

Activity Report of the Conciliation Body

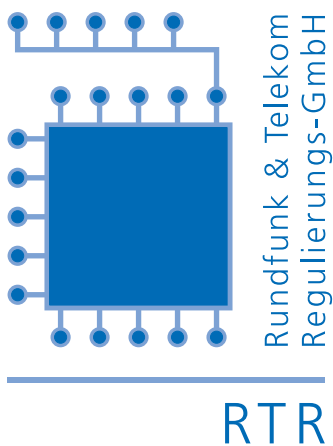




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Preface

Since the major problems and losses experienced in 2004 and 2005, caused by dialler programs on computers via fixed-link Internet access, and often leading to enormously high and unjustified telephone bills, the problems referred to us by users have been shifting appreciably towards the mobile communications sector.

A large proportion of the complaints received was related to mobile data service complaints, in 2009, i.e. the year under review, as well in the first three months of the current year. Mobile data services represent a major growth potential for the telecommunications and Internet industry: on the customer side, smartphones and netbooks have helped mobile Internet achieve a breakthrough among users; on the operator side, mobile data services generate high turnover (in addition to earnings from text messaging services). However, the number of problem cases has also risen with the increase in significance of mobile applications. It has been demonstrated in the past that adapting consumer protection requirements, to combat malware (dialler programs) for example, is an effective response. Analogously, the consumer protection requirements governing mobile Internet use also would appear to require

much improvement. For example, the current tariff structures increasingly prove to be cost traps, which can be eliminated only by means of improved cost control functions on the part of operators or providers. Requiring operators to provide information to their users actively and to bar services in time would be the right approaches in this context. For example, the provisions intended to protect users against inadvertently high data roaming costs, which will come into effect in 2010, might well be a step in the right direction.

Like no other industry, the computer, Internet and telecommunications industry is undergoing upheaval. In addition to the tasks mandated to us by legislation, as the regulatory body we also see it as important tasks to monitor developments, recognise trends and, where necessary, take corrective measures or sufficiently raise awareness among stakeholders and politicians. The present activity report is also to be viewed with this in mind; it not only comprehensively documents our work, but also provides ample background information on new problem areas and the corresponding approaches for solutions.

We hope that this report will be of interest to you!

Vienna, April 2010

Georg Serentschy
Managing Director,
Telecommunications Division, RTR

1. General information on conciliation in 2009

The Austrian Telecommunications Act 2003 (TKG 2003) stipulates that any complaints concerning telecommunications services can be submitted to the conciliation body. The procedure to be complied with is specified in § 122 TKG 2003 and, in more detail, by the conciliation body's procedure guidelines ("Verfahrensrichtlinien"). The most important prerequisite for the initiation of a conciliation procedure is a previously failed attempt to reach an agreement with the operator or provider. It is the intention of the law for conciliation procedures to be a remedy available to consumers only when they cannot achieve any further progress in their claims, i.e. through their own means and legal options (e.g. objection to a bill).

Frequent recourse to this conciliation procedure was witnessed again in 2009, whereas a significant decline in new requests for conciliation procedures can be seen compared to 2008. Nevertheless, it cannot be concluded that the telecommunications sector has become any less prone to complaints by end customers. Rather, the decline in the total number of procedures is attributable to a major extent only to developments related to a single operator: while responsible for almost 800 procedures in 2008 as a result of their aggressive direct sales methods, this operator acted more discreetly in 2009 and apparently generated fewer new complaints. In addition, the overall decline was reinforced by the decreasing number of complaints related to the fixed-link network.

Otherwise, the previous years' trend continued, reflecting general market developments: almost all mobile operators saw a continued increase in the number of procedures. All fixed-link opera-

tors, in contrast, saw a reduction in the number of complaints, as mentioned above.

The causes of the complaints received by the conciliation body are diverse. The spectrum ranges here from the classic charging dispute owing to alleged miscalculation of a bill through to complaints about poor service quality. Complaints directly concerning contracts also regularly find their way onto the desks of conciliation body staff members. However, the majority of complaints in 2009 undoubtedly concerned the mobile data services sector. The proportion of procedures received – already high in the previous period – rose again considerably in 2009. In particular, the rates charged for exceeding the data transfer volume included in the monthly packages repeatedly were the cause of outraged reactions and complaints by the users concerned. Operators need to address this issue by reinforcing their users' position as informed demanders and by specifically improving information policies. Without optimising the cost limitation tools offered or modifying product configurations (towards fair-use products for example), the complaints situation will not change. An entire chapter in this activity report is dedicated to this concern.

The positive experience previously gathered in connection with the new procedure guidelines introduced at the end of 2008 was corroborated in 2009. For users, these guidelines brought about both easier and better structured access to the conciliation procedure as well as the option of communicating with the conciliation body via a Web form. At the same time, directly linking this Web form with internal working databases means considerably easier handling for the con-

ciliation body's staff. The resources saved through the improved workflow have been successfully shifted towards tackling technical issues. Approximately 87% of all new procedure requests, corresponding to approximately 3,700 procedures, have been submitted by means of the new e-Government service. These figures provide a good indication of the benefits gained in terms of enhanced efficiency.

One of the other major tasks of the conciliation body is to maintain a dialogue with all parties concerned. This ensures that the feedback received is taken into consideration in everyday conciliation and existing expert knowledge is at the same time passed on. For example, an exchange of ideas and thoughts is increasingly sought with the Chambers of Labour in the Austrian Laender, and a regular exchange of information is also maintained with the Austrian Federal Ministry of Labour, Social Affairs and Consumer Protection. Only when all forces are combined will we see an improvement in the situation involving users affected by complaints. The conciliation body regards it as one of its tasks to render a significant contribution towards this goal.

1.1. The procedure in detail

One of the essential prerequisites for validly initiating a conciliation procedure has been already indicated: as an initial step, users must themselves attempt to resolve the issue in writing with their respective operators. The conciliation body route can be chosen only if this attempt at a solution fails. The further details of the procedure, particularly with regard to procedures for filing the request and the deadlines to be complied with as well as the various obligations, are laid down in the procedure guidelines. They can be found in the annex to this activity report. Those wishing to acquire a comprehensive picture of the individual steps of the procedure are advised to simply read them through. This involves only minimal effort, since, in drafting the procedure guidelines, attention has been paid to clarity and brevity.

The essential aspects to bear in mind when initiating a conciliation procedure can be found in Figure 1 below and are intended to provide an initial overview:

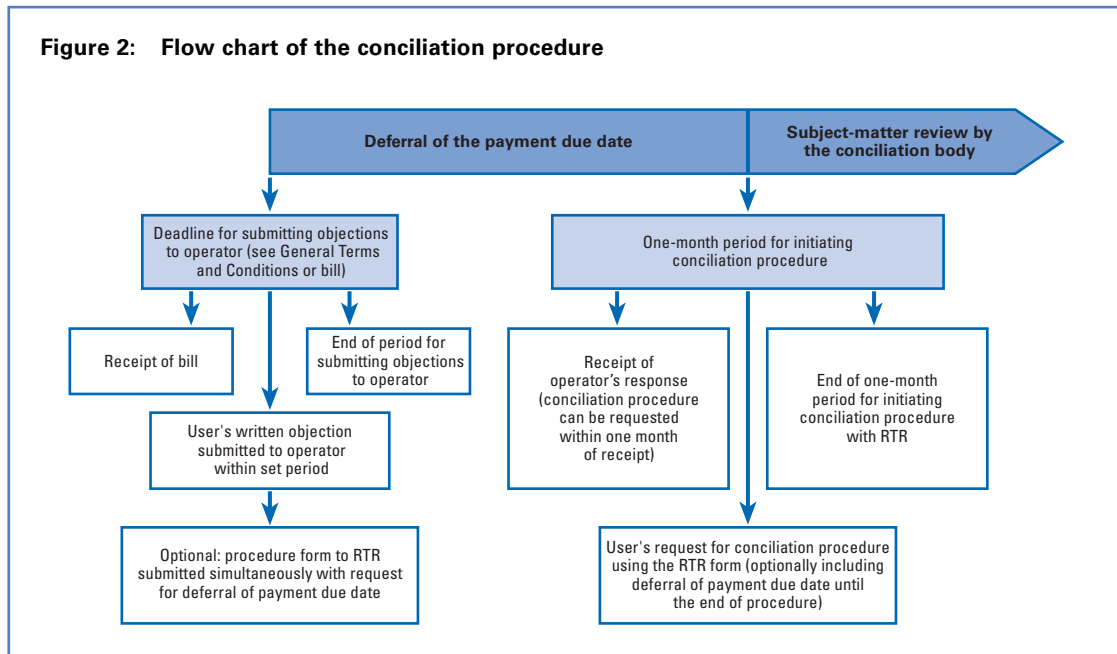
Figure 1: Essential aspects in initiating a conciliation procedure

Subject matter in dispute	➔	<ul style="list-style-type: none"> ■ Case concerns the provision of a telecommunications service ■ Not older than one year ■ Amount in dispute must be at least EUR 20 (in the case of charging disputes) ■ User must previously have attempted to seek a solution with the operator in writing (objection to bill, or complaint, submitted within deadline)
Request for a conciliation procedure	➔	<ul style="list-style-type: none"> ■ Within one month of receipt of operator's response ■ By Web form, fax or letter ■ Fully completed form
Deferral of the payment due date for the disputed amount	➔	<ul style="list-style-type: none"> ■ Written objection to the bill submitted within the set period, or ■ Request for conciliation procedure submitted ■ Request for deferral of the payment due date noted on the procedure form
Type of procedure	➔	<ul style="list-style-type: none"> ■ Cooperation procedure – conciliation body can only submit suggestions ■ No legally binding decisions

Figure 2 below describes the timetable for a conciliation procedure.

As may be seen, the procedure comprises two parts. The first part aims at deferring the payment due date and the second part involves the

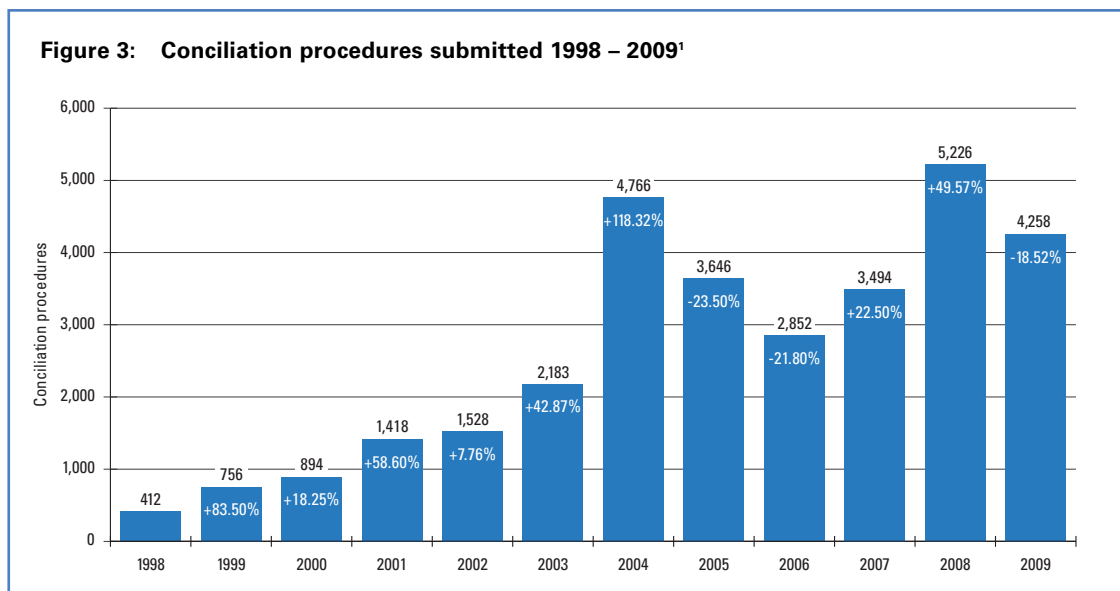
review of the subject matter by the conciliation body. The deadlines and mandatory periods are of major significance: this applies both for the objection to the bill and for the request for a conciliation procedure.



2. Conciliation in 2009 in figures

As already mentioned in the introduction to this activity report, the number of procedures declined considerably in 2009 compared with 2008, result-

ing in 18.5% fewer procedures. Yet compared with 2007, the number of new procedure requests was still up in 2009 (see Figure 3).



The comparatively high figures in 2004 and 2005 were attributable to the widespread issue at that time involving abuse by dialler programs. As already mentioned in the introduction, the enormous jump between 2007 and 2008 primarily resulted from the marketing policy of a single operator. Hence very specific problems were responsible for the flood of complaints in both 2004 and 2008. The related complaints disappeared again once the cause of the problem had been eliminated. Value-added services were regulated in 2004, a step for which RTR was responsible, among other things by introducing a strict

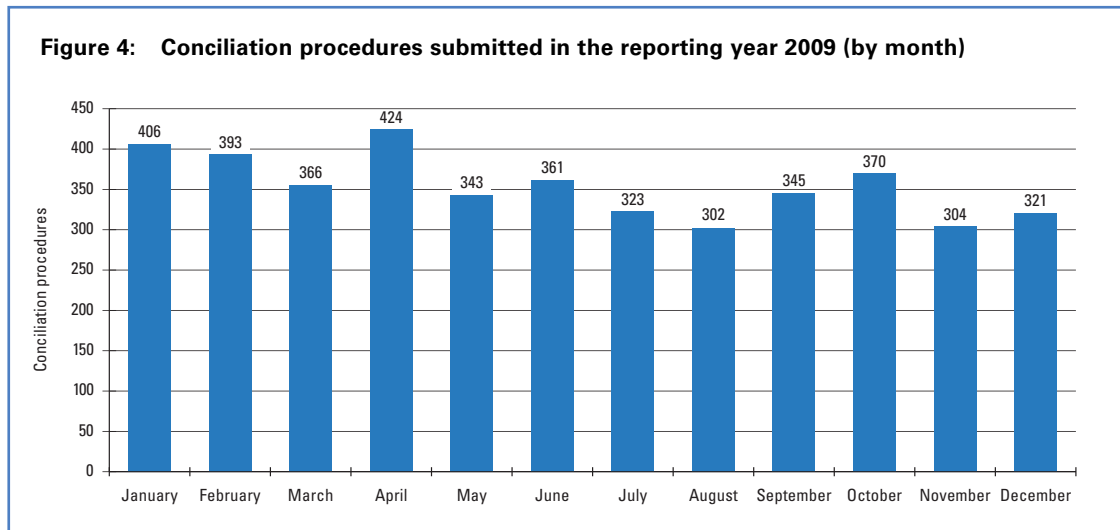
opt-in principle for dialler services. As a logical consequence, the excessive bills caused by the dialler programs and the subsequent objections to these bills ceased. Accordingly, the number of procedures returned to a normal level in 2006. The unexpected increases in new procedure requests naturally constitute a challenge to the conciliation body's organisation, as these fluctuations were and continue to be unforeseeable.

A look at the incoming requests in the year under review, grouped by month, reveals a rather unsurprising seasonal fluctuation. Fewer num-

¹ Percentages given as a difference compared to the previous year

bers of procedures can be seen during the typical summer holiday period in July and August and likewise during the two pre-Christ-

mas months of November and December (see Figure 4).



The previous years' trend, an increase in the number of charging disputes for mobile data services, was continued during the period under review. The number of contract disputes, however, declined in 2009. As will be seen in chapter 4.8 below, this is attributable to the fact that the complaints concerning contracts with the telecommunications services provider MyPhone have declined. Similar observations to those made in past years, suggesting a decline in complaints concerning value-added services, were also made during the period under review in this report.

The large number of charging disputes not classified in greater detail is attributable to the fact that a major share of the procedures submitted in 2009 were terminated during the payment deferral period or are still at this stage of the procedure, with the conciliation body not yet having

clearly identified the subject matter. For this reason, the total of the bars of the chart in Figure 5 (conciliation procedures submitted, by subject matter) is higher than the overall number of cases initiated in 2009, as in some conciliation procedures several subject matters may be involved.

As concerns the enquiries processed at the RTR call centre, the focus in terms of subject matter – aside from general enquiries concerning charging disputes and contract disputes – during the year under review was on charging disputes involving mobile data services and value-added text messaging services. Enquiries concerning harassing calls, text messages and e-mails were also frequently made to the RTR call centre (see Figure 6). Although the regulatory body's competence as defined by law is very limited in this context, RTR provides detailed information on its Web site.

Figure 5: Conciliation procedures submitted 2007 – 2009 (by subject matter, in absolute figures)

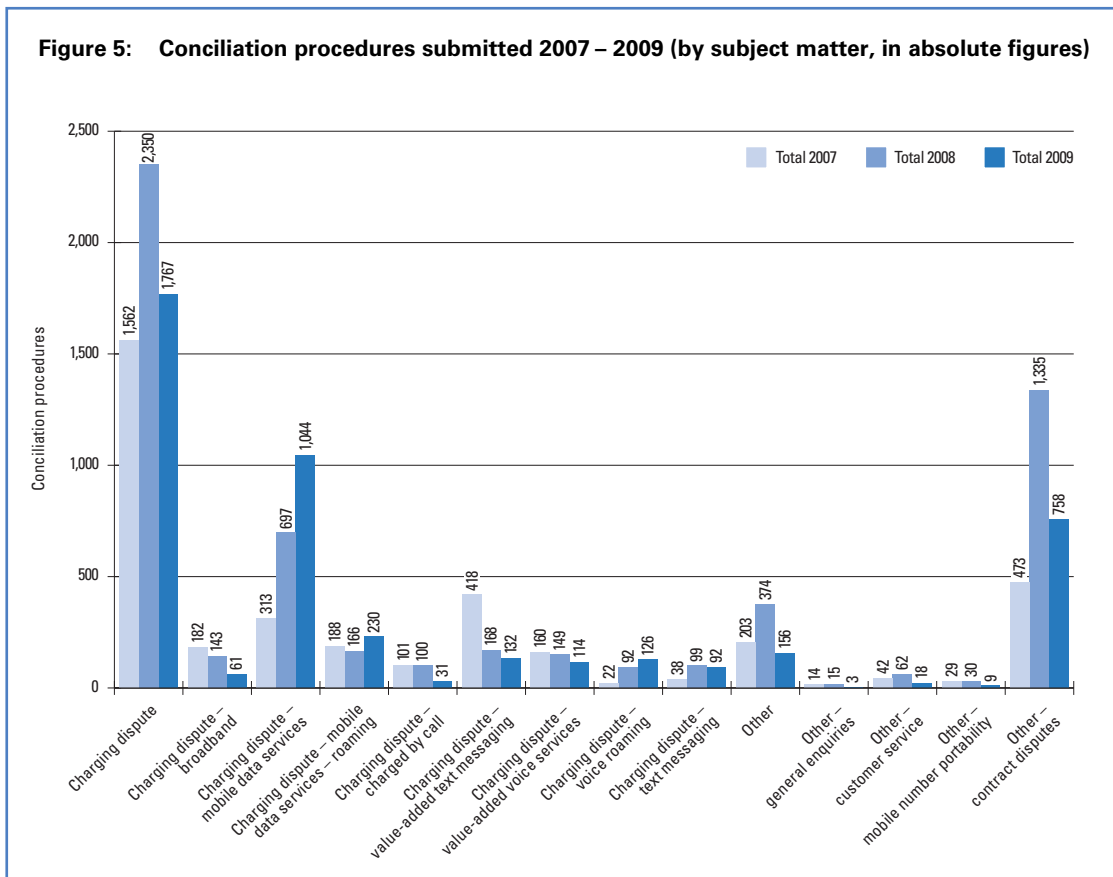
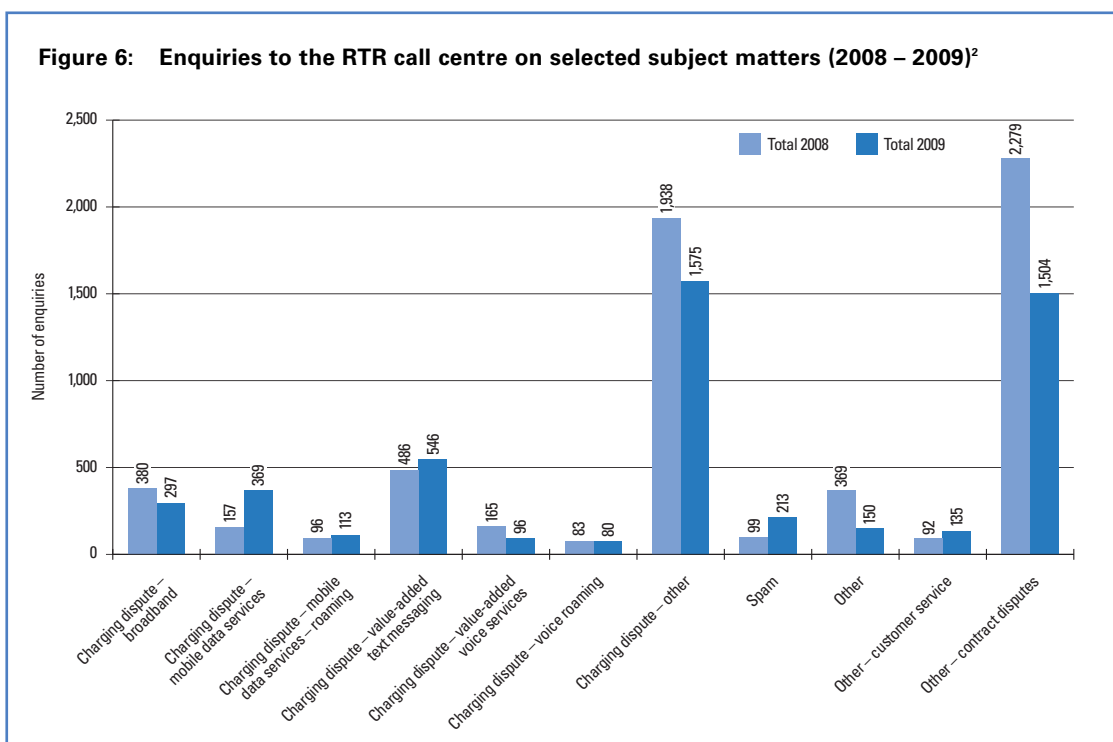


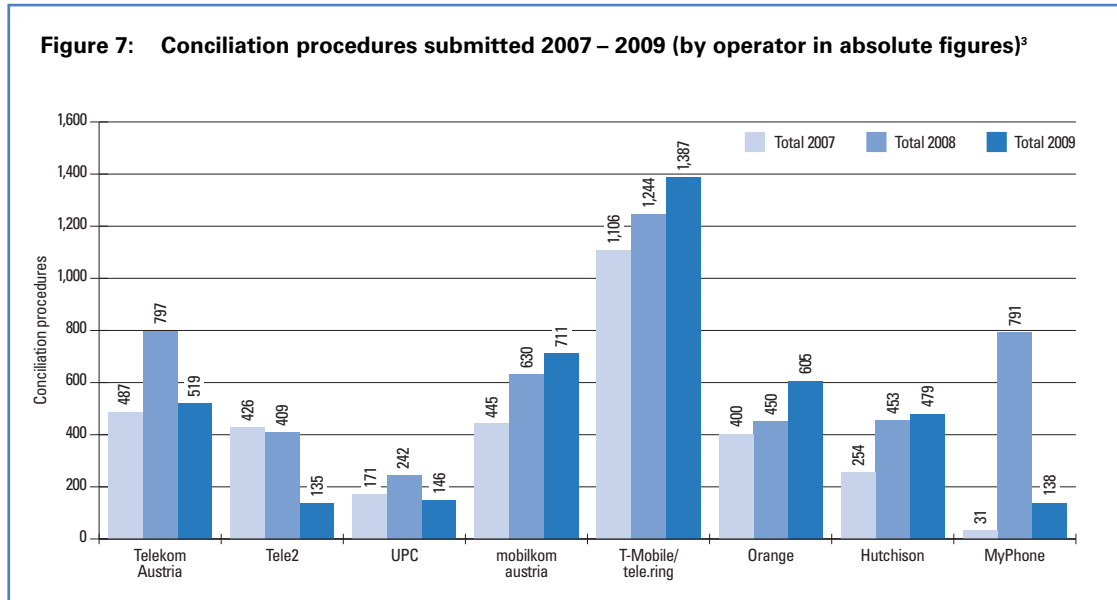
Figure 6: Enquiries to the RTR call centre on selected subject matters (2008 – 2009)²



² Call centre reference values are only available for 2008 and 2009.

It is time and again interesting to look at the trends in complaints when broken down by operator (see Figure 7).

Here, the shift towards complaints concerning mobile services is clearly evident. All mobile operators saw a more or less considerable rise in



complaints in 2009, while procedures concerning fixed-link networks declined substantially in some cases. Although MyPhone drew negative attention in 2008 as a result of its aggressive marketing, the number of procedures involving this operator declined considerably in 2009.

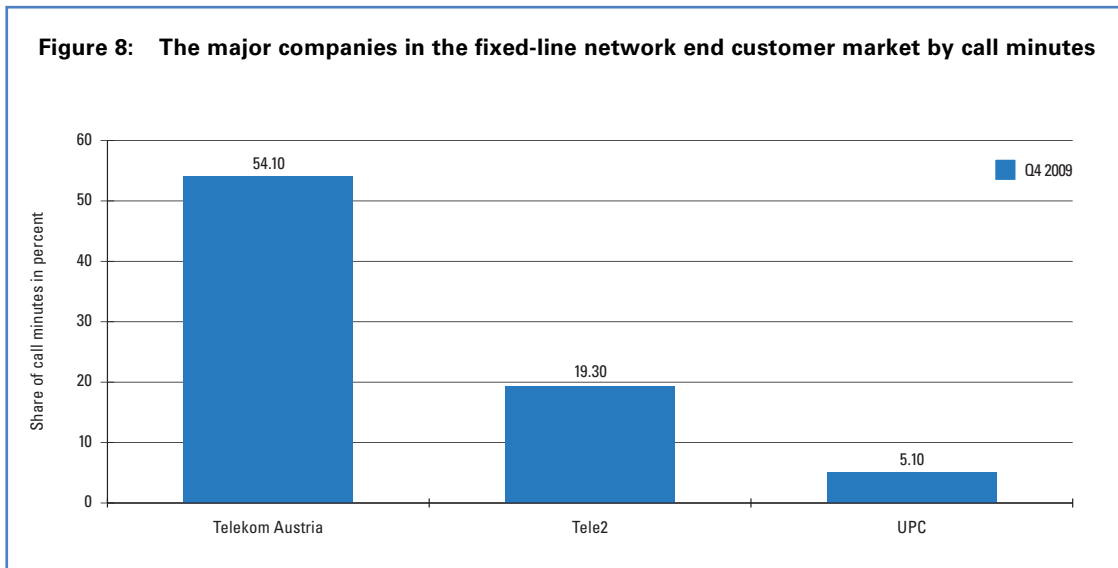
The absolute figures per operator should always be viewed with caution, of course. It is always advisable to compare the absolute figures to the respective operator's total customers. As the regulatory body does not have official customer statistics for all operators, in the following illustrations only approximate values can be provided, based on market shares and SIM cards.

³ T-Mobile incl. tele.ring

2.1. Fixed-line networks

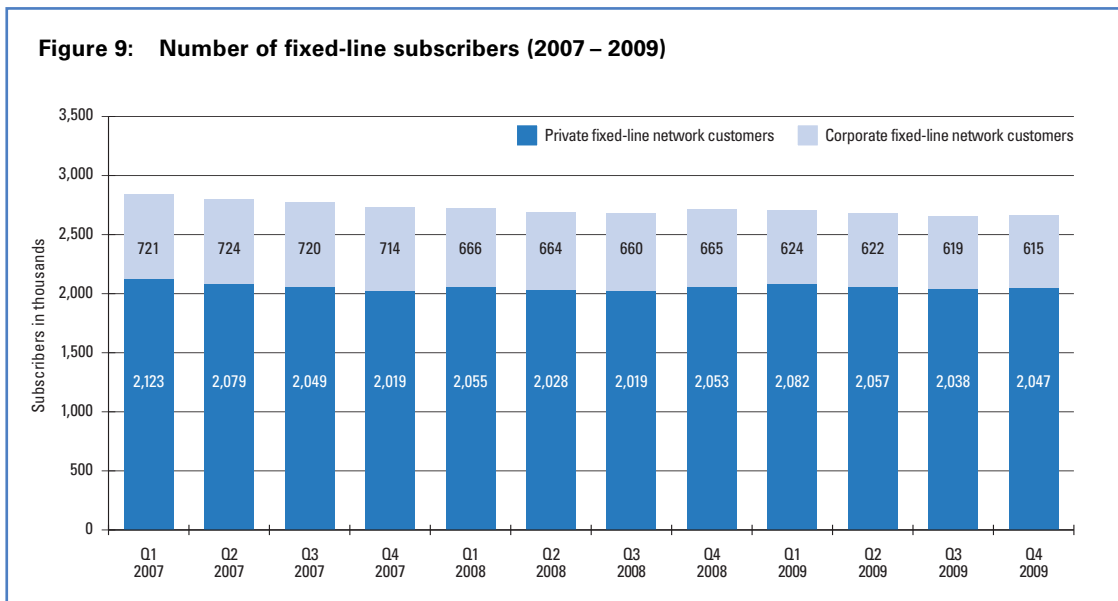
No precise figures that may be published are available on the numbers of complaints associ-

ated with the fixed-line network for the individual operators. Therefore, only rough estimates of the numbers of complaints can be deduced from the market share figures in Figure 8 below.



Referring to the total number of fixed-line network subscribers (see Figure 9), a positive observation is that the number of complaints in this area has decreased even though the num-

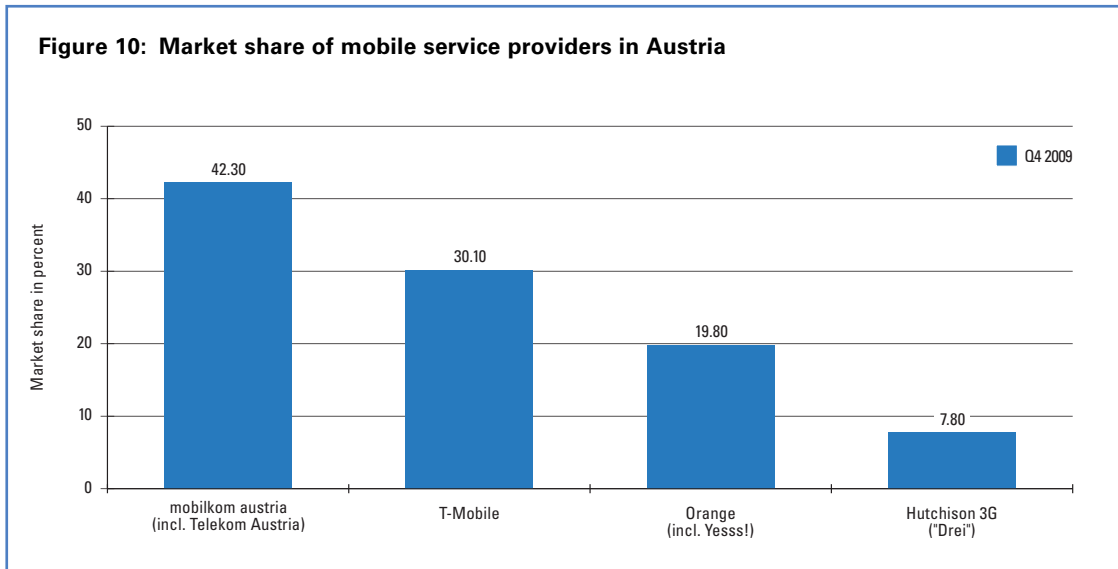
ber of subscribers has remained more or less constant. This suggests that fixed-line services are becoming increasingly less susceptible to complaints.



2.2. Mobile networks

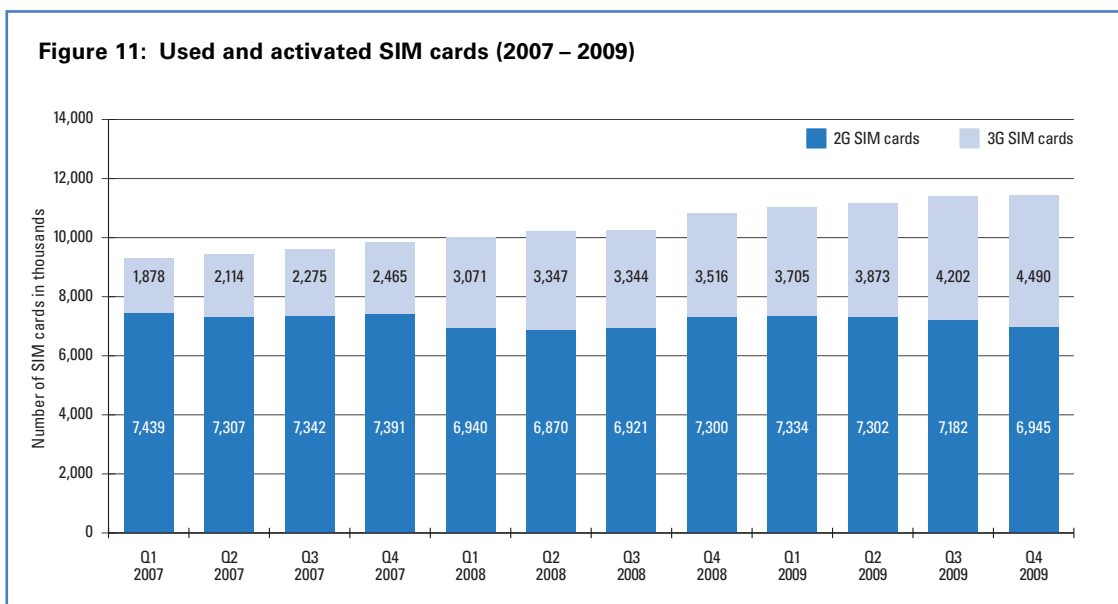
More detailed information is available on the mobile communications sector (see Figure 10). The data given below should be referred to in


comparison with the absolute figures for conciliation cases presented in Figure 7.



The fast pace at which the mobile communications market has grown in recent years becomes evident from Figure 11 below. This may be one of the reasons for the overall rise in number of complaints within this sector. It is additionally worthwhile to

note the disproportionate increase in the number of 3G SIM cards, which in turn is related to the high percentage of conciliation procedures involving mobile data services.





One of the reasons why the smaller and newer operators shown above are often confronted with more complaints is that their customers are more interested and more prone to change providers. Their customers are thus more likely to lodge complaints than the established operators' customers. Additionally, whether the particular operator is mostly active in the private customer segment or in the business sector may also account for a considerable difference. Whatever the case, the conciliation body has for sure observed in recent years that the private customer segment is more susceptible to complaints than the business sector.

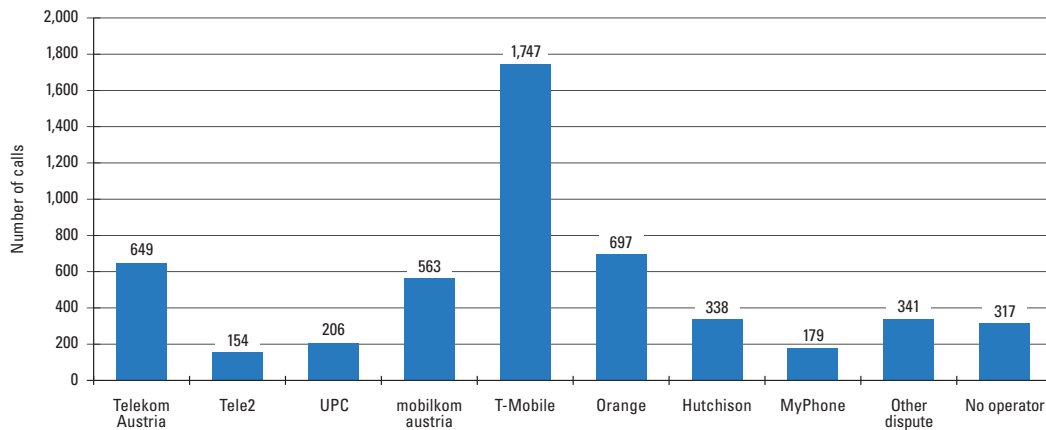
All these conclusions are obviously based only on the information gathered in connection with conciliation procedures. RTR has no way of knowing the number of complaints which are submitted directly to the operators and do not reach the conciliation body. It is therefore quite conceivable that certain operators receive many complaints directly, but these complaints are processed efficiently and in a customer-friendly manner, which means that there is no need for the (once again satisfied) users to turn to the conciliation body. The opposite scenario is of course conceivable as well, i.e. while there are fewer complaints in absolute terms, more complaints are escalated due to various factors such as unsatisfactory processing.

It should be mentioned in this connection that the operators themselves influence to some extent the number of complaints that are submit-

ted to the conciliation body. For instance, when responding to customer complaints, some operators display exemplary conduct by mentioning the option of requesting a conciliation procedure with RTR. It is obvious that such well-informed customers will more often turn to the conciliation body. In such cases it can be concluded that a greater number of complaints with the conciliation body is due to better customer service. In this connection, the regulatory authority has also observed that operators often mention the possibility of a conciliation procedure when the specific dispute has significantly escalated and the employee handling the particular case sees no alternative. In such difficult cases it is of course convenient, from the operator's point of view, to pass the case on to the conciliation body, thus avoiding the problem for the time being.

A relationship can also be established between the figures on conciliation procedures and the calls (initial contacts) processed by the RTR call centre. RTR makes use of outsourced call centre services to provide basic information about conciliation procedures and to respond to less complex enquiries that can be handled in a standardised manner. To the extent that the enquiries can be attributed to individual operators, an overall impression results that for the most part matches the pattern of the complaints submitted to the conciliation body. An exception is T-Mobile, where the proportion of phone enquiries at the call centre is greater than the number of conciliation procedures (see Figure 12).

Figure 12: Volume of enquiries processed by the RTR call centre in 2009 (by operator)



An upward trend can be clearly recognised with regard to the amounts in dispute (see Figure 13). Despite a decrease in the total number of new conciliation procedures, the number of procedures rose considerably in several categories, specifically for amounts in dispute between EUR 150 and 500, between EUR 500 and 1,000, and greater than EUR 1,000. When the procedures involving large amounts in dispute are examined more closely, it becomes clear that the majority of these disputes involve mobile data services

and specifically data roaming. However, the procedures involving the largest amounts in dispute have been conducted in the business customer sector, where the disputed bills can sometimes total EUR 100,000 and more. The trend toward procedures involving increasingly larger amounts in dispute also correlates with the number of procedures in which no amount at all is in dispute. There was a substantial drop of more than 400 cases in the number of this type of procedure, falling to a level of 601 in 2009.

Figure 13: Conciliation procedures submitted 2007–2009 (by amount in dispute)

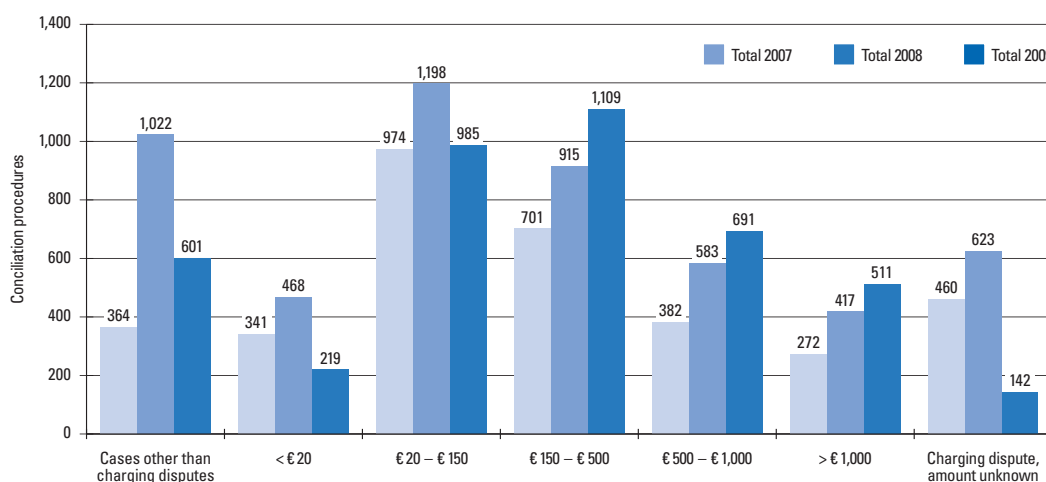
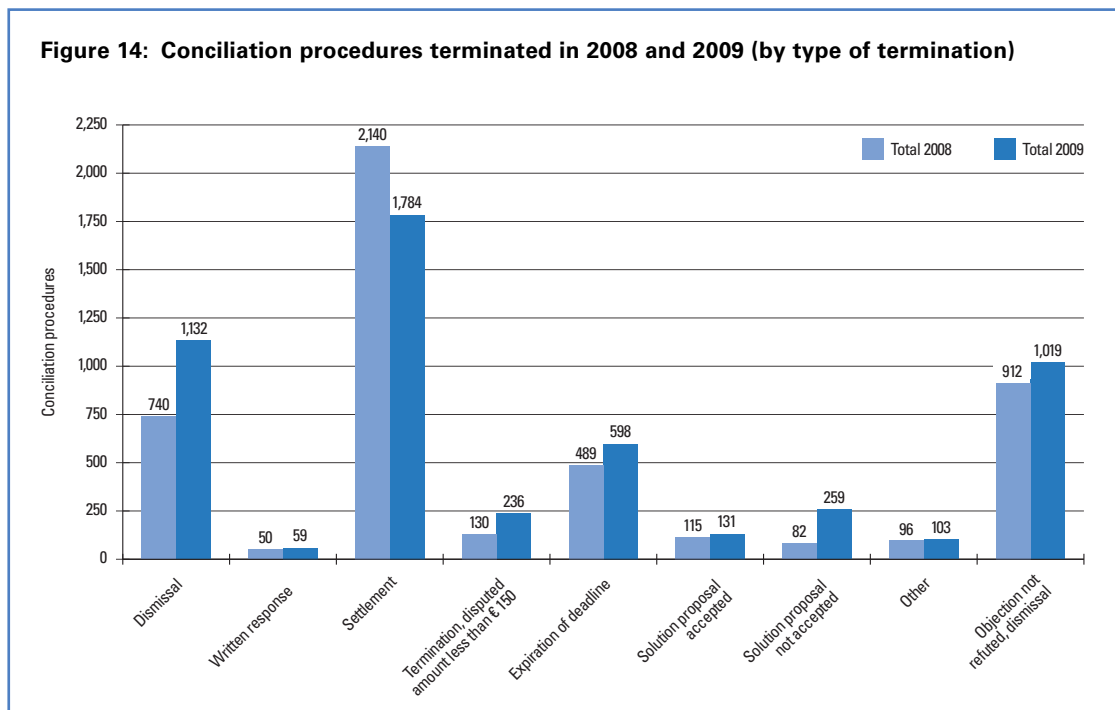


Figure 14 below offers a comparison between 2008 and 2009 of the manner in which procedures were terminated. Although 5,321 procedures were concluded in 2009, which is 567 more than in 2008, the positive trend toward a large proportion of settlements seen in 2008 could not be continued. Yet, almost 1,800 procedures terminated in a settlement and 130 with a solution proposal accepted by both parties. The number of solution proposals accepted also increased substantially in 2009, whereas the proportion of proposals refused increased even more. This is mainly to be accounted for by the conduct of

MyPhone, an operator that refused almost every solution proposed by the conciliation body. Such conduct on the part of an operator clearly reveals the limitations of a conciliation procedure out of court.

However, the total amount of reductions in charges achieved for users through conciliation procedures increased considerably in 2009. This figure adds up to approximately EUR 380,000, exceeding by almost EUR 110,000 the sum of EUR 270,000 achieved in the previous year.



3. Consumer services

Since commencing activities in 1997, the RTR conciliation body has become an important point of contact for end customers. This fact is reflected not only by the number of procedures but also by the demand for and acceptance of the services that the regulatory authority additionally offers to consumers. Specifically, more than 3,200 written enquiries to the regulatory authority, most of them via e-mail to rtr@rtr.at, were recorded during the year under review. Almost 2,000 of these concerned consumer protection issues. All enquiries falling within the RTR's scope of competence were answered individually, either in writing or by phone, whereas several experts from other divisions were often consulted to deal with complex issues. A great deal of interest was also shown in the RTR call centre in 2009. About 5,600 calls were taken in 2009. Information on a great variety of topics can be obtained by calling 0810 511 811 (for calls from Austria) on workdays from 8 am to 5 pm. Issues include problems with providers, information about roaming charges and being bothered by spam text messages, to cite a few examples.

As may be seen from Figures 15 and 16, the volume of enquiries dropped between 2008 and 2009, both for enquiries made in writing and for calls to the call centre. This development can be attributed to several factors.

The consumer services pages of the RTR Web site are an important means for providing consumers with information and assistance. On the one hand, <http://www.rtr.at/en/tk/Konsumenten-Service> sets forth in detail the responsibilities of the conciliation body, listing the cases where the body can provide further assistance. In addition, a broad range of advice and knowledge is offered

Figure 15: Volume of enquiries processed through rtr@rtr.at 2007 – 2009

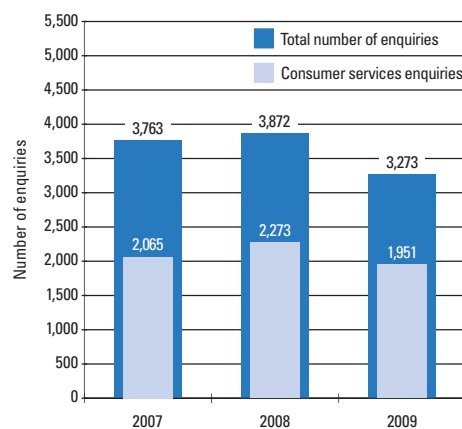
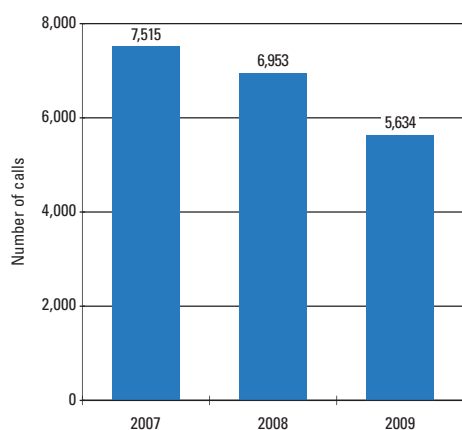



Figure 16: Number of calls processed by the call centre 2007 – 2009



to better equip consumers to deal with the world of telecommunications. Among the topics included here are problems with contracts,



porting phone numbers, roaming, the Eurotariff and billing increments, to name a few examples.

In addition, a Web form was made available at <http://www.rtr.at/en/tk/Webformular> in the autumn of 2008, allowing consumers to contact the RTR conciliation body or to submit requests for a conciliation procedure or statements pertaining to a pending procedure. This service is coming to be used more frequently in the place of sending documents by regular mail.

In response to the abuse issues resulting from value-added services, RTR has made available a complaint form at http://www.rtr.at/en/tk/mwd_beschwerde for the purpose of reporting complaints about value-added services. The grievances are evaluated with the aim of responding to abuse as swiftly as possible and taking effective action against any “black sheep” in the industry.

In addition to the services described above, as in previous years RTR published press releases and provided information in its media offerings in response to specific developments and current issues.

4. The individual operators

The following chapter briefly describes the most significant operators from the point of view of conciliation procedures, presenting the key topics in each case. With regard to the evaluations of the subject matter of complaints, it should be pointed out that one of the reasons for the relatively large proportion of “other charging disputes” is the fact that the subject matter of a procedure cannot always be precisely classified. In many cases the complaints concern several subject matters, so that the sum of cases involving individual subject matters is greater than the total number of procedures for that particular operator.

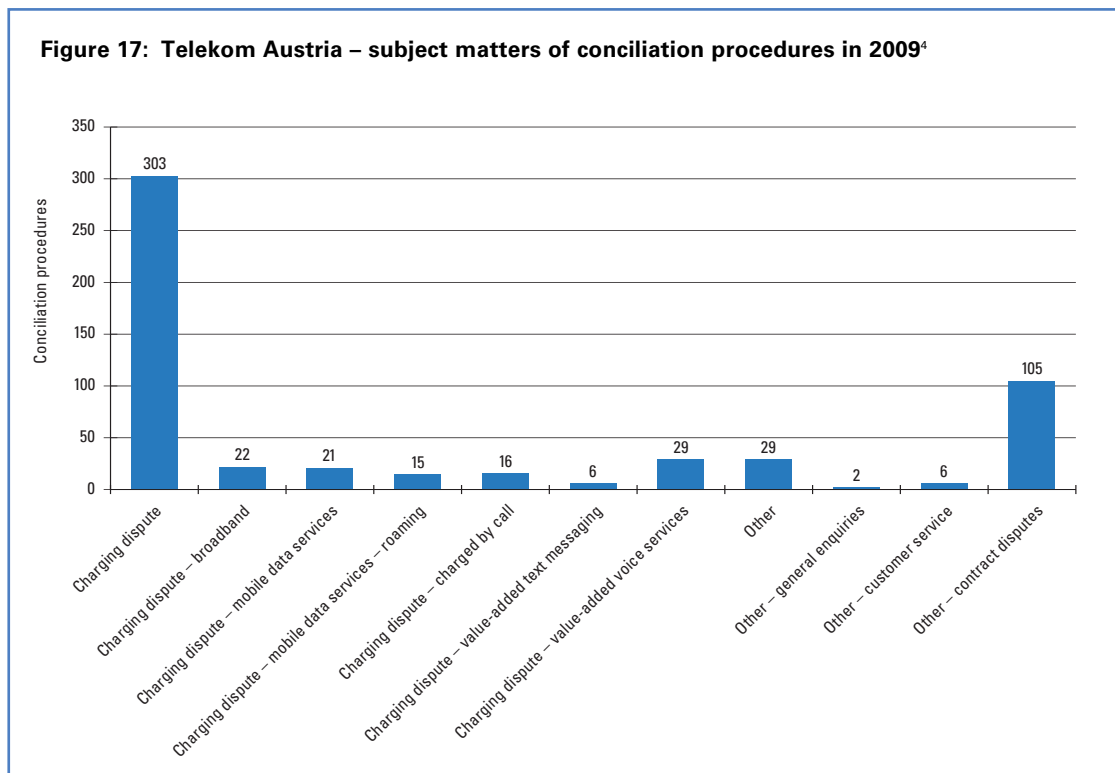
Examples are cited with the intention of providing an overview of the range of issues and should not, therefore, be taken as typical for the particular operator mentioned in every case. At

the end of each section on a specific operator there is an illustration depicting the kinds of initial enquiries made by users to the conciliation body’s call centre concerning that particular operator.

Moreover, it should be kept in mind that many smaller operators also exist, of course, that are involved in conciliation procedures. Yet, since the number of such procedures relative to those involving major operators is negligible, those smaller operators are not presented separately.

4.1. Telekom Austria TA AG

Like all typical fixed-line network operators, Telekom Austria was able to substantially reduce



⁴ In many cases the complaints concern several subject matters, so that the sum of cases involving individual subject matters is greater than the total number of procedures for the particular operator.

the number of conciliation procedures in 2009, bringing the figure down to 519 after a total of 797 in 2008. This represents an almost 35% reduction. No especially frequent single reason for complaints against Telekom Austria could be identified. The evaluation of conciliation procedures by subject matter (see Figure 17) clearly reveals that Telekom Austria has in the meantime become the subject of complaints concerning mobile services as well. This development reflects the fact that Telekom Austria has been active in the market for a number of years as a mobile service operator, in particular as a provider of triple-play and quadruple-play products that include mobile services.

In cases of contract disputes, the charges for setting up a connection are often an issue. Users have complained time and again of having to bear the high excavation costs for laying a connection line. It needs to be pointed out in this regard that the user is always responsible for paying excavation costs.

Telekom Austria is especially affected by cases where a telephone system is hacked and unauthorised phone calls are subsequently made via this telephone system. In such cases, presumably caused by organised crime, the resulting damage is considerable. Although few such cases have come to light, the individual amount in dispute is always more than EUR 10,000. An example to illustrate this can be found below.

The evaluation of the subject matters of the enquiries processed by the call centre in 2009 correlated with the subject matters of disputes

Example 1:

Hacked telephone system

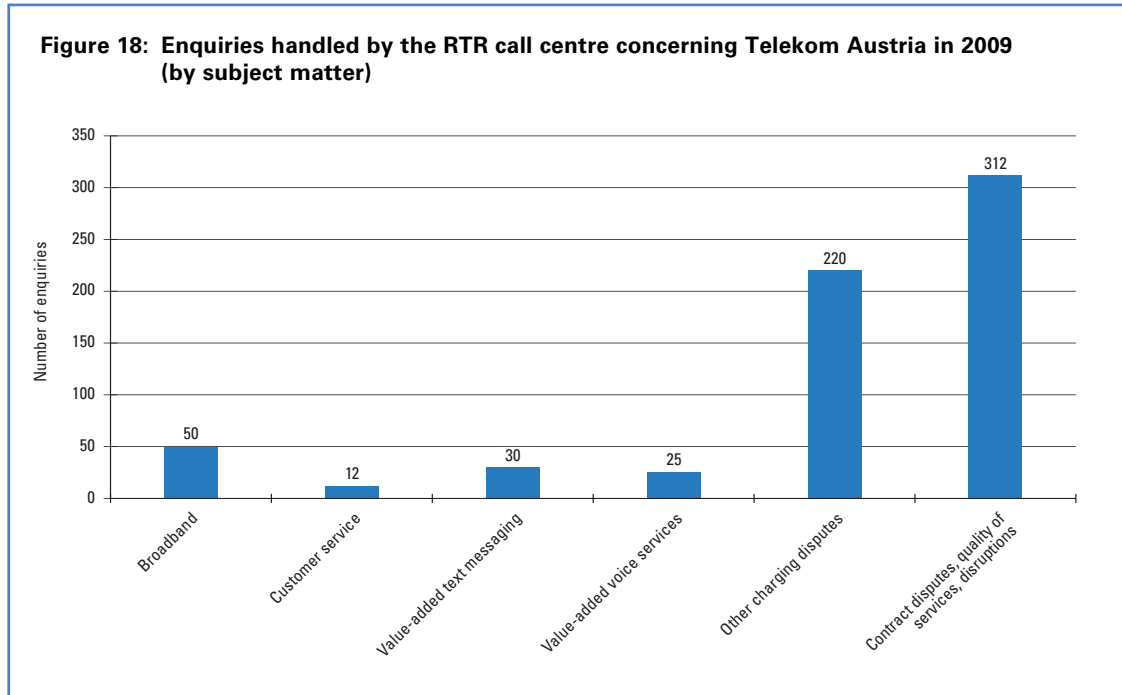
A hotel operator uses a telephone system to handle calls made by hotel staff and customers. The private branch exchange (PBX) used was purchased from a provider other than Telekom Austria. Yet the PBX was apparently not configured properly or defective in some other way. It is most likely that a password used for remote maintenance had not been changed in a manner consistent with security standards.

Whatever the case, hackers gained control of the PBX and used it purposefully for their criminal activities. Beginning on Friday evening, a large number of connections were made to costly destinations abroad, in particular to Sierra Leone and Zimbabwe. The abuse, which continued until Monday morning, incurred charges of about EUR 130,000. The weekend was chosen for the attacks probably so that the company's staff would not be able to notice irregularities such as blocked phone lines too soon and take action in response.

From a legal standpoint, the affected users could expect little support: the telephone system had not been purchased from Telekom Austria nor had the company provided maintenance, which means that it could not be held responsible.

addressed in conciliation procedures, whereas the percentage of cases involving contract

disputes was disproportionately high (see Figure 18):

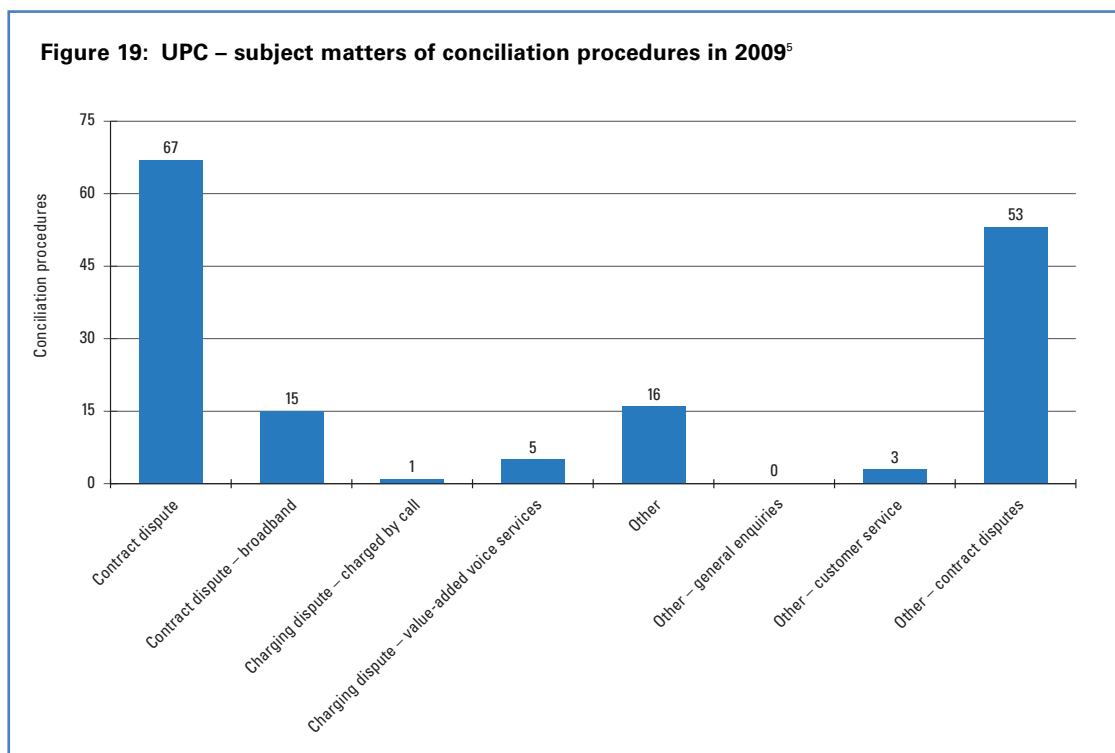


4.2. UPC

“UPC” will be used to refer collectively as a whole to all companies belonging to this group.

In a manner similar to Telekom Austria as described above, the number of procedures involving UPC was down as well. In 2009, 146 new procedures were processed by the conciliation body, almost 100 fewer requests for conciliation

procedures than in the previous year. As almost all fixed-line network and broadband products are being charged at a flat rate recently, operators are spared the many objections to bills on account of what customers felt to be overcharging for data transfer. The majority of complaints in the area of fixed-line broadband access thus concerned other topics, such as the available bandwidth or the charges for setting up a connection (see Figure 19).



The example below illustrates the problems arising when the user finds that the bandwidth promised for a product is not satisfactorily achieved.

Example 2:

Less bandwidth than expected

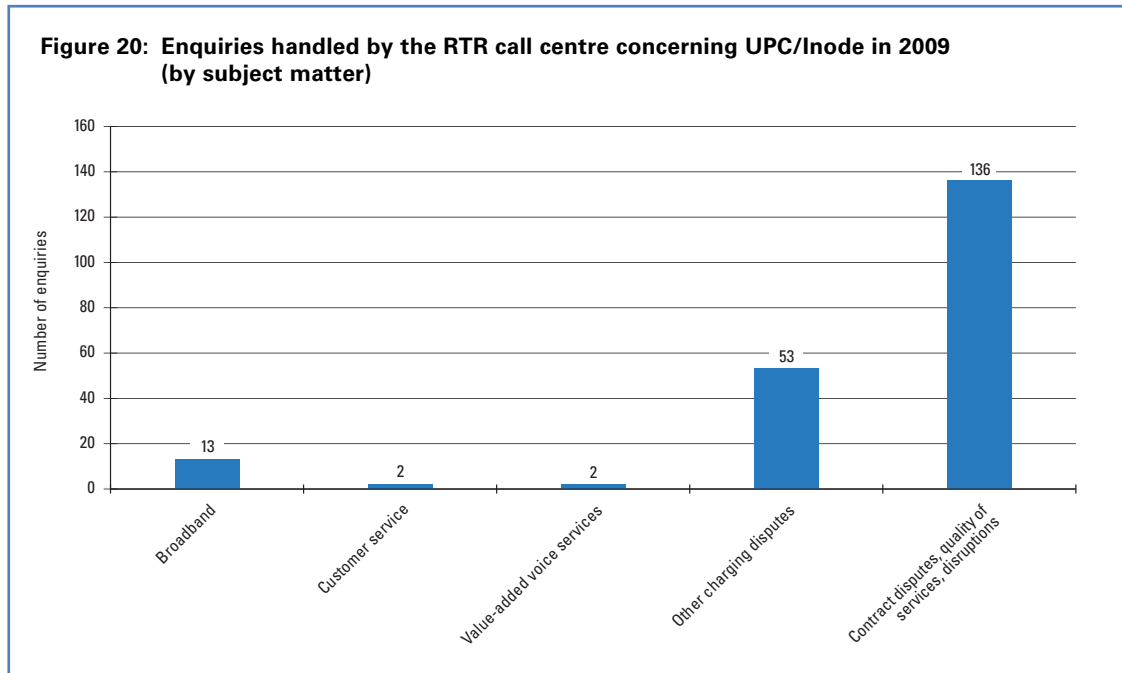
Ms Z has been a UPC customer for a long time. In 2008 she wishes to change to a product with a greater bandwidth and decides to upgrade to xDSL Privat, a product offering a bandwidth of 6,144/768 kbps at a

price of EUR 35 per month. It later becomes evident that the bandwidth promised in the ads cannot be achieved and that only half the expected rates are possible. Ms Z then complains to UPC but does not receive any response to her enquiry. She subsequently turns to the conciliation body. Upon intervention by the conciliation body, UPC offers a satisfactory solution. The contract is cancelled with retroactive effect and the higher rate charged is refunded.

⁵ In many cases the complaints concern several subject matters, so that the sum of cases involving individual subject matters is greater than the total number of procedures for the particular operator.

As in the case of the conciliation procedures, no especially frequent reason for the complaints can be identified for the enquiries processed by the call centre (see Figure 20). Similar to Telekom

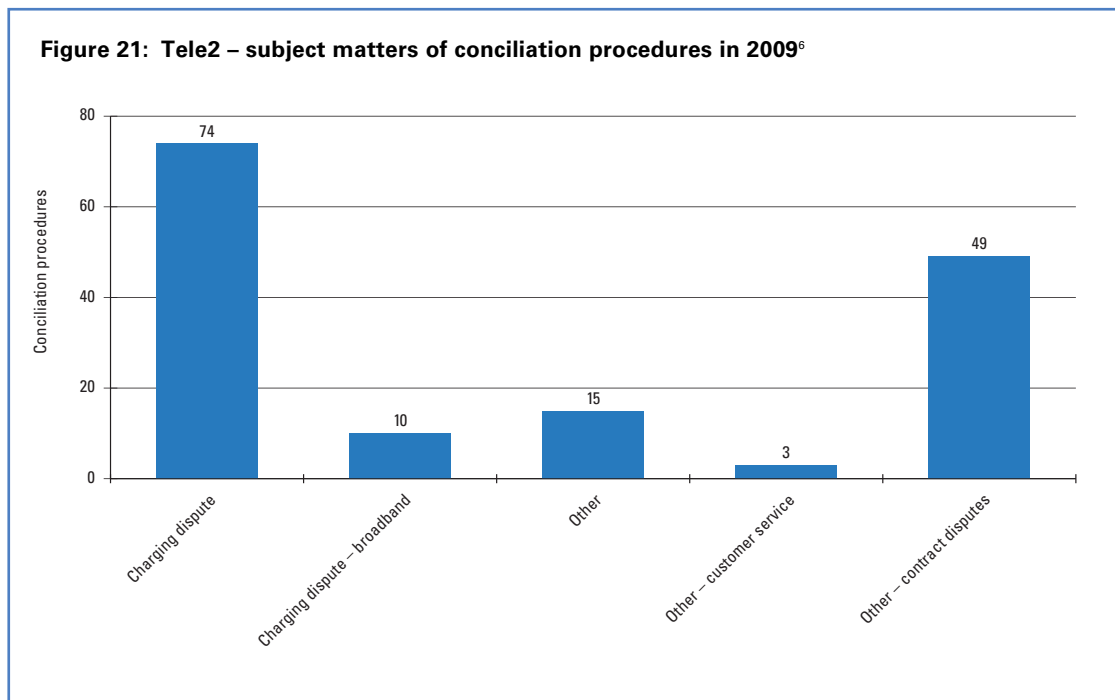
Austria, a substantial share of complaints concern contracts. This seems to be typical for fixed-line network operators.



4.3. Tele2 Telecommunication GmbH

The third company in the group of major fixed-line network providers in Austria additionally substantiates the impression that procedures involving this sector are on the decline. In fact, the

reduction in the number of conciliation procedures was most striking for Tele2. Only 135 procedures were recorded with the conciliation body in 2009. Compared with the 409 procedures in 2008, this represents a two-thirds decrease in the number of cases.



Tele2 is still involved in isolated cases where customers complain about charges for data transfer volumes (see Figure 21). Apparently, Tele2 still has a number of long-time customers with fixed-line network broadband access which is charged according to the data volume consumed. While the standard case nowadays in the mobile communications sector, such disputes today represent singular exceptions within the fixed-line network sector since, as was previously mentioned, charging by flat rate is the rule here.

Example 3:

Costly data

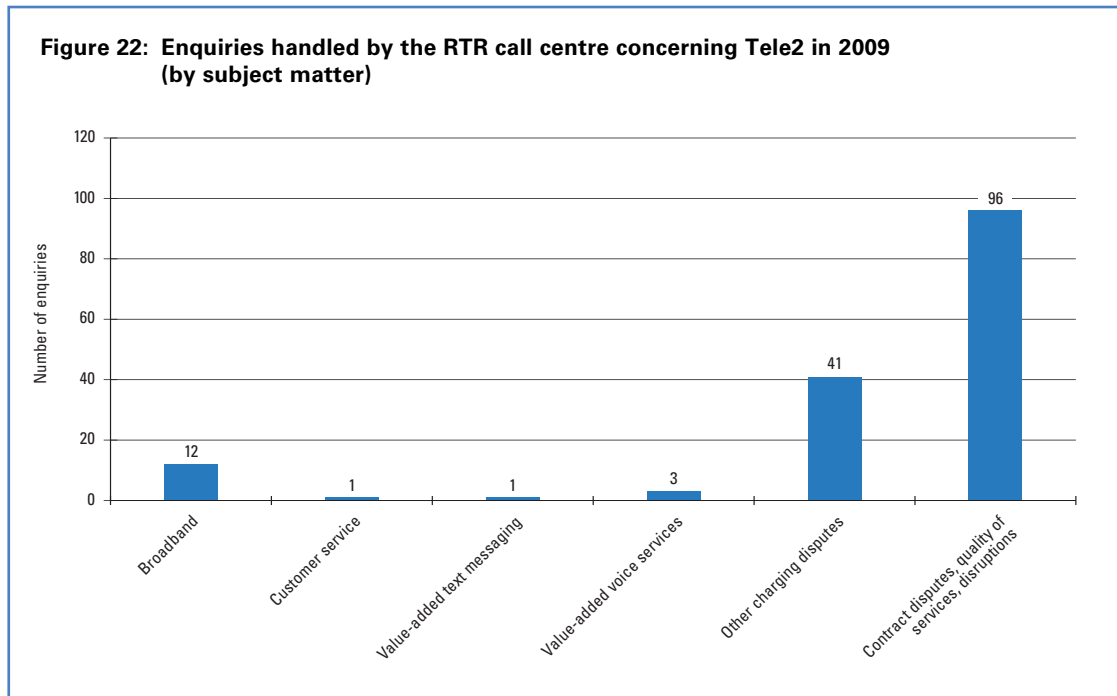
Mr W was billed EUR 1,200 for a large data transfer volume. He stated during the concilia-

tion procedure that he was not responsible for the charges specified in the bill in dispute as a result of exceeding the data transfer limit. In the course of the conciliation procedure, Tele2 was able to prove that the data had been transferred using Mr W's user ID, but not that his phone line had been used. This means that there was a slight chance of third-party abuse, i.e. that the access data had been abused and the data volume consumed via another phone line. In view of the slim chance of this scenario, the conciliation body proposed a solution aimed at a 50% reduction of the amount in dispute. Both Mr W and Tele2 accepted the solution proposal.

⁶ In many cases the complaints concern several subject matters, so that the sum of cases involving individual subject matters is greater than the total number of procedures for that particular operator.

The evaluation of the enquiries received by the call centre (see Figure 22) reveals no unexpected results, corresponding for the most part to the

evaluations presented above for the other fixed-line network operators.

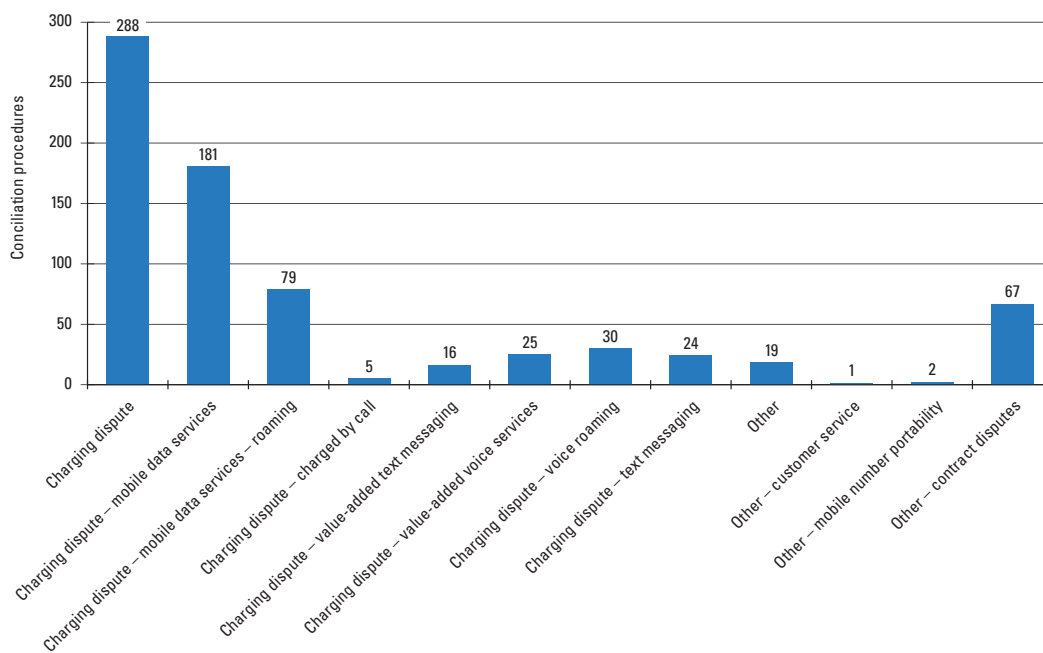


4.4. mobilkom austria AG

Like all other mobile service providers, mobilkom austria showed a rise in the number of complaints received during the year under re-

view. The increase was comparatively moderate, however. Although mobilkom austria leads the market in mobile communications, the number of procedures rose by only 81 between 2008 and 2009 to a total of 711.

Figure 23: mobilkom austria – subject matters of conciliation procedures in 2009⁷



There are repeatedly cases where charges for value-added services (see Figure 23) are disputed by phone subscribers on grounds that they did not themselves use the value-added services. This argument can in fact be relevant in questioning the correctness of a bill, as the example below demonstrates.

Example 4:

No automatic liability in the case of value-added services

Ms K consults the conciliation body, requesting a conciliation procedure to be initiated. She asks for a review of the rates charged for the use of value-added text

messaging services. In the bill concerned a large number of value-added text messages during the period from 11 November through 4 December 2008 was charged amounting to a total of EUR 740. In the course of the procedure it was established beyond doubt that the phone number in question was used exclusively by a third party, Mr K, during the billing period in dispute. Mr K alone had access to the mobile phone with this number and he also knew the PIN code for it.

The conciliation body subsequently presented a solution proposal to the effect that Ms K would not be made liable for the charges

⁷ In many cases the complaints concern several subject matters, so that the sum of cases involving individual subject matters is greater than the total number of procedures for the particular operator.

incurred by the value-added services. The solution proposal was primarily based on ruling no. 1 Ob 244/02t of 27 May 2003 passed by the Austrian Supreme Court of Justice. According to this ruling, it is important to distinguish two contracts in the case of value-added telephone services, i.e. the contract between the phone service subscriber and the network operator and the contract with the (value-added) service provider. The Supreme Court ruled out any automatic liability on the part of the telephone subscriber for charges incurred through value-added services, even in the case where the third party had permission to use the phone to make normal calls. However, in order for the phone subscriber to be liable for charges incurred by value-added services, the subscriber must issue an authorisation of representation to the third party.

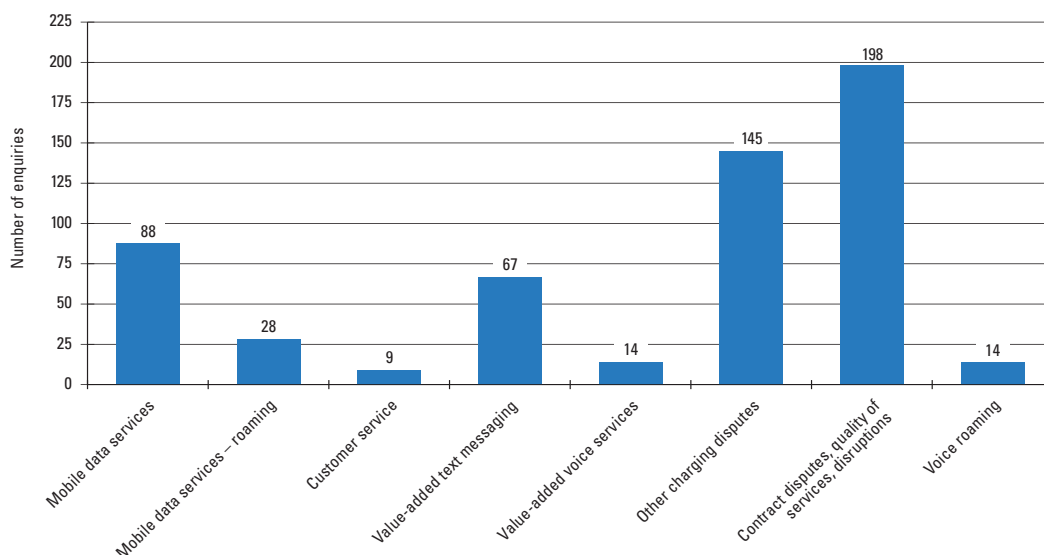
In the absence of such authorisation, which is the usual case, no direct liability exists. This situation obviously has no effect on the obligation of the party actually using the value-added services to assume, as a contractual party, liability for the claims incurred thereby. That party was probably Mr K in the specific case.

The solution proposal prepared by the conciliation body was rejected by mobilkom austria, however.

An analysis of the enquiries received by the call centre reveals that the main subjects were data services and value-added text messaging (see Figure 24).

In general, it appears that, while there is a relatively large number of enquiries concerning value-added text messaging, comparatively few conciliation procedures ensue.

Figure 24: Enquiries handled by the RTR call centre concerning mobilkom austria in 2009 (by subject matter)

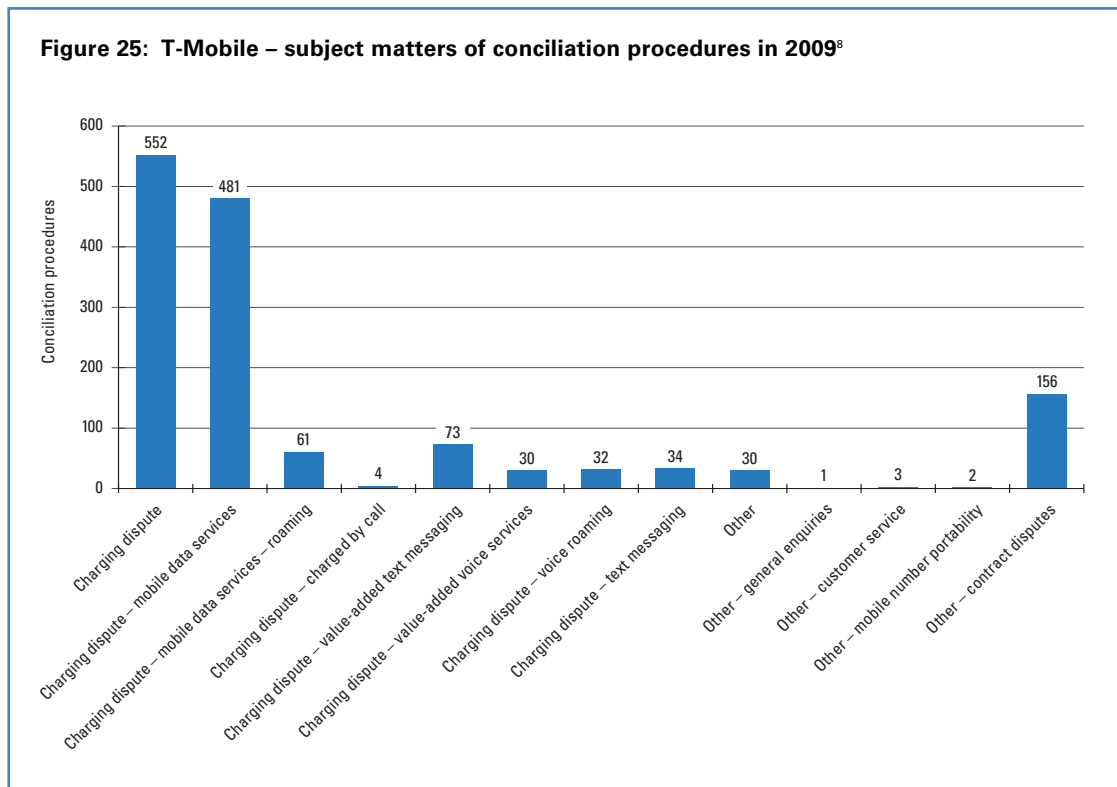


4.5. T-Mobile Austria GmbH

T-Mobile was unable to reverse the trend of recent years in 2009 and continued to clearly lead the sector in the number of complaints. The level of 1,244 procedures in 2008 was in fact exceeded by an additional 143 procedures in 2009, resulting in a total of 1,387.

As in the previous year, complaints concerning mobile data services were clearly the most common reason for procedures (see Figure 25). The corrective measures that T-Mobile has already

partially implemented in this area would not seem to have had the desired effect yet. In comparison to the other mobile operators, the percentage of cases involving value-added text messaging is about the same. Although the number of specific complaints in this area has fallen appreciably in recent years, a certain baseline level continues to remain. It should be noted that T-Mobile's cooperation in the conciliation procedures has improved remarkably compared with the previous year, and especially in cases involving mobile data services this operator now provides useful and complete data for evaluating the cases.



⁸ In many cases the complaints concern several subject matters, so that the sum of cases involving individual subject matters is greater than the total number of procedures for the particular operator.

Many cases often involving only small amounts could be resolved immediately by offering a swift compromise, without the conciliation body having to intervene. This is illustrated by the example below.

Example 5:

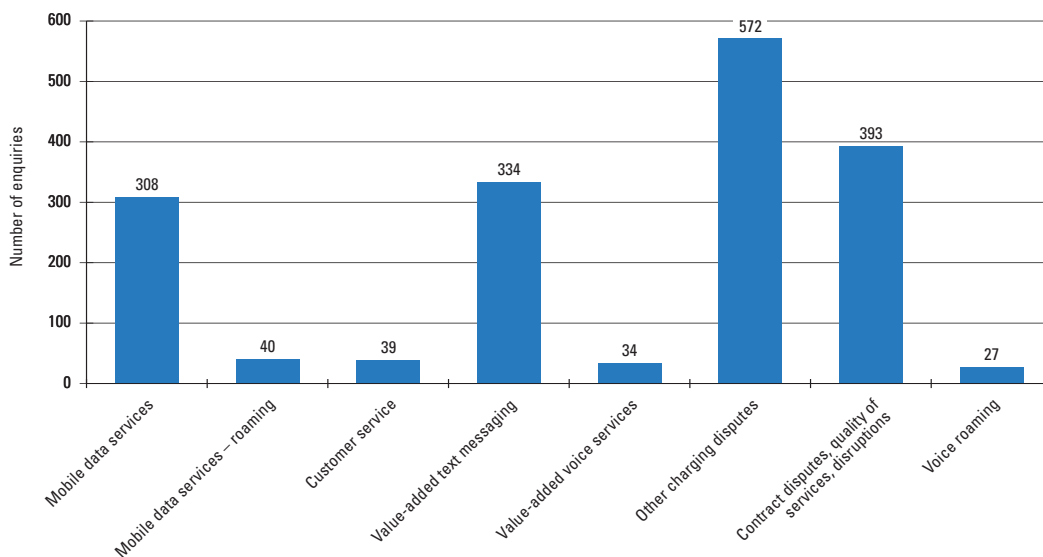
Mobile phone used as credit card?

Ms K has been a T-Mobile customer for some time. She uses her mobile phone only for making calls and sending text messages. She was thus very surprised to find on her phone bill an item amounting to EUR 80 for taking part in a lottery game. She had no idea why the amount had been

charged. Ms K was not aware that her mobile phone could be used in almost the same way as a common credit card to pay for a variety of services. In the conciliation procedure, the person who had used her mobile phone for payment could not be identified anymore. In a show of good will, T-Mobile in the end waived the claim to the amount. The procedure was concluded with a settlement.

An analysis of the reasons for enquiries to the call centre reveals a distribution skewed toward value-added text messaging. 334 enquiries on this subject is a substantial number (see Figure 26).

Figure 26: Enquiries handled by the RTR call centre concerning T-Mobile in 2009 (by subject matter)

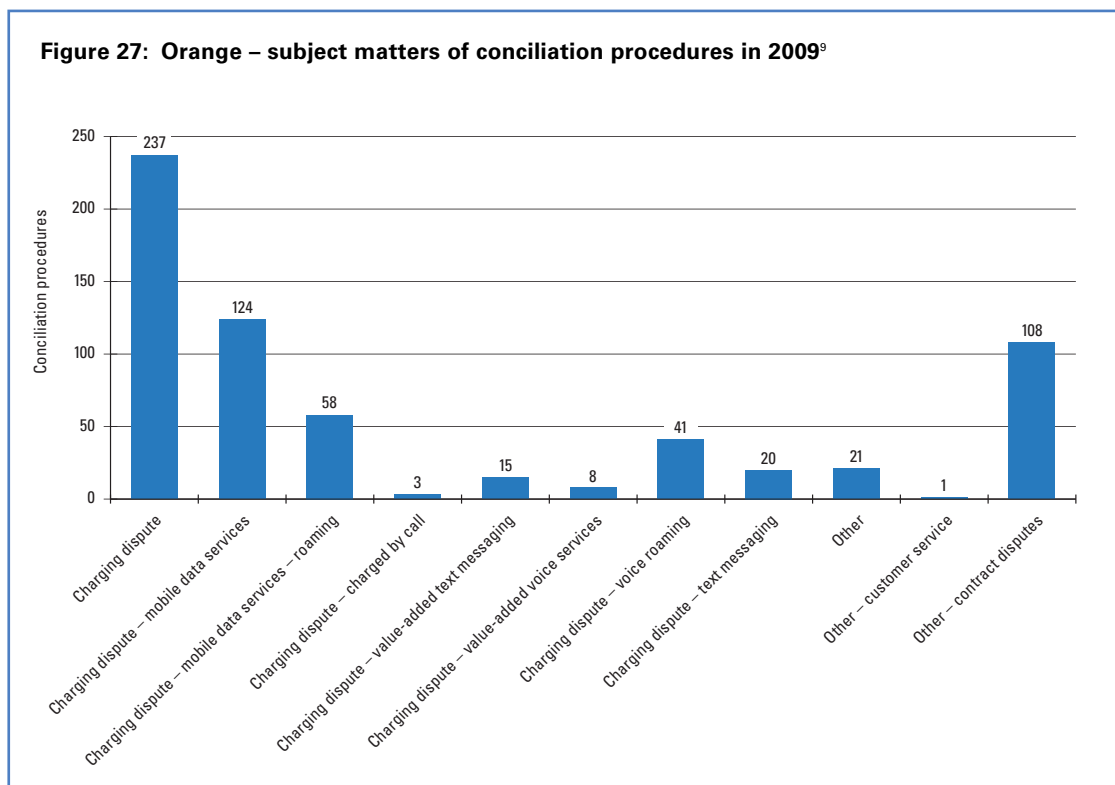


4.6. Orange Austria Telecommunication GmbH

The observations made above concerning other mobile operators also apply to Orange in 2009. Orange showed a striking increase of 35% in the number of procedures, reaching a total of 605 in 2009. As with other operators, the majority of complaints concerned mobile data services. The situation had been quite different in 2008, when Orange had stood out thanks to a remarkably small percentage of complaints concerning mobile data services. This had been primarily due to the fact that, at the time, Orange had opted for a customer-friendly and intelligent product design. While the majority of operators charged additional fees when the customer exceeded the data transfer

volume included in the mobile Internet access contract, Orange was content to simply throttle the data transfer rate in such cases. This kind of fair-use billing method was very appropriate, which can be seen in the fact that not a single complaint was addressed to the conciliation body on account of throttling the bandwidth. Since then Orange has re-introduced products to their portfolio that are based on the data volume consumed, and this apparently had an immediate effect on the number of complaints (see Figure 27).

Another peculiarity of the Orange statistics is the comparatively large percentage of cases involving roaming calls. The conciliation body is, however, not able to discern the reasons for this.



⁹ In many cases the complaints concern several subject matters, so that the sum of cases involving individual subject matters is greater than the total number of procedures for the particular operator.

The large variety of services now offered via mobile phones is also reflected in the conciliation procedures. For instance, a new phenomenon is for services resembling value-added services to be offered through “normal” fixed-line network numbers, with the customer’s own operator billing for the service. This is illustrated by the example below.

Example 6:

Value-added service or not?

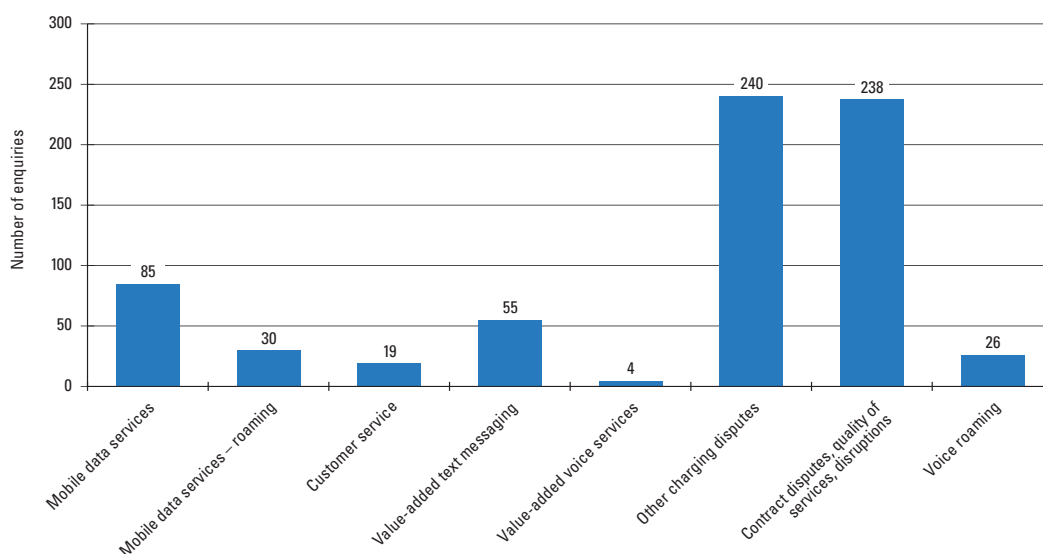
Mr R turns to the conciliation body. He objects to a EUR 250 charge on his phone bill, listed as “Telephone advice under 01-2676104-xx”. In summary, he contended that he had called the number because it promised contacts free of charge. He claimed that there had been no warning of the extra charges and that he had been able to talk to some lady only briefly. His call had then been put in a queue for a very long time and finally been disconnected, he stated. He claimed that no services had

been provided and that he had received no contact information. In the course of the conciliation procedure, Orange stated that they had enquired with ATMS, the service provider and licence holder, and the latter had claimed that a message advising of the charges had correctly been transmitted. Hence, agreeing to a credit note was not an option.

The conciliation body concluded that the service in question met all of the criteria for a value-added service, as defined in the Communications Parameters, Fees and Value-Added Services Ordinance (KEM-V), and thus should have been offered under a number beginning with 09. The body therefore proposed a solution, which was subsequently accepted by both parties.

The analysis of initial responses by the call centre reveals a comparatively small percentage of cases involving value-added text messages (see Figure 28).

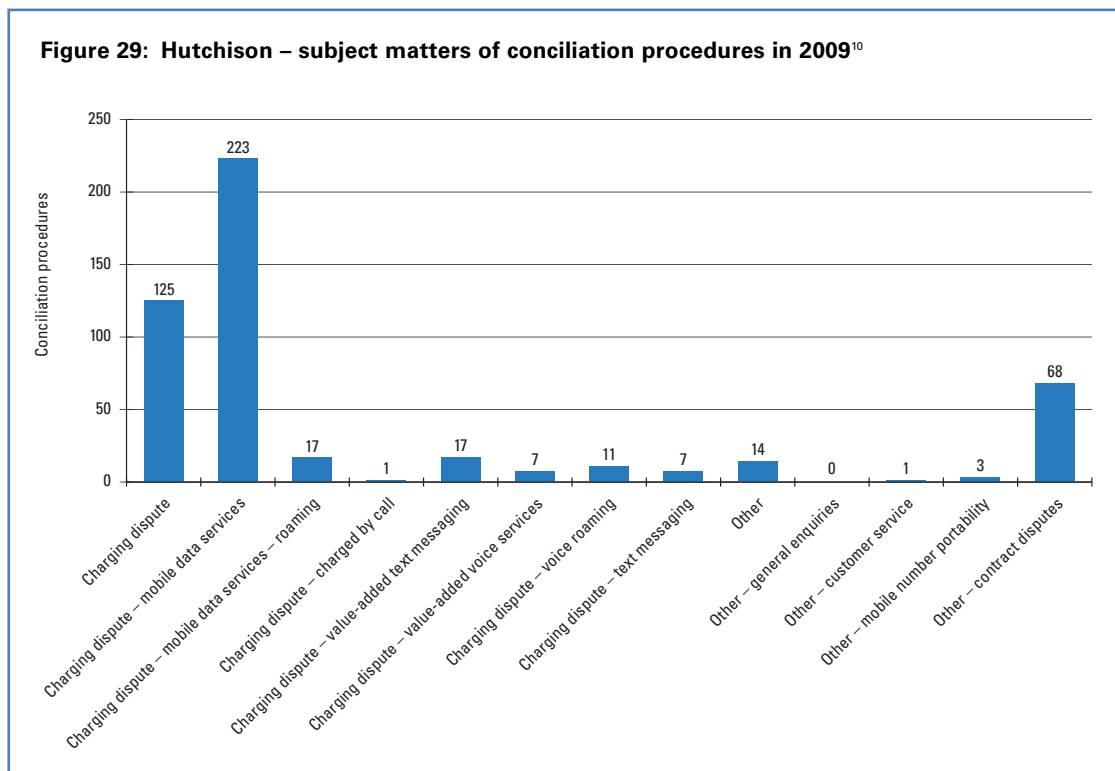
Figure 28: Enquiries handled by the RTR call centre concerning Orange in 2009 (by subject matter)



4.7. Hutchison 3G Austria GmbH

For Hutchison, more commonly known as “3”, the number of procedures rose only slightly in 2009. With an increase of just under 6% in the year under review, the number of procedures totalled 479. Compared to the other mobile operators, the percentage of complaints about mobile

data services is very high (see Figure 29). This might be related to the fact that Internet customers make up a relatively large share of Hutchison’s total customer base, or also that these services provided by Hutchison are particularly prone to complaints because, for example, Hutchison does not actively warn customers consistently when the included data limit is exceeded.



Not all the cases brought before the conciliation body are charging disputes, as the example below illustrates.

Example 7:

Wrong telephone directory listing

Ms K turns to the conciliation body. For her main phone number with Hutchison, she had ordered a regular telephone directory listing as specified in § 69 subsection 3 of the Austrian Telecommunications Act 2003 (TKG 2003) and wanted to change the entry, which Hutchison refused to do, however.

Upon investigating the complaint, the conciliation body discovered the following: Ms K had requested no directory listing when concluding the contract. Yet, somewhat later she reconsidered and wished a listing after all. Hutchison responded, stating that a subsequent listing in the phone directory was not possible. The number could be listed only if there was a small address change. Faced with this alternative, Ms K decided to have her number entered, having her address listed with a wrong street number. It comes as no surprise that this solution

¹⁰ In many cases the complaints concern several subject matters, so that the sum of cases involving individual subject matters is greater than the total number of procedures for the particular operator.

did not satisfy Ms K in the long run, and she requested her listing to be changed to her correct address. Yet Hutchison refused, stating that it would only be possible to delete the listing.

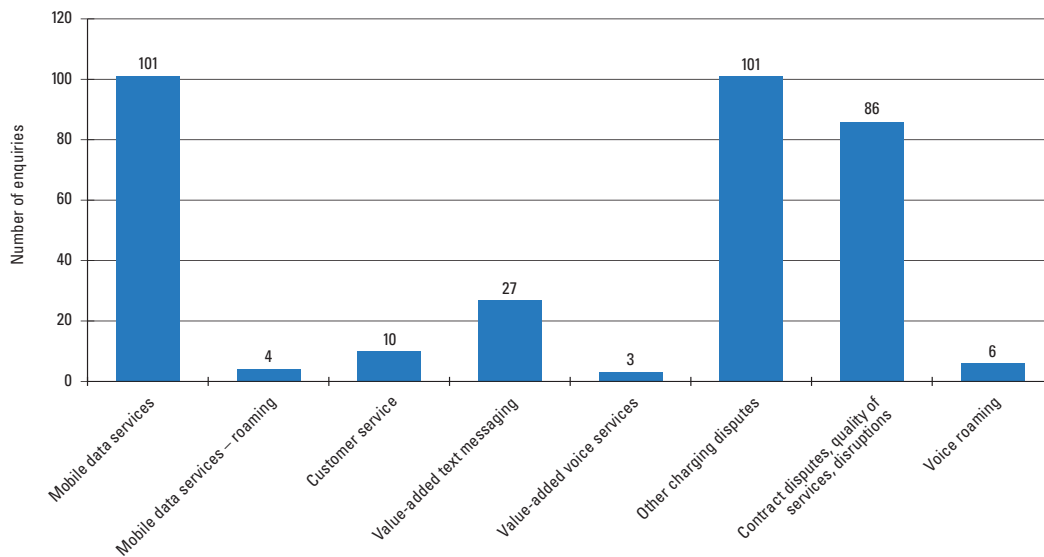
The conciliation body then prepared a solution proposal which basically aimed at the address to be corrected. Specifically, § 69 subsection 3 of TKG 2003 stipulates that subscribers have the right to request from the operator of the publicly available telephone service with whom they have a contractual relationship for the use of a line to have their surname, first name(s), academic

degree, address, subscriber number and, if the subscriber so requires, occupation included in the provider's subscriber directory free of charge. The provision additionally stipulates that subscribers have the right according to the same preconditions to verify the entry, correct it and have it withdrawn.

The solution proposal was subsequently accepted by both parties.

As with the conciliation procedures, the major reason for the enquiries recorded by the call centre was mobile data services (see Figure 30).

Figure 30: Enquiries handled by the RTR call centre concerning Hutchison in 2009 (by subject matter)

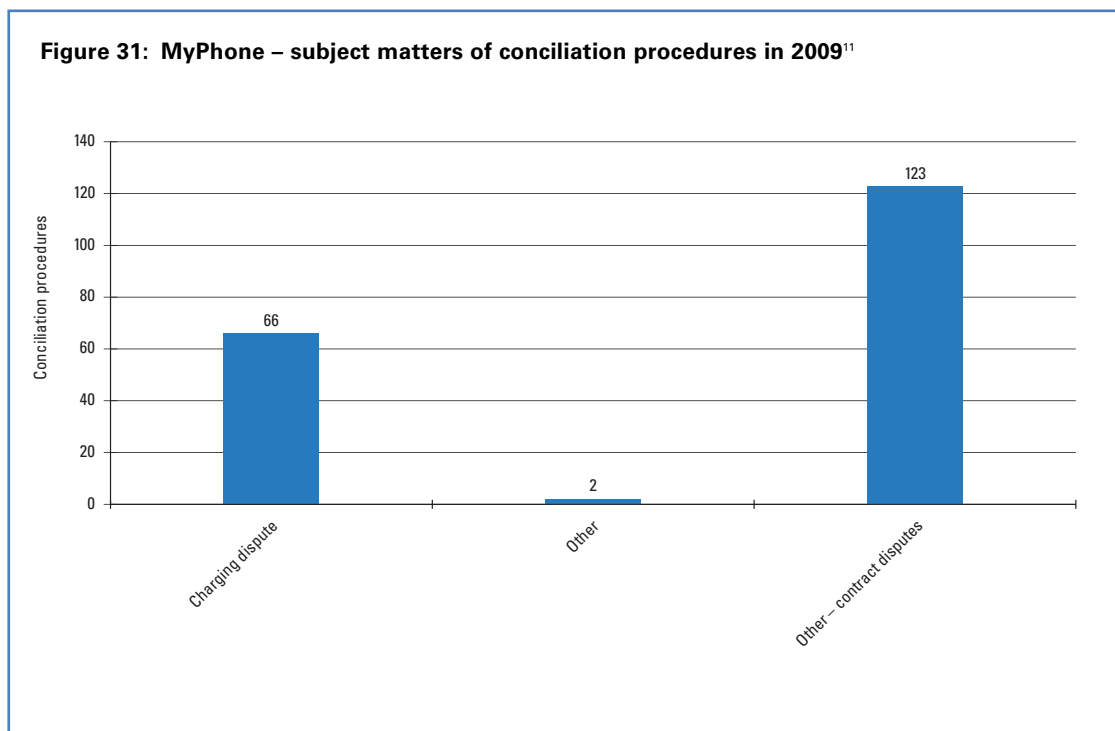


4.8. MyPhone GmbH

Appearing on the Austrian telecommunications market only in late 2007, already in 2008 MyPhone collected a total of 791 conciliation procedures to their credit. MyPhone mainly supplies services such as call-by-call carrier selection and carrier pre-selection. Most of the contracts included a minimum contract period with a monthly base rate, so that once the contract had, in MyPhone's view, been concluded, they insisted on compliance with the minimum contract period. In connection with highly problematic direct

marketing methods, in particular involving contacting potential customers directly by phone, a veritable flood of complaints ensued in 2008, which even received some attention in the media. The situation changed considerably in 2009. The number of procedures dropped to 138, with the complaints received in 2009 concerning for the most part grievances originating in 2008.

Almost all complaints concerned disagreements in connection with the conclusion of contracts (see Figure 31). The conciliation body correspondingly prepared a large number of solution propos-



als aimed at establishing that no legally effective contract had been agreed. Regrettably, all these solution proposals were rejected, and MyPhone continued to assert their disputed claims against parties they hold to be customers.

Anyway, the conciliation body will be closely observing any further developments, promptly making them public if necessary.

Example 8:

Who else is on the line?

Mr W requests a conciliation procedure to be initiated against MyPhone. He claims to have been called by MyPhone on 8 August 2008. During the phone conversation, he states, he was told that he could save money on phone calls if he gave his verbal

¹¹ In many cases the complaints concern several subject matters, so that the sum of cases involving individual subject matters is greater than the total number of procedures for the particular operator.

consent. Yet, he was not aware which company had called him.

He states that he finally had to answer a few questions by repeating sentences as instructed, but that he did not conclude any contract. No mention was made of changing his preselected carrier. Afterwards, he states, he unexpectedly received bills, which he subsequently objected to. He reports having received several payment reminders.

In the conciliation procedure, MyPhone stated their point of view, asserting that a legally valid verbal contract had been concluded with one of their call centre employees and that confirmation of the contract had also been sent to the complainant. In addition, MyPhone had not received in time the written statement of withdrawal

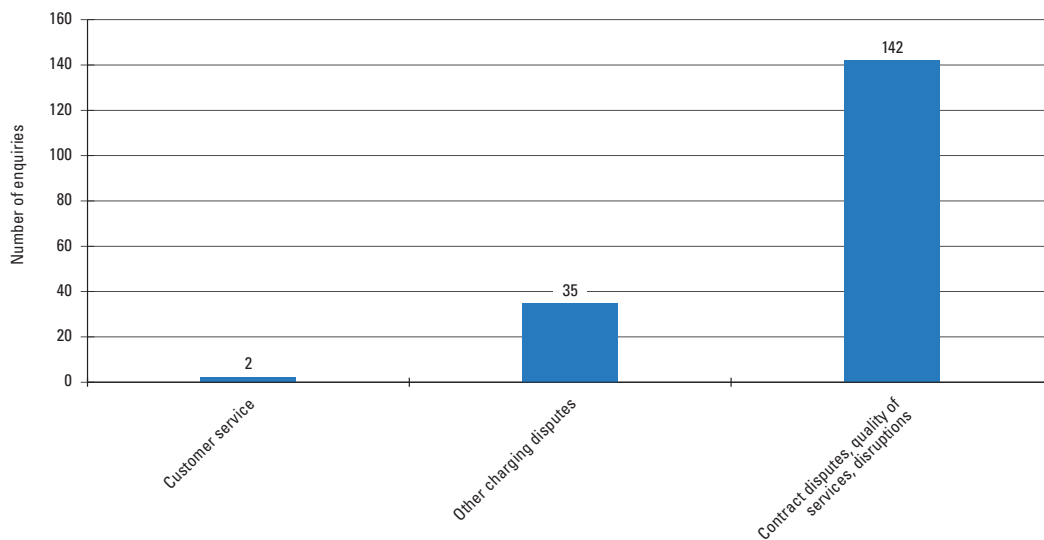
from the contract as specified in the Austrian Consumer Protection Act. The contract was legally valid and thus continued to be in effect, MyPhone claimed. To reinforce their case, MyPhone submitted the digital audio recording concerned as proof of the contract having been concluded.

Yet, an analysis of the recording revealed that the course of the conversation could not be reconstructed and no intention to enter into a contract on Mr W's part was identifiable. Of particular note was that comments in the voice of another person could be heard. In view of these circumstances, the conciliation body proposed a solution in favour of Mr W. Yet regrettably, as the conciliation body had expected, MyPhone rejected the proposal.

An evaluation of the distribution of initial enquiries by subject matter (see Figure 32) corresponds to the experience gathered in the conciliation

procedures – the large majority were concerned with contract disputes.

Figure 32: Enquiries handled by the RTR call centre concerning MyPhone in 2009 (by subject matter)



5. Selected topics

Four key topics are discussed in the following that have come to play an important role in conciliation procedures and are relevant to amendments of legislation governing user rights. The first chapter concerns mobile Internet access, the matter with which the conciliation body was mainly involved in the year under review. This provides the background for chapter 4.2, which offers a checklist that is useful for selecting the most suitable mobile Internet product. The last two chapters report on major changes with respect to roaming within the European Union and the legitimacy of charging fees for paying by remittance slip. Finally, chapter 5.5 presents an overview of the topics discussed in the activity reports of the past few years.

5.1. Mobile Internet access

As discussed in the previous chapters, disputes concerning charges incurred by using mobile data services are the most common reason for complaint by far. The aim in the following is, firstly, to elucidate the putative reasons for this situation and, secondly, to point out useful options for solving the issue.

Finally, a checklist is offered to assist consumers in making an informed and qualified decision when selecting a product.


Problem number 1: charging method and high rates in many cases

The conciliation body has come to recognise that, in particular, mobile Internet products including an inexpensive data package in the monthly base rate are especially risky. Yet, as

soon as the package limit is exceeded, excessively high rates are charged. Just one typical example for such a scheme: EUR 9 a month for 3 GB and 10 cents for each additional MB. Another problem are very high data tariffs. These are usually data tariffs charged in conjunction with normal mobile call rates. Rates of EUR 5 per MB exist for example, amounting to a total of about EUR 5,000 per GB!

The following are some positive examples of safe products:

Prepaid: Users of a prepaid card always purchase in advance a credit balance that they are able to consume within a specified period. An example might be EUR 20 for 1 GB, which can be used up within one year. There are practically never any complaints about charges for such products, even though the price per GB is often higher than with normal post-paid services. When calculating price, users should, however, also bear in mind that with products including a monthly data package the unused data volume expires each month. Especially users requiring mobile Internet access only infrequently or occasionally are thus often much better off with prepaid services in terms of cost. For someone able to make do for six months with the 1 GB cited in the example above, the monthly expense would be a mere EUR 3.33. Prepaid services are therefore recommended for those just getting started in the mobile Internet world. Another advantage is that data modems are available at reasonable prices (i.e. around EUR 50) from dealers other than service providers. If the user decides after a while that a contract product would be a better solution, the modem can continue to be used.



Fair use: The feature of this type of product is that data volume is not additionally charged. Yet operators choose to design their specific products in different ways. Products are often offered that include bandwidth throttling when a certain limit, e.g. 6 GB, is exceeded. In some cases the service is blocked completely when certain limits are reached, with the block being lifted only once the new billing period begins. Some operators only issue warnings when the stipulated fair-use limit is exceeded, and only in the case of a repeated infraction are penalties such as blocks or cancellations imposed. Regardless of how such products are specified in detail, they allow users to access the Internet without reservations and without having to constantly check the data volume used. The risk of receiving an unexpectedly high or shocking bill is eliminated.


Flat fee: Little needs to be said about services billed at a flat rate. Such products may be used in an unlimited way and are just as safe as pre-paid cards or fair-use products, with respect to the risk of unexpectedly high bills as a result of exceeding data volume limits.

“Inexpensive” products based on use: There are also products on the market that, while charged from the outset based on use, nonetheless ensure a high degree of cost certainty due to the price structure and the level of rates. At EUR 4 for every GB increment started, for example, even though costly charges could be incurred through using unusually large data volumes, users are not likely to run up truly exorbitant bills. 20 GB would result in a bill of EUR 80, for instance.

Problem number 2: low visibility of the volume used

Everyone usually has a “feel” for minutes and seconds but not for bits and bytes. Every user should be aware of this. Even skilled computer and Internet experts experience unwanted or inadvertent data transfers from time to time. Anyone claiming to have a clear overview of data transfer is usually suffering from overconfidence. It is important to note the difference from using a phone: the device is held in the user’s hand, and making a phone call is a personal activity of which the user is well aware. Yet, precisely such awareness is missing when using the Internet. This is a typical example: staff members of the conciliation body are often told that the particular user only downloaded a few songs or video clips. A subsequent analysis of the data traffic often reveals that a large volume of data was uploaded. Inexperienced users in particular do not consider that the majority of file sharing programs allow other Internet users to access the data on their own computers. Once the program is running, others can access files, initiating data transfers, regardless of whether the computer’s user is actually downloading files. That is just one example of the difficulties in monitoring the volume of data used. The many other examples include: defective or poorly configured software downloading data from the Internet; automatic software updates; or malware such as Trojans, viruses and similar software.

There are, of course, methods for monitoring the volume of data one uses, for instance by installing suitable software. Yet only experts are able to utilise such tools reliably, and even then considerable effort is required.



A note in this connection: Most data modems are provided with a connection program that usually includes a data counter. But even such a counter can, if at all, display only approximate levels. It is always possible that the data volume actually used is not recorded or displayed.

Problem number 3: lack of transparency

Every company is obviously keen on presenting their products favourably. Unfortunately, this sometimes leads to the use of units in a way that prevents the average user from recognising the true magnitude of price differences. Referring back to the example mentioned at the outset, i.e. EUR 9 a month for 3 GB and 10 cents for each additional MB, not everyone is aware that a factor of 1,000 separates an MB from a GB. While one GB within the package costs EUR 3, the same data volume costs EUR 100 beyond the limit. It is consequently very important for users to check the specified units and convert them for comparison. It is, of course, preferable for the operators themselves to provide customers with the key contract details in a compact and easily readable form when the contract is concluded.

Problem number 4: speed kills

As uncanny as it may seem, the risk of unexpectedly costly bills becomes more imminent as bandwidths increase. High bandwidth is of course an important quality factor in Internet access, affording convenient use of the service. Yet it also implies that very large data volumes can be transferred in a short time. By way of example, at a bandwidth of 3 mbps, 1 GB can be transferred within a period of 45 minutes. Thus, even with products including a comprehensive data package, it is possible to exceed the limit only a few hours or days. Every user should be mindful of this possibility.

Problem number 5: sparse information about the volume currently used

While almost every provider offers a way of querying the current volume of data used, experience has unfortunately revealed that only very few users make use of such options. Most users use this feature only at the outset and quit sooner or later because it is too time-consuming. In addition, often details are presented that are not up to date and are of a non-binding nature. The number of operators providing pushed information, such as text messages to warn users, is unfortunately very small. The conciliation body feels urged to point out that only such active, pushed information services are truly effective. Examples of useful solutions include systems that inform the user just before the data package limit is exceeded and then once more immediately thereafter. Additional notification is necessary when unusually high charges have already been incurred.

Problem number 6: not all information reaches the user

In a widely varied range of solutions for mobile Internet access it is inherent that text messages sent by operators to inform users do not always reach users in a way of which users become aware. Specifically, UMTS WLAN routers do not display the text messages received for users. And many UMTS modems do not display the incoming mailbox for text messages when the modem runs under a Linux operating system. Responsibility rests with the operators in this respect to develop more reliable systems. One way of ensuring that users are informed would be to redirect the user's browser to a Web site displaying the necessary information, for example.

Problem number 7: lack of features for limiting costs

Hardly any products are offered in Austria that allow the maximum costs to be limited. While for data roaming a standard limit of EUR 60 will enter into effect within the European Union as of 1 July 2010, no comparable limits exist at the national level for mobile Internet use. In the experience of the conciliation body, an operator will block access only once a charge of several hundred euros has been incurred. It would be very important in this case to stipulate cost limits by contract in order to ensure cost certainty in using these services. It should only be possible for the user to exceed these limits by taking clear action to signify consent.

Problem number 8: high penetration of mobile Internet access

It is obviously wrong to view this as a general problem. On the contrary, the tremendous success of mobile Internet access on the market is a noteworthy success story for Austria. The added numbers using this service have inevitably also led to added numbers of complaints, however.

Conclusion: In summary, from the foregoing list it can be recognised that a large variety of potential problem situations have arisen in the context of mobile Internet access; in particular because of an interplay of these problem areas, such services have become by far the most frequent subject of the complaints brought before the conciliation body. There is clear need for action, especially on the part of the operators.

5.2. Checklist for mobile data services

1. Probably the most important aspect to consider is network coverage:

Although Austria's mobile networks have been expanded to a very high degree, that is no guarantee that you will actually be able to use every network satisfactorily at the locations where you are accustomed to having access, i.e. in your home or at work. Do not rely completely on the network coverage maps provided by operators. Borrow data cards from the operators coming into question and test personally the availability of network service.

2. The second consideration is your own personal pattern of use:

Determine whether you will surf the Internet and use e-mail only occasionally or, for instance, use multimedia applications, such as videos, requiring large data volumes, and estimate your expected data volume needs. If you already have Internet access, evaluate your current data transfer volume.

3. The third consideration is to carefully look at the products offered:

Find out which products are available and determine which of these can best meet your requirements.

In doing so, consider these items:

- Minimum contract period versus entitlement to cancel at any time: A minimum contract period often means more inexpensive terminal devices, as these are subsidised. A contract able to be cancelled at any time, on the other hand, means greater flexibility. Calculate the options, for example for two years, and compare them. Data modems in particular can often be purchased at a reasonable price from a dealer other than a service provider.

- **Contract or prepaid card:** With a prepaid card you may have higher rates but a high degree of cost certainty in return. You can use only the data volume included in the prepaid card. Especially individuals who less frequently use the Internet or are just getting started are usually better off with a prepaid card.
- **Billing based on use versus flat fee or fair use:** Products billed at a flat or fair-use rate will probably be more expensive than products charged according to the data volume used. Yet the former afford a high degree of cost certainty, because no additional charges are added to the base rate.
- **Rate level:** Work out some examples. In doing so, use varying assumptions: first assume your expected data volume, then assume a case where an unusually large data volume (e.g. 30 GB) is run up – which can unexpectedly happen to anyone, for example caused by malware.
- **Compare the contract notice periods.**
- **Find out how the operator would protect you against unexpectedly costly bills.** Does the operator perhaps offer absolute use limits? Does the operator send text messages to warn of certain charge limits?

Once you have worked through all these items, you will of course need to decide on the basis of your personal preferences (security, price, flexibility or other considerations). Priorities vary here from one individual to another. Yet it is important for you to at least consider all of the items in order to have a valid basis for taking your decision.

5.3. International roaming in the European Union

International roaming was also one of the topics that the conciliation body had to deal with in 2009. The number of complaints both in connection with voice roaming services as well as concerning data roaming services rose.

The most frequent reason given for conciliation procedures in the field of mobile data roaming services was that unexpected and extremely high costs had been run up through the use of data roaming services abroad. Users specifically complained that no warnings were issued even after considerable costs had been incurred. This results primarily from the fact that the tariffs for using mobile data roaming services can still be uncomfortably high – especially when the user has no special roaming package.

It was pleasing to see that the number of complaints involving roaming in the vicinity of borders decreased in 2009 as well. This is probably to be attributed to the introduction of the requirement to provide notification when data services are used in other EU countries and to send text messages advising users entering another EU member state that roaming costs will be incurred. This provides additional protection from inadvertent roaming in the vicinity of borders. The situation in the vicinity of the border with Switzerland continues to pose problems, however, because the requirements contained in the EU Roaming Regulation do not apply for Switzerland.

5.3.1. Roaming in the European Union

On 30 June 2009 the extended EU Roaming Regulation entered into force, introducing additional duties for mobile operators with regard to voice roaming services, text messaging services and mobile data roaming services within the European Union. A summary of the new provisions is given below:

5.3.1.1 Eurotariff

Firstly, the Eurotariff in 2009 was further reduced with effect from 1 July 2009. As of this date, the maximum price for all outgoing or active roaming calls under the Eurotariff is 51.6 cents per minute (including VAT), and the maximum price for all incoming or passive roaming calls is 22.8 cents per minute (including VAT).

Besides these price reductions, all calls subject to a Eurotariff are required to be billed on a per-second basis as of 1 July 2009. An initial mini-

imum charging period not exceeding 30 seconds (equivalent to a 30/1 billing increment for regulated active roaming calls) may be applied to calls made. Any calls received have to be charged on a per-second basis from the very first second.

However, mobile operators are still allowed to offer alternative roaming tariffs (special roaming tariffs) involving higher rates or charging in billing increments. The important thing is that every mobile operator offers at least one tariff that complies with the requirements of the Eurotariff.

Figure 33: Maximum prices for roaming calls introduced by the EU Roaming Regulation

In cents (ct) (including VAT)	Since summer 2007	30 August 2008	1 July 2009	1 July 2010	1 July 2011
Calls made	58.8 ct	55.2 ct	51.6 ct	46.8 ct	42.0 ct
Calls received	28.8 ct	26.4 ct	22.8 ct	18.0 ct	13.2 ct

5.3.1.2 Euro-SMS tariff

As of 1 July 2009, all mobile operators providing roaming services are required to offer their customers a so-called Euro-SMS tariff which must not exceed 13.2 cents including VAT. Mobile operators are no longer permitted to charge subscribers for receiving text messages while roaming in an EU member state. As in the case with

voice roaming tariffs, mobile operators may still offer additional roaming tariffs for text messaging services (special roaming tariffs).

MMS messages are not subject to this price regulation, which means that customers may be charged for receiving MMS messages.

Figure 34: Euro-SMS tariff

In cents (ct) including VAT per SMS	1 July 2009
Text messages sent	max. 13.2 ct
Text messages received	0 ct

5.3.1.3 Mobile data roaming services

Unlike for voice services and text messages, the expanded EU Roaming Regulation did not introduce any price regulations for mobile data roaming services at retail level. However, as of 1 July 2009 mobile operators are obliged to put into place comprehensive transparency and safeguard mechanisms for their roaming customers.

Tariff information

Firstly, mobile operators have to offer a sufficient amount of tariff information on the charges for regulated data roaming services (i.e. data roaming services within the European Union) and the risk of expense involved when using data roaming services within the European Union. According to the Regulation, mobile operators are generally obliged to ensure that their roaming customers, both before and after the conclusion of a contract, are kept adequately informed of the charges which apply to their use of regulated data roaming services.

Automatic message

As of 1 July 2009, all mobile operators are required to send an automatic message to roaming customers when establishing a data roaming connection in another member state of the European Union. This automatic message, provided free of charge, has to inform the customers that they are using a roaming service and of the applicable tariff. This information, which may be delivered by text message, e-mail or pop-up window, has to be provided every time the roaming customer enters a member state of the European Union and initiates for the first time a regulated data roaming service. It is important that this automatic message is provided in such a way as to ensure easy receipt and comprehension.

Cost-limiting function

As of 1 March 2010 mobile operators are required to provide all customers capable of using data roaming services with a feature that allows them to define for the use of data roaming services a certain limit which must not be exceeded.

This limit may be expressed as an amount of money or as data volume. To this end, the operator has to inform the customers in advance of the data volume corresponding to a certain amount of money and vice versa. The operator may make available one or more limits for specified periods of use, whereas one of these limits has to be approximately EUR 60 per monthly billing period (including VAT).

Between 1 March 2010 and 1 July 2010, customers have the opportunity to actively opt for a limit. If they fail to do so, no limit will apply to them during this period, leaving them without any control feature for the data roaming services they use. As of 1 July 2010, a monthly default limit, i.e. a limit close to EUR 60 per month including VAT, will be applicable to all customers who have not opted for some other limit.

For customers who choose a certain limit, no more can be charged for the use of data roaming services within the European Union than the specified amount, unless the customer explicitly wishes to continue provision of those services.

Therefore, if a cost-limiting feature for data roaming services is specified in the contract, the following procedure must be followed: When the regulated data roaming services¹² have reached 80% of the agreed limit in terms of volume or funds, the home provider (i.e. the customer's own operator and contractual partner, not the foreign operator in whose network the customer is roaming) has to send a notification to the roaming customer's mobile phone

¹² A regulated data roaming service means a roaming service enabling the use of packet switched data communications by a roaming customer outside the member state of his/her home network in another member state of the European Union; this term also includes the transmission and receipt of MMS messages in another EU member state.

or other end device (smartphone, notebook etc.), for example via text message, e-mail or pop-up window, informing the customer that 80% of the agreed amount or volume has already been used up. Customers finding such notification annoying have the right to require their operators at no charge to refrain from sending it. However, they have the right at any time and free of charge to request the notification to again be sent.

When 100% of the agreed data limit is reached, the operator has to send the customer another notification indicating,

- that they have fully used up the agreed limit;
- the procedure to be followed if the customer wishes to continue provision of those services;
- the cost associated with each additional unit to be consumed.

If the roaming customers do not react in a timely manner and as prompted in the notification received, the operator has to immediately refrain from providing and charging data roaming services. If the data roaming services are blocked for this reason, the block will usually be continued until the next period of use. Of course, the services can be reactivated sooner upon agreement between the customer and operator.

The data or volume limit aims at protecting subscribers from incurring higher charges for the use of regulated data roaming services than previously specified by agreeing on a limit with the operator, unless the user explicitly requests data roaming services to continue to be provided.

Operators may decide on the general technical means of implementing the compulsory cost-limiting function described above as well as the means of providing the information to their customers. The notifications required when the roaming services have reached 80% or 100% of the agreed limit may be sent as text messages

for instance. Operators also determine the manner in which their customers can request the continued provision of data roaming services, e.g. whether they have to send a reply SMS or click a certain button in a pop-up-window.

Customers not wishing to use a cost-limiting function can also request their operators to deactivate this service.

5.3.2 Successfully implemented in Austria

In 2009, the conciliation body received hardly any complaints involving the requirements stipulated in the Roaming Regulation. This applies to the requirements deriving from the first Roaming Regulation (charging of the Eurotariff, text messages sent by operators to inform users) in effect since 30 June 2007 and the new requirements deriving from the expanded EU Roaming Regulation (Eurotariff to be billed on a per-second basis, introduction of a Euro-SMS tariff, text messages sent by operators to inform subscribers when they use data roaming services), which have been in effect since 30 June 2009.

The few complaints actually lodged with the conciliation body mainly concern problems related to the billing of the Eurotariff on a per-second basis as well as activating special roaming tariffs and the Eurotariff.

On the whole, the conciliation body observed that the Austrian mobile operators have satisfactorily implemented or complied with the requirements set out in the Roaming Regulation. The hope remains that the introduction of the cost-limiting function will also result in a decrease in complaints concerning mobile data roaming services, especially concerning so-called bill shocks.

The Roaming Regulation is scheduled to be in force only until 30 June 2012. The European Commission must then review the effectiveness

of the Roaming Regulation and provide in the framework of this review appropriate recommendations on its prolongation, extension or termination, if applicable.

5.4. Admissibility of charges for payment via payment slip (“Zahlscheinentgelt”)

One area of legislation governing user rights that has seen major amendments is the admissibility of charges for payment via payment slip, so-called “Zahlscheinentgelte”. Specifically, these are charges which are billed for any payment form other than direct debiting or credit card payment and apply to the traditional remittance via payment slip or to Internet banking. The contracts of nearly all Austrian operators stipulate such additional charges for each bill paid. However, the end of 2009 saw new legislation pertaining to this issue, when the Payment Services Act (ZaDiG) entered into force on 1 November 2009. § 27 subsection 6 second sentence of the ZaDiG stipulates the following: “The payment service provider shall not prevent the payee from offering the payer a reduction for the use of a given payment instrument. However, the payee shall not have the right to request charges for the use of a specific payment instrument.”

When applied to a standard telecommunications services contract with end customers, the payee is the provider of the telecommunications services. Pursuant to this provision, it is now possible to offer a reduction for using specific payment instruments but not to request a charge for others. Enterprises cannot waive the quoted provision of the ZaDiG (§ 26 subsection 6 ZaDiG) in a legally effective way either, i.e. this is not only a consumer protection provision. Hence it can be generally concluded that the billing of charges for payment via payment slip is no lon-

ger lawful. Granting a reduction on the monthly base rate to customers choosing a specific payment instrument is still permitted, though.

There still have been no final rulings based on the new legal situation, however. The Austrian Supreme Court of Justice, in its ruling 4 Ob 50/00g of 14 March 2000, only dealt with the issue of admissibility of charges for payment via payment slip based on the previous legal situation. In this case, billing such a charge was held admissible. The first ruling of the Supreme Court on this issue since the ZaDiG entered into force is pending.

Within the scope of an objection procedure pursuant to § 25 TKG 2003, the Telecom-Control Commission (TKK) may object to an operator’s general terms and conditions pursuant to § 25 subsection 6 of the TKG 2003 if upon review they do not measure up to standards. At the time of the preparation of this report, however, no decision on an objection issued by the Telecom-Control Commission (TKK) was available since all the general terms and conditions submitted pursuant to § 25 TKG 2003 which contained such clauses had either been withdrawn for revision by the operators or had been revised accordingly. Since the ZaDiG entered into force, the Telecom-Control Commission (TKK) has not accepted any general terms and conditions containing clauses stipulating charges for payment through payment slip (“Zahlscheinentgeltklauseln”). But some operators, of course, still use general terms and conditions that were issued before the entry into force of the ZaDiG.

As of the time of the preparation of this report, the conciliation body had in fact already made recommendations within the scope of its conciliation activities suggesting that such charges be waived.

5.5. Topics discussed in the previous activity reports

The activity report of the conciliation body is published annually and can be downloaded on our Web site at <http://www.rtr.at/en/komp/alle-Berichte>. Figure 35 below shows which topics were discussed in greater detail in the conciliation reports from 2005 to 2008.

Figure 35: Overview of topics discussed in the activity reports of the conciliation body over the past four years

2005	<ul style="list-style-type: none"> ■ What is unbundling? ■ Itemised Billing Ordinance (EEN-V) ■ Blocking of value-added text messaging services ■ International dialler programs ■ Billing increments of rate plans ■ Rulings on value-added services ■ Charges for data transfers ■ Amendment to the anti-spam provision § 107 TKG 2003
2006	<ul style="list-style-type: none"> ■ Billing increments ■ Roaming ■ Mobile Internet access ■ Value-added text messaging services ■ Amendment to the protection regulations concerning value-added services ■ Voice over IP
2007	<ul style="list-style-type: none"> ■ Value-added services ■ Mobile data card, data roaming ■ International roaming in the European Union ■ Issues related to the feasibility of establishing broadband connections ■ Direct marketing – telemarketing ■ Recent court rulings
2008	<ul style="list-style-type: none"> ■ Monitoring of value-added services ■ International roaming ■ Voice mail abroad ■ Roaming in the vicinity of borders ■ International roaming in the European Union



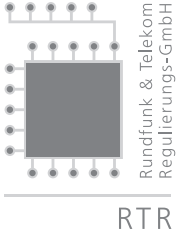
6. Outlook

The conciliation body will continue to devote the main focus of conciliation activities in 2010 to mobile data services. Besides handling the related cases submitted, it will probably be necessary to consider strategic measures at the legislative level as well. In its capacity as a conciliation body, RTR also regards it as its responsibility to provide its know-how to those who wish to make useful contributions to improving users' cost certainty. It would appear an undisputed fact that there is need for action in this context. Operators, users and stakeholders alike – all will have to do their part to significantly improve the current situation.

Apart from these clearly identifiable priorities in our work, it will also be important to review in an ongoing way the complaints submitted in order to identify new issues and developments. The conciliation body will continue its commitment to fulfilling the task of protecting the rights of users of telecommunications services in the future as well – as it has done in recent years, for example through successfully limiting abuse associated with value-added services.

7. Annex

7.1. "Deferral of the payment due date" and "Request for a conciliation procedure" procedure form

<p>"Deferral of the payment due date" and "Request for a conciliation procedure" procedure form</p>  <p>RTR</p>
<p>PLEASE NOTE:</p>
<p>You should always refer to the applicable <u>procedure guidelines</u> both with regard to the deferral of the payment due date and the conciliation procedure.</p>
<p>If you have already requested a conciliation procedure with the conciliation body and you know the identification code ("Geschäftszahl") (RSTR xxxx/0x) and your personal details have not changed, you only need to complete the fields "First name", "Surname" and the RSTR code under Item A. You will find the identification code in the conciliation body's reply, either in the subject line of the e-mail or below your address on the left side of the letter.</p>
<p>In which cases is a conciliation procedure principally possible?</p>
<ul style="list-style-type: none">■ If you have lodged a written objection with the operator;■ If you have received a written response from the operator;■ If you filed a request for a conciliation procedure within one month after receipt of the operator's written response;■ Please complete Item A and Item C of the form.
<p>Prerequisites for the deferral of the payment due date:</p>
<ul style="list-style-type: none">■ You have to lodge an objection with your provider and complete Item B of the form (the section highlighted in grey); or■ You have already received a written response from the operator and request a conciliation procedure as specified in Item C and you also ask for deferral of the payment due date up until the end of the conciliation procedure. For this purpose, please complete Item C.2. <p>Please note: You should refer explicitly to § 12 of the procedure and keep in mind that the provider might demand interest on arrears after the procedure has ended.</p>

A. General data:

Your personal data

Mr Ms Company

Surname or name of company:		First name:	
Street:		Postcode, town/city:	
Daytime phone number:		E-mail:	
Your account number with the operator:		RSTR code (if available):	

You are represented by: (You are not obliged to have a representative, e.g. a lawyer, act on your behalf)

Mr Ms Company

Surname or name of company:		First name:	
Street:		Postcode, town/city:	
Daytime phone number:		E-mail:	
Telephone number/s concerned		Operator or provider concerned	

B. Deferral of the payment due date:

PLEASE NOTE: If you want to file a request for a conciliation procedure as specified in Item C and also ask for deferral of the payment due date, you only need to check the box under C.2.

Deferral of the payment due date before a conciliation procedure is possible:

Please complete the field below only if you have already lodged an objection with the operator and have not yet received a written response:

Bill/s concerned:

Number or date of bill:	Disputed amount:	Total amount:	Objection lodged/Date:

C. Request for a conciliation procedure

C.1. Bill/s concerned (only complete these fields if you object to a bill)

Number or date of bill or reference code:	Disputed amount:	Total amount:	Objection lodged/Date:	Date of receipt of the operator's written response:

C.2. Deferral of the payment due date during the conciliation procedure:

Yes, I request deferral of the payment due date for the bills disputed in the conciliation procedure as defined in the procedure guidelines

C.3. Please give a brief summary of the case and explain why you believe that your request has been wrongly rejected:

Please enclose copies of the following documents:

- Your written objection/complaint
- Operator's written response

Please specify any other documents (enclosed as copies) which you hold to be additionally relevant to assessing the case (e.g. disputed bill, repair orders, memos, Web site printouts, itemised telephone bills):

C.4. Your solution proposal:

(Please note that an amicable solution cannot be expected to be found if unreasonable claims are raised. Therefore, your solution proposal should also be reasonable from the operator's point of view.)

D. Other messages:

7.2. Guidelines for conciliation procedures with operators or providers of telecommunications services pursuant to § 122 subsection 1 no. 1 of the Austrian Telecommunications Act 2003 (TKG 2003)

§ 1: General information on the conciliation procedure and deferral of the payment due date – what can the conciliation body do for you?

- a) Within the scope of the conciliation procedure, you can attempt to find an out-of-court solution for problems that you have experienced with your **operator** and that you could not resolve satisfactorily on your own (**see Section I**).
- b) In addition, you have the opportunity to achieve a “deferral of the payment due date”. This means that, for the time being, you do not have to pay the disputed amount of a bill for which you already lodged an objection with your operator (**see Section II**).

SECTION I: CONCILIATION PROCEDURE

§ 2: General information on the conciliation procedure. When instituting a conciliation procedure you have to consider the following issues:

- a) **“Operators”** are all providers of “telecommunications services”, i.e. typically telephone service operators and Internet service providers. Companies that only offer e-mail and Web services or sell other services or products over the Internet or the phone (e.g. Internet shops, online route planners, etc.), for instance, are **not** telecommunications service providers.

- b) **Prior attempt to resolve the problem or objection to the bill:** You must have contacted your operator in writing and attempted to resolve the problem. In the case of a disputed bill, this means that you must have sent a written objection to the bill to your operator within the specified period. This period varies from operator to operator and is indicated on the bill; you may also request your operator to inform you of the objection period. In case of other problems (e.g. contract disputes, poor performance of services), you also have to lodge a written complaint with the operator.
- c) If you receive the operator’s written response to your complaint or objection to the bill and disagree with the response, you have to submit to the conciliation body a **fully completed request for a conciliation procedure stating the grounds for the request** using the **procedure form** (“Verfahrensformular”) **within one month** (**see § 17**).
- d) If the operator does not provide you with a written response to your objection to the bill or your complaint within six weeks, the conciliation body may declare a conciliation procedure to be admissible. In this case, you will also have to file a request for a conciliation procedure with the conciliation body using the **procedure form within one month** (**see § 17**).
- e) If in the written response the operator fails to notify you of the option of a conciliation procedure and of the one-month period, the period for filing a request for a conciliation

procedure will be four months, unless you can be expected to be familiar with the one-month period.

- f) The information you provide in the procedure form has to be **complete and truthful** and **easy to comprehend**. If this is not the case, the conciliation body will return the request to you, additionally granting you a one-time period to correct the information. Moreover, you have to submit all documents that support your case (contracts, bills, proof of payment etc.) together with the request for a conciliation procedure. Please send copies of all documents, unless you are asked to submit the original documents.
- g) You can also be **represented** in the conciliation procedure (e.g. by a third person or a recognised consumer protection organisation). The conciliation body may ask you to provide written confirmation that power of attorney has been granted.
- h) In general, the conciliation procedure is **free of charge**. However, you have to pay your own expenses (e.g. photocopies, postage, telephone costs or the cost of legal advice and representation).

§ 3: In which cases is a conciliation procedure no longer possible?

- a) If the case has **already been the subject matter** of a conciliation procedure or of administrative or court proceedings;
- b) If the case occurred more than **one year ago** (e.g. the bill is older than one year);
- c) If the amount in dispute is **less than EUR 20 including VAT**, unless the subject matter is of significance beyond this individual case;
- d) If you have already legally **acknowledged** the disputed claim (e.g. by arranging a debt repayment plan with a debt collection agency);

- e) If you have not **filed an objection to the disputed bill within the set period or, in the case of other problems, if you have not lodged a written complaint** and therefore have not received a corresponding written response from your operator. Please note: most bills specify the period of time allowed for lodging an objection with the operator;
- f) If you have failed to observe the deadline **for filing the request for a conciliation procedure with the conciliation body**; or
- g) In the event that **a procedure form has obviously been completed arbitrarily and is incomprehensible or incomplete, if the additional period for correcting the request has elapsed without result**.

§ 4: What steps does the procedure with the conciliation body entail?

- a) As a rule, the conciliation body gives the operator the opportunity to reply to your complaint or objection. Furthermore, the operator is asked to suggest a **compromise** and/or review the solution suggested by you in the request for the conciliation procedure. If a settlement is reached in this way, the procedure will be terminated.
- b) If no settlement could be reached, the conciliation body will examine all documents that were submitted by the two parties. For technical issues the conciliation body may also consult with RTR technology experts.
- c) Depending on the outcome of the reviews, the procedure may be terminated in various ways:
 - l. If the conciliation body believes that at least parts of your complaint are justified, it will issue a **written solution proposal**. This written proposal will be submitted to you and your operator. If both parties ac-

cept the proposal, this becomes a binding settlement. If the proposal is not accepted by one party or by both parties, the conciliation procedure ends without a settlement.

- II. If the conciliation body believes that your complaint is unjustified or incomprehensible, the procedure will be terminated with a written **dismissal** giving the reasons for rejection.
- III. In the case of procedures with an **amount in dispute between EUR 20 and EUR 150** (including VAT), the procedure may be terminated without any further review of the subject matter, after the conciliation body has obtained a statement from the operator.
- IV. If the conciliation body is already familiar with your problem or complaint or if your problem or complaint is obviously not well-founded, we will send you a **written reply**, without having previously requested a response from the operator.

§5: How does the conciliation body reach a decision?

- a) As already mentioned, the conciliation body will primarily try to reach an **amicable solution**. Should this not be possible, the case will be reviewed based on applicable law. Taking into account the amount in dispute and/or the significance of the case, it may, however, also decide according to the principles of expedience and equity.
- b) The conciliation body may also **refuse** to pass a decision on certain claims (mainly on claims for damages), if the investigation methods available are not appropriate to sufficiently ascertain the facts of the case. Specifically, the body does not have the same opportunities as the courts to question witnesses and appoint experts that do not belong to RTR.

§6: How long will the procedure take?

The conciliation body endeavours to carry out the procedure as quickly as possible, but within **six months** at most. In individual cases, the procedure may last longer though. Please note that enquiries in pending procedures that merely refer to the duration of the procedure will not be answered within the first six months.

§7: What are the operator's obligations?

The operator is obliged by law to cooperate in the conciliation procedure. The operator has to submit to the conciliation body all requested documents that are necessary for assessing the case or carrying out the procedure, e.g. subscriber data, contracts, test logs, copies of the company's response letter to the objection etc.

§8: What deadlines have to be met?

If the conciliation body requests you or the operator to submit information, the response has to be submitted within **14 calendar days** as a rule. This period may be extended or shortened in individual cases as circumstances require. The applicable response period will be communicated in each individual case.

§9: Data protection

The conciliation body will use any and all data submitted by you and the operator (e.g. name, address, phone number dialled etc.) only for the purpose of the conciliation procedure itself. If, in the course of the conciliation procedure, evidence of potential offences violating administrative penal/criminal law emerges, the conciliation body may forward the relevant data in order to allow the competent bodies (**e.g. Telecommunications Offices, public prosecutor's office**) to intervene.

SECTION II: DEFERRAL OF THE PAYMENT DUE DATE

§ 10: General information on the deferral of the payment due date

Deferral of the payment due date means that you do not have to pay the disputed amount before you receive the operator's written response to your objection. If you lodge a permissible request for a conciliation procedure with the conciliation body after receipt of the written response, the payment due date will be postponed until the end of the conciliation procedure. If no request for a conciliation procedure is submitted, deferral of payment is applicable only up to one month after receipt of the operator's written response. Hence, the operator can again demand payment of the amount after receipt of the conciliation body's notification that the deferral of payment is no longer applicable.

§ 11: What are the preconditions for deferral of the payment due date?

- a) You must have lodged a **written objection** with the operator or have filed a request for a conciliation procedure with RTR, or a conciliation procedure must be pending; and
- b) You have to complete the section of the procedure form entitled "Deferral of the payment due date" (<http://www.rtr.at/schlichtungsstelle>) fully and correctly and send it to the conciliation body or complete and submit the corresponding Web form.

§ 12: What else do you have to take into account?

- a) The deferral of the payment due date becomes effective upon the conciliation body's confirmation; however, please also take note of § 13.

- b) You have to pay the undisputed amount of the bill without delay.
- c) The operator is entitled to ask you to pay a certain amount based on the average of the three bills preceding the disputed bill.
- d) If the deferral of the payment due date is no longer applicable and there are no grounds for recalculation, the operator is entitled to demand the statutory interest on arrears starting from the original due date.
- e) Please note: a **deferral of the payment due date is no substitute for a request for a conciliation procedure** pursuant to the provisions given in Section I, these are two different processes!

§ 13: What further steps does the conciliation body take?

The conciliation body will send the procedure form and/or your documents to the operator. The company can then object to the deferral of the payment due date within seven working days (e.g. if the provider takes the view that no objection has been raised so far). If the operator does object, you will have the opportunity to refute the objection. If necessary, the conciliation body will decide separately on the deferral of the payment due date. **If it turns out that the preconditions for deferral of the payment due date have never existed, it will not take effect at any time.**

SECTION III: GENERAL PROVISIONS

§ 14: How can you contact the conciliation body?

You can contact the conciliation body by conventional mail, fax or using the Web form (e-mails will not be accepted).

§ 15: Your contact details, availability, obligations to cooperate

- a) Please notify the conciliation body without delay of any changes to your name, address, phone number, fax number or e-mail address. If you fail to notify the conciliation body of any changes, all documents/e-mails sent to you via the available contact information will be deemed served.
- b) You are required to **cooperate in the procedure** in a timely manner. If you do not reply to a letter of the conciliation body within the stipulated period (§ 8) despite a reminder, the procedure will be discontinued. This applies similarly to both deferral of the payment due date and the conciliation procedure.
- c) If a settlement has been reached, you (and your operator) must inform the conciliation body without delay.

§ 16: Who manages the procedure?

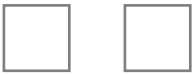
The conciliation body is responsible for all decisions (governing the procedure), such as setting time limits, termination of procedures etc. The conciliation procedure does not provide for any appeal or resumption of a terminated procedure. However, you may take recourse to the courts at any time, i.e. even during or after a procedure (pursuant to Sections I and II).

§ 17: Procedure form

The procedure form mentioned in these guidelines constitutes a part of these guidelines and is available as a Web form at <http://www.rtr.at/en/tk/SchlichtungsstelleRTR>. You can also download the form or request a hard copy by conventional mail.

§ 18: Entry into force

These guidelines enter into force on 1 October 2008. However, § 3 b) only applies to newly instituted procedures.



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