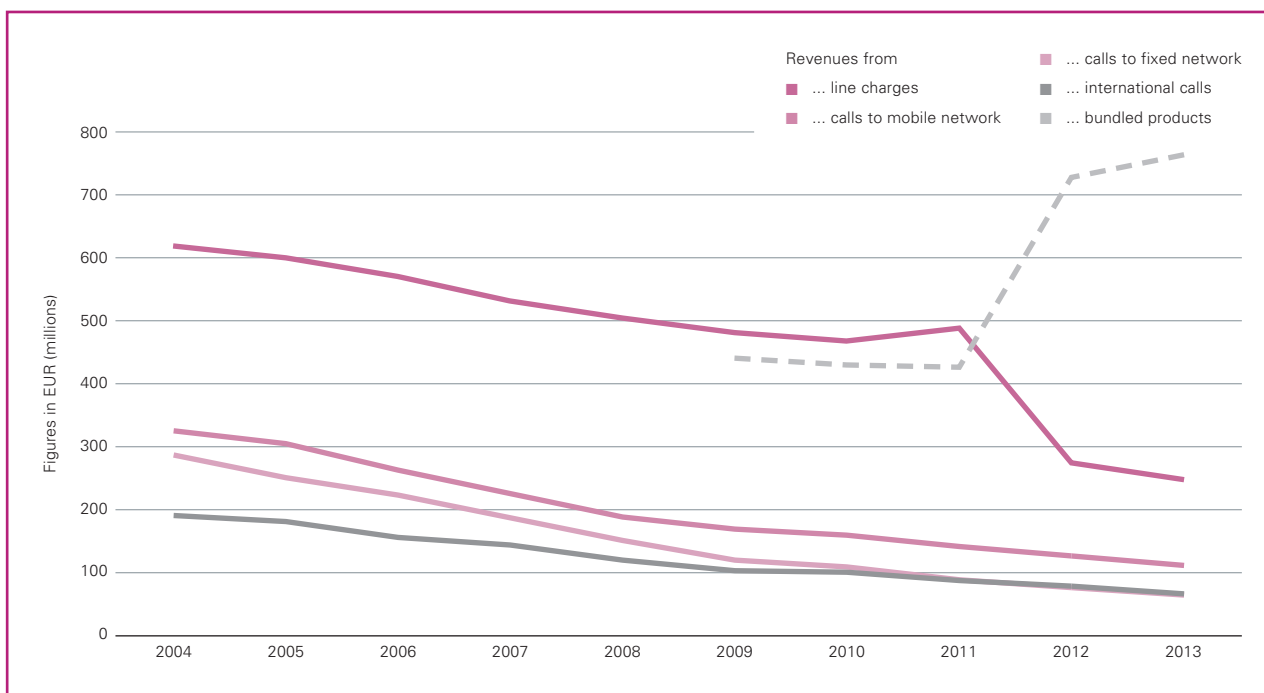


Source: RTR

Figure 36 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 steady downward trend in charges for calls to mobile networks to the fixed network and to other countries continued. Connection fees for calls to the fixed network again fell by 15% compared with the previous year. There was also a 15% 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. 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 (85.3% of all voice call minutes in Austria in 2013 originated from mobile phones). The revenues in this segment have fallen continuously as a result.

Revenues from line charges fell by 10%. Such revenues had plummeted by 44% in 2012 in the wake of a revision of the data query as specified by the KEV, excluding fees collected as part of broadband packages. Broadband retail revenues rose conversely, in other words, the decrease in line charges has led to an increase in broadband retail revenues. This effect can be recognised in Figure 36.

Figure 36: Fixed network retail revenues by type of business 2004 to 2013

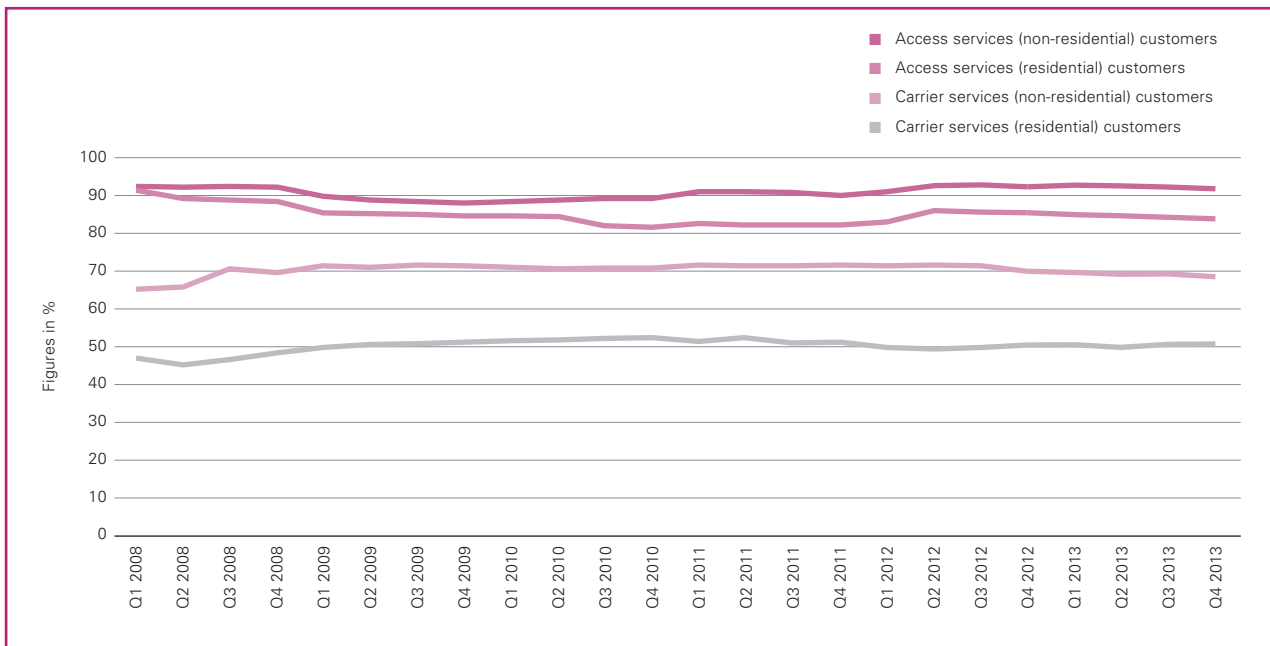


Source: RTR

A1 Telekom’s market shares in terms of revenues (as shown in Figure 37) changed only negligibly during 2013. The market share in access services held by A1 Telekom, as measured by residential customer revenue, fell slightly to 84%, while the market share in the non-residential segment remains at 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 gain as large a footing 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 69%, and this value has remained largely unchanged since early 2009. Alternative operators in carrier services (calls to mobile networks, to the fixed network and to international destinations) for residential customers have enjoyed the greatest success; at 51% in the fourth quarter of 2013, 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.

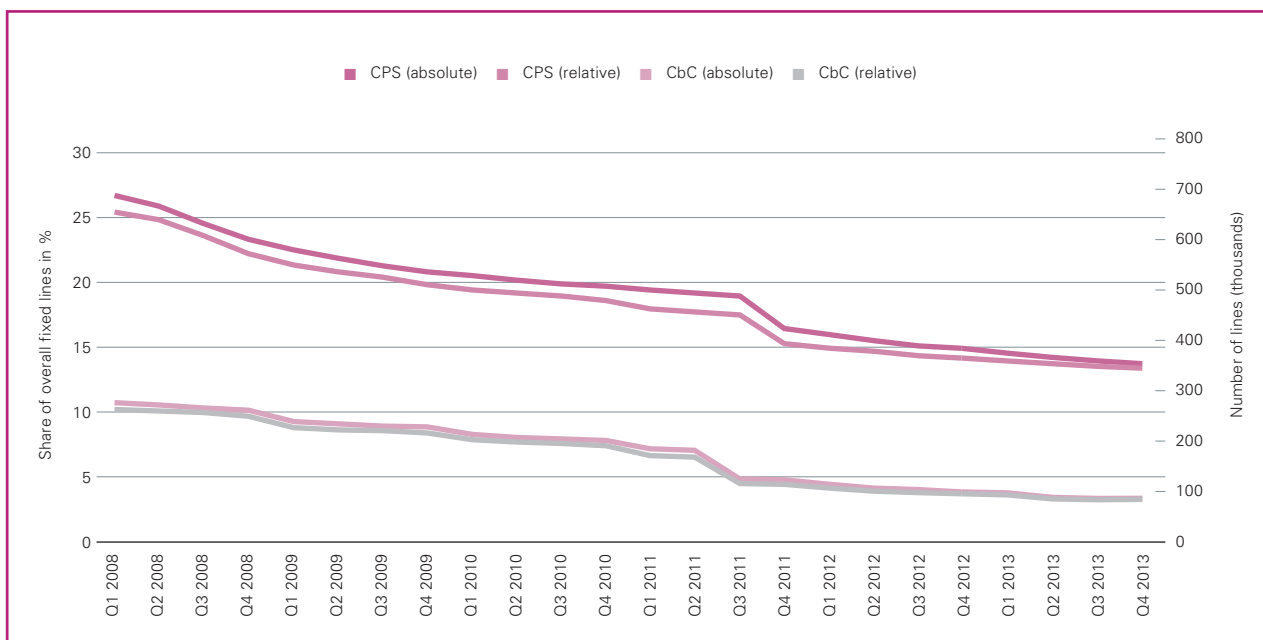
Figure 37: A1 Telekom: share of revenues from access and carrier services by customer segment, 2008 to 2013



Source: RTR

The changes in the shares held by alternative network operators in the carrier services market, which are shown only implicitly in Figure 37, 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 38 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 8% after Q4 2012 and fell to a total of around 352,000 by the end of 2013 (i.e. 13% of all fixed network lines). The number of CbC customers has declined even more sharply, dropping by 15% between the fourth quarter of the previous year and the end of 2013. Overall, CbC customers used 3% of all fixed lines (85,000).

Figure 38: CPS and CbC customers 2008 to 2013



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. The sharp drop in the curve shown for Q3 2011 resulted after a major operator cleaned up its database.

10.2.2.3 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 barely aware of such markets, the functioning of these markets is very important for competition. The interconnection of networks, along with the resulting wholesale market transactions, serves to enable the customers of one network operator to reach the customers of all other network operators. Without this service, small networks with only a few customers would be 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 to provide retail services. This substantially diminishes the barriers to market entry.

The wholesale markets listed below can be distinguished within the category of fixed network voice calls:

- Market for call origination in the public telephone network at a fixed location (origination)
- (Operator-specific) markets for call termination in individual public telephone networks at a fixed location (termination)
- Market for transit services in the fixed public telephone network (transit)

Origination

Origination refers to a service involving the transmission of voice and data traffic from the subscriber to the first interconnectable exchange in the source network. The first interconnectable exchange generally refers to the switching exchange where at least one network operator is interconnected with the source network and at which traffic can be transferred.

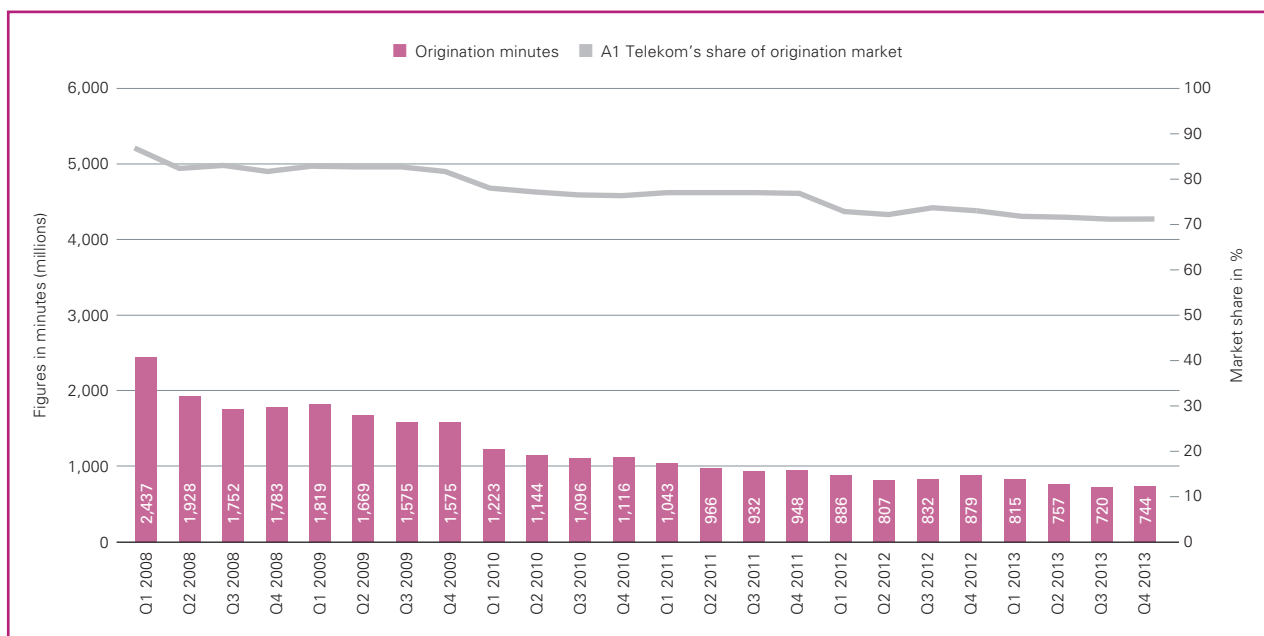
Depending on the infrastructure available to a given operator, the specific operator can either provide origination services directly or has to purchase them in the wholesale market. Operators with customers connected directly to their networks can provide the origination service directly (as part of their services) and the service does not generate any wholesale revenues. This is the case for the vast majority of calls.

Carrier network operators that do not have customers connected directly to their networks purchase origination services from A1 Telekom within the framework of carrier (pre-) selection. As the operator with significant market power in the origination market, A1 Telekom is required to offer the service. 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 39). This is due to the rapidly dwindling importance of narrowband dial-up internet services and to the substitution of fixed network by mobile services in the voice call market.

A1 Telekom continues to maintain a very large share of the origination market (including internally provided services; cf. Figure 39). 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 39: A1 Telekom: fixed network origination minutes and market share 2008 to 2013



Source: RTR

The Telekom-Control-Kommission (TKK) decision M 1.9/12 of 30 September 2013 set new origination fees for A1 Telekom, valid as of 1 November 2013. Regulation of the origination market was loosened, mainly in response to the progressive substitution of fixed network services through mobile networks, and higher limits were consequently defined for origination fees. Termination fees were simultaneously appreciably lowered (refer to the section below). By setting origination fees so as to maintain the balance to be paid by carrier network operators for origination and termination (refer to Table 26), A1 Telekom failed to fully utilise the margin accorded by the regulator for setting prices.

Due to the conversion of A1 Telekom's core network to a next generation network (NGN), and on the basis of the rules laid down in TKK decision M 1.9/12 of 30 September 2013, all traffic at any one of the seven switching exchanges can be transferred at the rates displayed in Table 26. The previous distinction between local, single tandem and double tandem rates, depending on the transfer point, became obsolete.

Table 26: Origination fees charged by A1 Telekom in 2013

Origination with A1 Telekom to carrier network operators	Local origination until 31 October 2013	Maximum rate as of 1 November 2013	Actual rate as of 1 November 2013
EUR cents per minute (peak/off-peak)	0.82/0.48	2.135/1.321	1.503/0.875

Rates in EUR cents (excl. VAT). Peak: Monday to Friday (weekdays) from 8 am to 6 pm.

Source: RTR

Termination

Termination is a wholesale service, provided by every subscriber network operator, to transport incoming traffic from the last interconnectable exchange to subscribers 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 of the Telecommunications Act 2003 (TKG 2003). Every operator is consequently subject to access and fee regulation. Without regulation, other challenges to competition can arise at A1 Telekom than those experienced by smaller network operators. This is because A1 Telekom 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 obligations to publish a reference interconnection offer (RIO), maintain separate accounts and observe a policy of non-discrimination.

The pure LRIC standard for calculating costs, as recommended by the European Commission, was implemented for the first time in the TKK decision M 1.8/12 of 30 September 2013. This specifically entails counting only those costs incurred directly through the provision of fixed network termination as an additional service. In contrast to the previously applied FL-LRAIC standard, overhead expenses are not counted under pure LRIC. The result was a substantial decrease in termination fees (refer to Table 27).

As with origination, due to the conversion of A1 Telekom's core network to a next generation network (NGN) and on the basis of the rules laid down in TKK decision M 1.8/12 of 30 September 2013, all traffic can now be transferred to A1 Telekom at one of seven switching exchanges. The previous distinction between local, single tandem and double tandem rates, depending on the transfer point, became obsolete. Consequently, the termination fees charged by A1 Telekom no longer differ from those of alternative network operators.

Table 27: Termination fees charged by A1 Telekom and by alternative operators in 2013

Termination	Local origination by A1 Telekom until 31 October 2013	Alternative operators until 31 October 2013	A1 Telekom and alternative operators as of 1 November 2013
EUR cents per minute (peak/off-peak)	0.82/0.48	1.28/0.71	0.137/0.085

Rates in EUR cents (excl. VAT). Peak: Monday to Friday (weekdays) from 8 am to 6 pm.

Source: RTR

Transit

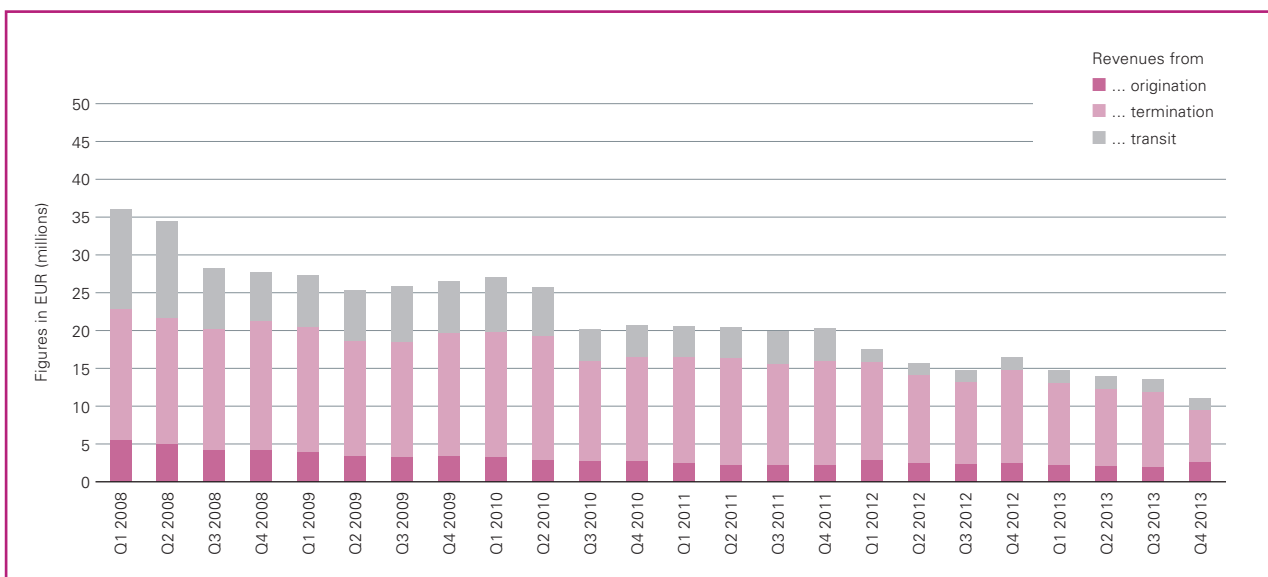
Transit services refer to carrying traffic between two networks or between two interconnectable switching exchanges within one network. Such services are thus the subject of supply or demand by communication network operators for the purpose of routing traffic through certain line sections and as such cannot be considered to be either origination or termination as described above.

As several companies offer services in the transit market and compete with one another to a sufficient degree allowing for an effective competition 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 2013. The fee changes mentioned above are already evident in the case of origination and termination revenues in the fourth quarter of 2013 (i.e. increase of the origination fee and reduction of the termination fee).

Figure 40: Revenues from fixed network wholesale markets, 2008 to 2013



Source: RTR

10.2.3 Mobile communications

10.2.3.1 Market participants

The largest frequency allocation round ever in Austria took place in autumn 2013. Auction revenues totalling around EUR 2.014 billion were achieved on behalf of the Republic of Austria. Six frequency blocks in the 800 MHz band, seven in the 900 MHz band and 15 in the 1800 MHz band were auctioned off.

The only mobile network operators to participate in the multiband auction were the three current Austrian operators A1 Telekom, T-Mobile and Hutchison. A total of 28 frequency packages, each consisting of 2x5 MHz, were awarded to the bidders as follows: A1 Telekom acquired 14 packages for about EUR 1.030 billion, T-Mobile acquired nine packages for roughly EUR 654 million and Hutchison successfully bid for five packages, paying about EUR 330 million.

Table 28 lists the long-term frequency spectra as allocated after the auction of the blocks in the 800, 900 and 1800 MHz frequency bands.

Table 28: Long-term spectrum distribution after the multiband auction

	800 MHz	900 MHz	1800 MHz	2.1 GHz FDD	2.1 GHz TDD	2.6 GHz FDD	2.6 GHz TDD
A1 Telekom	2x20	2x15	2x35	2x20	10	2x25	25
T-Mobile	2x10	2x15	2x20	2x15	10	2x20	
Hutchison		2x5	2x20	2x25	5	2x25	25

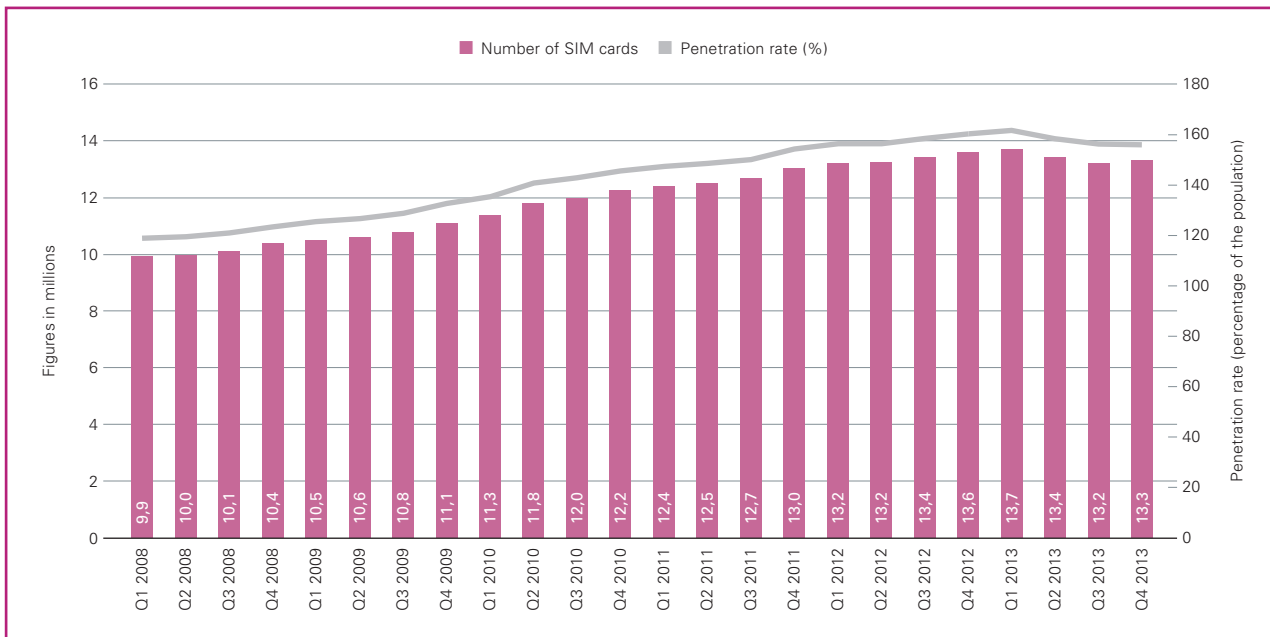
Source: RTR

10.2.3.2 Market development

SIM cards

Figure 41 shows the number of activated SIM cards. By Q4 2013 the number of SIM cards had increased by 34% over the first quarter of 2008. The corresponding penetration rate, i.e. relative to Austria's population, was 156% by the end of 2013. The decline in SIM cards in mid-2013 can primarily be attributed to a database clean-up at that time by network operators.

Figure 41: SIM cards, 2008 to 2013

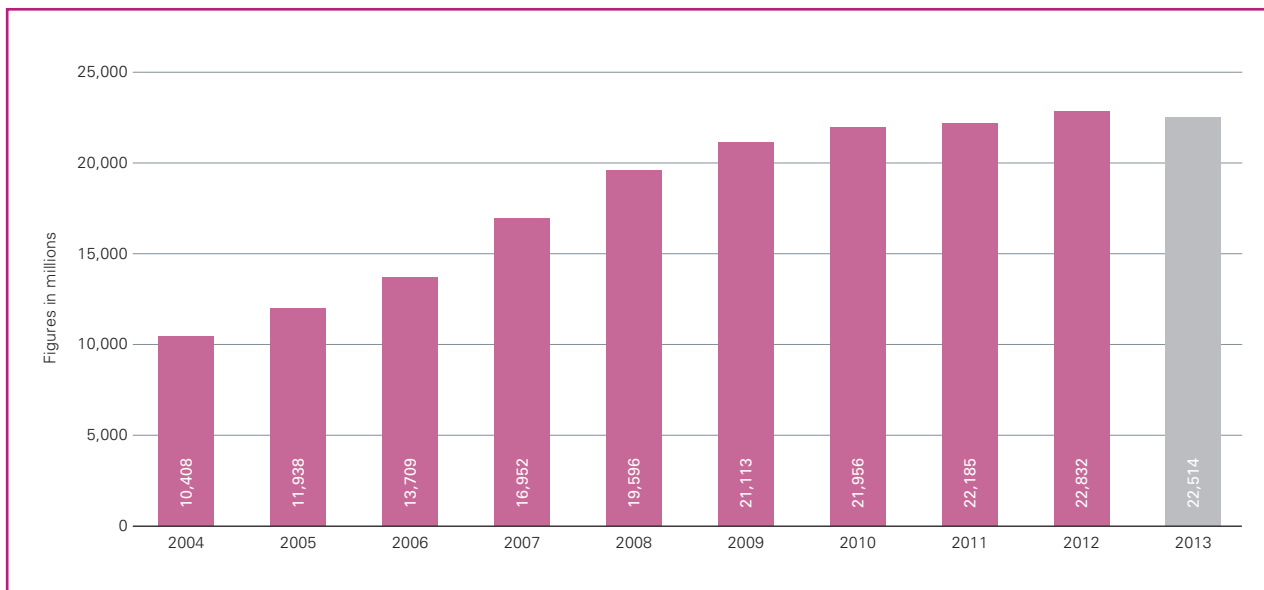


Source: RTR

Call minutes and text messages

The number of call minutes fell from the previous year for the first time in 2013. Figure 42 shows the number of technical call minutes for the retail mobile market, which amounted to more than 22.5 billion minutes in 2013. Call minutes showed very high growth rates of about 15% per year from 2004 to 2006. The growth rate then peaked at 24% in 2007, when flat rate mobile service packages were introduced. In the ensuing years, the growth rate declined steadily, until the number of mobile voice call minutes declined for the first time in 2013 (falling by 2% from 2012).

Figure 42: Call minutes in the retail mobile communications market (technical measurement)*, 2004 to 2013

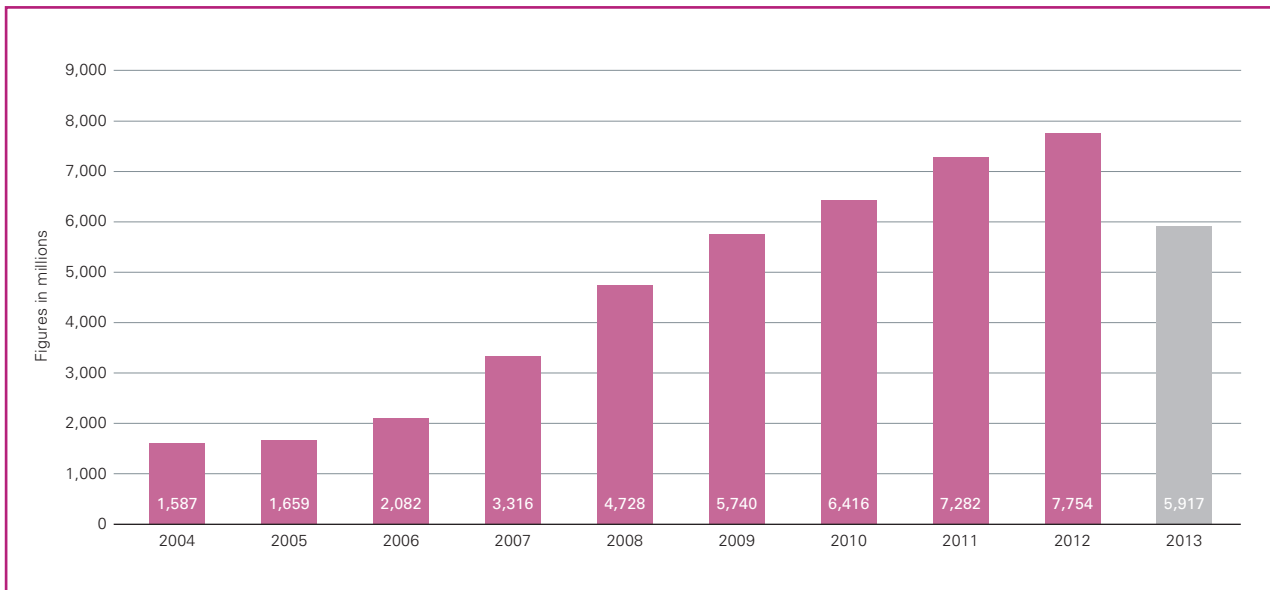


* This figure refers to the actual time retail customers spent talking on their mobile phones (without accounting for billing increments). Billed call minutes, in contrast, refer to the number of call minutes charged to retail customers (using the applicable billing increments).

Source: RTR

Due to the above-mentioned introduction of flat rate packages, the growth rate for text messages similarly peaked at 59% in 2007. The growth rate slowed down in the following years until 2013, when a decline – similar to that for call minutes – was observed for the first time. As shown in Figure 43, subscribers to Austrian mobile services only sent about 5.9 billion text messages in 2013, representing almost 2 billion fewer than in the previous year. The decline can be mainly attributed to the increasingly widespread use of instant messaging services such as WhatsApp and iMessage; allowing smartphone users to send pictures and videos as such services represent an attractive alternative to conventional text messaging.

Figure 43: Text messages in the retail mobile communications market (technical measurement)*, 2004 to 2013

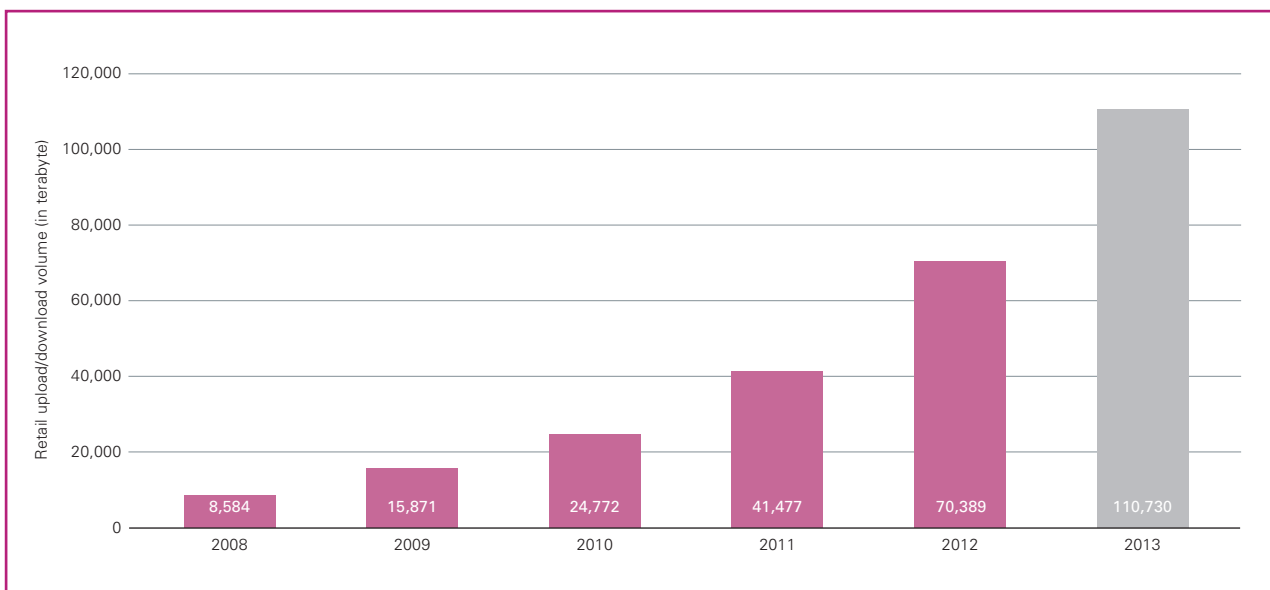


* This figure refers to the actual number of text messages sent by retail customers. Billed text messages, in contrast, refer to the number of text messages charged to retail customers.

Source: RTR

In the case of data volume, the trend is running in the opposite direction. The penetration rate for smartphones continues to rise and the ever-increasing range of LTE services offered is leading to vigorous growth rates among data services. While 8,600 terabytes (TB) were uploaded or downloaded in 2008, the figure in 2013 totalled some 110,700 TB – more than twelve times the data volume in 2008.

Figure 44: Data volumes uploaded and downloaded via mobile networks, 2008 to 2013

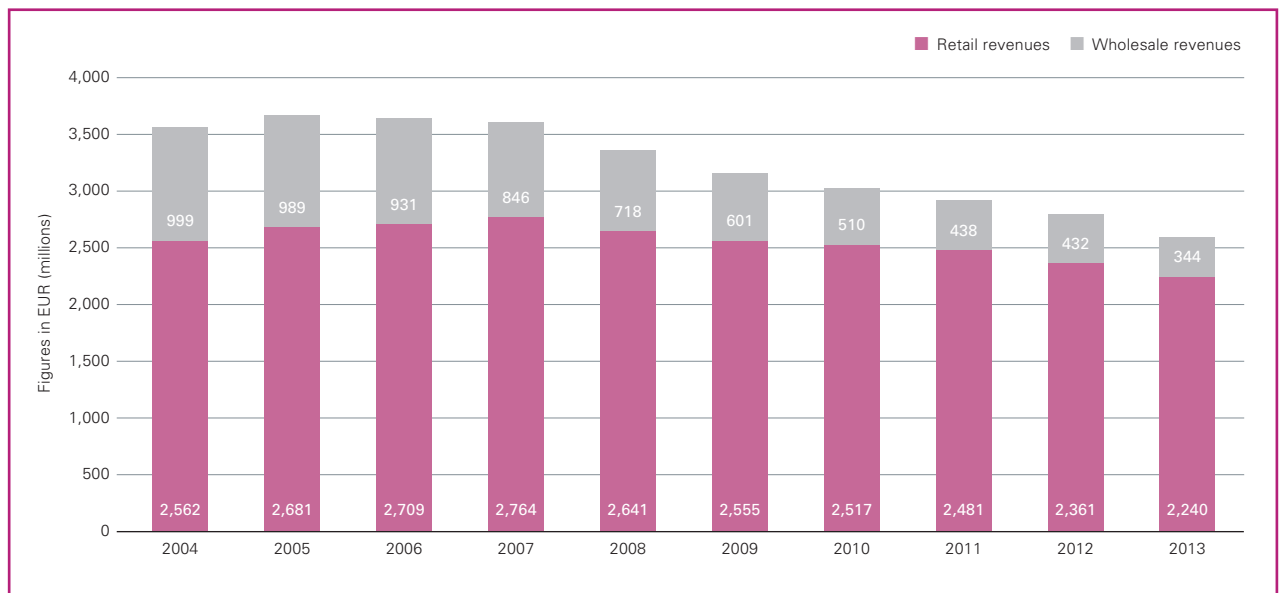


Source: RTR

Revenues

The trend seen for mobile market revenues in 2013 was similar to that observed in previous years. Despite a growing number of subscribers, overall revenues again dropped during the period under review, as can be seen in Figure 45. Since 2007 there has been a constant decrease in revenues, both from end users and wholesale customers. Retail revenues totalled EUR 2.24 billion in 2013 or 6% less than in 2012. The decline in wholesale revenues, which amounted to EUR 344 million in 2013 (thus dropping by 20% from 2012), can largely be attributed to the takeover of Orange by Hutchison. Termination revenues generated between the merged operators are no longer shown in the statistics, since termination minutes within the same network do not affect revenues (as is also the case with the fixed network). Furthermore, termination fees were also brought down to the pure-LRIC level, while international roaming rates were reduced in accordance with the EU Roaming Regulation.

Figure 45: Mobile market revenues, 2004 to 2013



Source: RTR

The revenues shown in Figure 45 comprise the following income items:

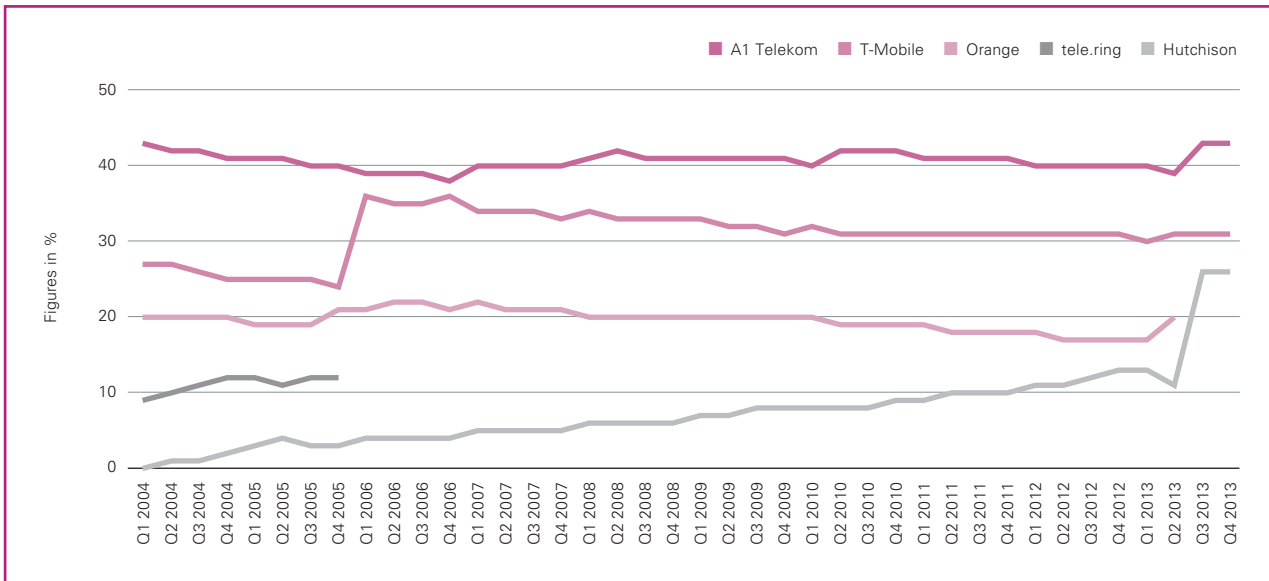
- Retail revenues: connection fees for voice calls, text messages and data services, basic monthly fees, activation fees
- Wholesale revenues: revenues from voice termination and text messages, revenues from inbound international roaming (i.e. when customers from another country make calls in Austria)

10.2.3.3 Market shares and concentration

Figure 46 shows the market share held by each of the mobile operators 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).

T-Mobile's takeover of tele.ring in 2006 accounts for the sharp increase in its market share. At the end of 2006 T-Mobile and A1 Telekom held nearly equal market shares. Further market consolidation took place in late 2012, as reflected by the chart data for Q2 2013. At the end of 2013, A1 Telekom (including yesss!) held a 43% share of the market, as measured in subscribers, and Hutchison (including Orange) 26%. T-Mobile continues to be the second-largest mobile network operator, with a 31% market share at the end of 2013.

Figure 46: Mobile market share based on number of subscribers, 2004 to 2013



The chart displays Orange including yesss! until Q2 2013. From Q3 2013 onwards, A1 Telekom is shown including yesss! and Hutchison 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.

This section first discusses the most important broadband technologies in use, developments in the NGA rollout as well as the wholesale products that are currently available as specified in regulatory requirements. This is then elaborated in more detail and describes the developments in the retail broadband market and changes in the wholesale broadband market in recent years.

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 29: Broadband access technologies

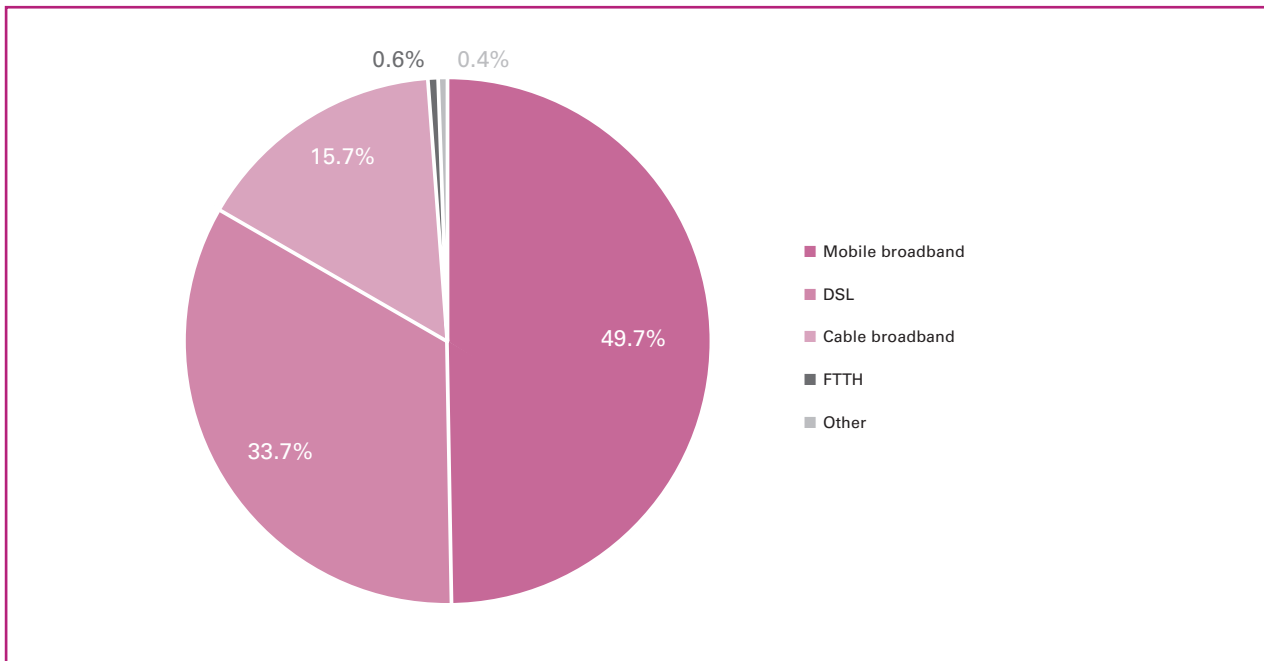
Access technology	Largest providers	Availability (in % of population)
(x)DSL: transmission technology based on copper wire pairs	A1 Telekom Tele2, UPC (unbundled lines)	> 99% Unbundled lines: approx. 65%
Cable broadband: DOCSIS coaxial cable-based transmission technology	UPC, LIWEST, Salzburg AG, kabelplus	Approx. 50%
Mobile broadband: UMTS/HSPA/LTE transmission technology in mobile networks	A1 Telekom (incl. bob and yesss!), T-Mobile (incl. tele.ring), Hutchison (Drei)	Approx. 95% (HSPA)
FTTH (fibre to the home) / fibre optics	A1 Telekom	< 5% (estimate)

Source: RTR

Figure 47 shows the percentage of the total number of active connections or subscribers accounted for by each different access technology at the end of 2013. 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 – 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, or where several mobile broadband connections used within the same household or business are also counted repeatedly. At 0.6%, the percentage of FTTH connections continued to be very minor. The share of other broadband access technologies such as wireless networks (W-LAN/WiFi/WiMAX) and PLC (power line communications) is even smaller.

Figure 47: Percentage accounted for by each broadband access technology as at 31 December 2013



Source: RTR

NGA rollout

‘Next generation access’ (NGA) is generally used to refer to the rollout of fibre optic networks to the end user with the aim of providing higher bandwidths. 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 2013. 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. In addition, A1 Telekom continues to carry out field trials of vectoring technology in 2013. 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 through the DOCSIS 3.0 transmission technology and in some cases through a further rollout of fibre optics. Austria’s largest cable network operators – UPC, LIWEST, Salzburg AG and kabelplus – now offer bandwidths of more than 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. With the next generation access technologies LTE/4G, bandwidths of even up to 150 Mbps can be achieved in urban areas. In the wake of the frequency auction in autumn 2013, a further rollout of LTE is expected in rural areas as well in the coming years. While actually achievable bandwidths 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, etc., the maximum speeds are comparable to those supported by the most popular fixed network products.

Wholesale products

Wholesale products and services are those offered by companies to other providers in the market to 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. A1 Telekom offers both products 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) or cable branch box (i.e. with partial unbundling). In order to unbundle lines at one of A1 Telekom's over 1,400 MDFs, the alternative operator requires a space at the MDF where the line can be handed over (collocation space) as well as a 'backhaul' connection from the MDF to the alternative operator's own network (e.g. using leased lines or Ethernet services). Most unbundled lines are used to provide broadband internet connectivity (usually offered in a package with voice telephony). At the end of 2013, the number of broadband lines realised by means of local loop unbundling totalled about 164,000, or 3.7% of all broadband connections (including mobile broadband) and 11% of all DSL connections in Austria.
- **Virtual unbundling:** In line with TTK decision M3/09 of 6 September 2010 (Market for physical access to network infrastructures), and more recently following decision M 1.1/12 of 16 December 2013, A1 Telekom is required to offer 'virtual unbundling' in NGA rollout areas (see also Section NGA rollout). Unlike physical local loop unbundling (see above), where the alternative operator is allowed to use the actual copper wire pair at the MDF, in this case a service is provided through which alternative operators are able to offer the same retail products as via physical unbundling.³¹ This product is a substitute for physical unbundling in cases where the latter is no longer technically or economically feasible for the alternative operator.
- **Bitstream access:** This product provides the wholesale customer with a data stream (bitstream) at a higher network level (in the case of A1 Telekom, for example, at one of nine exchange points). Although this requires fewer investments by alternative operators than is the case with unbundling, it nevertheless does have 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 requirements and by some alternative operators (unbundling partners, cable network operators). At the end of 2013, broadband access was being provided via A1 Telekom bitstream services in about 40,100 cases. A1 Telekom's obligation to offer bitstream products only applies to bitstream products for the provision of connections to non-residential customers. The pressure from competition through cable and mobile broadband in the residential customer segment makes a similar requirement unnecessary. Nonetheless, A1 Telekom continues to offer the corresponding wholesale products on a voluntary basis.

10.2.4.3 Changes in retail markets

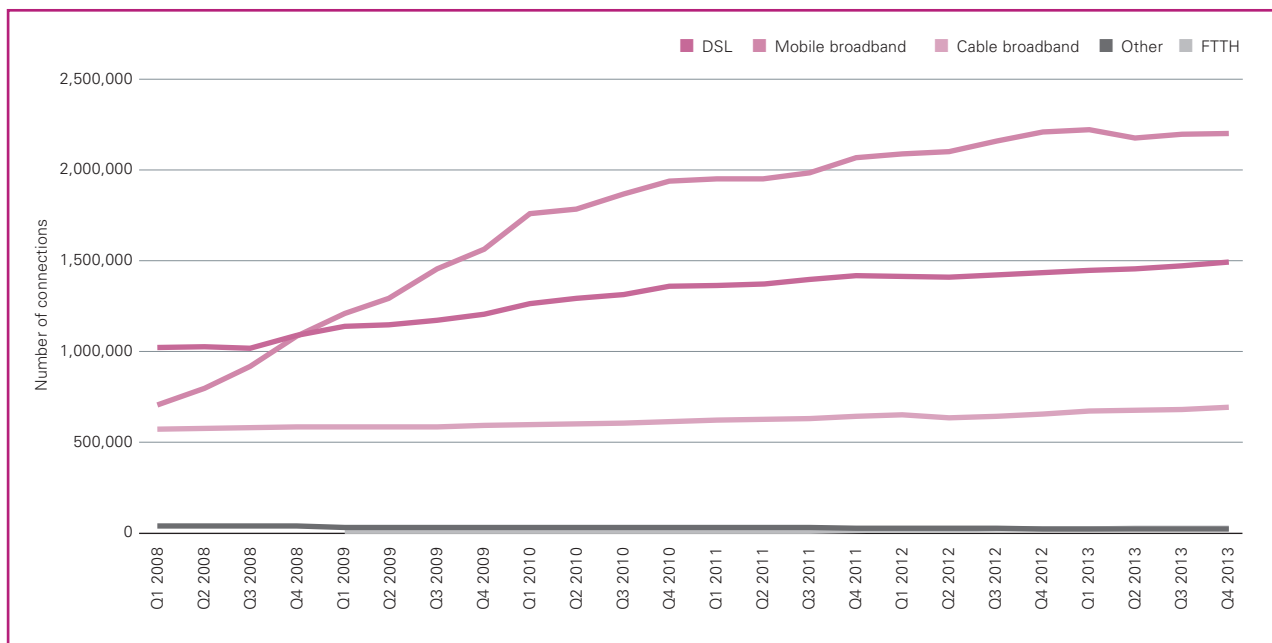
Within the end user market it is important to distinguish between the market for residential customers, which includes DSL as well as cable, FTTH and mobile broadband access, and the market for business customers, which includes only DSL and FTTH access.³² As distinct data for residential and business customers are not available for the monitoring period, the chart of the numbers of connections in the retail markets below can only reflect changes in the total number of connections. Residential customers request the majority of connections (about 85%).

³¹ Where technically possible in the A1 Telekom network.

³² Refer to the TTK decision in procedure M 1.2/12 of 16 December 2013, www.rtr.at/de/tk/M1_2_12 (in German).

Figure 48 shows the changes in the number of broadband connections, broken down according to the major transmission technologies. About 4.4 million broadband connections existed as of the end of 2013. After substantial growth rates in previous years, the number of mobile broadband connections remained more or less stable in 2013 (whereas the significant drop in Q2 2013 is accounted for by an operator database clean-up). There also appear to be signs of a deceleration in the growth of DSL connections. On the whole, the market would appear to be gradually entering a saturation period.

Figure 48: Broadband connections, 2008 to 2013



The category of FTTH connections is included under 'Others' up to Q4 2008.

Due to subsequent corrections by the network operators, the figures shown here differ slightly from those originally reported in the 2012 Communications Report.

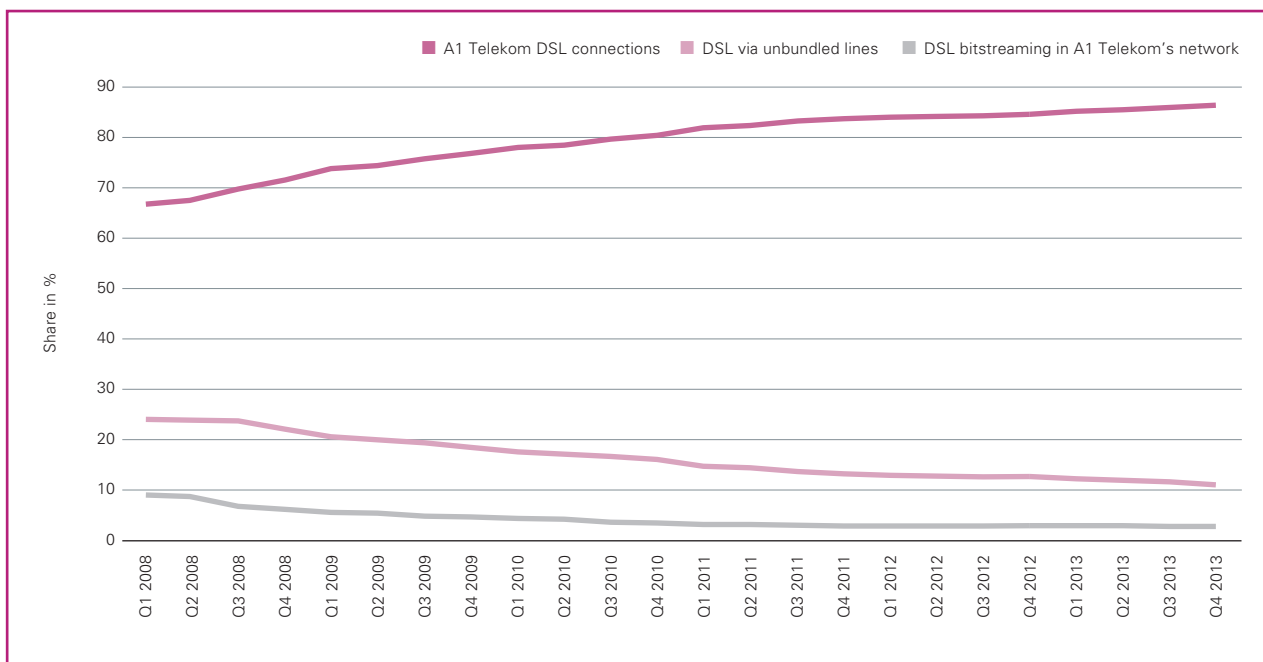
Source: RTR

10.2.4.4 Changes in wholesale markets

This section describes the changes in the broadband markets for bitstream access products and for unbundled subscriber lines (see also section NGA rollout). 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 49 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 Q1 2008, amounting to more than 86% of DSL connections at the end of 2013.

Figure 49: Percentage of DSL connections using bitstream and unbundling technology, 2008 to 2013



Due to subsequent corrections by the network operators, the figures shown here differ slightly from those originally reported in the 2012 Communications Report.

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.

10.2.5 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 uninterrupted (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 for the purpose of supplementing and expanding 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 to connect a branch and headquarters (intranet) or to connect business partners, suppliers and customers (to form an extranet).

In recent years demand for wholesale Ethernet services has increased substantially. 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.

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 (Ethernet services supporting 1 Gbps and 10 Gbps are also common). At 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.

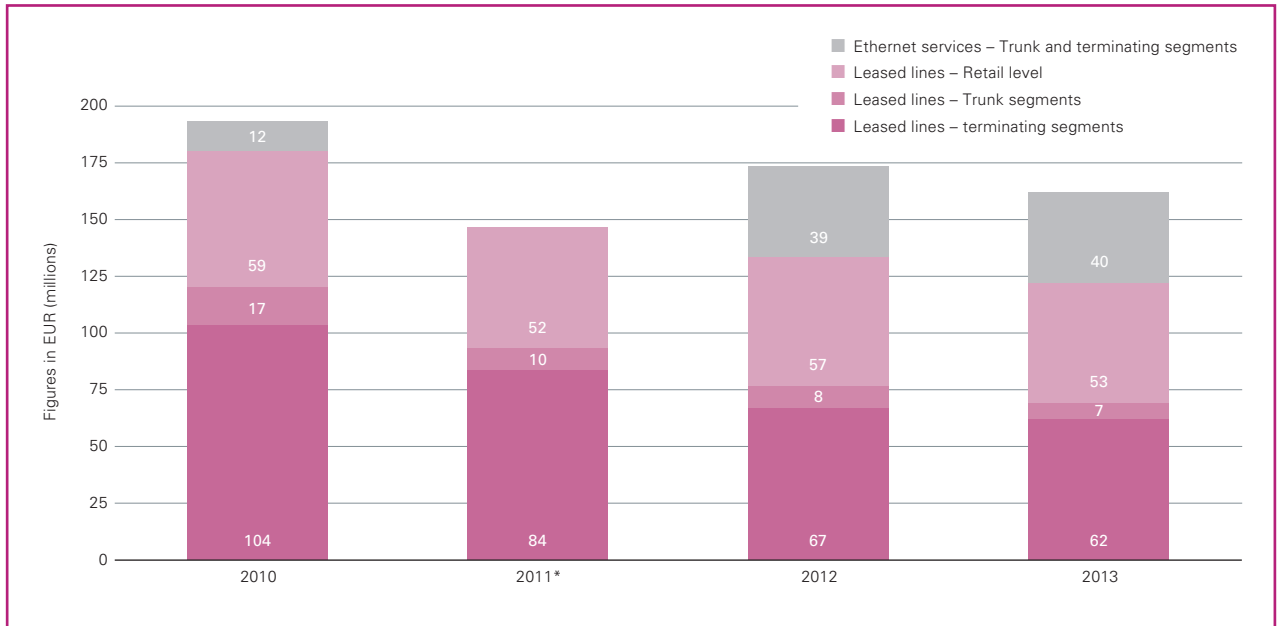
10.2.5.2 Market data

Alongside A1 Telekom, the major providers of leased lines and Ethernet services at the end of 2013 were Energie AG Oberösterreich Data, Tele2, Salzburg AG, T-Systems Austria, kabelplus and Wien Energie.

Figure 50 shows the volume of revenues generated in Austria through leased lines in the period 2010 to 2013. Revenues from leased lines consistently decreased from 2010 to 2013, which is probably due mainly to substitution with Ethernet services.³³

³³ The category of leased lines additionally includes leased lines with Ethernet interfaces which resemble Ethernet services from a demand-side point of view and, in some cases, in terms of price.

Figure 50: Revenues from leased lines and Ethernet services, 2010 to 2013



* 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 "Analysis of programmes and communications broadcast by non-commercial radio and television in a changing media landscape", carried out by Jan Krone (Department of Media Economics, St. Pölten University of Applied Sciences) and Alexander Rihl (Department of Digital Media Culture, Konrad Wolf University of Film and Television Art, Potsdam) was presented in October 2013.

The study was commissioned by RTR with the goal of performing an analysis of broadcasters and programmes based on freely accessible information made available on the web. The specific focus was on programme and communications services which were classified according to structural and content features and the societal relevance of the range of services offered.

11.1.2 Research Institute for Electronic Mass Media Law (REM)

In 2013, REM, which was founded in early 2005, once again dedicated its efforts to academic research on electronic mass media law at national and international level.

REM was established as a non-profit association within RTR. The members of REM's Board of Directors are: Walter Berka (University of Salzburg, Chair), Hans Peter Lehofer (Austrian Administrative Court – VfGH), Alfred Grinschgl (RTR), Michael Holoubek (Vienna University of Economics and Business), Christoph Grabenwarter (Vienna University of Economics and Business, VfGH), Michael Ogris (KommAustria) and Matthias Traimer (Austrian Federal Chancellery).

REM held a workshop on 10 April 2013 that focused on the topic of "Fees charged per household – an instrument for funding broadcasting?" and related issues.

As in previous years, the association organised the Austrian Broadcasting Forum, a conference for the purpose of exchanging ideas concerning issues of broadcasting law among researchers and practitioners. Under the motto of "Diversity of opinions in broadcasting and online media", the ninth annual Austrian Broadcasting Forum on 17 and 18 October 2013 looked at the important issue of diversity of opinions from a variety of perspectives. The presentations discussed ways of ensuring the diversity of opinions in both public and private broadcasting, as well as the contribution made by broadcasting funding to the diversity of opinions and the current state of pluralism under the conditions created by the internet.

11.2 Telecommunications and Postal Services Division

11.2.1 Internet Society Competence Centre (KIG) and information and communication technologies (ICT)

The Internet Society Competence Centre (Kompetenzzentrum Internetgesellschaft, or KIG) has been established by the federal government with the goal of positioning Austria among the leading ICT nations. RTR serves as the KIG's operational support centre and sits on its Board of Directors. In addition to this activity, RTR is also concerned with ICT-related topics that are not only influenced by but also have an impact on the development of the telecommunications markets.

The consultation document, prepared by RTR as the KIG's operational support centre and entitled "Basic considerations towards developing an Austrian ICT strategy for 2014–2018", was distributed to the major stakeholders at the end of 2012 and published for consultation on www.iktstrategie.at, a website specifically created for this purpose. Ultimately, more than 30 individuals had participated in the online consultation. Statements were submitted by some 30 institutions and organisations. Following discussion by the board of the KIG, the collective opinions were incorporated in summary form into the consultation document by the KIG's operational support centre. This version was then published on KIG's website at www.kig.gv.at.

Numerous discussions were held to clarify the opinions and to weigh the various positions, after which the basic considerations were used to define the pillars of a future ICT strategy (refer to www.kig.gv.at). The strategy paper proposes that the ICT's focus during the next legislative period should be on education, health and business and in this way, by utilising four levers, i.e. infrastructure and e-government, funding, safety and security, and mobility, move Austria up to a place among the leading ICT nations. The goal of this project was to equip the next federal government with a basis for developing an ICT strategy. There were also other topics discussed as part of the basic considerations. Although these are currently not included in the strategy, they should not be overlooked as they are equally important for the development of ICT in Austria.

Alongside defining the pillars of an ICT strategy as the foundation for new developments in the area of ICT, an equal amount of effort was put into ongoing projects launched previously. Many of these projects are presented on the KIG website, in the two catalogues of priority projects that are still currently valid. Specific progress reports are published on an annual basis by the various project sponsors.

Monitoring the current status of ICT in Austria based on a variety of parameters and indices plays a vital role in enabling the KIG to fulfil its mandate of defining priorities for the various steps required in the ICT sector. In this context, the KIG's operative arm researches and analyses data and indices that are relevant to ICT and then publishes a corresponding report. The World Economic Forum's Networked Readiness Index (NRI), which represents a key element of this analysis, compares the ICT readiness of approximately 140 countries along various axes as a means of preparing a specific strengths and weaknesses profile in each case. In 2013 as in the previous year, Austria placed 19th to rank among the advanced industrial nations.

Besides activities for the KIG, together with the energy regulatory authority E-Control, RTR studied and analysed aspects related to the introduction of smart grids and smart metering that are relevant for telecoms. The exchange of expertise allowed key areas to be examined in detail from the perspectives of telecoms and the energy sector, including outage security, protection against unauthorised data queries or manipulation, and data transfer technologies.

11.2.2 RTR NetTest to reinforce the demand side

As of 23 May 2013, RTR offers interested users the option of verifying the actual service quality that is available through their internet connections; the legal basis is Art. 17 of the Telecommunications Act 2003 (TKG 2003) Features such as upload and download speed, ping and signal strength can be tested at www.netztest.at. The RTR-NetTest is available as an app, either for the Android OS (see RTR-NetTest in the Google Play Store) or for iOS (for iPhone and iPad; see RTR-NetTest in Apple iTunes), as well as in a browser version.

The RTR-NetTest comprises two separate test sets that can be used completely independently.

The Multithreaded Broadband Test (RMB-Test) developed by RTR measures ping, download, upload and signal strength (in the mobile version). The second is an optional detailed test (= Network Diagnostic Tool test of the M-Lab research platform, NDT-Test), which analyses other quality parameters for users interested in technical details.

Features of the RTR-NetTest include:

- Measurement results rated on a traffic light system, with green signifying a good result, yellow a moderate and red a poor one
- Map showing previous test results, including various filter options
- Statistical comparison of all internet providers based on all tests completed, including various filters
- 'Live ticker' showing the five most recent test results
- Display of individual user's test history
- Extensive help with background information listing potential causes of a poor connection

The measurement results collected through the RTR-NetTest are available as Open Data (see www.data.gv.at). The test itself is available as open source software.

A further development stage is planned to expand the RTR-NetTest to include additional tests with specific regard to net neutrality.

11.2.3 The Virtuous Circle

In 2013 special attention was also devoted to the interrelationships, primarily at European level, arising between regulatory activities, investment policy and innovation policy within all of ICT. One product of these activities is "The Virtuous Circle", a book that was presented both in Austria and to an international public last year.

The book's core thesis is that regulatory activity cannot be viewed in an isolated fashion but rather is influenced by investment policy and innovation policy, whilst itself having an impact on these two areas. In view of Europe's perceived lag behind the rest of the world, as indicated for example statistically by the Networked Readiness Index (NRI), a better interplay of these three areas is proposed as a way of putting Europe back at the top in ICT. In this context, a regulatory policy adapted to today's conditions, which for example places more emphasis on dynamic efficiency in order to provide enhanced investment incentives, is seen as a prerequisite for efficient investments. It is easier to allocate funding for such investments, despite the tense situation of public finances; an example here would be incentives to encourage pension funds to invest in telecommunications infrastructure. Innovation policy should aim to facilitate the breakthrough of new technologies and not erect obstacles that keep businesses from developing and selling their services which would allow Europe to catch up with the US also in the service provider field. Implementing such changes may well put a 'virtuous circle' in motion, i.e. create a positive cycle that continuously feeds itself and ultimately further promotes innovation and investment activity.

The book entitled "The Virtuous Circle" also contains a summary of activities taken up by RTR in its function as chair of BEREC.

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 the Austrian Regulatory Authority for Broadcasting and Telecommunications (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 also took place in 2013 in order to ensure transparency and to meet the public's need for information.

Website and social media

The website www.rtr.at provides comprehensive documentation of the work of the regulatory authorities. It describes in detail both the regulatory authorities' activities and the regulatory environment as well as the changes in markets, 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 in a timely manner. The RTR-NetTest, advising users of the current service quality provided by their internet connection, was launched in 2013 (refer to 11.2.2).

An information service is available at www.rtr.at/de/rtr/Informationsservice (in German). Here users can subscribe to links referring to important information supplemented by numerous publications and activities and accompanied by tweets that also contain a link to the particular information. RTR's Twitter page can be viewed at <https://twitter.com/RTRGmbH>.

Publications

Another major area of the authority's public relations activities is the large number of publications appearing each year. The annual publications include: the RTR Communications Report, which covers all reporting requirements for the authority's entire spectrum of activities; the Activity Report of the Conciliation Body, describing current developments and issues in the area of end-consumer arbitration; the RTR Telecom Monitor, which provides telecommunications market data; and the RTR newsletter RTR Aktuell.

Furthermore, two issues of RTR's publication series appeared in 2013, the year under review: "Analysis of programmes and communications broadcast by non-commercial radio and television in a changing media landscape" and "The Virtuous Circle: New Regulations, Innovation and Investment – How to bring Europe back to the Top".

All publications are made available as PDF documents on the RTR website under Competence Centre.

Events

The regulatory authority conveys relevant information at national and international levels through presentations given by selected RTR employees and the organisation of numerous professional conferences, discussion forums and workshops. Particularly worth mentioning in 2013 were the one-day specialist event "EuoReg 2013: TV Scenarios for a Convergent World", the ninth annual Austrian Broadcasting Forum on the topic of "Diversity of opinions in broadcasting and online media" and the 14th Salzburg Telecom Forum, which addressed the question of "A digital single market for Europe?"

Enquiry management

Each day RTR processes a large number of enquiries in writing and by telephone, most of which are answered personally. In the year under review, 2,817 written requests were addressed to rtr@rtr.at, which represents one fifth less than in 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.

Table 30: Volume of enquiries, 2011 to 2013

Year	2011	2012	2013
Number of enquiries to rtr@rtr.at	4,263	3,572	2,817
Number of phone enquiries	6,578	4,909	3,497

Source: RTR

End users seeking initial advice on issues related to arbitration in end-consumer disputes 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 2013 the RTR call centre received 3,497 calls, i.e. more than one quarter fewer than in the previous year.

Media relations

In order to provide the public with timely 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. Particularly in the case of the Media Division, these activities included the reports specified in the Act on Transparency in Media Cooperation and Funding (MedKF-TG) and reporting on the television film projects funded by the Austrian Television Fund (FERNSEHFONDS AUSTRIA). The main activity of media relations in the Telecommunications and Postal Services Division was to provide detailed information on the multiband auction.

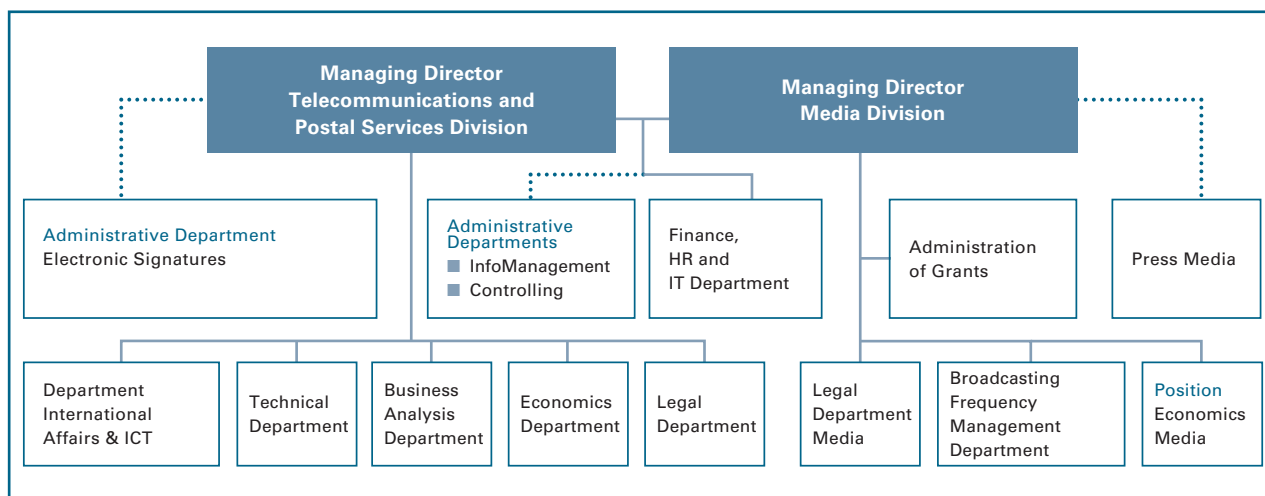


12 The company

The Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) was established under Austrian law in 2001. The purpose of the authority is to regulate the Austrian broadcasting and telecommunications markets (and now also the market for postal services) and to ensure competition. The duties of the regulatory authority are laid down in the KommAustria Act (KOG), the Austria Telecommunications Act 2003 (TKG 2003), the Postal Markets Act (PMG) and in the Signatures Act (SigG). 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 Serentschy was in charge of the Telecommunications and Postal Services Division. RTR’s organisational structure is depicted in the chart below.

Figure 51: RTR organisation chart



Source: RTR

12.1 Staff development

Staff development at RTR is focused on ensuring the necessary expertise required by every staff member for their particular role. The system, which is structured in line with needs and competences, is aimed at ensuring the acquisition of the required professional and personal skills and at further developing those skills. It facilitates a systematic approach to staff competences to allow employees to develop their skills along the lines of corporate objectives. This approach accommodates changing market conditions and increasing complexity as well as the high professional standards applying to staff members, thus creating conditions to achieve high-quality performance standards.

Within the Media Division, activities originally conceived as projects were integrated into standard operations in response to the Act on Transparency in Media Cooperation and Funding (MedKF-TG). Correspondingly, all positions within the division were filled for the entire business year as of January 2013.

The Non-Commercial Broadcasting Fund and the Private Broadcasting Fund received a larger endowment in 2013, resulting in an increase in the number of funding applications needing to be processed.

A project dedicated to closely monitoring advertising activities by broadcasters was launched in January 2013. Staff members were hired for a limited 14-month period to work on this project.

The average increase in full-time equivalents (FTEs) working in the Media Division was 2.05 and is mostly attributed to the factors mentioned above.

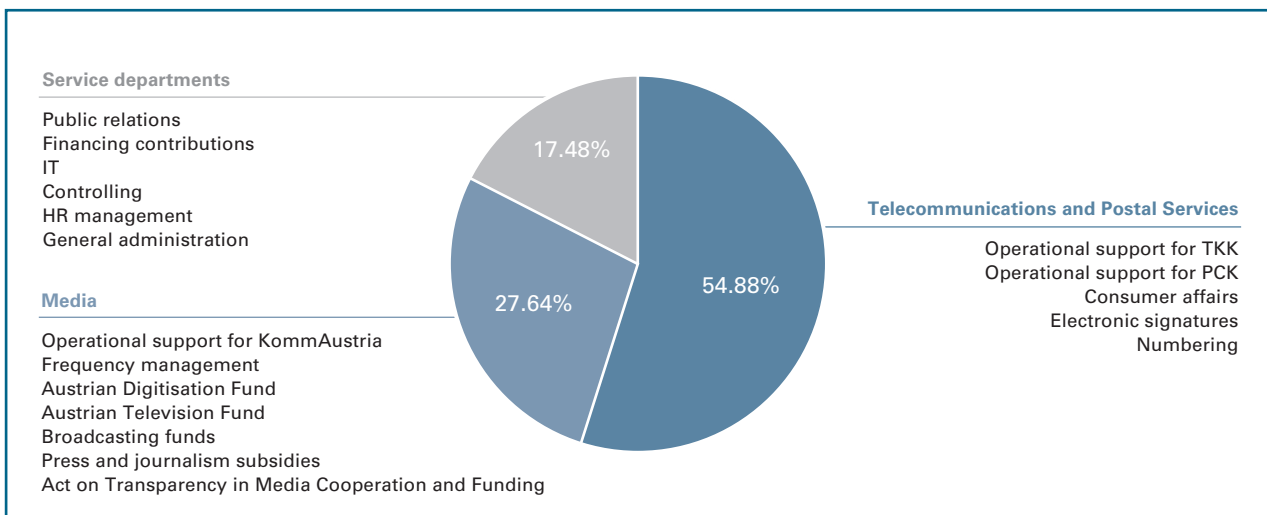
For the Telecommunications and Postal Services Division, the average increase was by 1.24 FTEs.

Staff movements also resulted from employees returning from leave and from double staffing, as new employees were trained for their new jobs to fill vacancies due to parental leave or fluctuation. This additionally explains the minor increase of 0.18 FTEs working in the service area.

In 2013, the average number of FTEs at RTR on the basis of an employment contract with the authority was 109.07, which corresponds to an average increase of 3.47 FTEs.

The overall level of employment as of 31 December 2013 was 108.70 FTEs.

Figure 52: Staff structure and size as of 31 December 2013



Source: RTR

12.2 RTR's financial statements for 2013

The financial statements presented below were prepared in accordance with the Austrian Commercial Code (UGB) as amended.

The external auditors at Deloitte Audit Wirtschaftsprüfungs GmbH have issued an unqualified audit certificate confirming RTR's financial statements for the 2013 business year (1 January to 31 December 2013).

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 is specified in the KOG.

RTR's two divisions receive both federal funding, to finance those tasks which are 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 to fulfil the organisation's regulatory tasks in those sectors. The contributions from federal funding are value-adjusted and the total amount of the expense is limited.

In addition to its regulatory activities, RTR also has responsibilities relating to grants and subsidies. Specifically, RTR administrates various grant funds that receive federal government endowments. RTR supports press and journalism subsidies as part of its duties as the operative arm of the Austrian Communications Authority (KommAustria).

In order to ensure that the funding objectives specified in each case are fulfilled, specific guidelines are used to allocate grants from the Austrian Digitisation Fund, the Austrian Television Fund, the Private Broadcasting Fund and the Non-Commercial Broadcasting Fund.

The expenses incurred in the administration of those 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 those funds. This report must then be submitted 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 to the Telekom-Control-Kommission (TKK) 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); media service providers established in Austria (Art. 35 Par. 2 KOG); providers and operators of public communications networks and services in the telecoms sector (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 2013 business year (1 January to 31 December 2013) with a balanced result.

Table 31: Profit and loss statement for the 2013 business year (1 January to 31 December 2013)

	2013		2012	
		EUR	EUR (thousands)	
1. Net revenues		12,549,946.70		12,352
2. Other operating income				
a) Income from disposal of fixed assets (excluding financial assets)	7,115.58		1	
b) Income from release of provisions	9,409.79		10	
c) Other	989,094.13	1,005,619.50	790	801
3. Personnel expenses				
a) Salaries	-6,924,985.87		-6,712	
b) Severance payment expenses and payments to staff provision funds	-116,092.63		-119	
c) Pension insurance expenses	-232,578.87		-222	
d) Statutory social insurance contributions as well as salary-dependent charges and mandatory contributions	-1,733,796.77		-1,652	
e) Voluntary benefits	-117,245.19	-9,124,699.33	-111	-8,816
4. Depreciation, amortisation and write-downs				
a) Tangible and intangible fixed assets		-336,238.64		-285
5. Other operating expenses				
a) Other	-4,229,923.38	-4,229,923.38	-4,203	-4,203
6. Operating result		-135,295.15		-151
7. Income from other securities held as financial assets		134,563.56		102
8. Miscellaneous interest and similar income		13,967.62		33
9. Income from disposal and write-up of financial assets		0.00		21
10. Financial result		148,531.18		156
11. Result from ordinary activities		13,236.03		5
12. Taxes on income		-33,828.17		-16
13. Net annual loss		-20,592.14		-11
14. Release of capital reserves				
a) Release of appropriated capital reserves		20,592.14		11
15. Result for current year		0.00		0
16. Profit carried forward		0.00		0
17. Unappropriated income		0.00		0

Source: RTR

Sector-specific expenses in RTR's specialist divisions

The annual financial statements prepared by RTR do not itemise funding use by division. For this reason, Tabelle 32 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 2013 business year, income and expenses were distributed as follows:

Table 32: RTR income and expenses by division

Figures in EUR (thousands)	Telecommunications and Postal Services	Media	TOTAL
Net revenues	7,577	4,973	12,550
Other operating revenues	285	720	1,005
Personnel expenses	-5,989	-3,135	-9,124
Depreciation, amortisation and write-downs	-225	-111	-336
Other operating expenses	-1,740	-2,490	-4,230
Operating result	-92	-43	-135
Financial result	93	56	149
Result from ordinary activities	1	13	14
Taxes on income	-21	-13	-34
Net annual loss	-21	0	-21
Release of capital reserve	21	0	21
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 33: Profit and loss statement broken down by specific area of activity for the business year from 1 January to 31 December 2013

Figures in EUR	RTR TOTAL	Telecom regulation	Electronic signatures
1. Net revenues	12,549,946.70	6,802,781.51	96,044.46
2. Other operating income	1,005,619.50	270,514.04	13,532.29
3. Personnel expenses	-9,124,699.33	-5,398,173.66	-89,898.10
4. Amortisation, write-downs and depreciation of tangible and intangible fixed assets	-336,238.64	-212,229.22	-3,898.04
5. Other operating expenses	-4,229,923.38	-1,527,501.59	-37,278.84
6. Operating result	-135,295.15	-64,608.92	-21,498.23
7. Income from other securities held as financial assets	134,563.56	75,948.00	1,057.64
8. Miscellaneous interest and similar income	13,967.62	7,762.29	114.25
9. Income from disposal and write-up of financial assets	0.00	0.00	0.00
10. Financial result	148,531.18	83,710.29	1,171.89
11. Result from ordinary activities	13,236.03	19,101.37	-20,326.34
12. Taxes on income	-33,828.17	-19,101.37	-265.80
13. Net annual loss	-20,592.14	0.00	-20,592.14
14. Release of capital reserves	20,592.14	0.00	20,592.14
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	678,386.92	3,758,311.50	65,922.41
2. Other operating income	953.04	718,629.23	205.34
3. Personnel expenses	-501,237.48	-2,355,223.98	-51,347.84
4. Amortisation, write-downs and depreciation of tangible and intangible fixed assets	-8,718.54	-87,950.72	-2,077.17
5. Other operating expenses	-175,299.77	-2,066,134.46	-13,212.84
6. Operating result	-5,915.83	-32,368.43	-510.10
7. Income from other securities held as financial assets	6,923.65	37,849.15	605.35
8. Miscellaneous interest and similar income	727.51	4,025.36	58.44
9. Income from disposal and write-up of financial assets	0.00	0.00	0.00
10. Financial result	7,651.16	41,874.51	663.79
11. Result from ordinary activities	1,735.33	9,506.08	153.69
12. Taxes on income	-1,735.33	-9,506.08	-153.69
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	670,284.19	478,215.71
2. Other operating income	1,065.52	720.04
3. Personnel expenses	-472,823.64	-255,994.63
4. Amortisation, write-downs and depreciation of tangible and intangible fixed assets	-11,264.62	-10,100.33
5. Other operating expenses	-193,137.70	-217,358.18
6. Operating result	-5,876.25	-4,517.39
7. Income from other securities held as financial assets	6,905.94	5,273.83
8. Miscellaneous interest and similar income	712.75	567.02
9. Income from disposal and write-up of financial assets	0.00	0.00
10. Financial result	7,618.69	5,840.85
11. Result from ordinary activities	1,742.44	1,323.46
12. Taxes on income	-1,742.44	-1,323.46
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 34a: Balance sheet as at 31 December 2013 – assets

	December 31, 2013		December 31, 2012	
	EUR		EUR (thousands)	
A. Fixed assets				
I. Intangible assets				
1. Rights	265,111.82		225	
2. Prepayments on intangible assets	23,575.00	288,686.82	33	258
II. Tangible assets				
1. Buildings on third-party land	74,535.16		97	
2. Other equipment, operating and office equipment	322,953.37		268	
3. Construction in progress	4,132.34	401,620.87	0	365
III. Financial assets				
1. Securities held as financial assets		3,391,480.61		3,391
		4,081,788.30		4,014
B. Current assets				
I. Receivables and other assets				
1. Trade receivables	1,248,118.82		727	
2. Other receivables and assets	387,009.54	1,635,128.36	418	1,145
II. Cash in hand and at banks		2,726,921.36		2,882
		4,362,049.72		4,027
C. Deferred income		86,910.27		76
D. Trustee accounts – funds		16,129,414.21		19,467
		24,660,162.50		27,584

Source: RTR

Table 34b: Balance sheet as at 31 December 2013 – liabilities

	December 31, 2013		December 31, 2012	
	EUR		EUR (thousands)	
A. Equity				
I. Capital stock	3,633,641.71		3,634	
II. Capital reserves				
1. Appropriated	22,157.42		43	
III. Net retained profits/accumulated losses	0.00	3,655,799.13	0	3,677
B. Provisions				
1. Provisions for severance payments	242,320.00		214	
2. Other provisions	1,641,102.00	1,883,422.00	1,476	1,690
C. Liabilities				
1. Trade payables	673,345.03		298	
2. Other payables	2,206,645.84	2,879,990.87	2,335	2,633
(taxes payable: EUR 445,196.57 [2012: EUR 390,000]; social security obligations: EUR 161,675.46 [2012: EUR 156,000])				
D. Trustee obligations – funds		16,240,950.50		19,584
		24,660,162.50		27,584

Source: RTR

The company's equity as at 31 December 2013 was as follows:

Table 35: Equity as at 31 December 2013

Figures in EUR	December 31, 2013		December 31, 2012	
	Capital stock as at 31 December		3,633,641.71	
Capital reserves as at 31 December		22,157.42		42,749.56
Loss from performance of duties under SigG (1 January to 31 December)	-20,592.14		-10,496.88	
= Loss for current year	-20,592.14		-10,496.88	
Release of capital reserve	20,592.14		10,496.88	
Profit carried forward	0.00		0.00	
Retained profit		0.00		0.00
Equity as at 31 December		3,655,799.13		3,676,391.27

Source: RTR

12.3 The RTR Supervisory Board

Following works council elections, the staff representatives in the Supervisory Board changed as of the beginning of 2013. In December 2013, 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)
Philipp Sandner (staff representative)
Ursula Assmann (staff representative)
Florian Klicka (staff representative)







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13.2 Abbreviations

4G Fourth generation (LTE)

A

A1 Telekom	A1 Telekom Austria AG
ABGB	Austrian General Civil Code (<i>Allgemeines Bürgerliches Gesetzbuch</i>)
ADSL	Asymmetric digital subscriber line
AGB	General terms and conditions
AGF	Association for Television Research (<i>Arbeitsgemeinschaft Fernsehforschung</i>)
AGTT	TELETEST Working Group
AIM	Austrian Internet Monitor
AK-TK	Working Group for Technical Coordination of Public Communications Networks and Services (<i>Arbeitskreis für technische Koordination für öffentliche Kommunikationsnetze und -dienste</i>)
AMD-G	Audiovisual Media Services Act (<i>Audiovisuelle Mediendienste-Gesetz</i>)
ANO	Alternative network operator
ARD	Association of Public Broadcasting Corporations in the Federal Republic of Germany (<i>Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland</i>)
Art.	Article
ARU	Access remote unit
A-SIT	Austrian Centre for Secure Information Technology (<i>A-SIT Zentrum für sichere Informationstechnologie – Austria</i>)
A-Trust	A-Trust Gesellschaft für Sicherheitssysteme im elektronischen Datenverkehr GmbH
ATV	ATV Privat TV GmbH & Co KG
AVG	General Administrative Procedure Act (<i>Allgemeines Verwaltungsverfahrensgesetz</i>) 1991

B

BEREC	Body of European Regulators for Electronic Communications
BKA	Federal Chancellery (<i>Bundeskanzleramt</i>)
BKS	Federal Communications Board (<i>Bundeskommunikationssenat</i>)
BMASK	Federal Ministry of Labour, Social Affairs and Consumer Protection (<i>Bundesministerium für Arbeit, Soziales und Konsumentenschutz</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> ; as of 2014: BMBF – Federal Ministry of Education and Women’s Affairs, <i>Bundesministerium für Bildung und Frauen</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> ; as of 2014: BMWFW – Federal Ministry of Science, Research and Economy, <i>Bundesministerium für Wissenschaft, Forschung und Wirtschaft</i>)
BMWFJ	Federal Ministry of Economy, Family and Youth (<i>Bundesministerium für Wirtschaft, Familie und Jugend</i> ; as of 2014: BMWFW – Federal Ministry of Science, Research and Economy, <i>Bundesministerium für Wissenschaft, Forschung und Wirtschaft</i>)
BoR	Board of Regulators
BR	Bavarian Broadcasting (<i>Bayerischer Rundfunk</i>), Germany
BVG MedKF-T	Federal Constitutional Act on Media Cooperation and Media Funding (<i>Bundesverfassungsgesetz Medienkooperation und Medienförderung</i>)
B-VG/BVG	Federal Constitutional Act (<i>Bundesverfassungsgesetz</i>)
BWB	Federal Competition Authority (<i>Bundeswettbewerbsbehörde</i>)



C

CAP	Content and application provider
CATI	Computer-assisted telephone interview
CbC	Call-by-call
CCA	Combinatorial clock auction
CEPT	Conférence Européenne des Administrations des Postes et des Télécommunications
CPG PT	Conference Preparatory Group Project Team
CPS	Carrier pre-selection
CSP	Certification service provider

D

DAB	Digital audio broadcasting
DSL	Digital subscriber line
DSLAM	Digital subscriber line access multiplexer
DVB-S	Digital video broadcasting – satellite
DVB-T	Digital video broadcasting – terrestrial

E

EaP	Eastern Partnership
EC	European Community
ECC	Electronic Communications Committee
ECG	E-Commerce Act (<i>E-Commerce-Gesetz</i>)
EEN-V 2011	Itemised Billing Ordinance 2011 (<i>Einzelentgeltnachweis-Verordnung 2011</i>)
EETT	National Telecommunications and Post Commission of Greece
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

F

FAQ	Frequently asked questions
FBZV	Frequency Range Allocation Ordinance (<i>Frequenzbereichszuweisungsverordnung</i>)
FCC	Federal Communications Commission
FDD	Frequency division duplex
FEEI	Association of the Austrian Electrical and Electronics Industries (<i>Fachverband der Elektro- und Elektronikindustrie</i>)
FERG	Exclusive Television Rights Act (<i>Fernseh-Exklusivrechtegesetz</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

Gallup	Das Österreichische Gallup-Institut, Dr. Karmasin Ges.m.b.H.
Gbps	Gigabits per second
GE06	Geneva Agreement 2006
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

H.T.S. GmbH	H.T.S. GmbH, Informationssysteme für Marktforschung
HbbTV	Hybrid broadcast broadband TV
HD	High definition
HSM	Hardware security module
HSPA	High speed packet access
Hutchison	Hutchison Drei Austria GmbH (formerly: Hutchison 3G Austria GmbH)

I

ICT	Information and communications technology
IFES	Institute for Empirical Social Research (<i>Institut für empirische Sozialforschung GmbH</i>)
IIHF	International Ice Hockey Federation
IP	Internet protocol
IRG	Independent Regulators Group
ISDN	Integrated services digital network
ISP	Internet service provider
ISPA	Internet Service Providers Austria
ITU	International Telecommunication Union

J

JTG	Joint Task Group
-----	------------------

K

KartG 2005	Cartels Act 2005 (<i>Kartellgesetz 2005</i>)
kbps	Kilobits per second
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>)
kHz	Kilohertz
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>)
KPI	Key performance indicator
KSchG	Consumer Protection Act (<i>Konsumentenschutzgesetz</i>)
kW	Kilowatt

L

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 Requirements Ordinance (<i>Mitteilungsverordnung</i>)
MNO	Mobile network operator
MUX	Multiplexer
MUX-AG-V 2011	Multiplex Operator Selection Principles Ordinance 2011 (<i>MUX-Auswahlgrundsätzeverordnung 2011</i>)
MVNO	Mobile virtual network operator

N

NDR	North German Broadcasting (<i>Norddeutscher Rundfunk</i>), Germany
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>)

O

OECD	Organisation for Economic Co-operation and Development
ÖGB	Austrian Trade Union Federation (<i>Österreichischer Gewerkschaftsbund</i>)
OGH	Austrian Supreme Court of Justice (<i>Oberster Gerichtshof</i>)
OJ	Official Journal
Orange	Orange Austria Telecommunication GmbH (now: Hutchison Drei Austria GmbH)
ORF	Austrian Broadcasting Corporation (<i>Österreichischer Rundfunk</i>)
ORF-G	ORF Act (ORF-Gesetz)
ORS	Österreichische Rundfunksender GmbH & Co KG (or: ORS comm GmbH & Co KG)
ÖZV	Austrian Magazine Association (<i>Österreichischer Zeitschriftenverband</i>)

P

Par.	Paragraph
PCK	Post-Control-Kommission
PDH	Plesiochronous digital hierarchy
PLC	Power line communications
PMG	Postal Market Act (<i>Postmarktgesetz</i>)
POTS	Plain old telephone service
PresseFG 2004	Press Subsidies Act 2004 (<i>Presseförderungsgesetz 2004</i>)
PrR-G	Private Radio Act (<i>Privatradiogesetz</i>)
PrTV-G	Private Television Act (<i>Privatfernsehgesetz</i>)
PSD	Power spectral density
PSP	Postal service point
PSTN	Public switched telephone network
PT	Project Team
PTS	Swedish Post and Telecom Authority
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>)
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.1	Sat.1 Privatrundfunk und Programmgesellschaft mbH
SD	Standard definition
SDH	Synchronous digital hierarchy
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 2003	Telecommunications Act 2003 (<i>Telekommunikationsgesetz 2003</i>)
TKK	Telekom-Control-Kommission
TKMV 2008	Telecommunications Markets Ordinance 2008 (<i>Telekommunikationsmärkteverordnung 2008</i>)
T-Mobile	T-Mobile Austria GmbH
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
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>)
VDSL	Very high speed digital subscriber line
Verizon	Verizon Austria GmbH
VfGH	Constitutional Court (<i>Verfassungsgerichtshof</i>)
VFRÖ	Austrian Association of Independent Radio Broadcasters (<i>Verband Freier Radios Österreichs</i>)



VHF	Very high frequency
VoD	Video on demand
VÖP	Austrian Association of Private Broadcasters (<i>Verband Österreichischer Privatsender</i>)
VÖZ	Association of Austrian Newspapers (<i>Verband Österreichischer Zeitungen</i>)
VStG	Administrative Penal Act (<i>Verwaltungsstrafgesetz</i>)
v-ULL	Virtual unbundling
VwGG	Administrative Court Act 1985 (<i>Verwaltungsgerichtshofgesetz 1985</i>)
VwGH	Administrative Court (<i>Verwaltungsgerichtshof</i>)

W

WettbG	Competition Act (<i>Wettbewerbsgesetz</i>)
WiFi	Wireless fidelity
WiMAX	Worldwide interoperability for microwave access
W-LAN	Wireless local area network
WLR	Wholesale line rental
WRC	World Radio Conference

Z

ZDF	Second German Television (<i>Zweites Deutsches Fernsehen</i>)
ZuKG	Access Control Act (<i>Zugangskontrollgesetz</i>)



13.3 Selection of relevant legal sources

13.3.1 EU legislation

Access Directive	Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (OJ L 108/7 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)

(Zugangskontrollgesetz) Federal Act on the Protection of Services Subject to Access Control, Federal Law Gazette I No. 60/2000 as last amended by Federal Law Gazette I No. 32/2001

Act on Transparency in Media Cooperation and Funding (MedKF-TG)

(Medienkooperations- und -förderungs-Transparenzgesetz) Federal Act on Transparency in Media Cooperation, Advertising Orders and Funding for Media Owners of Periodical Media, Federal Law Gazette I No. 125/2011

Administrative Court Act 1985 (VwGG)

(Verwaltungsgerichtshofgesetz 1985), Federal Law Gazette I No. 10/1985 as last amended by Federal Law Gazette I No. 122/2013

Administrative Penal Act (VStG)

(Verwaltungsstrafgesetz) Administrative Penal Act, Federal Law Gazette No. 52/1991 as last amended by Federal Law Gazette I No. 33/2013

Audiovisual Media Services Act (AMD-G) (formerly: Private Television Act – PrTV-G)

(Audiovisuelle Mediendienste-Gesetz) Federal Act on Audiovisual Media Services, Federal Law Gazette I No. 84/2001 as last amended by Federal Law Gazette I No. 84/2013

Broadcasting Fees Act (RGG)

(Rundfunkgebührengesetz) Federal Act Enacting a Law on Broadcasting Fees and Amending the Telephone Rates Act, the Broadcasting Ordinance, the Telecommunications Act, the Broadcasting Act, and the Act on Contributions to the Promotion of the Arts, Federal Law Gazette I No. 159/1999 as last amended by Federal Law Gazette I No. 70/2013

Cartels Act 2005 (KartG 2005)

(Kartellgesetz 2005) Federal Act on Cartels and Other Restrictions on Competition, Federal Law Gazette I No. 61/2005 as last amended by Federal Law Gazette I No. 13/2013

Competition Act (WettbG)

(Wettbewerbsgesetz) Federal Act on the Establishment of a Federal Competition Authority, Federal Law Gazette I No. 62/2002 as last amended by Federal Law Gazette I No. 129/2013

Consumer Protection Act (KSchG)

(Konsumentenschutzgesetz) Federal Act Enacting Provisions for the Protection of Consumers, Federal Law Gazette 140/1979 as last amended by Federal Law Gazette I No. 50/2013

Cooperation of Consumer Protection Authorities Act (VBKG)

(Verbraucherbehörden-Kooperationsgesetz) Federal Act on the Cooperation of Authorities in Consumer Protection, Federal Law Gazette I No. 102/2011

E-Commerce Act (ECG)

(E-Commerce-Gesetz) Federal Act 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. 83/2013
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. 84/2013
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. 164/2013
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. 161/2013
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. 84/2013
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. 169/2013
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. 96/2013



13.3.2.2 Ordinances

2013 Digitisation Plan	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 – 2013 Digitisation Plan
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. 344/2013
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. 105/2013
Cost Limitation Ordinance (KostbeV)	<i>(Kostenbeschränkungsverordnung)</i> RTR Ordinance specifying measures for cost control and cost limitation for subscribers using telecommunications services, 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 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



Publishing information

Owner and publisher: Austrian Regulatory Authority for Broadcasting and Telecommunications (Rundfunk und Telekom Regulierungs-GmbH), Mariahilfer Strasse 77-79, A-1060 Vienna, Austria. Tel.: +43 1 58058-0; fax: +43 1 58058-9191; e-mail: rtr@rtr.at, web: www.rtr.at.

Responsible for content: Alfred Grinschgl (CEO Media Division) and Johannes Gungl (CEO Telecommunications and Postal Services Division), Austrian Regulatory Authority for Broadcasting and Telecommunications

Conceptual design and text: Austrian Regulatory Authority for Broadcasting and Telecommunications

Graphic design and layout: Mag. Johannes Bulgarini Verlag und Werbeagentur, Gföhl 8, A-3053 Laaben, Austria.
E-mail: jo@bulgarini.at

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**AUSTRIAN REGULATORY
A U T H O R I T Y
FOR BROADCASTING AND
TELECOMMUNICATIONS**

Mariahilfer Str. 77–79, A-1060 Vienna

Tel: +43 1 58058-0

Fax: +43 1 58058-9191

<http://www.rtr.at> e-mail: rtr@rtr.at

Reg.No. 208312t, Vienna Comm. Court

DPR No. 0956732 Austria